

Dated

20[XX]

UNIVERSITY OF ULSTER (1)

and

[XXXXX] (2)

AGREEMENT FOR THE PROVISION OF SUPPLIES

Conditions of Contract for Supplies (“Terms and Conditions”)

1 Interpretation

1.1 In these Terms and Conditions, the following words will have the following meanings:

“Agreement”	means the agreement between the Supplier and the Customer for the supply and purchase of Goods which comprises these Terms and Conditions together with any or all of the following, if applicable: (a) the Purchase Order; (b) the Invitation to Tender/Specification; (c) the Tender; or where none of the above documents apply, any instruction issued by the Customer to the Supplier to supply Goods;
“Commencement Date”	means, as applicable: (a) the date of commencement of the Agreement as set out in the ITT; or (b) the date the Purchase Order is issued by the Customer; or (c) where there is no ITT and no Purchase Order is issued, the date that the Customer places an order for the Goods with the Supplier;
“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;
“Commodity Codes”	means the full, applicable commodity code(s) for the Goods, which is required to make customs declarations when importing goods to Northern Ireland;
“Customer”	means the University of Ulster (branded as Ulster University) of Cromore Road, Coleraine, County Londonderry, BT52 1SA;
“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 (including without limitation, the privacy of electronic communications);
“Data Processing Schedule”	means the data processing schedule set out in the ITT;

“EEA”	the European Economic Area;
“EORI Number”	means an economic operators registration and identification number, being an identification number for use in all customs procedures;
“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;
“Environmental Policy”	the Customer’s environmental sustainability policy statement made available on its website from time to time at https://www.ulster.ac.uk/finance/visitors/supplying/sustainable-procurement or any other environmental policy notified by the Customer to the Supplier from time to time;
“FOIA”	means the Freedom of Information Act 2000;
“Goods”	means the Goods to be supplied by the Supplier to the Customer as detailed in the Invitation to Tender, Specification, Tender or Purchase Order (as applicable) or, where no such documents exist, as detailed in the instructions issued by the Customer to the Supplier to supply the Goods;
“Information”	has the meaning given under section 84 of the FOIA;
“Invitation to Tender (ITT)”	means the invitation sent by the Customer to a potential Supplier to submit a Tender and this definition shall include any invitation to quote (ITQ) issued by the Customer to a potential Supplier where evaluation is to be conducted solely on price;
“Necessary Consents”	means all approvals, certificates, authorisations, permissions, licences, permits, registrations, EORI number or XI EORI number as appropriate for the movement of Goods, regulations and consents necessary from time to time for the performance of the Agreement;
“Party/Parties”	the Supplier and/or the Customer (as appropriate);
“Premises”	will have the meaning given in the Invitation to Tender, Purchase Order, or Customer’s other form of instruction to supply Goods, as applicable, or if such term is not defined it will be the “ Deliver To” address as specified in the Purchase Order;
“Price”	the price of the Goods as stated in the Purchase Order, Tender, or Customer’s other form of instruction to supply Goods, as applicable;

“PurchaseOrder”	means the Customer’s order for the Goods which has a unique PO number, and details the Goods to be supplied by the Supplier to the Customer in accordance with the terms of the Agreement;
“Request for Information”	will have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” will apply);
“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;
“Specification”	means any specification for the Goods produced by the Supplier and agreed with the Customer; or supplied to the Supplier by the Customer including any specification contained in the Invitation to Tender, Purchase Order or Customer’s other form of instruction to supply Goods, as applicable, and any documents referred to therein which set out the quantity, description, quality and price of the Goods;
“Staff”	means all persons employed by the Supplier to perform its obligations under the Agreement together with the Supplier’s servants, agents, suppliers and sub- contractors used in the performance of its obligations under the Agreement;
“Supervisory Authority”	the relevant supervisory authority in the territory where a party to these Terms and Conditions are established (other than the Commissioner);
“Supplier”	means the person, firm or company that enters into the agreement with the Customer;
“Term”	means: <ul style="list-style-type: none"> (a) where the Agreement is for a one off purchase of Goods, the period commencing on the Commencement Date and ending on the date that the Goods are delivered and the Supplier has performed all of its obligations in accordance with the Agreement, unless the Agreement is terminated earlier in accordance with these terms and conditions; or (b) where the Agreement is for the supply of Goods over a fixed term duration as set out in the ITT, the period commencing on the Commencement Date and ending on the expiry of the fixed term period set out in the ITT including any extension periods that may be exercised by the Customer at its option as set out in the ITT, unless the Agreement is terminated earlier in accordance with these terms and conditions;
“Tender”	means the Supplier's written offer to supply the Goods;
“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;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in Northern Ireland; and
“XI EORI NUMBER”	means an economic operator’s registration and identification number, being an identification number for use in all customs procedures and as required to move goods to or from Northern Ireland.

