

Dated

202[X]

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UNIVERSITY OF ULSTER (1)

and

[XXXXX] (2)

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AGREEMENT FOR THE PROVISION OF SUPPLIES

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[Insert Tender Title]

Contract Reference: Project [xxxx]

# SUBJECT TO CONTRACT / CONTRACT DENIED

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**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]** (**Supplier**).

## **BACKGROUND**

- (A) The University sought proposals for the provision of “**[TYPE] Supplies**” by means of a public tender exercise. The University placed a contract notice **[details of Find a Tender Service reference]** on **[date]** in the Find a Tender Service seeking expressions of interest from potential providers for the provision of Supplies.
- (B) The University has, through a competitive process, selected the Supplier to provide these Supplies and the Supplier is willing and able to provide the Supplies 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.

**Applicable Law:** 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

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable Supplies which are substantially similar to the Supplies 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 Supplier in the event that an incident or occurrence of any nature threatens the continued delivery of any aspect of the Supplies to the University (including the procedures to be taken by the Supplier in planning and providing for any such event), the Business Continuity Plan at the date of this agreement being set out in Schedule 5.

#### **Catastrophic Failure:**

- (a) a failure by the Supplier for whatever reason to implement the Business Continuity Plan successfully; or
- (b) a failure by the Supplier for whatever reason to support the University in the implementation of its business continuity plan successfully; or

- (c) any action by the Supplier, whether in relation to the Supplies 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 Supplies.

**Change Control Procedure:** the procedure for changing this agreement, as set out in Schedule 6.

**Charges:** means any charges which may become due and payable by the University to the Supplier in respect of the Supplies in accordance with the provisions of this agreement.

**Commencement Date:** [DATE].

**Commercially Sensitive Information:** the information listed in Schedule 8 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the University that, if disclosed by the University, would cause the Supplier 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.

**Commodity Codes:** the full, applicable commodity code(s) for the Supplies, which is required to make customs declarations when importing goods to Northern Ireland.

**Contract Mobilisation Plan:** means the contract mobilisation plan relating to the Supplies, included in Schedule 7 as amended by agreement between the parties from time to time.

**Contract Year:** a period of 12 months, commencing on [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 (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

Suppliers 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 5.5.

**Dispute Resolution Procedure:** the procedure set out in clause 19.

**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.

**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 Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

**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 4 for the roles attributed to such personnel.

**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 Supplies.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, registrations, EORI number or XI EORI number as appropriate for the movement of

Supplies, regulations and consents necessary from time to time for the performance of the agreement.

**Pandemic Event:** an event or delay caused by, or arising from or in relation to, a pandemic, including, but not limited to, 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 the pandemic.

**Pandemic Event Cessation Notice:** a notification under Clause 32.9 that a Pandemic Event that was preventing a party's performing obligations has ceased to have that effect.

**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.

**Remediation Notice:** a notice served by the University in accordance with clause 30.1(b).

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

**Replacement Supplier:** any third party supplier of Replacement Supplies 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 23.1.

**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.

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

**Supplier Party:** the Supplier's agents and Suppliers, including each Sub-Supplier.

**Supplier's Authorised Representative:** the person designated as such by the Supplier, the first such person being set out in Schedule 4.

**Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Suppliers who are engaged in the provision of the Supplies from time to time.

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

**Supplies:** the Supplies to be delivered by or on behalf of the Supplier under this agreement, including those described in Schedule 1 (Specification).

**Sub-Contract:** any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Supplies from that third party.

**Sub-Supplier:** the Suppliers or Suppliers that enter into a Sub-Contract with the Supplier.

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

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

**TSS:** means the UK government trader support scheme established to facilitate the movement of goods between Great Britain and Northern Ireland.

**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's Authorised Representative:** the person(s) designated as such by the University, the first such person(s) being set out in Schedule 4.

**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 Supplier by or on behalf of the University; or
  - (ii) which the Supplier has access to pursuant to this agreement; or
  - (iii) which the Supplier 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 Contract Manager:** the person designated as such by the University, the first such person being set out in Schedule 4.

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

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

**XI EORI number:** means an economic operators 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 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 Supplier is aware** or **to the Supplier'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) Schedule 1 to this agreement;
  - (c) the remaining schedules to this agreement other than Schedule 2;
  - (d) the Tender Documents;
  - (e) Schedule 2 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 Supplier 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 34 and 36 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 Supplier 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 34 and 36 shall apply.

