

Dated

202[X]

UNIVERSITY OF ULSTER (1)

and

[XXXXX] (2)

AGREEMENT FOR THE PROVISION OF SERVICES

[Insert Tender Title]

Contract Reference: Project [xxx]

SUBJECT TO CONTRACT / CONTRACT DENIED

SUBJECT TO CONTRACT / CONTRACT DENIED

CONTENTS

CLAUSE

1.	Definitions and Interpretation	1
2.	Term	9
3.	Extending the initial term	9
4.	Consents, Service Provider's warranty and due diligence	10
5.	Provision of Services	12
6.	Service levels	13
7.	Service standards & Equality	14
8.	Health and Safety	16
9.	Equipment	17
10.	Transferred Equipment [NOTE – IF NOT REQUIRED STATE 'NOT USED']	18
11.	University's Premises and Assets	18
12.	Business Continuity [NOTE – IF NOT REQUIRED STATE 'NOT USED']	21
13.	Payment	21
14.	Service credits [NOTE – IF NOT REQUIRED STATE 'NOT USED']	23
15.	Personnel used to provide the services	24
16.	Key personnel [NOTE – IF NOT REQUIRED STATE 'NOT USED']	25
17.	Safeguarding children and vulnerable adults	26
18.	TUPE [NOTE – IF NOT REQUIRED STATE 'NOT USED']	26
19.	Conflicts of Interest	26
20.	Reporting and meetings [NOTE – IF NOT REQUIRED STATE 'NOT USED']	27
21.	Monitoring	27
22.	Change control and continuous improvement	27
23.	Dispute resolution	28
24.	Sub-Contracting and assignment	29
25.	Indemnities	30
26.	Limitation of liability	30
27.	Insurance	31
28.	Freedom of information	32
29.	Data protection	33
30.	Confidentiality	36
31.	Audit	37
32.	Intellectual property	38
33.	Termination for breach	39
34.	Termination on notice & Ineffectiveness	40
35.	Force majeure	40
36.	Prevention of bribery	42
37.	Obligations to Assist on Re-Tendering of Services	44
38.	Exit Plan [NOTE – IF NOT REQUIRED STATE 'NOT USED']	44
39.	Termination Services	46
40.	Consequences of termination	49
41.	Gratuities	49
42.	Non-solicitation	49

SUBJECT TO CONTRACT / CONTRACT DENIED

43.	Waiver	49
44.	Cumulation of remedies	50
45.	Severability	50
46.	Partnership or agency, Independent Contractor.....	50
47.	Third party rights	50
48.	Publicity	51
49.	Notices	51
50.	Entire agreement	51
51.	Counterparts	51
52.	Governing law and jurisdiction.....	51

SCHEDULES

SCHEDULE 1	SPECIFICATION	54
SCHEDULE 2	SERVICE LEVELS	55
Part 1.	Service Levels.....	55
1.	The Service Levels	55
2.	Consistent failure	55
Part 2.	Service Credits.....	56
SCHEDULE 3	SERVICE PROVIDER'S SOLUTION.....	57
SCHEDULE 4	CHARGES AND PAYMENT	58
SCHEDULE 5	CONTRACT MANAGEMENT	59
1.	University's Contract Manager.....	59
2.	Service Provider's Authorised representatives	59
3.	University's Authorised Representatives	59
4.	Key personnel	59
5.	Meetings	60
6.	Reports	60
SCHEDULE 6	BUSINESS CONTINUITY PLAN	61
SCHEDULE 7	CHANGE CONTROL	62
1.	General principles	62
2.	Procedure	62
SCHEDULE 8	EXIT	64
SCHEDULE 9	CONTRACT MOBILISATION PLAN.....	65
SCHEDULE 10	TUPE [NOTE – IF NOT REQUIRED STATE 'NOT USED'].....	66
Part 1.	Transfer of employees	66
1.	Definitions	66
2.	Transfer of employees to the Service Provider	67
3.	Employment exit provisions	69

SUBJECT TO CONTRACT / CONTRACT DENIED

4.	Pensions	73
Part 1.	Transferring and Incumbent Employees.....	75
SCHEDULE 11	COMMERCIALLY SENSITIVE INFORMATION	76
SCHEDULE 12	MEASURES TO BE IMPLEMENTED IN RELATION TO ENVIRONMENTAL IMPACTS	77
SCHEDULE 13	UNIVERSITY'S ASSETS.....	78
SCHEDULE 14	DATA PROCESSING	80

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) **UNIVERSITY OF ULSTER** (branded as Ulster University) of Cromore Road, Coleraine, County Londonderry, BT52 1SA (**University**).
- (2) [FULL COMPANY NAME] incorporated and registered in [•] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Service Provider**).

BACKGROUND

- (A) The University sought proposals for the provision of “[TYPE] Services” by means of a public tender exercise. The University placed a contract notice [details of Find a Tender Service reference] on [Date] in Find a Tender Service seeking expressions of interest from potential providers for the provision of Services.
- (B) The University has, through a competitive process, selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Achieved Service Levels: in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 2).

Applicable Laws: any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body

Associated Company: any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Continuity Plan: a plan which sets out the procedures to be adopted by the Service Provider in the event that an incident or occurrence of any nature threatens the

continued delivery of any aspect of the Services to the University (including the procedures to be taken by the Service Provider in planning and providing for any such event), the Business Continuity Plan at the date of this agreement being set out in Schedule 6.

Catastrophic Failure:

- (a) a failure by the Service Provider for whatever reason to implement the Business Continuity Plan successfully; or
- (b) a failure by the Service Provider for whatever reason to support the University in the implementation of its business continuity plan successfully; or
- (c) any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the University's Contract Manager has or may cause significant harm to the reputation of the University.

Change: any change to this agreement including to any of the Services.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 7.

Charges: the Service Charges and any charges which may become due and payable by the University to the Service Provider in respect of any additional staff support in accordance with the provisions of this agreement.

Commencement Date: [DATE].

Commercially Sensitive Information: the information listed in Schedule 11 comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the University that, if disclosed by the University, would cause the Service Provider significant commercial disadvantage or material financial loss.

Commissioner: means the UK Information Commissioner, being the independent regulator and supervisory authority in the UK pursuant to section 114 of the Data Protection Act 2018.

Consistent Failure: shall have the meaning set out in Part 1 of Schedule 2.

Contract Mobilisation Plan: means the contract mobilisation plan relating to the Services, included in Schedule 9 as amended by agreement between the parties from time to time.

Contract Year: a period of 12 months, commencing on [Insert DATE] each year.

Coronavirus: the disease known as coronavirus disease (COVID-19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including:

- (a) the Data Protection Act 2018;
- (b) the UK GDPR;
- (c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

- (d) any laws which implement or amend any such laws in the UK;
- (e) the guidance codes of practice issued by the Commissioner or other Supervisory Authority applicable to a party; and
- (f) where applicable, other non-domestic legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and binding upon a party (including, without limitation, the privacy of electronic communications).

Default: any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub contractors in connection with or in relation to the subject-matter of this agreement and in respect of which such party is liable to the other.

Default Notice: is defined in clause 5.4.

Dispute Resolution Procedure: the procedure set out in clause 23.

EEA: the European Economic Area.

Effective Date: is defined in Schedule 10.

Emergency Exit: any termination of this agreement which is a (i) termination of the whole or part of this agreement in accordance with clause 33, except where the period of notice given under that clause is greater than or equal to six months; (ii) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to clause 33 or clause 34; or (iii) wrongful termination or repudiation of this agreement by either party.

Environmental Information Regulations: the Environmental Information Regulations 2004 (SI 2004/3391) as retained pursuant to the European Union (Withdrawal) Act 2018 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Plan: the plan to be prepared by the Service Provider pursuant to clause 38 and included in Schedule 8.

Extension Period: is defined in clause 3.1.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

Hourly Rates: the hourly rates set out in Schedule 4, as may be altered from time to time in accordance with clause 13.7.

Incumbent Employees: is defined in Schedule 10.

Information: has the meaning given under section 84 of FOIA.

Initial Term: the period commencing on the Commencement Date and ending on the [NUMBER] anniversary of the Commencement Date.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Key Personnel: those personnel identified in Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 16.

Major Incident: an event which, because of its scale or potential impact, (has or will have) a significant impact on the day to day operation of the Services.

Management Reports: the reports to be prepared and presented by the Service Provider in accordance with clause 20 and Schedule 5 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Necessary Consents: all approvals, requisite qualifications recognised within the UK by the appropriate governing body, certificates, authorisations, permissions, licences, permits, VISAs and work permits (where applicable), regulations and consents necessary from time to time for the performance of the Service.

Ordinary Exit: any termination of this agreement which occurs: (i) pursuant to clause 33 or clause 34 where the period of notice given by the party serving notice to terminate pursuant to such clause is greater than or equal to six months; or (ii) as a result of the expiry of the Term.

Pandemic Event: an event or delay caused by, or arising from or in relation to, a pandemic or Coronavirus that prevents or delays the performance of the obligations of the Provider and the University under this agreement or the performance of any obligations under this agreement, including (but not limited to):

- (a) absences or unavailability of the Provider, the University, the Provider's Personnel, the University's Authorised Representative, the University's Contract Manager, Key Personnel or any additional staff owing to any illness, quarantining or self-isolation (including, but not limited to, precautionary self-isolation) where the decision to quarantine or self-isolate is recommended by the Government; or
- (b) any loss of, or disruption to, any of facilities of the Provider or the University; or
- (c) any recommended or mandatory measures introduced by the Government intended to prevent or delay the spread of Coronavirus; or

Pandemic Event Cessation Notice: a notification under Clause 35.9 that a Pandemic Event that was preventing a party's performing obligations has ceased to have that effect.

Personal Data: shall have the same meaning as set out in the Data Protection Act 2018.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the University a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the University; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the University.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

Regulated Activity Provider: shall have the same meaning as set out in article 10 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this agreement or any other affairs of the University and "**Regulatory Body**" shall be construed accordingly.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the University in accordance with clause 33.1(b).

Replacement Services: any services that are identical or substantially similar to any of the Services and which the University receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the University internally or by any Replacement Service Provider.

Replacement Service Provider: any third party supplier of Replacement Services appointed by the University from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Required Insurances: is defined in clause 27.1.

Standard Contractual Clauses (SCCs): the ICO's International Data Transfer Agreement for the transfer of personal data from the UK and/or the ICO's International Data Transfer Addendum to EU Commission Standard Contractual Clauses or such other alternative clauses as may be approved by from time to time, being such appropriate safeguard for cross border transfers of Personal Data as required by Article 46 UK GDPR.

Service Charges: the charges which shall become due and payable by the University to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Service Credits: the sums attributable to a Service Failure as specified in Part 2 of Schedule 2.

Service Delivery Date: [DATE] being the date when the delivery of the Services shall commence.

Service Failure: a failure by the Service Provider to provide the Services in accordance with any individual Service Level measured on a monthly basis.

Service Levels: the specific service levels to which the Services are to be provided, as set out in Schedule 2.

Supervisory Authority: the relevant supervisory authority in the territory where a party to these Terms and Conditions are established (other than the Commissioner).

Service Provider Equipment: any materials, plant or equipment owned or held by the Service Provider or any Service Provider Party and provided by the Service Provider or any Service Provider Party for use in providing the Services.

Service Provider Party: the Service Provider's agents and contractors, including each Sub-Contractor.