1.2 Where a capitalised word is not defined in these Terms and Conditions it will have the meaning given to it in the Invitation to Tender or Purchase Order.

1.3 In these Terms and Conditions, unless the context otherwise requires:

- 1.3.1 references to numbered clauses are references to the relevant clause in these Terms and Conditions;
- 1.3.2 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 1.3.3 the headings to the clauses of these Terms and Conditions are for information only and do not affect the interpretation of the Agreement;
- 1.3.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 1.3.5 where the word ‘including’ is used in these Terms and Conditions, it will be understood as meaning ‘including without limitation’.

2 Basis of Agreement

- 2.1 Issue of a Purchase Order by the Customer or, where a Purchase Order is not issued, placement of an order for Goods by the Customer in any other format will constitute acceptance by the Customer of the offer contained in the Supplier's Tender or the Supplier’s quotation, as the case may be, for the supply and purchase of Goods on the basis of the Agreement.
- 2.2 Any variation to the provisions of the Agreement (including any special terms and conditions agreed between the Parties) will be inapplicable unless in writing and signed by a duly authorised representative of each Party.

2A Term

2A.1 The Agreement shall take effect on the Commencement Date and shall continue for the Term.

2B Consents and Compliance

- 2B.1 The Supplier warrants that at the Commencement Date it has all Necessary Consents in place to provide the Goods and shall ensure that it maintains all Necessary Consents during the Term. The Customer shall not (unless otherwise agreed in advance in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.

2B.2 Where applicable in respect of the Goods, the Supplier must, at its own cost, discharge all export, transit and import clearance formalities and comply with all laws and regulations required by the countries of export, transit and import in respect of the Goods. Such clearance formalities shall include but not be limited to the following:

2B.2.1 the Supplier obtaining such export and import licences and consents in relation to the Goods as are required from time to time. If required by the Customer, the Supplier shall provide the particulars of such Necessary Consents to the Customer prior to the relevant delivery;

2B.2.2 the Supplier completing all acts necessary in relation to all security clearances for the export, transit and import of the Goods;

2B.2.3 the Supplier discharging all obligations arising from pre-shipment inspections in respect of the Goods, including measuring, quality, weighing and counting checks; and

2B.2.4 all other acts required to obtain the requisite official authorisation arising in connection with the export, transit and import of the Goods.

2B.3 The Supplier undertakes to attend to and complete in a proper and efficient manner all necessary documents and formalities in connection with the export, transit and import of Goods, pursuant to the obligations at clause 2B.2 above.

3 Quality of the Goods to be supplied

3.1 The Supplier will supply the Goods to the Customer in accordance with the Specification, where applicable. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement will:

3.1.1 (where applicable) be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after delivery;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

3.1.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;

3.1.4 be free from design defects;

3.1.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier will not relieve the Supplier of any of its obligations under this sub-clause.

4 Price

4.1 In consideration of the Supplier's performance of its obligations under the Agreement, the Customer will pay the Price in accordance with this clause, and clause 5, below.

4.2 The Price of the Goods will be as stated in the Purchase Order, Tender or Customer's other form of instruction to supply the Goods (as applicable), and no increase will be accepted by the Customer unless agreed by it in writing.

4.3 The Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice. The Supplier shall indemnify the Customer against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account

for, or to pay, any VAT relating to payments made to the Supplier under the Agreement.