#### **4. CONSENTS, COMPLIANCE, SUPPLIER'S WARRANTY AND DUE DILIGENCE**

- 4.1 The Supplier warrants that at the Commencement Date it has all Necessary Consents in place to provide the Supplies and shall ensure that it maintains all Necessary Consents during the Term. The University shall not (unless otherwise agreed in advance in writing) 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 Supplier has made all reasonable attempts to obtain and comply with a Necessary Consent in line with the requirements of the Supplies and this agreement.
- 4.3 Subject to as otherwise may be agreed with the University as set out at Schedule 1 and where applicable in respect of the Supplies, 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 Supplies. Such clearance formalities shall include but not limited to the following:
- (a) the Supplier obtaining such export and import licences and consents in relation to the Supplies as are required from time to time. If required by the University, the Supplier shall provide the particulars of such Necessary Consents available to the University prior to the relevant delivery;
  - (b) the Supplier completing all acts necessary in relation to all security clearances for the export, transit and import of the Supplies;
  - (c) subject to clause 11.6 in respect of the payment of VAT, discharge all import duties, tariffs, clearance charges, taxes, brokers' fees and other amounts payable in connection with the export, transit and import of the Supplies;
  - (d) the Supplier discharging all obligations arising from pre-shipment inspections in respect of the Supplies, including measuring, quality, weighing and counting checks; and
  - (e) all other acts required to obtain the requisite official authorisation arising in connection with the export, transit and import of the Supplies.
- 4.4 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 Supplies, pursuant to the obligations at clause 4.3 above.
- 4.5 Notwithstanding clauses 4.3 and 4.4, in the event the Supplier uses the TSS to facilitate the movement of the Supplies to the University Premises, the University agrees to submit any supplementary import declarations required.
- 4.6 The Supplier acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Supplies 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 Supplies in accordance with the terms of this agreement;

- (b) it has received all information requested by it from the University pursuant to clause 4.6(a) and has had the opportunity to clarify such information to enable it to determine whether it is able to provide the Supplies 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 4.6(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.

4.7 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 Supplier by the University and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.8 The Supplier:

- (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 Supplier;
- (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 Supplier 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 Supplier'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 Supplier's Tender and in Schedule 2 (Supplier'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 Supplies or meet any Service Levels.
- 4.9 The Supplier 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 Supplier in accordance with clause 4.8(h).
- 4.10 Nothing in clause 4.9 shall limit or exclude the liability of the University for fraud or fraudulent misrepresentation.

## **THE SUPPLIES**

### **5. PROVISION OF SUPPLIES**

- 5.1 The Supplier warrants that:
- (a) it has full unencumbered legal and beneficial title to all the Supplies;
  - (b) it has full capacity and authority to enter into this agreement; and
  - (c) at the date of delivery of any of the Supplies it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Supplies to the University.
- 5.2 The Supplier 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 Supplies from the Full Service Commencement Date.
- 5.3 The Supplier shall provide the Supplies to the University with effect from the Full Service Commencement Date for the duration of this agreement and shall ensure that the Supplies:
- (a) comply in all respects with the requirements set out in Schedule 1 (Specification);

- (b) are supplied in accordance with Schedule 2 (Supplier's Solution) and the provisions of this agreement;
- (c) where applicable be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after delivery pursuant to clauses 6.7 to 6.19;
- (d) 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 Supplies;
- (e) 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;
- (f) be free from design defects; and
- (g) be fit for any purpose held out by the Supplier or made known to the Supplier by the University expressly or by implication, and in this respect the University relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the University of any designs provided by the Supplier will not relieve the Supplier of any of its obligations under this sub-clause.

5.4 In the event that the Supplier fails to commence delivery of the Supplies on the Full Service Commencement Date, then without prejudice to the University's right to terminate this agreement pursuant to clause 30.1 the parties will meet to agree a new date from which the Supplier shall commence delivery of the Supplies provided that:

- (a) there will be no obligation on the University to pay the Charges in respect of Supplies not delivered by the Supplier;
- (b) this shall have no impact on the University's ability to bring a claim due to the Supplier's breach of clause 5.2;
- (c) there shall be no change to the Initial Term.

5.5 In the event that the Supplier does not comply with the provisions of clauses 5.1 to 5.3 inclusive in any way the University may:

- (a) serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**); and/or
- (b) reject any of the Supplies which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the University of such Supplies. If the University rejects any of the Supplies pursuant to this clause the University may (without prejudice to other rights and remedies) either:
  - (i) have such Supplies promptly, and in any event within five Working Days, either repaired by the Supplier or replaced by the Supplier with Supplies which conform in all respects with the approved sample or with the Specification and

due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

- (ii) treat this agreement as discharged by the Supplier's breach and obtain a refund (if payment for the Supplies has already been made) from the Supplier in respect of the Supplies concerned together with payment of any additional expenditure reasonably incurred by the University in obtaining other Supplies in replacement provided that the University uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Supplies.

5.6 For the avoidance of doubt, the University and the Supplier shall comply with all of their obligations as specified in Schedule 1 (Specification) for the duration of this agreement.

5.7 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the University by the Supplier in connection with the supply of the Supplies and shall pay the University any extra costs occasioned by any discrepancies, errors or omissions therein.

## **6. SUPPLIES AND DELIVERY**

### *Supplies*

6.1 The Supplier hereby guarantees the Supplies for the period from the date of delivery to the date 12 months thereafter or as otherwise specified in the Specification or Tender, against faulty materials or workmanship. If the University shall within such guarantee period or within 25 Business Days thereafter give notice in writing to the Supplier of any defect in any of the Supplies as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the University may have) promptly remedy such defects (whether by repair or replacement as the University shall elect) free of charge.