Service Provider's Authorised Representative: the person designated as such by the Service Provider, the first such person being set out in Schedule 5.

Service Provider's Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Service Provider's Tender: the tender submitted by the Service Provider and other associated documentation submitted by the Service Provider in relation to its tender.

Services: the services to be delivered by or on behalf of the Service Provider under this agreement, including those described in **Error! Reference source not found.** (Specification).

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Tender Documents: the procurement documents issued by the University for this agreement which include, for the avoidance of doubt, any clarification responses issued by the University.

Term: the period commencing on the Commencement Date and ending on the expiry of the Initial Term except where:

- (a) the Initial Term has been extended under clause 3, in which case the Term will end at the end of the Extension Period(s); or
- (b) the agreement is terminated earlier in accordance with its terms.

Termination Assistance Notice: has the meaning set out in clause 39.8.

Termination Assistance Period: the period specified in the Termination Assistance Notice in which the Service Provider shall provide the Termination Services as may be extended pursuant to clause 39.9.

Termination Date: the date of expiry or termination of this agreement.

Termination Payment Default: a default by the University in the payment of Service Charges, reference to which shall exclude any disputed invoices(s).

Termination Services: the services and activities to be performed by the Service Provider pursuant to the Exit Plan, including those activities listed in clause 39.13 and any other services required pursuant to the Termination Assistance Notice.

Transferred Equipment: any equipment which is to be transferred in accordance with clause 10 and as more particularly specified in Schedule 1 (Specification).

Transferring Employees: is defined in Schedule 10.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) together with the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (SI 2006/177), as amended or replaced from time to time.

Unauthorised Territory: means a territory outside the UK which has not received an adequacy regulation pursuant to Section 17A of the Data Protection Act 2018, as such territory is not considered to provide adequate levels of protection of Personal Data.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

University Assets: any materials, plant or equipment owned or held by the University and provided by the University for use in providing the Services including those items identified in Schedule 13.

University Data: means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Service Provider by or on behalf of the University; or
 - (ii) which the Service Provider has access to pursuant to this agreement; or
 - (iii) which the Service Provider has is required to generate, process, store or transmit pursuant to this agreement; or
 - (iv) stored on the University computer system or otherwise owned by the University; or
- (b) any Personal Data for which the University is the Data Controller.

University's Authorised Representative: the person(s) designated as such by the University, the first such person(s) being set out in Schedule 5.

University's Contract Manager: the person designated as such by the University, the first such person being set out in Schedule 5.

University's Premises: the premises identified in Schedule 1 and which are to be made available for use by the Service Provider for the provision of the Services on the terms set out in this agreement.

Working Day: Monday to Friday, excluding any public holidays in Northern Ireland.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression **so far as the Service Provider is aware** or **to the Service Provider's knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) **Error! Reference source not found.** to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) the Tender Documents;
 - (e) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

[DN: SENIOR BUYERS MUST ENSURE THAT THEY HAVE SELECTED ONE OF THE BELOW OPTIONS FOR THE DURATION OF THE CONTRACT.

The two ways that you can deal with the contractual duration are as follows:

(i) Option One – the contract is for an Initial Term with the option to extend for a further Extension Period upon one month's prior written notice. This means that the contract will not automatically renew and notice will need to be given to extend the Term – in the absence of such notice the contract will terminate. If the University does not typically provide advanced notice in these circumstances it would be more prudent to select the second option;

(ii) Option Two – the contract automatically renews from the Initial Term into the Extension Period without any notice required.]

[DN: OPTION ONE]

- 3.1 The University may extend this agreement beyond the Initial Term by a further period or periods of up to **[PERIOD months/years]** (**Extension Period**). If the University wishes to extend this agreement, it shall give the Service Provider at least one (1) month's written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the University gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the University does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clauses 37 and 39 shall apply.

[DN: OPTION TWO]

- 3.1 This agreement shall upon the expiry of the Initial Term automatically without notice extend beyond the Initial Term by a further period or periods of up to **[PERIOD months/years]** (**Extension Period**). If the University does not wish for the agreement to automatically extend, it shall give the Service Provider at least one (1) month's written notice of such intention before the expiry of the Initial Term.
- 3.2 If the University gives such notice then the Term shall not be extended by the Extension Period and this Agreement shall expire on the expiry of the Initial Term and the provisions of clauses 37 and 39 shall apply.

4. CONSENTS, SERVICE PROVIDER'S WARRANTY AND DUE DILIGENCE

- 4.1 The Service Provider warrants that at the Commencement Date it has all Necessary Consents in place to provide the Services and shall ensure that it maintains all Necessary Consents during the Term. The University shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain and comply with a Necessary Consent in line with the requirements of the Services and this agreement.
- 4.3 The Service Provider acknowledges and confirms that:
 - (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the University all the questions it considers to be

relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;

- (b) it has received all information requested by it from the University pursuant to clause 4.3(a) and has had the opportunity to clarify such information to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the University pursuant to clause 4.3(b);
- (d) it has raised all relevant due diligence questions with the University before the Commencement Date; and
- (e) it has entered into this agreement in reliance on its own due diligence.

4.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the University in respect of any information which is provided to the Service Provider by the University and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.5 The Service Provider:

- (a) warrants and represents that it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this agreement and that this agreement is executed by a duly authorised representative of the Service Provider;
- (b) warrants and represents that no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this agreement;
- (c) warrants and represents that it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this agreement;
- (d) warrants and represents that no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- (e) warrants and represents that it owns, has obtained or is able to obtain, valid licences for all Intellectual Property that are necessary for the performance of its obligations under this agreement;
- (f) warrants and represents that in the three 3 years prior to the date of this agreement:

- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this agreement.
- (g) as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender and in Schedule 3 (Service Provider's Solution) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the University prior to execution of the agreement; and
- (h) shall promptly notify the University in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the University during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.
- 4.6 The Service Provider shall not be entitled to recover any additional costs from the University which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the University by the Service Provider in accordance with clause 4.5(h).
- 4.7 Nothing in clause 4.6 shall limit or exclude the liability of the University for fraud or fraudulent misrepresentation.

THE SERVICES

5. PROVISION OF SERVICES

- 5.1 The Service Provider shall comply with its obligations and perform the tasks allocated to it under the Contract Mobilisation Plan from the Commencement Date in accordance with the provisions of this agreement in order to ensure that it is in a position to commence delivery of the Services from the Service Delivery Date.
- 5.2 The Service Provider shall provide the Services to the University with effect from the Service Delivery Date for the duration of this agreement and shall ensure that the Services:
- (a) comply in all respects with the requirements set out in Schedule 1 (Specification); and
 - (b) are supplied in accordance with Schedule 3 (Service Provider's Solution) and the provisions of this agreement.

- 5.3 In the event that the Service Provider fails to commence delivery of the Services on the Service Delivery Date, then without prejudice to the University's right to terminate this agreement pursuant to clause 33.1 the parties will meet to agree a new date from which the Service Provider shall commence delivery of the Services provided that:
- (a) there will be no obligation on the University to pay the Charges in respect of Services not delivered by the Service Provider;
 - (b) this shall have no impact on the University's ability to bring a claim due to the Service Provider's breach of clause 5.2;
 - (c) there shall be no change to the Initial Term.
- 5.4 In the event that the Service Provider does not comply with the provisions of clauses 5.1 or 5.2 in any way, the University may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a **Default Notice**).
- 5.5 For the avoidance of doubt, the University and the Service Provider shall comply with all of their obligations as specified in Schedule 1 (Specification) for the duration of this agreement.
- 5.6 The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the University by the Service Provider in connection with the supply of the Services and shall pay the University any extra costs occasioned by any discrepancies, errors or omissions therein.

Provision of additional staff in special circumstances

- 5.7 In addition to the Service Provider's obligations to deliver the Services, the University may request the Service Provider to provide additional staff support in special circumstances. In such circumstances the University will endeavour to give the Service Provider at least one week's notice of such requirements. Any such requests for additional staff support must be authorised by the University's Contract Manager, prior to the Service Provider providing any additional staff support.
- 5.8 Following authorisation of the request for additional staff support, the Service Provider shall provide appropriately qualified additional staff to meet the University's request. Such additional staff, shall comply with all provisions of this agreement as if they were employed in the delivery of the Services. The Service Provider will charge the University for the provision of such additional staff on the basis of the appropriate Hourly Rates.

6. SERVICE LEVELS

- 6.1 Where any Service is stated in Schedule 2 to be subject to a specific Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.

6.2 As existing Services may be varied from time to time and new Services added, Service Levels for the same will be determined and included within Schedule 2. Service Levels will be reviewed and amended on an ongoing basis to ensure the services delivered meet the changing needs of the University.

6.3 The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 20. **[NOTE – IF NOT REQUIRED STATE “NOT USED”]**

6.4 In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the University may have, the provisions of clause 14 shall apply.

7. SERVICE STANDARDS & EQUALITY

7.1 Without prejudice to clause 6, the Service Provider shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with the Best Industry Practice from time to time;
- (b) in all respects in accordance with the University's policies, values and commitment to sustainability as set out or referred to in **Error! Reference source not found.**;
- (c) in a manner that assists the University to reduce its environmental impacts in the areas of energy and water conservation and waste reduction (including through the implementation of those measures specified in Schedule 12); and
- (d) in accordance with all Applicable Laws.

7.2 Without limiting the general obligation set out in clause 7.1, the Service Provider shall (and shall procure that all servants, agents, employees, consultants and Sub-contractors of the Service Provider including the Service Provider's Personnel shall):

- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the University requests so as to enable the University to comply with its obligations under the Human Rights Act 1998; and
- (b) comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 as amended by the Sex Discrimination (Northern Ireland) Order 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equality Act (Sexual Orientation) Regulations (NI) 2006, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Disability Discrimination (Northern Ireland) Order 2006, the Race Relations (Northern Ireland) Order 1997 as amended by the was amended by the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003, the Employment Relations (Northern Ireland) Order 1999, the

Employment Rights (Northern Ireland) Order 1996 and the Employment Equality (Age) Regulations (Northern Ireland) 2006 and shall ensure that in his employment policies and practices and in the delivery of the services required of the Service Provider under this agreement he has due regard to the need to promote equality of treatment and opportunity between:

- (i) persons of different religious beliefs or political opinions;
- (ii) men and women or married and unmarried persons;
- (iii) persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave);
- (iv) persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- (v) persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
- (vi) persons of different ages; and
- (vii) persons of differing sexual orientation.

Equality Policies and Practices

- 7.3 The Service Provider shall introduce and shall procure that any Sub-Contractor shall also introduce and implement an equal opportunities policy in accordance with guidance from and to the satisfaction of the Equality Commission. The Service Provider shall review such policies on a regular basis (and shall procure that its Sub-Contractors do likewise) and the University shall be entitled to receive upon request by it a copy of any such policy.
- 7.4 The Service Provider shall take all reasonable steps to ensure that all of the Service Provider's Personnel comply with its equal opportunities policies (referred to in clause 7.3 above). These steps shall include:
- (a) the issue of written instructions to the Service Provider's Personnel and other relevant persons;
 - (b) the appointment or designation of a senior manager with responsibility for equal opportunities;
 - (c) training of all the Service Provider's Personnel and other relevant persons in equal opportunities and harassment matters; and
 - (d) the inclusion of the topic of equality as an agenda item at team, management and staff meetings,
 - (e) and the Service Provider shall procure that its Sub-Contractors do likewise (in relation to their equal opportunities policies).