- 4.4 The Price will include the costs of packaging, insurance, delivery, unloading and stacking and carriage of the Goods. No extra charges will be effective unless agreed in writing and signed by the Customer.
- 4.5 The Supplier is responsible for paying all import duties, tariffs, clearance charges, taxes, brokers' fees and other amounts payable in connection with the export transit and import of the goods, unless otherwise agreed in writing by the Customer.

5 Payment

- 5.1 The Customer will pay the Supplier the Price for the Goods, (plus a sum equal to the VAT chargeable on the supply of the Goods), following delivery of the Goods, no later than 30 days after the receipt of a valid invoice which includes a valid PO number. Further, all invoices from Great British suppliers or non-EU suppliers or where the Goods are shipped from a non-EU country, must include the Supplier's XI EORI number and the Commodity Code(s) in respect of the Goods to be considered valid.
- 5.2 Where the Supplier enters into a sub-contract with a contractor for the purpose of performing its obligations under the Agreement, it will ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

6 Recovery of Sums Due

- 6.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which at any later time may become due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier will not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

7 Packaging

- 7.1 The Goods will be packed and marked in a proper manner and in accordance with the Customer's instructions and any statutory requirements (including labelling requirements and where applicable CE and UKNI marks) and any requirements of the carriers. The Supplier will indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause.
- 7.2 All packaging materials will be consistent with the Customer's Environmental Policy and considered non-returnable.

8 Environmental Requirements

- 8.1 The Supplier will provide the Goods in accordance with the Customer's Environmental Policy.

9 Cancellation

- 9.1 The Customer will have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been delivered to the Customer. The cancellation will be made in writing. Without prejudice to the generality of the foregoing, the Customer will pay the Price (or where applicable, that part of the Price) for Goods which have been delivered to the Customer or at the date of the notice of cancellation are in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund.

10 Delivery

- 10.1 The Supplier will deliver the Goods to the Premises on the delivery date and time specified in the Invitation to Tender, Purchase Order, or other form of instruction to supply the Goods submitted by the Customer (as applicable). Any access to Premises and any labour and equipment that may be provided by the Customer in connection with delivery will be provided, without acceptance by the Customer of any liability whatsoever and the Supplier will indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of its sub-contractors. This indemnity shall be unlimited in respect of death or personal injury caused by the negligence of the Supplier and in all other cases the Supplier's liability under this indemnity shall in no event exceed twice the value of the Agreement.
- 10.2 Each delivery of the Goods will be accompanied by a delivery note which shows the PO number and the type and quantity of the Goods.
- 10.3 Where any access to the Customer's Premises is necessary in connection with delivery or installation the Supplier and its sub-contractors will at all times comply with the reasonable requirements of the Customer's security arrangements.
- 10.4 If the Supplier faces a delay in delivering the Goods within the time promised or specified in the Specification, Purchase Order, or other form of instruction to supply the Goods submitted by the Customer (as applicable), the Supplier shall notify the Customer of this delay as soon as practicably possible and seek to agree a new date for delivery. If the Customer and the Supplier cannot agree on a new date for delivery the Customer shall have the right to cancel the Goods and terminate the Agreement without any further liability to the Supplier, including any liability to pay for the Goods.
- 10.5 Unless otherwise stated in the Specification, Purchase Order or other form of instruction to supply the Goods submitted by the Customer (as applicable), where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises and situated or installed in accordance with clause 10.6. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 10.6 Except where otherwise agreed in writing, delivery shall include the unloading, stacking or installation of the Goods by the Supplier's staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 10.7 All equipment, tools and vehicles brought onto the Customer's Premises will be at the Supplier's risk.
- 10.8 Any equipment provided by the Customer for the purpose of facilitating delivery of the Goods will remain property of the Customer and will only be used for the purpose of carrying out the Agreement, and will be returned promptly to the Customer on completion of delivery.

11 Non-delivery

- 11.1 Where (i) the Supplier fails to deliver the Goods in accordance with clause 10.1; or (ii) the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies, the Customer will be entitled:
- 11.1.1 to terminate the Agreement;
- 11.1.2 to request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Customer;
- 11.1.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to

provide a full refund of the Price of the rejected Goods (if paid);

11.1.4 to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense;

11.1.5 to buy the same or similar Goods from another Supplier;

11.1.6 to recover from the Supplier the element of the cost of buying the Goods from another Supplier which exceeds the Price.