6.2 Any Supplies rejected or returned by the University as described in clause 6.1 shall be returned to the Supplier at the Supplier's risk and expense.

6.3 If requested by the University, the Supplier shall provide the University with samples of Supplies for evaluation and approval, at the Supplier's cost and expense.

6.4 The University reserves the right to substitute to new or improved products should these be developed by the Supplier during the period of agreement and where alternative sources of supply become available these will be considered by the University in relation to value for money and the University reserves the right to consider same.

6.5 The University's right of rejection shall continue irrespective of whether the University has in law accepted the Supplies. In particular, taking delivery, inspection, use or payment by the University of the Supplies or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right of remedy that the University may have against the

Supplier, provided that the right of rejection shall cease within a reasonable time from the date on which the University discovers or might reasonably be expected to discover the latent defect or other relevant breach of contract.

- 6.6 If any Supplies provided to the University were procured or obtained by the Supplier from third parties, then any guarantees, warranties, benefits or indemnities which the agreement holds from such third parties in respect of those Supplies will be held on trust for the University. In the event of the Supplies being recalled, initiated by the manufacturer of the Supplies, the Secretary of State for Health or Medicines and Healthcare products Regulatory Organisation (or any such similar regulatory body), the Supplier shall, without delay and at its own expense, arrange for the collection of such Supplies and credit the University for any Supplies delivered but unused by the University including part used packs.

#### *Delivery*

- 6.7 The Supplier will deliver the Supplies to the University Premises (or other such collection point pursuant to clause 6.12) on the delivery date and at the time specified in the Specification or any relevant purchase order. At the point of delivery, the Supplier shall have cleared the Supplies for export, transit and import, pursuant to clause 4.3 above.
- 6.8 Each delivery of the Supplies will be accompanied by a delivery note which shows the purchase order number and the type and quantity of the Supplies.
- 6.9 In particular the Supplies shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Supplies (and all documents relating thereto) shall bear prominent and adequate warnings.
- 6.10 Where any access to the University Premises is necessary in connection with delivery or installation the Supplier and his sub-Suppliers will at all times comply with the reasonable requirements of the University's security arrangements.
- 6.11 Time of delivery shall be of the essence and if the Supplier fails to deliver the Supplies within the time promised or specified in the Specification, the University may release itself from any obligation to accept and pay for the Supplies and/or terminate the agreement, in either case without prejudice to any other rights and remedies of the University.
- 6.12 Unless otherwise stated in the Specification, where the Supplies are delivered by the Supplier, the point of delivery shall be when the Supplies are removed from the transporting vehicle at the University Premises and situated or installed in accordance with clause 6.13. Where the Supplies are collected by the University, the point of delivery shall be when the Supplies are loaded on the University's vehicle.

- 6.13 Except where otherwise agreed in writing, delivery shall include the unloading, stacking or installation of the Supplies by the Supplier's staff or the Supplier's suppliers or carriers at such place as the University or duly authorised person shall reasonably direct.
- 6.14 Property and risk in the Supplies shall, without prejudice to any other rights or remedies of the University pass to the University at the time of acceptance of delivery.
- 6.15 The University shall be under no obligation to accept or pay for any Supplies delivered in excess of the quantity ordered. If the University elects not to accept such over-delivered Supplies it shall give notice in writing to the Supplier to remove them within 5 Business Days and to refund to the University any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Supplies), failing which the University may dispose of such Supplies and charge the Supplier for the costs of such disposal. The risk in any over- delivered Supplies shall remain with the Supplier unless they are accepted by the University.
- 6.16 The University shall be under no obligation to accept or pay for any Supplies supplied earlier than the date for delivery stated in the Specification.
- 6.17 Unless expressly agreed to the contrary, the University shall not be obliged to accept delivery by instalments. If, however, the University does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the University, entitle the University to terminate the whole of any unfulfilled part of this agreement without further liability to the University.
- 6.18 Without prejudice, the University shall be at liberty to charge an administration fee, not in excess of 10% of the gross cost of any other Supplies purchased, as a result of a breach of clause 6. Such administration fees shall be in addition to any charge levied under clause 6.
- 6.19 In the case of non-delivery the University shall, provided that the University has been advised in writing of the dispatch of the Supplies, within 10 days of the notified date of delivery give notice to the Supplier that the Supplies have not been delivered.
- 6.20 On dispatch of any consignment of the Supplies the Supplier shall send the University an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Supplies, having been placed in transit, provided that the University has been advised in writing of the dispatch of the Supplies, within 10 Working Days of the notified date of delivery, give notice to the Supplier that the Supplies have not been delivered and may request the Supplier free of charge to deliver substitute Supplies within the timescales specified by the University or terminate this agreement.
- 6.21 Failure by the Supplier to deliver the Supplies or any part of them within the time agreed shall entitle the University to terminate this agreement and purchase other Supplies of the same or similar description to make good such default and recover from the Supplier the amount by which the cost of purchasing other Supplies exceeds the amount that would have been

payable to the Supplier in respect of the Supplies replaced by such purchase provided that the University uses all reasonable endeavours to mitigate its losses in this respect.

