

**NEWCASTLE UNIVERSITY IT PURCHASE AGREEMENT AND CONDITIONS OF CONTRACT  
2018**

**CONTRACT FRONT SHEET**

**THIS AGREEMENT** is made this

This Contract is between:

- (1) The University of Newcastle upon Tyne trading as Newcastle University (the "**University**"); and
- (2) **[SUPPLIER NAME]**, a company registered in England and Wales under company number **[NUMBER]** whose registered office is at **[ADDRESS]** (the "**Supplier**").

**Background**

- (A) The University wishes to procure **[a [INSERT DETAILS] system / software / hardware and related services]** for use by the University.
- (B) The Supplier has recommended that the University should contract for the supply of the **[System / Software / Hardware and the Services]**.
- (C) In reliance on the Supplier's skill, experience, expertise and knowledge that the **[System / Software / Hardware and the Services]** will meet its requirements, the University wishes to appoint the Supplier to supply the **[System / Software / Hardware and the Services]** on the terms and conditions of this Agreement.

**IT IS AGREED THAT:**

**1. COMPOSITION OF AGREEMENT**

This Agreement incorporates the following documents (which, to the extent that there is any inconsistency between any of them, shall be resolved in the following descending order of priority):

- 1.1 this Contract Front Sheet; (highest priority)
- 1.2 the Conditions of Contract;
- 1.3 **Schedules 4 - 11** inclusive;
- 1.4 the Appendices (where relevant); (lowest priority)

(together the "**Agreement**").

**2. SPECIAL TERMS**

The parties have agreed the following special terms which shall take precedence over the Conditions of Contract:

Special Terms:
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**3. COMMERCIAL DETAILS**

In this Agreement, the following words shall have the following meanings, unless the context otherwise requires:

Completion Date	<b>[INSERT]</b>
Escrow Agent	<b>[INSERT]</b>
University Representative	<b>[INSERT THE NAME OF THE UNIVERSITY'S AUTHORISED REPRESENTATIVE]</b> and any other person that University Representative nominates by giving notice in writing to the

	Supplier
Liquidated Damages (where applicable)	[INSERT AMOUNT]
Liquidated Damages Period (where applicable)	
Initial Term	[INSERT]
Site(s)	[INSERT]
Start Date	[INSERT THE DATE THAT THE SYSTEM/SERVICES WILL START TO BE PROVIDED. ALTERNATIVELY IF THERE IS NO START DATE DETERMINED AT THE DATE OF SIGNATURE INSERT "THE DATE ON WHICH THE SUPPLIER COMMENCES DELIVERY OF THE SYSTEM OR PROVISION OF THE SERVICES, SUCH DATE TO BE AGREED BETWEEN THE PARTIES" OR IF THE SYSTEM/SERVICES PROVISION WILL START ON THE DATE OF SIGNATURE INSERT "THE EFFECTIVE DATE"]

### 3.1 Scope of Services

3.1.1 The Supplier will:

*(tick all that apply)*

- supply the System in accordance with **Schedule 4**;
- supply the Support and Maintenance Services;
- supply the Services;
- supply the Documentation;
- enter into the Escrow Agreement - Standard Software,  
on and subject to the terms and conditions of this Agreement.

3.2 In complying with **section 3.1.1** above, the Supplier will:

3.2.1 supply the Deliverables in compliance with the Functional Specification as set out at **Schedule 6**; and

3.2.2 achieve Acceptance by the Completion Date.