12 Property

12.1 Property and risk of the Goods will, without prejudice to any of the rights or remedies of the Customer, pass to the Customer on completion of delivery. Delivery of the Goods will be completed in accordance with clause 10.5 and when the Customer has signed for the delivery.

13 Guarantee of title

13.1 The Supplier warrants that:

13.1.1 it has full clear and unencumbered title to all the Goods;

13.1.2 it has full capacity and authority to enter into the Agreement;

13.1.3 at the date of delivery of any of the Goods it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. From that date the Customer will acquire a valid and unencumbered title to the Goods.

14 Insurance

14.1 The Supplier will effect and maintain with a reputable insurance company, a policy or policies of insurance providing an adequate level, and duration, of cover in respect of all risks which may be incurred by the Supplier in respect of its performance of the Agreement, including death, personal injury, loss or damage to property or any other loss. In particular, the Supplier must hold product liability insurance in a sum no less than twice the value of the Agreement.

15 Intellectual property indemnity

15.1 The Supplier will indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Supplier, its employees, agents or sub-contractors.

16 Assignment and sub-contracting

16.1 The Supplier will not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part thereof. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

16.2 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Agreement, it will comply with the sub-contractor payment provision in clause 5.2.

16.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or

disposal will not increase the burden of the Supplier's obligations under the Agreement.

17 Termination

- 17.1 Where the Agreement is for a fixed term, the Customer may terminate it at any time by giving to the Supplier not less than one (1) month's prior written notice, unless the fixed term of the Agreement is less than 3 months in duration in which case the Customer may terminate it at any time by giving the Supplier not less than two (2) weeks' prior written notice.
- 17.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if:
- 17.1.1 the Supplier is in material breach of any obligation which is not capable of remedy; or
- 17.1.2 the Supplier repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement
- 17.1.3 the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- 17.1.4 the Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988; or
- 17.1.5 the Supplier becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.5) in consequence of debt in any jurisdiction.
- 17.3 Termination or expiry of the Agreement will not affect clauses 2B.3, 3, 13, 15, 23, 25, 26, 29 and 31.

18 Prevention of Corruption

- 18.1 The Supplier will not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 If the Supplier, its Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by clause 18.1 the Customer may:
- 18.2.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- 18.2.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of clause 18.1.

19 Prevention of Fraud

- 19.1 The Supplier will take all reasonable steps, in accordance with good industry practice, to prevent fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 19.2 The Supplier will notify the Customer immediately if it has reason to suspect that any fraud has

occurred or is occurring or is likely to occur.

- 19.3 If the Supplier or its Staff commits fraud in relation to the Agreement or any other contract with the Customer, the Customer may:

19.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

19.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

20 The Contracts (Rights of Third Parties) Act 1999

- 20.1 A person who is not a Party to the Agreement will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

21 Health and Safety

- 21.1 The Supplier will promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer will promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 21.2 While on the Premises the Supplier will comply with all health and safety measures.
- 21.3 The Supplier will notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 21.4 The Supplier 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 Premises in the performance of its obligations under the Agreement.
- 21.5 The Supplier 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 Customer on request.

22 Discrimination

- 22.1 The Supplier shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation in force from time to time, and shall use its best endeavours to ensure that in its employment policies and practices and in the delivery of the Goods required under the Agreement it has due regard to the need to promote equality of treatment and opportunity between:
- 22.1.1 persons of different religious beliefs or political opinions;
- 22.1.2 men and women or married and unmarried persons;
- 22.1.3 persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave);
- 22.1.4 persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);

22.1.5 persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);

22.1.6 persons of different ages; and

22.1.7 persons of differing sexual orientation.

22.2 The Supplier will take all reasonable steps to secure the observance of clause 22.1 by all Staff.

23 Data Protection

23.1 In this clause 23 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.

23.2 Both Parties will comply with all requirements of Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

23.3 The Parties acknowledge that for the purposes of Data Protection Legislation:

23.1.1 the Customer shall be the Controller and the Supplier shall be the Processor in respect of any Personal Data that is processed in accordance with Part 1 of the Data Processing Schedule, where applicable; and

23.2.2 the Supplier shall be the Controller and the Customer shall be the Processor in respect of any Personal Data that is processed in accordance with Part 2 of the Data Processing Schedule, where applicable.