## **7. PACKAGING**

- 7.1 The Supplies will be packed and marked in a proper manner and in accordance with the University's instructions and any statutory requirements (including labelling requirements where applicable CE and UKNI marks) accompanied with any other relevant risk, safety and emergency information written in English and any requirements of the carriers tasked by the Supplier with delivering the Supplies.
- 7.2 All packaging materials will be consistent with the University's environmental policy and considered non-returnable.

## **8. HEALTH AND SAFETY**

- 8.1 The Supplier 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 Supplier of any health and safety hazards that may exist or arise at the University's Premises and that may affect the Supplier in the performance of the agreement.
- 8.2 While on the University's Premises, the Supplier 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 Supplier 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 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 University's Premises in the performance of the agreement.
- 8.5 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 University on request.

## **9. UNIVERSITY'S PREMISES**

- 9.1 The University shall, subject to clause 7 and clause 12, provide the Supplier (and its Sub-Suppliers) with access to such parts of the University's Premises as the Supplier reasonably requires for the purposes only of properly providing the Supplies.

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

**10. BUSINESS CONTINUITY [NOTE – IF NOT REQUIRED STATE ‘NOT USED’]**

- 10.1 The Supplier shall comply at all times with the relevant provisions of the Business Continuity Plan.
- 10.2 Following the declaration of a Major Incident in respect of any of the Supplies, the Supplier shall:
- (a) implement the Business Continuity Plan;
  - (b) continue to provide the affected Supplies to the University in accordance with the Business Continuity Plan; and
  - (c) restore the affected Supplies to normal within the period laid out in the Business Continuity Plan.

**CHARGES AND PAYMENT**

**11. PAYMENT**

- 11.1 In consideration of the provision of the Supplies by the Supplier in accordance with the terms and conditions of this agreement, the University shall pay the Charges to the Supplier.
- 11.2 Subject to otherwise being agreed between the parties as may be set out at Schedule 3, the Supplier shall invoice the University for payment of the Charges by the fifth Working Day of each calendar month for the previous month. The Supplier shall direct all invoices to the University's Finance Office at Coleraine, which shall, upon request of the University, include the Commodity Code(s) in respect of the Supplies to be considered valid.
- 11.3 The University shall pay the Charges raised in accordance with clause 11.2, which have become payable within thirty (30) days of receipt of an undisputed invoice from the Supplier.

- 11.4 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 19. 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.
- 11.5 Subject to clause 11.4, 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 30.4, the Supplier shall not suspend the supply of the Supplies if any payment is overdue.
- 11.6 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 Supplier 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 Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 11.7 Except for as set out at clause 11.6, the Charges payable by the University shall not include all import duties, tariffs, clearance charges, taxes, brokers' fees and other amounts payable in connection with the export, transit and import of the Supplies, which, for the avoidance of doubt shall be discharged by the Supplier directly in accordance with clause 4.3(c), unless otherwise agreed in writing by the University.

## **STAFF**

### **12. PERSONNEL USED TO PROVIDE THE SUPPLIES**

- 12.1 The Supplier shall be responsible for providing at its own cost and expense all the personnel necessary to perform the Supplies.
- 12.2 At all times, the Supplier shall ensure that:
- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Supplies in respect of which they are engaged;
  - (b) each of the Supplier's Personnel providing Security related Supplies is trained and licenced by the British Security Industry Association;
  - (c) there is an adequate number of Supplier's Personnel to provide the Supplies properly;
  - (d) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Supplies; and
  - (e) all of the Supplier'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.

- 12.3 The University may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 12.4 The Supplier shall replace any of the Supplier'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 Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Supplies.
- 12.5 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Supplies and, on request, provide reasonable information to the University on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 12.6 The Supplier 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 Supplies is at least as good at the prevailing industry norm for similar Supplies, locations and environments.

**13. KEY PERSONNEL [NOTE – IF NOT REQUIRED STATE 'NOT USED']**

- 13.1 Each party shall appoint the persons named as such in Schedule 4 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 Supplies and who shall be retained on the implementation and/or operation of the Supplies 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.
- 13.2 The Supplier 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 Supplies 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 Supplier; or
  - (e) the Supplier obtains the prior written consent of the University.
- 13.3 The Supplier 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.

- 13.4 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 Supplier or the University becoming aware of the role becoming vacant.
- 13.5 The University may require the Supplier 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.
- 13.6 If the Supplier replaces the Key Personnel as a consequence of this clause 16, the cost of effecting such replacement shall be borne by the Supplier.