- 7.5 In the event of:

- (a) the Equality Commission notifying the Service Provider of an alleged breach by it or any Sub-Contractor (or any of their shareholders and/or directors) of the Fair Employment and Treatment (Northern Ireland) Order 1998; and/or
 - (b) any finding of unlawful discrimination (or any offence under the Applicable Laws mentioned in clause 7.2 above) being made against the Service Provider or its Sub-Contractors during the Term by any Industrial or Fair Employment Tribunal or Court,
- the Service Provider shall inform the University as soon as reasonably practicable and shall take such steps (including the dismissal or replacement of any relevant Service Provider's Personnel or Sub-Contractor(s)) as the University directs and shall seek the advice of the Equality Commission in order to prevent any such offence or repetition of the unlawful discrimination as the case may be.

7.6 The Service Provider shall monitor (in accordance with guidance issued by the Equality Commission) the composition of its workforce and applicants for employment and shall provide an annual report on the composition of such workforce and applicants to the University. If such monitoring reveals under-representation or lack of fair participation of particular groups, the Service Provider shall review the operation of its relevant policies and take affirmative/positive action where appropriate. The Service Provider shall impose on its Sub-Contractors obligations similar to those undertaken by it in this clause 7 and shall procure that those Sub-Contractors comply with such obligations.

7.7 The Service Provider shall provide such information as the University may from time to time request (including information requested to be provided by any Sub-Contractors) for the purpose of assessing the Service Provider's compliance with its obligations under clauses 7.4 to 7.7 of this agreement.

Equality

7.8 The Service Provider shall, and shall procure that each Subcontractor shall, in performing its/their obligations under this agreement (and other relevant agreements), use best endeavours to comply with the provisions of Section 75 of the Northern Ireland Act 1998, as if they were a public authority within the meaning of that section.

7.9 The Service Provider further acknowledges that the University must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Service Provider shall use all reasonable endeavours to assist (and to ensure that relevant Subcontractor assists) the University in relation to same.

8. HEALTH AND SAFETY

8.1 The Service Provider shall promptly notify the University of any health and safety hazards, which may arise in connection with the performance of the agreement. The University shall promptly notify the Service Provider of any health and safety hazards that may exist or arise

at the University's Premises and that may affect the Service Provider in the performance of the agreement.

- 8.2 While on the University's Premises, the Service Provider shall comply with any health and safety measures implemented by the University in respect of staff and other persons working on the University's Premises.
- 8.3 The Service Provider shall notify the University immediately in the event of any incident occurring in the performance of the agreement on the University's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.4 The Service Provider shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the University's Premises in the performance of the agreement.
- 8.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the University on request.

9. EQUIPMENT

- 9.1 Notwithstanding that the University may provide the Service Provider with certain University Assets and Transferred Equipment, the Service Provider shall be responsible for providing all the equipment necessary for the supply of the Services.
- 9.2 All Service Provider Equipment brought onto the University's Premises shall be at the Service Provider's own risk and the University shall have no liability for any loss of or damage to any equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the University's Default. The Service Provider shall provide for the haulage or carriage thereof to the University's Premises and the removal of Service Provider Equipment and Transferred Equipment when no longer required at its sole cost. Unless otherwise agreed, Service Provider Equipment brought onto the University's Premises will remain the property of the Service Provider or the Service Provider Party as the case may be.
- 9.3 The Service Provider shall maintain all items of Service Provider Equipment within the University's Premises in a safe, serviceable and clean condition.
- 9.4 The Service Provider shall, at the University's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the University's Premises any Service Provider Equipment which in the reasonable opinion of the University is either hazardous, noxious or not in accordance with this agreement; and

(b) replace such item with a suitable substitute item of equipment.

9.5 On completion of the Services the Service Provider shall remove the Service Provider Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the University's Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the University's Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider, the Service Provider's Personnel or any Service Provider Party.

10. TRANSFERRED EQUIPMENT [NOTE – IF NOT REQUIRED STATE 'NOT USED']

10.1 The Transferred Equipment shall be transferred from the University to the Service Provider in accordance with, and subject to, the terms and conditions set out in this clause 10.1 and Schedule 1 (Specification). However, (notwithstanding anything contained in Schedule 1 (Specification)) the Service Provider acknowledges that the Transferred Equipment is supplied by the University on an "as is" basis and the University makes no representation or warranty as to the merchantability, condition, quality, suitability or fitness for any purpose of the Transferred Equipment. The Service Provider shall satisfy itself in relation to each item of Transferred Equipment as to whether it is suitable for use in providing the Services.

10.2 Nothing in this clause 10 shall relieve the Service Provider from its obligations under clause 5.

10.3 The Service Provider acknowledges that the University Data and/or any databases generated or used as part of the Services are the property of the University and the University hereby reserves all Intellectual Property that may subsist in the University Data and/or any databases generated or used as part of the Services.

11. UNIVERSITY'S PREMISES AND ASSETS

11.1 The University shall, subject to clause 8 and clause 15, provide the Service Provider (and its Sub-Contractors) with access to such parts of the University's Premises as the Service Provider reasonably requires for the purposes only of properly providing the Services.

11.2 The University shall provide the Service Provider with such accommodation and facilities in the University's Premises as is specified in Schedule 1 or which is otherwise agreed by the parties from time to time.

11.3 Any accommodation or facilities in the University's Premises made available to the Service Provider by the University in connection with this agreement, including but not limited to those specified in Schedule 1, shall be made available to the Service Provider on a non-exclusive licence basis and shall be used by the Service Provider solely for the purpose of performing the Services. The Service Provider shall have the use of such land or Premises as licensee.

- 11.4 The Parties agree that there is no intention on the part of the University to create a tenancy of any nature whatsoever in favour of the Service Provider or its employees and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this agreement, the University retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- 11.5 Subject to the requirements of clauses 39 and 40 and the Exit Plan, in the event of the expiry or termination of the agreement, the University shall on reasonable notice provide the Service Provider with such access as the Service Provider reasonably requires to the University's Premises to remove any of the Service Provider's equipment. All such equipment shall be promptly removed by the Service Provider.
- 11.6 Subject to this clause 11, the University shall provide University Assets free of charge in accordance with this agreement for the use of the Service Provider in the performance of its obligations under this agreement.
- 11.7 In respect of any computer software that comprises part of the University Assets, the Service Provider acknowledges that (notwithstanding anything contained in Schedule 1 (Specification)) the transfer and use of same may be prohibited or restricted (for example, by the terms of the software licence between the University and a third party). In such circumstances, the University shall use its reasonable endeavours to enable the Service Provider to use the software for the purposes of providing the Services including liaising with the relevant third parties in connection with novating, assigning, sub-licensing or otherwise transferring to the Service Provider the right to use the software for the said purpose. Nothing in this clause 11 shall:
- (a) relieve the Service Provider from its obligations under clause 5; nor
 - (b) impose any obligation on the University to do anything that might prejudice or restrict its right to use the software in question for any purpose; nor
 - (c) constitute a warranty or representation that the University has the right to transfer the software to the Service Provider and/or the right to novate, assign or sub-licence the right to use the software to the Service Provider.
- 11.8 All University Assets shall remain the property of the University and shall be used only for the purposes of providing the Services. However, the Service Provider acknowledges that University Assets are supplied by the University on an "as is" basis and the University makes no representation or warranty as to the merchantability, condition, quality, suitability or fitness for any purpose of University Assets. The Service Provider shall have satisfied itself pursuant to the due diligence requirements of clause 4.3 that each University Asset is suitable for use in providing the Services. In the event that any University Assets are subsequently found by the Service Provider not to be suitable for use, the Service Provider shall not be entitled to recover any additional costs or charges from the University. The Service Provider shall be responsible for the cost of ensuring that the University Assets are suitable for use in providing the Services.

- 11.9 The Service Provider shall notify the University within 20 Working Days (or as otherwise agreed between the parties) of receipt of any University Assets if any University Asset is not in good condition when received by or on behalf of the Service Provider.
- 11.10 The Service Provider undertakes the safe custody of and due return of all University Assets (either on request, termination or expiry of this agreement) and shall be responsible for all loss thereof which is caused by the Service Provider and shall indemnify the University against such loss.
- 11.11 The Service Provider shall be responsible for any deterioration in the University Assets which is caused by the Service Provider save for any deterioration resulting from its normal and proper use for the purposes of this agreement provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair.
- 11.12 The University and the Service Provider shall maintain, repair and replace the University Assets, on the basis specified in Schedule 1 (Specification). However, where such maintenance, repair or replacement arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the University in maintaining, repairing or replacing the same shall be recoverable from the Service Provider as a debt.
- 11.13 Neither the Service Provider, nor any Service Provider Party, nor any other person, shall have a lien on any University Assets for any sum due to the Service Provider, Service Provider Party or other person and the Service Provider shall take all reasonable steps to ensure that the title of the University and the exclusion of any such lien are brought to the notice of all Service Provider Parties, Service Provider's Personnel and other people dealing with any University Assets.
- 11.14 The Service Provider shall, upon receipt of any item supplied directly or indirectly by the University, including but not limited to University Assets, and/or Transferred Equipment, ensure (including undertaking all necessary due diligence research to ensure) that throughout the Term such items are only used by the Service Provider, the Service Provider's Personnel and any Service Provider Party or any other person:
- (a) in strict accordance with the terms and limitations of any relevant licences;
 - (b) with any necessary authorities and/or permissions from relevant third parties;
 - (c) subject to and in accordance with any legal constraints or conditions of use; and
 - (d) in accordance with any relevant technical specifications or operating manuals relating to an item.
- 11.15 The Service Provider shall ensure that:

- (a) where using the University's Premises and any University Assets they are kept properly secure and it will comply and cooperate with the University's Contract Manager's reasonable directions regarding the security of the same;
- (b) only those of the Service Provider's Personnel that are duly authorised to enter upon the University's Premises for the purposes of providing the Services, do so;
- (c) any University Assets used by the Service Provider are only used for the purposes of delivering the Services and are not removed from University Premises unless expressly permitted under this agreement or by the University's Contract Manager.

11.16 The Service Provider shall notify the University immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the University, to any of the University's Premises or to any property of any other recipient of the Services in the course of providing the Services.

12. BUSINESS CONTINUITY [NOTE – IF NOT REQUIRED STATE 'NOT USED']

12.1 The Service Provider shall comply at all times with the relevant provisions of the Business Continuity Plan.

12.2 Following the declaration of a Major Incident in respect of any of the Services, the Service Provider shall:

- (a) implement the Business Continuity Plan;
- (b) continue to provide the affected Services to the University in accordance with the Business Continuity Plan; and
- (c) restore the affected Services to normal within the period laid out in the Business Continuity Plan.

To the extent that the Service Provider complies fully with the provisions of this clause 12 (and the reason for the declaration of a Major Incident was not breach of any of the other terms of this agreement on the part of the Service Provider), the Service Levels to which the affected Services are to be provided during the continuation of the Major Incident shall not be the Service Levels as referred to in clause 6 but shall be the service levels set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

13. PAYMENT

13.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the University shall pay the Service Charges to the Service Provider.