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

23.4 Without prejudice to the generality of clause 23.2, 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 the Agreement.

23.5 Without prejudice to the generality of clause 23.2, and to the extent that either Party acts as the Processor, that Party shall:

23.5.1 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 Supplier acknowledges the Customer shall rely on the Data Protection Legislation as the basis of processing of Personal Data (if any). Where the Supplier is relying on non-domestic law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by non-domestic law unless such non-domestic law prohibits the Supplier from so notifying the Customer;

23.5.2 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

supplies, 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); and

- 23.5.3 without prejudice to the confidentiality obligations in clause 31 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.

23.6 Where the Supplier acts as the Processor it shall:

- 23.6.1 assist the Customer, at the Customer'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;
- 23.6.2 notify the Customer without undue delay, and in any event not later than 24 hours, on becoming aware of a Personal Data Breach;
- 23.6.3 at the written direction of the Customer, delete or return Personal Data and copies of such to the Customer on termination of the Agreement unless required by law to store the Personal Data; and
- 23.6.4 maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes Data Protection Legislation.

23.7 The Supplier (or any of its sub-contractors approved in accordance with clause 16) shall not transfer Personal Data outside the UK unless the prior written consent of the Customer is obtained. Where such consent is granted, the Supplier must only proceed with such transfer and process the Personal Data outside the UK under the following conditions:

- 23.7.1 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 Supplier shall identify such territory within the Data Processing Schedule;
- 23.7.2 the Supplier 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 Supplier shall identify the transfer mechanism within the Data Processing Schedule and must immediately inform the Customer of any change to its status;
- 23.7.3 the transfer otherwise complies with the Data Protection Legislation. The Supplier shall provide full particulars to the Customer within the Data Processing Schedule and advise on any change to that status; and
- 23.7.4 the Supplier shall comply with the reasonable instructions notified to it by the Customer in advance of the transfer of Personal Data and thereafter from time to time.

23.8 Without prejudice to clause 16.1, the Customer consents to the Supplier appointing only the third-party processors outlined within the Data Processing Schedule as third-party processors of Personal Data under the Agreement. The Supplier 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 23 and in either case which the Supplier undertakes reflect and will continue to reflect the requirements of Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 23.8.

- 23.9 The Supplier agrees to indemnify, keep indemnified and defend at its own expense the Customer against all fines, costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Supplier or its employees, subcontractors or agents to comply with any of its obligations under this clause 23 or the Data Protection Legislation.
- 23.10 If any Personal Data transfer between the Customer and the Supplier requires execution of SCCs in order to comply with the Data Protection Legislation (where the Customer is the entity exporting Personal Data to the Supplier 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.
- 23.11 If the Customer consents to appointment by the Supplier of a subcontractor or third-party processor located in an Unauthorised Territory in accordance with clause 16, then the Customer authorises the Supplier to enter into SCCs with the subcontractor. The Supplier will make the executed SCCs available to the Customer on request.

24 Information Security

The Supplier shall at all times during the Term comply with the Customer's Electronic Information Assurance and Information Security Management System Policy and all other IT and cyber security policies made available to the Supplier by the Customer from time to time during the Term, as modified or updated by the Customer from time to time.

25 Freedom of Information

The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and will provide any necessary assistance to the Customer (at the Supplier's expense) to enable the Customer to comply with all Information disclosure obligations.

26 Publicity, Media and Official Enquiries

- 26.5 Without prejudice to the Customer's obligations under the FOIA or the Environmental Information Regulations, neither Party will make any press announcement or publicise the Agreement or any part thereof in any way, except with the prior written consent of the other Party.
- 26.6 Both Parties will take reasonable steps to ensure that their servants, employees, agents, subcontractors, suppliers, professional advisors and consultants comply with clause 26.1.

27 Security at the Premises

- 27.5 The Customer will be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier and their Staff will comply with all the Customer's security requirements.