#### **14. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 14.1 The parties acknowledge that the Supplier 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.
- 14.2 The Supplier shall ensure that all individuals engaged in the provision of the Supplies 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 Supplier shall monitor the level and validity of the checks under this clause 14.2 for each member of staff.
- 14.3 The Supplier 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 Supplier in the provision of the Supplies 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.
- 14.4 The Supplier shall immediately notify the University of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 14 have been met.
- 14.5 The Supplier shall refer information about any person carrying out the Supplies to the Independent Safeguarding Authority (ISA) where it removes permission for such person to carry out the Supplies (or would have, if such person had not otherwise ceased to carry out the Supplies) 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.

14.6 The Supplier shall not employ or use the Supplies 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.

**15. CONFLICTS OF INTEREST**

15.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the Supplier'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 Supplier and the duties owed to the University under the provisions of this agreement. The Supplier will disclose to the University full particulars of any such conflict of interest which may arise.

15.2 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 Supplier 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**

**16. REPORTING AND MEETINGS [NOTE – IF NOT REQUIRED STATE 'NOT USED']**

16.1 The Supplier shall provide the management reports in the form and at the intervals set out in Schedule 4.

16.2 The University's Contract Manager, the University's Authorised Representatives and relevant Supplier's Key Personnel shall meet in accordance with the details set out in Schedule 4 and the Supplier shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

**17. MONITORING**

17.1 The University may monitor the performance of the Supplies by the Supplier.

17.2 The Supplier shall co-operate, and shall procure that its Sub-Suppliers co-operate, with the University in carrying out the monitoring referred to in clause 17.1 at no additional charge to the University.

**18. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT**

18.1 Any requirement for a Change shall be subject to the Change Control Procedure.

- 18.2 The Supplier shall have an ongoing obligation throughout the Term to continuously review systems and procedures and identify new or potential improvements to the Supplies. As part of this obligation the Supplier shall identify and report to the University's Contract Manager on:
- (a) the emergence of new and evolving relevant technologies which could improve the Supplies;
  - (b) new or potential improvements to the Supplies including the quality, responsiveness, procedures, efficiency improvements, cost saving, added value, performance mechanisms and customer support Supplies in relation to the Supplies
  - (c) new or potential improvements to the interfaces or integration of the Supplies with other Supplies 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 Supplies to be delivered at lower costs and/or at greater benefits to the University.
- 18.3 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 18.2 shall be addressed by the parties using the Change Control Procedure.

## **19. DISPUTE RESOLUTION**

- 19.1 Either party may call an extraordinary meeting of the parties by service of not less than 5 days' written notice and:
- (a) the Supplier agrees to procure that the Supplier'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.
- 19.2 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.
- 19.3 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.

- 19.4 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).
- 19.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the Supplier's Authorised Representative and the University's Contract Manager, shall remain binding on the parties.
- 19.6 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.
- 19.7 While the Dispute Resolution Procedure referred to in this clause 19 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.

## **20. SUB-CONTRACTING AND ASSIGNMENT**

- 20.1 Subject to clause 20.3, 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 Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the University.
- 20.2 In the event that the Supplier 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-Supplier and be responsible for the acts omissions and neglects of its Sub-Suppliers;
  - (b) impose obligations on its Sub-Supplier in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Supplier 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.

20.3 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

### 21. INDEMNITIES

The Supplier 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 Supplier's Personnel or of any Supplier 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 Supplier's Personnel).

### 22. LIMITATION OF LIABILITY

22.1 Subject to clause 22.5, 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.

22.2 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.

22.3 Subject to clause 22.5, 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]**.

22.4 Subject to clause 22.5, the Supplier's total aggregate liability:

- (a) in respect of the indemnities given by the Supplier in clause 25.8 and 32.2 is unlimited;
- (b) 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 Supplier's Default shall in no event exceed **[£5,000,000]** per incident (subject to indexation) or such higher amount as the Supplier has applicable insurance cover for;
- (c) 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 Supplier has applicable insurance cover for.

22.5 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.

## 23. INSURANCE

23.1 The Supplier 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 Supplies hold and maintain appropriate cover.

(the **Required Insurances**).

The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier'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 Supplier.

23.2 The Supplier 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.

23.3 If, for whatever reason, the Supplier 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 Supplier.

- 23.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 23.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

## **INFORMATION**

### **24. FREEDOM OF INFORMATION**

- 24.1 The Supplier 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 Supplier's expense) to enable the University to comply with these information disclosure requirements.
- 24.2 The Supplier shall and shall procure that its Sub-Suppliers 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.
- 24.3 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.
- 24.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the University.
- 24.5 The Supplier 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 Supplier; or
  - (b) following consultation with the Supplier and having taken its views into account,

provided always that where clause 24.5(b) applies the University shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 24.6 The Supplier 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.
- 24.7 The Supplier 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 24.5.

## **25. DATA PROTECTION**

- 25.1 In this clause 25 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.
- 25.2 Both parties will comply with all applicable requirements of Data Protection Legislation. This clause 25 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 25.3 The parties acknowledge that for the purposes of Data Protection Legislation:
- (a) the University 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 Schedule 10; and
  - (b) the Supplier 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 10.