- 13.2 Subject to otherwise agreed between the parties as may be set out at Schedule 4, the Service Provider shall invoice the University for payment of the Service Charges by the fifth Working Day of each calendar month for the previous month. The Service Provider shall separately invoice the University for payment of any charges due in respect of additional staff support, requested by the University in accordance with clauses 5.7 and 5.8, on the basis of the Hourly Rates within thirty (30) days of the last day of provision of such additional staff in relation to a specific circumstance. All invoices shall be directed to the University's Finance Office at Coleraine. Any credits (Service Credits or others) which have been accrued in the previous monthly period should be submitted separately.
- 13.3 The University shall pay the Charges which have become payable within thirty (30) days of receipt of an undisputed invoice from the Service Provider.
- 13.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 23. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the parties.
- 13.5 Subject to clause 13.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Subject to clause 33.4, the Service Provider shall not suspend the supply of the Services if any payment is overdue.
- 13.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the University following delivery of a valid VAT invoice. The Service Provider shall indemnify the University against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the University at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.
- 13.7 At the formal performance review each year the parties shall review the Hourly Rates and agree whether it is appropriate and necessary to make any changes to these, provided that in no circumstances shall the Hourly Rates increase by a greater percentage amount than the percentage increase in the equivalent staff pay rate grades of University staff (if any).
- 13.8 **[NOTE – IF NOT REQUIRED STATE 'NOT USED']** The Service Provider has calculated the Service Charges on the basis that **[NUMBER]** Transferring Employees will transfer and **[NUMBER]** Incumbent Employees **[NUMBER]** will transfer on the Effective Date and that these employees will continue to be engaged by the Service Provider for the Term. The parties will meet within 3 months of the Effective Date and within 3 months of the start of each Contract Year (from the 2nd Contract Year onwards) to discuss the actual composition of staff employed by the Service Provider to deliver the Services:
- (a) In the event that the number of Transferring Employees and Incumbent Employees employed by the Service Provider is the same as or greater than the number

envisaged by the Service Provider and reflected in the Service Charges, no change will be made to the Service Charges; and

- (b) In the event that the number of Transferring Employees and Incumbent Employees employed by the Service Provider is less than the number envisaged by the Service Provider and reflected in the Service Charges then the Service Charges will be reduced to reflect any difference between the expected employment costs included in the Service Charges relating to the employment of the Transferring Employees and Incumbent Employees (who are no longer employed by the Service Provider) and the actual employment costs expected to be incurred by the Service Provider in respect of any equivalent replacement employees.

- 13.9 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the University pursuant to this agreement. Such records shall be retained for inspection by the University for seven (7) years from the end of the Contract Year to which the records relate.
- 13.10 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 13.11 The University may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement, or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the University.
- 13.12 The Service Provider shall make any payments due to the University without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the University to the Service Provider.

14. **SERVICE CREDITS [NOTE – IF NOT REQUIRED STATE ‘NOT USED’]**

- 14.1 If the Service Provider fails to provide the Services in accordance with any individual Service Level measured on a monthly basis, the Service Provider shall pay to the University the Service Credit set out in Part 2 of Schedule 2.
- 14.2 The parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the University. The Service Provider has taken the Service Credit into account in setting the level of the Charges.

STAFF

15. PERSONNEL USED TO PROVIDE THE SERVICES

- 15.1 The Service Provider shall be responsible for providing at its own cost and expense all the personnel necessary to perform the Services.
- 15.2 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) each of the Service Provider's Personnel providing Security related services is trained and licenced by the British Security Industry Association;
 - (c) there is an adequate number of Service Provider's Personnel to provide the Services properly;
 - (d) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (e) all of the Service Provider's Personnel comply with all of the University's policies including those that apply to persons who are allowed access to the applicable University's Premises.
- 15.3 The University may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 15.4 The Service Provider shall replace any of the Service Provider's Personnel who the University reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 15.5 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the University on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 15.6 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

16. KEY PERSONNEL [NOTE – IF NOT REQUIRED STATE ‘NOT USED’]

- 16.1 Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 16.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the University;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the University's satisfaction;
 - (d) the person resigns from their employment with the Service Provider; or
 - (e) the Service Provider obtains the prior written consent of the University.
- 16.3 The Service Provider shall inform the University of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The University shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 16.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than five (5) Working Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the University becoming aware of the role becoming vacant.
- 16.5 The University may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 16.6 If the Service Provider replaces the Key Personnel as a consequence of this clause 16, the cost of effecting such replacement shall be borne by the Service Provider.

17. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 17.1 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.
- 17.2 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:
- (a) subject to a valid enhanced disclosure check undertaken through Access Northern Ireland including a check against the adults' barred list or the children's barred list, as appropriate; and
 - (b) the Service Provider shall monitor the level and validity of the checks under this clause 17.2 for each member of staff.
- 17.3 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and any regulations made thereunder, as amended from time to time.
- 17.4 The Service Provider shall immediately notify the University of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 17 have been met.
- 17.5 The Service Provider shall refer information about any person carrying out the Services to the Independent Safeguarding Authority (ISA) where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any persons listed in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.
- 17.6 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

18. TUPE [NOTE – IF NOT REQUIRED STATE ‘NOT USED’]

The parties agree that the provisions of Schedule 10 shall apply to any Relevant Transfer of staff under this agreement.

19. CONFLICTS OF INTEREST

- 19.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any of the Service Provider's Personnel is placed in a position where, in the reasonable opinion of the University, there is or may be an actual conflict, or a potential conflict, between

the pecuniary or personal interests of the Service Provider and the duties owed to the University under the provisions of this agreement. The Service Provider will disclose to the University full particulars of any such conflict of interest which may arise.

- 19.2 The University reserves the right to terminate this agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the University, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the University under the provisions of this agreement. The actions of the University pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the University.

CONTRACT MANAGEMENT

20. REPORTING AND MEETINGS [NOTE – IF NOT REQUIRED STATE ‘NOT USED’]

- 20.1 The Service Provider shall provide the Management Reports in the form and at the intervals set out in Schedule 5.
- 20.2 The University’s Contract Manager, the University’s Authorised Representatives and relevant Service Provider’s Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Service Provider shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

21. MONITORING

- 21.1 The University may monitor the performance of the Services by the Service Provider.
- 21.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the University in carrying out the monitoring referred to in clause 21.1 at no additional charge to the University.

22. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 22.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 22.2 The Service Provider shall have an ongoing obligation throughout the Term to continuously review systems and procedures and identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the University's Contract Manager on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, efficiency improvements, cost saving, added value, performance mechanisms and customer support services in relation to the Services

- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the University which might result in efficiency or productivity gains or in reduction of operational risk; and
- (d) changes in the management /supervisory structure and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the University.

22.3 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 22.2 shall be addressed by the parties using the Change Control Procedure.

23. DISPUTE RESOLUTION

23.1 Either party may call an extraordinary meeting of the parties by service of not less than 5 days' written notice and:

- (a) the Service Provider agrees to procure that the Service Provider's Authorised Representative together with any other member of Key Personnel requested to attend by the University (if any) shall attend all extraordinary meetings called in accordance with this clause; and
- (b) the University agrees to procure that the University's Contract Manager shall attend all extraordinary meetings called in accordance with this clause.

23.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to at a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

23.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

23.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have

failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

- 23.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the Service Provider's Authorised Representative and the University's Contract Manager, shall remain binding on the parties.
- 23.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 23.7 While the Dispute Resolution Procedure referred to in this clause 23 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

24. SUB-CONTRACTING AND ASSIGNMENT

- 24.1 Subject to clause 24.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the University.
- 24.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the University for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the University, of any such Sub-Contract on receipt of a request for such by the University's Contract Manager.
- 24.3 The University shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the University.

LIABILITY

25. INDEMNITIES

The Service Provider shall indemnify and keep indemnified the University against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of any Service Provider's Personnel or of any Service Provider Party save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the University or its authorised representatives (excluding any Service Provider's Personnel).

26. LIMITATION OF LIABILITY

- 26.1 Subject to clause 26.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 26.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 26.3 Subject to clause 26.5, the University's total aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the University shall remain fully liable), shall in no event exceed **[£500,000]** in each Contract Year.
- 26.4 Subject to clause 26.5, the Service Provider's total aggregate liability:
- (a) in respect of the indemnities given by the Service Provider in clause 29.87, 32.2 and Schedule 10 is unlimited;
 - (b) in respect of Service Credits, is limited, in each Contract Year, to 80% of the Charges that are payable by the University in the applicable Contract Year; and
 - (c) for all loss of or damage to the University's Premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the University Data or any other data) of the University caused by the Service Provider's Default shall in no event exceed **[£5,000,000]** per incident (subject to indexation) or such higher amount as the Service Provider has applicable insurance cover for;
 - (d) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, (including loss or damage to the University Data or any other data) shall in no event exceed **[£5,000,000] in each Contract Year** or, if greater:

- (i) 120% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises; or
- (ii) such higher amount as the Service Provider has applicable insurance cover for.

26.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

27. INSURANCE

27.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than [£5,000,000] in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than [£5,000,000] in relation to any one claim or series of claims; and
- (c) professional indemnity insurance with a limit of indemnity of not less than [£1,000,000] in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover.

(the **Required Insurances**).

The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

27.2 The Service Provider shall give the University, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 27.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the University may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 27.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 27.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

28. FREEDOM OF INFORMATION

- 28.1 The Service Provider acknowledges that the University is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the University (at the Service Provider's expense) to enable the University to comply with these information disclosure requirements.
- 28.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer the Request for Information to the University as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the University with a copy of all Information in its possession or power in the form that the University requires within five Working Days (or such other period as the University may specify) of the University requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the University to enable the University to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 28.3 The University shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 28.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the University.
- 28.5 The Service Provider acknowledges that the University may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public

authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Service Provider; or
- (b) following consultation with the Service Provider and having taken its views into account,

provided always that where clause 28.5(b) applies the University shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

- 28.6 The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the University to inspect such records as requested from time to time.
- 28.7 The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the University may nevertheless be obliged to disclose Confidential Information in accordance with clause 28.5.

29. DATA PROTECTION

- 29.1 In this clause 29 the terms Controller, Processor, Data Subject, Personal Data, Personal Data Breach and processing shall have the meanings given to them in the Data Protection Act 2018 and appropriate technical and organisational measures shall have the meaning given to it in UK GDPR. Non-domestic law shall mean the law of a jurisdiction or territory outside the UK.
- 29.2 Both parties will comply with all applicable requirements of Data Protection Legislation. This clause 29 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 29.3 The parties acknowledge that for the purposes of Data Protection Legislation:
- (a) the University shall be the Controller and the Service Provider shall be the Processor in respect of any Personal Data that is processed in accordance with Part 1 of Schedule 14; and
 - (b) the Service Provider shall be the Controller and the University shall be the Processor in respect of any Personal Data that is processed in accordance with Part 2 of Schedule 14.

Schedule 14 sets out the scope, nature and purpose of processing by the Processor, the duration of the processing, the types of Personal Data, the categories of Data Subject and details of any cross-border transfers of Personal Data.