28 Supplier's Staff

- 28.5 The Customer may, by giving written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on the Premises, to any member of the Staff or any person employed or engaged by any member of the Staff.
- 28.6 The Supplier will comply with any clause 28.1 notice.
- 28.7 If requested, the Supplier will provide a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's Premises in connection with the Agreement.

- 28.8 The Supplier's Staff will comply with any rules, regulations and requirements specified by the Customer.
- 28.9 If the Supplier fails to comply with clause 28.2 within one month of the date of the request, and in the reasonable opinion of the Customer such failure may be prejudicial to the interests of the Customer, then the Customer may terminate the Agreement, provided always that such termination will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Customer.
- 28.10 The decision of the Customer in relation to clause 28.1 and 28.2 will be final and conclusive.

29 Audit

- 29.5 The Supplier will keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Supplier will on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

30 Transparency

- 30.5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not confidential. The Customer will be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of the Agreement, the Supplier hereby gives his consent for the Customer to publish the Agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

31 Confidentiality

- 31.5 Subject to clause 25, each Party will keep confidential and not disclose, and will procure that its employees and the employees of any sub-contractor keep confidential and do not disclose, any information of a confidential nature obtained by it (concerning the other Party) by reason of the Agreement except information which:
- (a) is in the public domain otherwise than by reason of a breach of this provision;
 - (b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (c) was in a Party's possession without restriction as to its disclosure prior to receiving such information from the other Party;
 - (d) is required to be disclosed by law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements;
 - (e) is necessary for a Party to disclose for the purposes of the performing its obligations under the Agreement (but only to the extent it is necessary to do so);
 - (f) is disclosed by a Party to its professional advisors who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Agreement;
 - (g) the other Party has given its specific express prior written consent can be disclosed; or
 - (h) in the case of the Customer, is disclosed to the Department for Education, the Customer's external auditors, the Customer's third party funders (including SEUPB) and any auditors that any such parties may appoint provided that they all will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause.
- 31.6 The provisions of this clause will apply during the continuance of the Agreement and after its expiry or termination howsoever arising.

32 Force Majeure

- 32.1 Neither Party will have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of that Party (those circumstances excluding any industrial action occurring within the Supplier's organisation and the circumstances set out in clauses 32.2 and 32.3) ("**Force Majeure Event**"). The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than three (3) months, either Party may terminate the Agreement by written notice to the other Party.
- 32.2 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.
- 32.3 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.

33 Entire agreement

- 33.5 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause will exclude liability for fraud or fraudulent misrepresentation.

33A Priority of Documents

- 33A.1 If there is any conflict or ambiguity between the terms of any documents issued by the Customer to the Supplier, the following order of priority shall apply:
- (a) Purchase Order;
 - (b) Specification;
 - (c) Invitation to Tender;
 - (d) Tender.

34 Waiver

Any waiver or relaxation either partly, or wholly of any of the conditions of the Agreement will be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract will not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

35 Agency, partnership etc

The Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

36 Remedies cumulative

Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

37 Severance

If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

38 Dispute Resolution

- 38.5 The Parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement. If the dispute cannot be resolved by the Parties within a reasonable period, the dispute may, by agreement between the Parties, be referred to a neutral adviser or mediator ("the Mediator") chosen by agreement between the Parties. If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act either Party will be able to apply to an appropriate mediation provider to appoint a Mediator. Within 10 Working Days of appointing the Mediator, the Parties will meet with the Mediator to agree a procedure for negotiations.
- 38.6 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings. The Parties agree to be bound by any written agreement once signed by both Parties. If the Parties fail to appoint a Mediator, or fail to reach agreement within one month of the Mediator being appointed, either Party may exercise any remedy that it has under the Agreement.

39 Notices

- 39.5 Any notice to be given under the Agreement will be in writing and shall be:
- 39.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 39.1.2 sent by fax or email to the fax number or email address specified in the Purchase Order, ITT, Tender, Customer's other form of instruction to supply the Goods or the Supplier's quotation, as applicable.
- 39.2 Any notice shall be deemed to have been received:
- 39.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 39.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
 - 39.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 39.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 39.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

40 Governing Law and Jurisdiction

- 40.5 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, will be governed by Northern Ireland law and will be subject to the exclusive jurisdiction of the Northern Ireland courts.