Schedule 10 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.

- 25.4 Without prejudice to the generality of clause 25.2 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.
- 25.5 Without prejudice to the generality of clause 25.2, and 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 Supplier acknowledges the University 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 University of this before performing the processing required by the non-domestic law unless such non-domestic law prohibits the Supplier 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 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);
- (c) without prejudice to the confidentiality obligations in clause 26 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 Supplier'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 25 and allow for audits by the University or the University's designated auditor and immediately inform the University if, in the opinion of the Supplier, an instruction infringes Data Protection Legislation.

25.6 The Supplier (or any of its sub-contractors approved in accordance with clause 20) shall not transfer Personal Data outside the UK unless the prior written consent of the University 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:

- (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 Supplier shall identify such territory within Schedule 10;

- (b) 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 Schedule 10 and must immediately inform the University of any change to its status;
- (c) the transfer otherwise complies with the Data Protection Legislation. The Supplier shall provide full particulars to the University within the Schedule 10 and advise on any change to that status; and
- (d) the Supplier shall comply with the 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.

25.7 Without prejudice to clause 20.1, the University consents to the Supplier appointing only the third-party processors outlined within Schedule 10 as third-party processors of Personal Data under this agreement or such other third-party processors approved by the University from time to time in writing. 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 25 and in either case which the Supplier undertakes reflect and will continue to reflect the requirements of Data Protection Legislation. As between the University 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 25.7.

25.8 The Supplier 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 Supplier or its employees, subcontractors or agents to comply with any of its obligations under this clause 25 or the Data Protection Legislation.

25.9 If any Personal Data transfer between the University and the Supplier requires execution of SCCs in order to comply with the Data Protection Legislation (where the University 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.

25.10 If the University consents to appointment by the Supplier of a subcontractor located in an Unauthorised Territory in accordance with clause 20, then the University authorises the Supplier to enter into SCCs with the subcontractor. The Supplier will make the executed SCCs available to the University on request.

## **26. CONFIDENTIALITY**

26.1 Subject to clause 26.2, 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.

26.2 Clause 26.1 shall not apply to any disclosure of information:

- (a) required by any Applicable Law, provided that clause 24.1 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 26.1;
- (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 19;
- (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 Supplier has given its prior written consent to disclosure.

26.3 On or before the Termination Date the Supplier 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.

## **27. AUDIT**

27.1 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-Suppliers) of the Supplies;
- (b) to review the integrity, confidentiality and security of any data relating to the University or any service users;
- (c) to review the Supplier's compliance with the Data Protection Act 2018, the FOIA, in accordance with clause 25 (Data Protection) and clause 24 (Freedom of Information) and any other legislation applicable to the Supplies;
- (d) to review any records created during the provision of the Supplies;

- (e) to review any books of account kept by the Supplier in connection with the provision of the Supplies;
- (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.

27.2 Except where an audit is imposed on the University by a regulatory body, the University may not conduct an audit under this clause 27 more than three (3) times in any rolling twelve month period.

27.3 The University shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Supplies.

27.4 Subject to the University's obligations of confidentiality, the Supplier 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 Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Supplies; and
- (c) access to the Supplier's Personnel.

27.5 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.

27.6 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 Supplier in which case the Supplier shall reimburse the University for all the University's reasonable costs incurred in the course of the audit.

27.7 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the University about the Charges, proposed Charges or the Supplier'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 Supplier shall pay to the University the amount overpaid within 20 days. The University may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the University has underpaid any Charges, the University shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the University if this was due to a default by the Supplier in relation to invoicing within 20 days.

## **28. INTELLECTUAL PROPERTY**

- 28.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- (a) furnished to or made available to the Supplier by or on behalf of the University shall remain vested in the University and its licensors;
  - (b) generated by the Supplier for use, or intended use, in relation to the performance by the Supplier of its obligations under the agreement shall vest and remain vested in the University and the Supplier hereby assigns the Intellectual Property Rights referred to in this clause 28.1 to the University.
- 28.2 The Supplier hereby assigns to the University, with full legal and beneficial title, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 28.1. This assignment shall take effect on the date of this agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute this assignment.
- 28.3 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Supplier in the performance of the agreement. The Supplier shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this agreement grants to the University a non-exclusive licence or, if itself a licensee of those rights, shall grant to the University an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the University to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party supplying services to the University.
- 28.4 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Supplies and the Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the University and the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the University or the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the University; or

- (b) the use of data supplied by the University which is not required to be verified by the Supplier under any provision of the agreement.
- 28.5 The University shall notify the Supplier in writing of any claim or demand brought against the University for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.
- 28.6 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
  - (a) shall consult the University on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the University; and
  - (c) shall not settle or compromise any claim without the University's prior written consent (not to be unreasonably withheld or delayed).
- 28.7 The University shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the University or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under this agreement and the Supplier shall indemnify the University for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the University in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 28.6.
- 28.8 The University shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the University or the Supplier in connection with the performance of its obligations under the agreement.
- 28.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the University and, at its own expense and subject to the consent of the University (not to be unreasonably withheld or delayed), use its best endeavours to:
  - (a) modify any or all of the Supplies without reducing the performance or functionality of the same, or substitute alternative Supplies of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Supplies or to the substitute Supplies; or
  - (b) procure a licence to use and supply the Supplies, which are the subject of the alleged infringement, on terms which are acceptable to the University, and in the event that

the Supplier is unable to comply with clause 28.9 within 20 Working Days of receipt of the Supplier's notification the University may terminate this agreement with immediate effect by notice in writing.