- 29.4 Without prejudice to the generality of clause 29.2, to the extent that either party acts as the Controller, that party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Processor for the duration and purposes of this agreement.
- 29.5 Without prejudice to the generality of clause 29.2, to the extent that either party acts as the Processor, that party shall:
- (a) process that Personal Data only on the documented written instructions of the Controller unless the Processor is required by Data Protection Legislation to otherwise process that Personal Data. The Service Provider acknowledges the University shall rely upon the Data Protection Legislation as the basis of processing of Personal Data (if any). Where the Service Provider is relying on non-domestic law as the basis for processing Personal Data, the Service Provider shall promptly notify the University of this before performing the processing required by the non-domestic law unless the non-domestic law prohibits the Service Provider from so notifying the University;
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) without prejudice to the confidentiality obligations in clause 29.9 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (d) assist the University, at the University's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with the Commissioner;
 - (e) notify the University without undue delay, and in any event not later than 24 hours, on becoming aware of a Personal Data Breach;
 - (f) notwithstanding the Service Provider's obligations in the Exit Plan at the written direction of the University, delete or return Personal Data and copies of such to the University on termination of the agreement unless required by Applicable Law to store the Personal Data; and

- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 29 and allow for audits by the University or the University's designated auditor and immediately inform the University if, in the opinion of the Service Provider, an instruction infringes Data Protection Legislation.

29.6 The Service Provider (or any of its sub-contractors or third-party processors approved in accordance with clause 24) shall not transfer Personal Data outside the UK unless the prior written consent of the University is obtained. Where such consent is granted, the Service Provider must only proceed with such transfer and process the Personal Data outside the UK under the following conditions:

- (a) the transfer is to a territory which is subject to an adequacy regulation made in accordance with section 17A of the Data Protection Act 2018, being a permitted transfer under Article 45 of UK GDPR as said territory is deemed to provide adequate protection for the privacy rights of Data Subjects. The Service Provider shall identify such territory within Schedule 14;
- (b) the Service Provider participates in a valid cross-border transfer mechanism in accordance with Article 46 of UK GDPR to ensure there is an adequate level of protection with respect to the privacy rights of Data Subjects. The Service Provider shall identify the transfer mechanism within Schedule 14 and must immediately inform the University of any change to its status;
- (c) the transfer otherwise complies with the Data Protection Legislation. The Service Provider shall provide full particulars to the University within the Schedule 14 and advise on any change to that status; and
- (d) the Service Provider complies with reasonable instructions notified to it by the University in advance of the transfer of Personal Data and thereafter as otherwise directed by the University from time to time.

29.7 Without prejudice to clause 24, the University consents to the Service Provider appointing only the third-party processors outlined within Schedule 14 as third-party processors of Personal Data under this agreement. The Service Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms that are substantially similar to those set out in this clause 29 and in either case which the Service Provider undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the University and the Service Provider, the Service Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 29.7.

29.8 The Service Provider agrees to indemnify, keep indemnified and defend at its own expense the University against all fines, costs, claims, damages or expenses incurred by the University or for which the University may become liable due to any failure by the Service Provider or its employees, subcontractors or agents to comply with any of its obligations under this clause 29 or the Data Protection Legislation.

29.9 If any Personal Data transfer between the University and the Service Provider requires execution of SCCs in order to comply with the Data Protection Legislation (where the University is the entity exporting Personal Data to the Service Provider located in an Unauthorised Territory), the parties will complete all relevant details in, and execute SCCs, and take all other actions required to legitimise the transfer in advance of transferring the Personal Data outside the UK.

29.10 If the University consents to appointment by the Service Provider of a subcontractor located in an Unauthorised Territory in accordance with clause 24, then the University authorises the Service Provider to enter into SCCs with the subcontractor. The Service Provider will make the executed SCCs available to the University on request.

30. CONFIDENTIALITY

30.1 Subject to clause 30.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

30.2 Clause 30.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 28.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 30.1;
- (d) by the University of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 23;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the University to any other department, office or agency of the Government; and
- (h) by the University relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

30.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the University's employees, members, students or service users, are delivered up to the University or securely destroyed.

31. AUDIT

- 31.1 During the Term and for a period of 7 years after the Termination Date, the University may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
 - (b) to review the integrity, confidentiality and security of any data relating to the University or any service users;
 - (c) to review the Service Provider's compliance with the Data Protection Act 2018, the FOIA, in accordance with clause 29 (Data Protection) and clause 28 (Freedom of Information) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the University's accounts;
 - (g) to carry out an examination pursuant to article 8(1) of the Audit (Northern Ireland) Order 1987 of the economy, efficiency and effectiveness with which the University has used its resources;
 - (h) in order to comply with the requirements of any competent authority or regulatory body;
 - (i) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 31.2 Except where an audit is imposed on the University by a regulatory body, the University may not conduct an audit under this clause 31 more than three (3) times in any rolling twelve month period.
- 31.3 The University shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 31.4 Subject to the University's obligations of confidentiality, the Service Provider shall on demand provide the University and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

(c) access to the Service Provider's Personnel.

31.5 The University shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its or, where possible, a regulatory body's, intention to conduct an audit.

31.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the University for all the University's reasonable costs incurred in the course of the audit.

31.7 If an audit identifies that:

(a) the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the University about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;

(b) the University has overpaid any Charges, the Service Provider shall pay to the University the amount overpaid within 20 days. The University may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and

(c) the University has underpaid any Charges, the University shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the University if this was due to a default by the Service Provider in relation to invoicing within 20 days.

32. INTELLECTUAL PROPERTY

32.1 In the absence of prior written agreement by the University to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

(a) in the course of performing the Services; or

(b) exclusively for the purpose of performing the Services,

shall vest in the University on creation.

32.2 The Service Provider shall indemnify the University against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the University's acts or omissions.

TERMINATION

33. TERMINATION FOR BREACH

33.1 The University may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

- (a) if the Service Provider fails to complete all of the tasks set out in the Contract Mobilisation Plan before the Service Delivery Date (for whatever reason) and fails to commence delivery of the Services on the Service Delivery Date;
- (b) if the Service Provider is in material breach of any obligation under this agreement provided that if the breach is capable of remedy, the University may only terminate this agreement under this clause 33.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the University (a **Remediation Notice**) to do so;
- (c) if a Consistent Failure has occurred;
- (d) if a Catastrophic Failure has occurred;
- (e) if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver, administrator or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;
- (f) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (g) if a person becomes entitled to appoint a receiver over any of the assets of the Service Provider;
- (h) if the holder of a qualifying floating charge over the assets of the Service Provider has become entitled to appoint or has appointed an administrative receiver;
- (i) if the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (j) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the University reasonably objects.

33.2 The University may terminate this agreement in accordance with the provisions of clause 19, 34, 35 and 36.

33.3 If this agreement is terminated by the University for cause such termination shall be at no loss or cost to the University and the Service Provider hereby indemnifies the University against any such losses or costs which the University may suffer as a result of any such termination for cause.

33.4 The Service Provider may terminate this agreement in the event that the University commits a Termination Payment Default by giving 30 days' written notice to the University. In the event that the University remedies the Termination Payment Default in the 30 day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

34. TERMINATION ON NOTICE & INEFFECTIVENESS

34.1 The University may, at any time, terminate this agreement early on such notice as it considers appropriate in the event that:

- (a) a challenge to the award of this agreement to the Service Provider or to any aspect of the competition leading to award of this agreement is or has been made by any person on the grounds of non-compliance with UK or EU public procurement rules; or
- (b) in the sole opinion of the University, the Service Provider conducts itself in such a manner so as to cause the University serious reputational damage.

34.2 If the University exercises its right of termination pursuant to clause 34.1 it shall pay the Service Provider for such of the Services as are provided up to the Termination Date in accordance with the Charges set out in Schedule 4 (Charges and Payment). The Service Provider shall not be entitled to any other payment or to any compensation (whether for loss of profit for services not provided or for loss of opportunity or reputation or otherwise) or remedy whatsoever as a result or in respect of early termination of this agreement in accordance with this clause.

34.3 In the event that this agreement is declared "ineffective" pursuant to Regulation 47J(2)(a) of the Public Contracts Regulations 2006, the University shall have no liability to the Service Provider other than in respect of Services provided prior to the date on which such "ineffectiveness" order takes effect, which cost shall be assessed in accordance with the Charges set out in Schedule 4 (Charges and Payment). Under no circumstances shall the Service Provider be entitled to any payment or compensation for loss of profit for Services not provided consequent on such declaration of ineffectiveness or for loss of opportunity or reputation or breach of statutory duty or otherwise or any other remedy whatsoever as a result or in respect of any such declaration of "ineffectiveness". The University and the Service Provider acknowledge and agree that it is intended that the provisions of this clause 34 and clauses 37 and 39 shall apply as a binding agreement between them which shall, to the extent permissible by law, survive and operate independently of this agreement notwithstanding any declaration of ineffectiveness of this agreement .

35. FORCE MAJEURE

35.1 Subject to the remaining provisions of this clause 35, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Event.

- 35.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 35.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 35.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 35.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 35.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 35.7 The University may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 45 Working Days.
- 35.8 If, due to a Pandemic Event, a party (**Affected Party**) is:
- (a) unable to complete any of its obligations at the time specified by this agreement; or
 - (b) delayed in carrying out any or part of its obligations under this agreement;
- the Affected Party shall notify the other party in accordance with clause 35.9.
- 35.9 Each party agrees with the other party that they shall:
- (a) notify the other party as soon as reasonably practicable (and in any event no later than [NUMBER] working days) after becoming aware of a Pandemic Event that will:

- (i) prevent completion of its obligations at the time specified by this agreement; or
- (ii) prevent or delay the Affected Party from performing any of its other obligations under this agreement;

and that notice shall include details of that Pandemic Event;

- (b) notify the other party as soon reasonably practicable (and in any event no later than [NUMBER] working days) after any Pandemic Event that was:
 - (i) preventing completion of its obligations; or
 - (ii) preventing or delaying the performance of any other obligations of each party under this agreement;

has ceased to have that effect and that notice shall identify the Pandemic Event to which it relates; and

- (c) use all reasonable endeavours to mitigate the effect of any Pandemic Events on the performance of its obligations (**Pandemic Event Cessation Notice**).

35.10 Subject to clause 33.4, if either party is unable to perform its obligations due to a Pandemic Event, continuation of the obligations shall take place [NUMBER] working days from and including the date of service of the Affected Party's Pandemic Event Cessation Notice in respect of that Pandemic Event.

35.11 Notwithstanding the provisions of Clause 33.3, if, due to a Pandemic Event, either party is unable to continue to complete its obligations by [LONG-STOP DATE], the University reserves the right to terminate this Agreement at any time after that date, in accordance with clause 33 (Termination).

36. PREVENTION OF BRIBERY

36.1 The Service Provider:

- (a) shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this agreement commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the University, or that an agreement has been reached to that effect, in connection with the execution of this agreement, excluding any arrangement of which full details have been disclosed in writing to the University before execution of this agreement.

36.2 The Service Provider shall:

- (a) if requested, provide the University with any reasonable assistance, at the University's reasonable cost, to enable the University to perform any activity

required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

- (b) within 40 Working Days of the Commencement Date, and annually thereafter, certify to the University in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 36 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this agreement. The Service Provider shall provide such supporting evidence of compliance as the University may reasonably request.

36.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the University) to prevent any Service Provider Party or Service Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.

36.4 If any breach of clause 36.1 is suspected or known, the Service Provider must notify the University immediately.

36.5 If the Service Provider notifies the University that it suspects or knows that there may be a breach of clause 36.1, the Service Provider must respond promptly to the University's enquiries, co-operate with any investigation, and allow the University to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this agreement.

36.6 The University may terminate this agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 36.1. In determining whether to exercise the right of termination under this clause 36.6, the University shall give all due consideration, where appropriate, to action other than termination of this agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the University; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.

36.7 Any notice of termination under clause 36.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the University believes has committed the Prohibited Act; and

(c) the date on which this agreement will terminate.

36.8 Despite clause 23 (Dispute resolution), any dispute relating to:

- (a) the interpretation of clause 36; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the University and its decision shall be final and conclusive.

36.9 Any termination under clause 36.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the University.

37. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

37.1 On reasonable notice, the Service Provider shall provide to the University for its use in any future tendering exercise for a Replacement Service Provider and/or (subject to the potential Replacement Service Provider entering into reasonable written confidentiality undertakings) to its potential Replacement Service Provider, the following material and information in order to facilitate the preparation by the University of any invitation to tender and/or to facilitate any potential Replacement Service Provider undertaking due diligence:

- (a) details of the Service(s);
- (b) details of and information relating to the equipment used by the Service Provider in the delivery of the Services (including ownership, make, model and asset number) and details of their condition and physical location;
- (c) identification of the equipment that the Service Provider will make available to the University or a Replacement Service Provider to deliver the Replacement Services after expiration of this agreement, together with the price that the Service Provider would expect to be paid in respect of these; and
- (d) all information as detailed in paragraph 3 of Schedule 10.

38. EXIT PLAN [NOTE – IF NOT REQUIRED STATE ‘NOT USED’]

38.1 The Service Provider will, within six months after the Commencement Date, deliver to the University an Exit Plan which sets out the Service Provider's proposed methodology for achieving an orderly transition of Services from the Service Provider to the University and/or its Replacement Service Provider on the expiry or termination of this agreement and which complies with the requirements set out in clauses 38.2 and 38.3 below. Within 60 days after the submission of the Exit Plan, the parties will use their respective reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

38.2 The Exit Plan will contain, as a minimum:

- (a) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Service Provider may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Service Provider of all such reasonable assistance as the University shall require to enable the University or its subcontractors to provide the Services;
- (b) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and
- (c) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit.

38.3 In addition, the Exit Plan shall:

- (a) document how the Services will transfer to the Replacement Service Provider and/or the University, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the University's technology components from any technology components operated by the Service Provider or its Sub-contractors (where applicable);
- (b) specify the scope of the Termination Services that may be required for the benefit of the University (including such of the services set out in clause 39.13 below as are applicable) and detail how such services would be provided (if required), during the Termination Assistance Period;
- (c) set out procedures to deal with requests made by the University and/or a Replacement Service Provider for Staffing Information pursuant to Schedule 10;
- (d) address each of the issues set out in this schedule to facilitate the transition of the Services from the Service Provider to the Replacement Service Provider and/or the University with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period;
- (e) provide a timetable and identify critical issues for providing the Termination Services; and
- (f) set out the management structure to be put in place and employed during the Termination Assistance Period.

38.4 The Service Provider will review and (if appropriate) update the Exit Plan prior to each Formal Performance Review (commencing with the second Contract Year) to reflect changes in the Services. Following such update the Service Provider will submit the revised Exit Plan to the University for review. Within 30 days following submission of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this clause 38 and the changes that have occurred in the Services since the Exit Plan was last agreed. If the parties are unable to agree the contents of the revised Exit Plan within that 30 day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

39. TERMINATION SERVICES

General

- 39.1 During the Termination Assistance Period or such shorter period as the University may require, the Service Provider will continue to provide the Services (as applicable) and will, at the request of the University pursuant to clause 39.8, provide the Termination Services.
- 39.2 During the Termination Assistance Period, the Service Provider will, in addition to providing the Services and the Termination Services, provide to the University any reasonable assistance requested by the University to allow the Services to continue without interruption following the termination or expiry of this agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the University and/or its Replacement Service Provider.
- 39.3 During the Termination Assistance Period, the Services and the Termination Services will be provided at no detriment to the Service Levels, save to the extent that the parties agree otherwise in accordance with clause 39.4.
- 39.4 Where the Service Provider demonstrates to the University's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Service Provider's ability to meet a particular Service Level(s), the parties shall vary the relevant Service Level(s) and/or the applicable Service Credits to take account of such adverse effect.
- 39.5 The parties acknowledge that the migration of the Services from the Service Provider to the University and/or its Replacement Service Provider may be phased, such that certain of the Services are handed over before others.
- 39.6 Within 30 days after service of notice of termination by either party or no less than six months prior to the expiry of this agreement, the Service Provider will submit for the University's approval the Exit Plan in a final form that could be implemented immediately.
- 39.7 The parties will meet and use their respective reasonable endeavours to agree the contents of the final form Exit Plan. If the parties are unable to agree the contents of the Exit Plan within 30 days following its delivery to the University then such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form Exit Plan, the Service Provider will provide the Termination Services in accordance with the principles set out in this schedule and the last approved version of the Exit Plan (insofar as this still applies).

Notification of Requirements for Termination Services

- 39.8 The University shall be entitled to require the provision of Termination Services by notifying the Service Provider in writing (**Termination Assistance Notice**) at least four months prior

to the date of termination or expiry of this agreement or as soon as reasonably practicable (but in any event, not later than one month) following the service by either party of any notice to terminate. The Termination Assistance Notice shall specify the:

- (a) date from which Termination Services are required which shall be no earlier than 12 months prior to expiry of this agreement or from the service by either party of any notice to terminate, as the case may be;
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required which shall continue no longer than 24 months after the date that the Service Provider ceases to provide the Services.

39.9 The University shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six months after the date the Service Provider ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Service Provider to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The University shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Service Provider to such effect.

Termination Obligations

39.10 The Service Provider shall comply with all of its obligations contained in the Exit Plan.

39.11 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this schedule):

- (a) the Service Provider will erase from any computers, storage devices and storage media that are to be retained by the Service Provider after the end of the Termination Assistance Period all University Data;
- (b) the Service Provider will return to the University such of the following as is in the Service Provider 's possession or control:
 - (i) all copies of any software licensed by the University to the Service Provider under this agreement;
 - (ii) all materials created by the Service Provider under this agreement, the Intellectual Property in which is owned by the University;
 - (iii) any parts of the ICT environment and any other equipment which belongs to the University; and
 - (iv) any items that have been on-charged to the University, such as consumables;
- (c) the Service Provider shall vacate any of the University's Premises;

- (d) each party will return to the other party all confidential information of the other party and will certify that it does not retain the other party's confidential information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services or Termination Services.

39.12 Except where this agreement provides otherwise, all licences, leases and authorisations granted by the University to the Service Provider in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

Scope of the Termination Services

39.13 The Termination Services to be provided by the Service Provider shall include (without limitation) such of the following services as the University may specify:

- (a) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (b) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- (c) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- (d) making available to the University and/or the Replacement Service Provider expertise to analyse training requirements and provide all necessary training for the use of materials by such staff as are nominated by the University (acting reasonably) at the time of termination or expiry. A documented plan is to be separately provided for this activity and agreed with the University at the time of termination or expiry;
- (e) answering all reasonable questions from the University and/or its Replacement Service Provider regarding the Services;
- (f) the provision of access to the University and/or the Replacement Service Provider during the Termination Assistance Period and for a period not exceeding six months afterwards for the purpose of the smooth transfer of the Services to the University and/or the Replacement Service Provider:
 - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Service Provider or its Sub-contractors (and the Service Provider agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Service Provider 's normal business hours, to members of the Service Provider's Personnel who have

been involved in the provision or management of the Services and who are still employed or engaged by the Service Provider or its Sub-contractors.

Disputes Relating to Termination Services

39.14 Where there is any dispute between the parties regarding the manner in which the Termination Services are to be performed, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

40. CONSEQUENCES OF TERMINATION

40.1 The provisions of clause 6.3 (provision of records), clause 25 (Indemnities), clause 27 (Insurance), clause 28 (Freedom of Information), clause 29 (Data Protection), clause 31 (Audit), clause 33 (Termination for Breach), clause 39 (Termination Services) and this clause 40 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

41. GRATUITIES

The Service Provider shall not whether by itself or by any Service Provider's Personnel or Service Provider Party, solicit any gratuity or tip or any other form of money-taking or reward, collection or charge for any of the Services except where allowed for elsewhere in this agreement.

42. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

43. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the University to the Service Provider in respect of the Services or any omission on the part of the University to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

44. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

45. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

46. PARTNERSHIP OR AGENCY, INDEPENDENT CONTRACTOR

- 46.1 Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.
- 46.2 The Service Provider is not and shall under no circumstances hold itself out as being an agent of the University.
- 46.3 The Service Provider is not and shall in no circumstances hold himself out as being authorised to enter into any contract on behalf of the University or in any other way to bind the University to the performance, variation, release or discharge of any obligation.
- 46.4 The Service Provider shall has not and shall in no circumstances hold himself out as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.
- 46.5 The Service Provider's Personnel and any Service Provider Party shall not hold themselves out to be and shall not be held out by the Service Provider as being employees or agents of the University for any purposes.

47. THIRD PARTY RIGHTS

- 47.1 The persons identified in Schedule 10 may enforce the terms of Schedule 10 subject to and in accordance with the provisions of Schedule 10, this agreement and the Contracts (Rights of Third Parties) Act 1999.
- 47.2 Except as provided in clause 47.1 and Schedule 10, no term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.
- 47.3 Notwithstanding clause 47.1, it is expressly agreed that the parties to this agreement may by agreement rescind or vary this agreement or any term of this agreement (including Schedule 10) without the consent of any person who has a right to enforce this agreement or the term

in question, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

48. PUBLICITY

The Service Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the University's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the University.

49. NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

50. ENTIRE AGREEMENT

This agreement, the schedules and the documents annexed to it or otherwise referred to in it [\[AND REFER TO ANY OTHER NECESSARY DOCUMENTS OR REPRESENTATIONS\]](#)¹ contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

51. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

52. GOVERNING LAW AND JURISDICTION

- 52.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of Northern Ireland.

¹ To be reviewed before signing

52.2 The parties irrevocably agree that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

This agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of **UNIVERSITY OF ULSTER**

Signature:

Name:

Position:

Signed for and on behalf of **[NAME OF SERVICE PROVIDER]**

Signature:

Name:

Position:

Schedule 1 Specification

[DN: This will be derived from the Specification included as Document 3 of the Invitation to Tender. Include any clarification responses which affect the Specification if not already incorporated into an updated version of the Specification.]

Schedule 2 Service levels

[DN: The document attached as an appendix to Document 1 of the ITT sets out the University's indicative Service Level regime for the Services. These will be combined with the detail of the Service Provider's solution to populate this schedule prior to signing.]

[NOTE – IF NOT REQUIRED STATE 'NOT USED']

Part 1. Service Levels

1. THE SERVICE LEVELS

Service	Method of calculating service delivery	Service level

2. CONSISTENT FAILURE

In this agreement, **consistent failure** shall mean:

- (a) [a failure rate of at least [INSERT NUMBER]% in meeting:
 - (i) [[INSERT NUMBER] or more of the Service Levels labelled ["Red"] in a rolling [INSERT NUMBER] month period; or
 - (ii) [INSERT NUMBER] or more Service Levels labelled ["Green"] in a rolling [INSERT NUMBER] month period.]
 - (iii) **OR**
 - (iv) [[INSERT NUMBER] or more Service Levels in a rolling [INSERT NUMBER] month period.]
 - (v) **[AND/OR]**
- (b) [the Service Provider being liable to pay £[INSERT FIGURE] to the University in Service Credits in respect of [two consecutive months].]
[AND/OR]
- (c) [the University serving two Remediation Notices in a rolling 36 month period or three Default Notices in a rolling 18 period.]