- 28.10 The Supplier grants to the University a royalty-free, irrevocable and non- exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the University reasonably requires in order to use the Supplies and exercise its rights and take the benefit of this agreement. The Supplier shall indemnify the University against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and University 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 Supplies, except to the extent that they have been caused by or contributed to by the University's acts or omissions.
- 28.11 The Supplier shall indemnify the University against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and University 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 Supplies, except to the extent that they have been caused by or contributed to by the University's acts or omissions.

## **TERMINATION**

### **29. CANCELLATION**

- 29.1 The University will have the right to cancel any order for the Supplies, or any part of the Supplies, which have not yet been delivered to the University. The cancellation will be notified in writing. Without prejudice to the generality of the foregoing, the University will pay the Charges (or where applicable, that part of the Charges) for Supplies which have been delivered to the University 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 Supplies and which cannot be used for other orders or be returned to the Suppliers of those materials for a refund.

### **30. TERMINATION FOR BREACH**

- 30.1 The University may terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier fails to complete all of the tasks set out in the Contract Mobilisation Plan before the Full Service Commencement Date (for whatever reason) and fails to commence delivery of the Supplies on the Full Service Commencement Date;
  - (b) if the Supplier 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 30.1 if the Supplier 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 resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier 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 Supplier's property or equipment;
- (e) if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if a person becomes entitled to appoint a receiver over any of the assets of the Supplier;
- (g) if the holder of a qualifying floating charge over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
- (h) if the Supplier 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;
- (i) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the University reasonably objects.

30.2 The University may terminate this agreement in accordance with the provisions of clause 15, 29, 31, 32 and 33.

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

30.4 The Supplier 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 Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

## **31. TERMINATION ON NOTICE & INEFFECTIVENESS**

31.1 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 Supplier 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 Supplier conducts itself in such a manner so as to cause the University serious reputational damage.

- 31.2 If the University exercises its right of termination pursuant to clause 31.1 it shall pay the Supplier for such of the Supplies as are provided up to the Termination Date in accordance with the Charges set out in schedule 3 (Charges and Payment). The Supplier shall not be entitled to any other payment or to any compensation (whether for loss of profit for Supplies 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.
- 31.3 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 Supplier other than in respect of Supplies 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 3 (Charges and Payment). Under no circumstances shall the Supplier be entitled to any payment or compensation for loss of profit for Supplies 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 Supplier acknowledge and agree that it is intended that the provisions of this clause 31 and clauses 34 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.

## **32. FORCE MAJEURE**

- 32.1 Subject to the remaining provisions of this clause 32, 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 Force Majeure Event.
- 32.2 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.
- 32.3 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.
- 32.4 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.
- 32.5 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 Supplier 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.

32.6 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.

32.7 The University may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Supplies and which continues for more than 45 Working Days.

32.8 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 32.9.

32.9 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**).

32.10 Subject to clause 30.4, 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.

32.11 Notwithstanding the provisions of Clause 30.3, 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 29 (Termination).

### **33. PREVENTION OF BRIBERY**

33.1 The Supplier:

- (a) shall not, and shall procure that any Supplier Party and all Supplier 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.

33.2 The Supplier 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 Supplier) compliance with this clause 33 by the Supplier and all persons associated with it or other persons who are supplying Supplies or Supplies in connection with this agreement. The Supplier shall provide such supporting evidence of compliance as the University may reasonably request.

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

33.4 If any breach of clause 33.1 is suspected or known, the Supplier must notify the University immediately.

33.5 If the Supplier notifies the University that it suspects or knows that there may be a breach of clause 33.1, the Supplier 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.

33.6 The University may terminate this agreement by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 33.1. In determining whether to exercise the right of termination under this clause 33.6, 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 Supplier or a senior officer of the Supplier or by an employee, Sub-Supplier or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Supplier) 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 Supplier or the Sub-Supplier (as the case may be); or

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

33.7 Any notice of termination under clause 33.6 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.

33.8 Despite clause 19 (Dispute resolution), any dispute relating to:

- (a) the interpretation of clause 33; 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.

33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the University.