Part 2. Service Credits

[•]

Schedule 3 Service Provider's Solution

[DN: This will be derived from the Service Provider's Tender]

Schedule 4 Charges and payment

[DN: THE CALCULATION OF CHARGES AND PAYMENTS SHALL BE DEPENDENT UPON THE SPECIFICATION AND TENDER SUBMISSION DEVISED ON A CASE BY CASE BASIS]

Schedule 5 Contract management

[DN: Key Personnel, meeting and report information will be populated based on Specification and Preferred Bidder's tender prior to contract commencement.]

1. UNIVERSITY'S CONTRACT MANAGER

1.1 The University's initial Contract Manager:

Contract Manager	Contact Details
	Address Telephone: Email:

2. SERVICE PROVIDER'S AUTHORISED REPRESENTATIVES

2.1 The Service Provider's initial Authorised Representative: [INSERT DETAILS]

3. UNIVERSITY'S AUTHORISED REPRESENTATIVES

3.1 The University's initial Authorised Representative(s):

Authorised Representative	Contact Details
	Room H017 Address Telephone: Email:

4. KEY PERSONNEL

[INSERT DETAILS]

[DN: Details of Key Personnel to be completed based on Preferred Bidder's Tender]

5. MEETINGS

5.1 Type: Formal Performance Review

5.2 Quorum: ***[DN: Dependent on contract management structures proposed in Preferred Bidder's Tender]***

5.3 Frequency: 2 months before the end of each Contract Year

5.4 Agenda: Will cover the following issues (which are not exhaustive):

- (a) Review of the annual report submitted by Service Provider including:
 - (i) assessment of contract performance, by service against targets;
 - (ii) proposals for the operation of the contract over the next 12 months;
 - (iii) proposals for the introduction of new operational efficiencies and savings;
 - (iv) revised performance targets;
 - (v) confirmation of contract budget for the following Contract Year; and
- (b) Review of Hourly Rates

[DN: Details of other meetings to be completed based on Specification and Preferred Bidder's Tender]

6. REPORTS

[DN: Details of reports to be completed based on Specification and Preferred Bidder's Tender]

6.1 Type

6.2 Contents

6.3 Frequency

6.4 Circulation list

Schedule 6 Business Continuity Plan

[DN: To be inserted from Preferred Bidder's Tender]

[NOTE – IF NOT REQUIRED STATE 'NOT USED']

Schedule 7 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the University or the Service Provider sees a need to change this agreement, for reasons other than to meet the day to day operational requirements, the University may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the University and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the University and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, with the exception of emergency situations, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

- 2.1 Discussion between the University and the Service Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the University; or
 - (c) a recommendation to change this agreement by the Service Provider.
- 2.2 Where a written request for an amendment is received from the University, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the University within one week of the date of the request.
- 2.3 A recommendation to amend this agreement by the Service Provider shall be submitted directly to the University in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The University shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;

- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the University and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider the University shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the University and return one of the copies to the Service Provider; or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the University and by the Service Provider shall constitute an amendment to this agreement.

Schedule 8 Exit

[DN: Exit Plan to be prepared and included in contract in accordance with clause 38]

[NOTE – IF NOT REQUIRED STATE 'NOT USED']

Schedule 9 Contract Mobilisation Plan

[DN: To be inserted from Preferred Bidder's Tender]

[NOTE – IF NOT REQUIRED STATE 'NOT USED']

Schedule 10 TUPE [NOTE – IF NOT REQUIRED STATE ‘NOT USED’]

Part 1. Transfer of employees

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Auto-Enrolment Requirements: means the requirements under the 2008 Act dealing with automatic enrolment and under the relevant associated regulations promulgated under the 2008 Act including the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 and the Employers’ Duties (Implementation) Regulations (Northern Ireland) 2010 and such other related or subsequent applicable regulations as may be prescribed from time to time under the 2008 Act;

Current Services: the facilities services carried out by the Incumbent Employer;

Effective Date: the date(s) on which the Current Services (or any part of the Current Services) transfer from the Incumbent Employer to the Service Provider or Sub-Contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider or Sub-Contractor;

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE;

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality Commission for Northern Ireland or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses which shall include any incurred as a result of an indemnity or warranty given, or to be given, by the University to a Replacement Service Provider or sub-contractor;

Incumbent Employees: employees of the Incumbent Employer whose contracts of employment transfer with effect from the Effective Date to the Service Provider or Sub-Contractor by virtue of the application of TUPE;

Incumbent Employer: Resource (NI) Limited a private limited company incorporated in Northern Ireland with company number NI011703 and registered office address of Edgewater Business Park, 8 Edgewater Road, Belfast, BT3 9JQ;

Other Employee: an individual (who is not a Relevant Employee) engaged or employed by the Service Provider or Sub-Contractor prior to the Service Transfer Date and/or whose

contract of employment is claimed, or is deemed, to have effect after the Service Transfer Date as if originally made between the University or Replacement Service Provider and that individual as a result of the application of TUPE, including any employee of the Service Provider or Sub-Contractor who objects to a Relevant Transfer;

Pension Protection Regulations: means the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255), the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No 246), the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) (SR 2006 No 177), the Transfer of Employment (Pension Protection) Regulations (Northern Ireland) 2005 (SR 2005 No 94) and the Electricity (Protected Persons) Pensions Regulations (Northern Ireland) 1992 (SR 1992 No 93);

Relevant Employees: those employees identified on the Service Provider's Final Staff List whose contracts of employment will transfer with effect from the Service Transfer Date to the University or a Replacement Service Provider by virtue of the application of TUPE;

Relevant Transfer: a transfer to which TUPE applies;

Service Provider's Final Staff List: the list of all the Service Provider's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services before the Service Transfer Date;

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all the Service Provider's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-Contractor to the University or any Replacement Service Provider;

Staffing Information: in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the University may reasonably request including the Employee Liability Information, details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, the current pension provision for such persons and the amount of time spent on the provision of the Services by such persons;

2008 Act: means the Pensions (No.2) Act (Northern Ireland) 2008.

2. TRANSFER OF EMPLOYEES TO THE SERVICE PROVIDER

- 2.1 The parties acknowledge that, pursuant to TUPE, the contracts of employment of the Incumbent Employees together with any collective agreement relating to such employees will have effect from and including the Effective Date as if originally made between the Service Provider or Sub-Contractor and the Incumbent Employees (or between the Service Provider or Sub-Contractor and the relevant trade union, as the case may be) except (subject to paragraph 4) in so far as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or to any Incumbent Employee who objects under Regulation 4(7) of TUPE.

- 2.2 The Service Provider or any relevant Sub-Contractor shall assume responsibility for all remuneration, benefits, outgoings and emoluments in respect of the Incumbent Employees from and including the Effective Date.
- 2.3 The Service Provider will provide and shall procure that any Sub-Contractor shall provide the Incumbent Employer with the information necessary to enable the Incumbent Employer to discharge its or their obligation to inform and consult under Regulation 13 of TUPE about the transaction contemplated by this agreement. The Service Provider will provide reasonable assistance to enable compliance with any requirement to inform and consult to take place at least twelve weeks in advance of the Effective Date to allow meaningful consultation to take place.
- 2.4 Without prejudice to paragraph 2.3, the Service Provider shall immediately on request by the University or the Incumbent Employer provide details of any measures that the Service Provider or any Sub-Contractor envisages it will take in relation to any Incumbent Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider shall give confirmation of that fact.
- 2.5 The Service Provider shall be liable for and indemnify and keep indemnified the University and the Incumbent Employer in respect of any Employment Liabilities which may be incurred by the University or the Incumbent Employer arising from or as a consequence of:
- (a) the employment or termination of employment of the Incumbent Employees and the employment and/or engagement or termination of employment and/or engagement of any other Service Provider's Personnel, including without limitation, all wages, benefits, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date; and
 - (b) any act or proposal by the Service Provider or any Sub-Contractor prior to or following the Effective Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of TUPE and/or to make a substantial change in working conditions of any Incumbent Employee to the material detriment of that Incumbent Employee. For the purposes of this sub-paragraph the expressions "repudiatory breach", "substantial change" and "material detriment" shall have the meanings ascribed to them for the purposes of Regulation 4(9) and 4(11) of TUPE; and/or
 - (c) any failure of the Service Provider or Sub-Contractor to provide the information and assistance referred to in paragraph 2.3 and 2.4 above and/or failure to comply with its obligations under regulations 13 and/or 14 of TUPE; and
 - (d) anything done or omitted to be done by the Service Provider or any sub-contractor in respect of any of the Incumbent Employees whether before or after the Effective Date; and
 - (e) any failure of the Service Provider or any Sub-Contractor to comply with obligations pursuant to TUPE.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, in part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the University or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date. Such change in the identity of the supplier of the Services (or any part of the Services) shall be a "Service Transfer". Accordingly, in the event of a Service Transfer, the provisions in paragraph 3.10 shall apply.
- 3.2 The Service Provider shall and shall subject to compliance with Data Protection Legislation:
- (a) within 20 Working Days of the earliest of:
- i. receiving notice of full or partial termination of this agreement;
 - ii. 12 months before the expiry of this agreement;
 - iii. receipt of a notification from the University of a Service Transfer or proposed Service Transfer or otherwise;
 - iv. and in any event, as reasonably requested by the University, provide in respect of the Service Provider's Personnel, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the University, including information as to the application of TUPE to any employees and it will provide an updated Service Provider's Provisional Staff List and updated Staffing Information at such intervals as are reasonably requested by the University. The Service Provider shall notify the University of any material changes to this information as and when they occur.
- 3.3 At least 8 weeks prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the University and/or, at the direction of the University, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's Personnel named are Relevant Employees.
- 3.4 The University shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information ("TUPE Information") for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.

- 3.5 The Service Provider warrants to the University that the TUPE Information will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.
- 3.6 The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 12 months prior to termination of this agreement the Service Provider agrees that it will not, and agrees to procure that any Sub-Contractor will not, other than in the ordinary course of business, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Service Provider's Provisional Staff List and/or Service Provider's Final Staff List (as appropriate) and will not, without the prior written consent of the University (such consent not to be unreasonably withheld or delayed):
- (a) increase the total number of employees listed on the Service Provider's Provisional Staff List or Service Provider's Final Staff List (as appropriate) save for fulfilling assignments and projects previously scheduled and agreed with the University;
 - (b) make, propose or permit any material changes to the terms and conditions of employment of any employees listed on the Service Provider's Provisional Staff List or Service Provider's Final Staff List (as appropriate);
 - (c) increase the proportion of working time spent on the Services (or the relevant part) by any of the Service Provider's Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Staff List or Service Provider's Final Staff List (as appropriate);
 - (e) replace any Service Provider's Personnel listed on the Service Provider's Provisional Staff List or Service Provider's Final Staff List (as appropriate) or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on such lists save for:
 - (i) the execution of assigned operations as detailed in 3.7(a) and 3.7(c); and/or
 - (ii) replacing voluntary resignations or staff terminated by due and fair disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces; and
 - (f) the Service Provider will promptly notify the University or as appropriate will procure that any Sub-Contractor will promptly notify the University or, at the direction of the University, the Replacement Service Provider of any notice to terminate employment given by the Service Provider or any Sub-Contractor or received from any persons listed on the Service Provider's Provisional Staff List or Service

Provider's Final Staff List (as appropriate) regardless of when such notice takes effect.