#### **34. CONSEQUENCES OF TERMINATION**

34.1 The provisions of clause 21 (Indemnities), clause 23 (Insurance), clause 24 (Freedom of Information), clause 25 (Data Protection), clause 26 (Confidentiality), clause 27 (Audit), clause 29 (Termination for Breach), clause 39 (Termination Supplies) and this clause 34 (Consequences of termination) shall survive termination or expiry of this agreement.

#### **GENERAL PROVISIONS**

**35. GRATUITIES**

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

**36. 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 Supplies of any senior staff of the other party who have been engaged in the provision of the Supplies or the management of this agreement or any significant part thereof either as principal, agent, employee, independent Supplier 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.

**37. 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 Supplier in respect of the Supplies or any omission on the part of the University to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Supplies in accordance with the provisions of this agreement.

**38. 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.

**39. 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.

**40. PARTNERSHIP OR AGENCY, INDEPENDENT SUPPLIER**

40.1 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.

- 40.2 The Supplier is not and shall under no circumstances hold itself out as being an agent of the University.
- 40.3 The Supplier 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.
- 40.4 The Supplier 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.
- 40.5 The Supplier's Personnel and any Supplier Party shall not hold themselves out to be and shall not be held out by the Supplier as being employees or agents of the University for any purposes.

#### **41. THIRD PARTY RIGHTS**

- 41.1 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.
- 41.2 It is expressly agreed that the parties to this agreement may by agreement rescind or vary this agreement or any term of this agreement 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.

#### **42. PUBLICITY**

The Supplier 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.

#### **43. 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.

**44. ENTIRE AGREEMENT**

This agreement, the schedules and the documents annexed to it or otherwise referred to in it [\[AND REFER TO ANY OTHER NECESSARY DOCUMENTS OR REPRESENTATIONS\]](#)<sup>1</sup> 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.

**45. 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.

**46. GOVERNING LAW AND JURISDICTION**

46.1 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.

46.2 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.

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<sup>1</sup> To be reviewed before signing

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 SUPPLIER]**

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      Supplier's Solution**

*[DN: This will be derived from the Supplier's Tender]*

### Schedule 3 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]***

The below Charges are inclusive of all costs in respect of delivering the Supplies to the delivery location in accordance with clause 6.7 to clause 6.13 inclusive.

**Schedule 4      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.      SUPPLIER'S AUTHORISED REPRESENTATIVES**

2.1    The Supplier'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  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 Supplier 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 Charges.

*[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 5 Business Continuity Plan**

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

## **Schedule 6      Change control**

### **1.      GENERAL PRINCIPLES**

- 1.1      Where the University or the Supplier 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 Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
- 1.2      Until such time as a Change is made in accordance with the Change Control Procedure, the University and the Supplier 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 Supplier 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 Supplier and the Supplier'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 6, shall be undertaken entirely at the expense and liability of the Supplier.

### **2.      PROCEDURE**

- 2.1      Discussion between the University and the Supplier 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 Supplier.
- 2.2      Where a written request for an amendment is received from the University, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the University within one week of the date of the request.
- 2.3      A recommendation to amend this agreement by the Supplier shall be submitted directly to the University in the form of two copies of a Change Control Note signed by the Supplier 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 Supplier.

2.5 For each Change Control Note submitted by the Supplier 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 Supplier; or
  - (iii) notify the Supplier of the rejection of the Change Control Note.

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

**Schedule 7 Contract Mobilisation Plan**

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

**Schedule 8      Commercially sensitive information**

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

**Schedule 9      Measures to be implemented in relation to Environmental Impacts**

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

## Schedule 10 Data Processing

### PART 1 – Processing by the Supplier as a Processor

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

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

	<p><b>or third-party processors when the territory does not have an adequacy regulation from the UK.</b></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>
Territory of Supplier	<p><b><i>D.N This should set out the territory of the Supplier and the University should check whether this territory has an adequacy regulation from the UK before proceeding to transfer any Personal Data to the Supplier. Delete the statement below which does not apply.</i></b></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 Supplier is permitted under Article 45 of the UK GDPR.]</p> <p><b><u>OR</u></b></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 <b>[Insert product or service]</b> to the data subjects. The processor party will support the controller to arrange <b>[insert description of processor activity]</b>. The processing will continue for as long as the arrangement is in place and subject to each party’s respective data retention requirements. <b>[D.N. The duration of the processing should be for at least the duration of the Supplies or Supplies provision]</b></i></p>
<p>The nature and purpose of the processing</p>	<p><i>The nature of the processing is the provision of <b>[Insert product or service]</b> to the data subject in connection with providing <b>[Insert details of how the data subjects information will be used.]</b></i></p>
<p>The type of Personal Data being processed</p>	<p><b><i>D.N. This should include details of Personal Data shared with the processor under this agreement.</i></b></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><b><i>D.N. This should include details of types of data subjects whose data you share with the processor under this agreement.</i></b></p> <p><i>E.g. customers, employees etc.</i></p>
<p>Permitted Purposes</p>	<p><b><i>D.N. This should set out to the reasons for the processing of Personal Data under this agreement.</i></b></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><b><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></b></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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