- 3.8 At least seven days before the Service Transfer Date, the Service Provider will provide and shall procure that a Sub-Contractor shall provide to the University or to any Replacement Service Provider as directed by the University, in respect of each person on the Service Provider's Final Staff List who is a Relevant Employee:
- (a) the most recent month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;
 - (e) details of any voluntary deductions from pay; and
 - (f) bank/building society account details for payroll purposes.
- 3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.10 In connection with a Relevant Transfer, the Parties agree that the Service Provider shall perform and discharge all its obligations in respect of all the Relevant Employees and their representatives. The Service Provider shall be liable for and indemnify and keep indemnified the University and any Replacement Service Provider and any sub-contractor of the Replacement Service Provider in respect of any Employment Liabilities which may be incurred by the University and/or any Replacement Service Provider arising from or as a consequence of:
- (a) the Service Provider's failure to perform and discharge any such obligation; the employment or termination of employment of the Relevant Employees including without limitation, all wages, benefits, holiday pay (including accrued holiday entitlement up to the Service Transfer Date), bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise payable in respect of any period or before the Service Transfer Date;
 - (b) any act or omission by the Service Provider on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
 - (c) the provision of, or proposal by the Service Provider or any Sub-Contractor to offer any change to any benefit, term or condition or working condition of any Service Provider's Personnel on the Service Provider's Provisional Staff List or Service Provider's Final Staff List (as appropriate) arising before the Service Transfer Date save where such changes have been made with the prior written consent of the University pursuant to paragraph 3.7;

- (d) any claim made by or in respect of any Service Provider Personnel other than a Relevant Employee for which it is alleged that the University or any Replacement Service Provider may be liable by virtue of this Agreement and/or TUPE;
- (e) any act or omission of the Service Provider or any Sub-Contractor in relation to its obligations under Regulation 11, 13 or 14 of TUPE, or in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the University or a Replacement Service Provider's failure to comply with Regulation 13(4) of TUPE; and
- (f) any statement communicated to or action done by the Service Provider or any Sub-Contractor to, or in respect of, any Relevant Employee before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the University.

3.11 The Service Provider shall indemnify the University and any Replacement Service Provider in respect of any claims arising from any act or omission of the Service Provider in relation to any other Service Provider Personnel who is not a Relevant Employee during any period whether before or after

3.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.10 and paragraph 4, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the University in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.13 Despite paragraph 3.11, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

3.14 In the event of a Subsequent Transfer which is not a Service Transfer, the following provisions shall apply:

- (a) the University or the Replacement Service Provider can, at its discretion, make to any of the employees listed on the Service Provider's Provisional Staff List or any Service Provider's Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
- (b) when the offer has been made by the University or Replacement Service Provider and accepted by an employee or worker, the Service Provider shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Service Provider which could be without the

employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;

- (c) if the employee does not accept an offer of employment made by the University or Replacement Service Provider, the employee shall remain employed by the Service Provider and all claims in relation to the employee shall remain with the Service Provider; and
- (d) if the University or Replacement Service Provider does not make an offer to any employee on the Service Provider's Provisional Staff List or any Service Provider's Personnel, then the employee and all claims in relation to that employee remains with the Service Provider.

4. PENSIONS

4.1 The Service Provider shall procure that it and/or any Sub-Contractor shall provide benefits of at least the minimum required as prescribed under the Pension Protection Regulations for and in respect of service from and including the Effective Date for Incumbent Employees. For the avoidance of doubt and in accordance with the Pension Protection Regulations the Service Provider shall procure that it and/or any Sub-Contractor shall offer Incumbent Employees membership of (at the Service Provider's option):

- (a) the Service Provider's or any Sub-Contractor's occupational defined benefit or hybrid scheme, whereby the scheme must provide benefits worth at least the equivalent in present value of 6 percent of the Incumbent Employees' pensionable pay (excluding the Incumbent Employees' own contributions) for each Incumbent Employee. The Incumbent Employee will not be required to contribute more than 6 per cent of pensionable pay; or
- (b) an occupational money purchase scheme or a stakeholder arrangement where it is up to each Incumbent Employee to decide on the amount of his or her contributions which the Service Provider or any Sub-Contractor will then be required to match, up to 6 per cent of each Transferring Employee's or Incumbent Employee's pensionable pay.

4.2 Claims from Employees or Trade Unions

The Service Provider hereby indemnifies the University and any Replacement Service Provider and, in each case, their sub-contractor from and against any Employment Liabilities incurred by, awarded against or agreed to be paid by the University and/or any Replacement Service Provider arising from claims by Incumbent Employees or Relevant Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Incumbent Employees and Relevant Employees which:

- (a) relate to pension rights in respect of periods of employment on and after the Effective Date until the Service Transfer Date or the date of termination or expiry of this agreement; or
- (b) arise out of the failure of the Service Provider or any Sub-Contractor to comply with the provisions of this paragraph 4 before the Service Transfer Date or the date of termination or expiry of this agreement.

4.3 Pension Issues on Expiry or Termination

The Service Provider shall and shall procure that any Sub-Contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the Service Transfer Date or on the expiry or termination of this agreement (including without limitation identification of the Relevant Employees);
- (b) promptly provide to the University such documents and information which the University may reasonably request in advance of the Service Transfer Date or expiry or termination of this agreement; and
- (c) fully co-operate (and procure that the trustees of every Service Provider's scheme shall fully co-operate) with the reasonable requests of the University relating to any administrative tasks and arrangements or agreements to deal with the pension aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the Service Transfer Date or on the expiry or termination of this agreement.

4.4 Service Provider's Acknowledgment

The Service Provider acknowledges that any costs and additional pension contributions arising from complying with the Automatic Enrolment Requirements during the period of this agreement in respect of any Incumbent Employees or new employees are the sole responsibility of the Service Provider and any Sub-Contractor. The Service Provider undertakes to comply and to procure that any Sub-Contractor comply with the Automatic Enrolment Requirements.

- 4.5 The provisions of paragraph 4 shall be directly enforceable by an affected employee against the Service Provider or any relevant Sub-Contractor.

Part 1. Transferring and Incumbent Employees²

Transferring Employees	Incumbent Employees

² To be completed

Schedule 11 Commercially sensitive information

[DN: To be inserted from Preferred Bidder's Tender]

[NOTE – IF NOT REQUIRED STATE 'NOT APPLICABLE']

Schedule 12 Measures to be implemented in relation to Environmental Impacts

[DN: To be inserted from Preferred Bidder's Tender]

[NOTE – IF NOT REQUIRED STATE 'NOT APPLICABLE']

Schedule 13 University's Assets

University Assets

[DN: List of University Assets to be finalised and inserted prior to signing]

[NOTE – IF NOT REQUIRED STATE ‘NOT APPLICABLE’]

Schedule 14 Data Processing

PART 1 – Processing by the Service Provider as a Processor

[DN: To be completed prior to signing. Please ensure each specific lot's personal data has been accounted for.]

The subject matter and duration of the processing	<i>The processing relates to the provision of [Insert product or service] to the data subjects. The processor party will support the controller to arrange [insert description of processor activity]. The processing will continue for as long as the arrangement is in place and subject to each party's respective data retention requirements. [D.N. The duration of the processing should be for at least the duration of the Services or Goods provision]</i>
The nature and purpose of the processing	<i>The nature of the processing is the provision of [Insert product or service] to the data subject in connection with providing [Insert details of how the data subjects information will be used.]</i>
The type of Personal Data being processed	<i>D.N. This should include details of Personal Data shared with the processor under this agreement.</i> <i>E.g. Name, contact details, DOB, bank account details, health information, salary information etc.</i>
The categories of data subjects	<i>D.N. This should include details of types of data subjects whose data you share with the processor under this agreement.</i> <i>E.g. customers, employees etc.</i>
Permitted Purposes	<i>D.N. This should set out to the reasons for the processing of Personal Data under this agreement.</i> <i>E.g. Support to arrange the supply of [X] products and related order management information.</i>
Permitted Recipients	<i>D.N. This should set out to those subcontractors and third-party processors of the Service Provider that are approved by the University (if any), the territories in which they are situated and the transfer mechanism adopted by the Service Provider to transfer Personal Data to such</i>

	<p>subcontractors or third-party processors when the territory does not have an adequacy regulation from the UK.</p> <p>Name:</p> <p>Territory:</p> <p>Transfer mechanism for cross border transfers of Personal Data where the subcontractor or third-party processor is situated within an Unauthorised Territory:</p> <p>Or as otherwise agreed in writing between the parties from time to time.</p>
Territory of Service Provider	<p><i>D.N This should set out the territory of the Service Provider and the University should check whether this territory has an adequacy regulation from the UK before proceeding to transfer any Personal Data to the Service Provider. Delete the statement below which does not apply.</i></p> <p>[It is noted that this territory has an adequacy regulation from the UK Secretary of State pursuant to section 17A of the Data Protection Act 2018 and as such any transfer of Personal Data from the University to the Service Provider is permitted under Article 45 of the UK GDPR.]</p> <p><u>OR</u></p> <p>[It is noted that this territory is an Unauthorised Territory. The parties shall enter the SCCs and do all such acts as required to legitimise any transfer of Personal Data.]</p>

PART 2 – Processing by the University as a Processor

<p>The subject matter and duration of the processing</p>	<p><i>The processing relates to the provision of [Insert product or service] to the data subjects. The processor party will support the controller to arrange [insert description of processor activity]. The processing will continue for as long as the arrangement is in place and subject to each party's respective data retention requirements. [D.N. The duration of the processing should be for at least the duration of the Services or Goods provision]</i></p>
<p>The nature and purpose of the processing</p>	<p><i>The nature of the processing is the provision of [Insert product or service] to the data subject in connection with providing [Insert details of how the data subjects information will be used.]</i></p>
<p>The type of Personal Data being processed</p>	<p><i>D.N. This should include details of Personal Data shared with the processor under this agreement.</i></p> <p><i>E.g. Name, contact details, DOB, bank account details, health information, salary information etc.</i></p>
<p>The categories of data subjects</p>	<p><i>D.N. This should include details of types of data subjects whose data you share with the processor under this agreement.</i></p> <p><i>E.g. customers, employees etc.</i></p>
<p>Permitted Purposes</p>	<p><i>D.N. This should set out to the reasons for the processing of Personal Data under this agreement.</i></p> <p><i>E.g. Support to arrange the supply of [X] products and related order management information.</i></p>
<p>Permitted Recipients</p>	<p><i>D.N. This should set out to those subcontractors and third-party processors of the University appointed under this agreement (if any), the territories in which they are situated and the transfer mechanism adopted by the University to transfer Personal Data to such subcontractors or third-party processors when the territory does not have an adequacy regulation from the UK.</i></p>

	<p>Name:</p> <p>Territory:</p> <p>Transfer mechanism for cross border transfers of personal data where the subcontractor or third-party processor is situated within an Unauthorised Territory:</p>
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