### 3.3 Notices and Dispute Resolution

For the purpose of **clause 30** (Notice) and **clause 35** (Dispute Resolution) of the Conditions of Contract:

Addresses for Notices and Points of Escalation:	
<b>The University:</b>	<b>The Supplier:</b>
<b>Address:</b>	<b>Address:</b>
<b>Notice Recipient:</b>	<b>Notice Recipient:</b>
<b>First Point of Escalation:</b>	<b>First Point of Escalation:</b>

<b>Second Point of Escalation:</b>	<b>Second Point of Escalation:</b>
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**3.4 [Liability]**

**For the purpose of clause 16.2 (Liability) in the Conditions of Contract:]**

<i>Supplier's Liability Cap</i>	
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**3.5 Sub-contracting and Assignment**

For the purpose of **clause 26.1** (Sub-contracting and Assignment) in the Conditions of Contract:

Is the Supplier permitted to sub-contract? (Yes/No – include details of any restrictions on the Supplier's right to sub-contract)	
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**4. PRICING, PAYMENT AND MILESTONES**

**SIGNED BY** the duly authorised representatives of the parties on the date set out as the Start Date above.

**SIGNED by [insert name of signatory]** )  
 duly authorised to sign for )  
 and on behalf of the **Supplier** )

**SIGNED by [insert name of signatory]** )  
 duly authorised to sign for )  
 and on behalf of the **University** )

# CONDITIONS OF CONTRACT

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## 1. DEFINITIONS AND INTERPRETATION

In this Agreement:

1.1 the following words and expressions have the following meanings unless the context otherwise requires:

<b>"Acceptance"</b>	the Final Acceptance Certificate is issued by the University in accordance with <b>clause 7.5</b>
<b>"Acceptance Criteria"</b>	the acceptance criteria set out or referred to in <b>Schedule 8</b>
<b>"Acceptance Date"</b>	the date on which Acceptance occurs
<b>"Acceptance Tests"</b>	the acceptance tests set out or referred to in <b>Schedule 8</b>
<b>"Additional Services"</b>	the services to be supplied by the Supplier under this Agreement as set out in <b>Schedule 4</b> , including project management, delivery, installation, configuration, integration, hosting services, testing and training, but excluding the Support and Maintenance Services
<b>"Agreement Personal Data"</b>	Personal Data which is to be Processed under this Agreement, as more particularly described in <b>Schedule 12</b>
<b>"Anti-Slavery Laws"</b>	any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015
<b>"Anti-Slavery Policy"</b>	the Base Code of the Ethical Trading Initiative [and University's anti-slavery policy, in each case] as amended from time to time [Note: Neil to check whether the University has its own anti-slavery policy or whether it relies upon the Base Code of the Ethical Trading Initiative (as referenced in the University's Slavery and Human Trafficking Statement).]
<b>"Applicable Law"</b>	any: <ul style="list-style-type: none"><li>(a) statute, statutory instrument, bye law, order, directive, treaty, decree or law;</li><li>(b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or</li><li>(c) legally binding industry code of conduct or guideline,</li></ul>

which relates to this Agreement, the System and/or the Services and/or the activities which are comprised in all or some of the System and/or the Services or the use or application of the output from the System and/or the

Services

**"Bespoke Software"**

those items of Supplier Software which are identified as bespoke in **Schedule 4**, together with any updates and upgrades to, and revisions, new releases and new versions of, such items which are supplied to the University by the Supplier from time to time when remedying any Defects or under the Support and Maintenance Services

**"Bribery Act"**

the Bribery Act 2010

**"Change"**

subject to **clauses 4.5 and 7.6.2**, a change to the Project Plan, the Functional Specification, the Acceptance Tests, the Acceptance Criteria, the System, the Services or the Price

**"Change Control Procedure"**

the change control procedure set out in **Schedule 9**

**"Change in Control"**

will occur in respect of a person (the **"relevant entity"**) where:

- (a) Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the Start Date hold Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity; or
- (b) a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the Term ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity,

save that any such event will not constitute a Change in Control in respect of the relevant entity where its ultimate Parent Undertaking (if any) before the relevant event remains its ultimate Parent Undertaking after that event ("Parent Undertaking" having the meaning set out in section 1162 Companies Act 2006)

**"Completion Date"**

the date specified in the Contract Front Sheet by which Acceptance is to be achieved

**"Confidential Information"**

shall mean the existence and terms of this Agreement, and all other information and trade secrets relating to the University's business or students which come into the possession of, or are otherwise made available to, the Supplier pursuant to this Agreement, whether orally, or in documentary, electronic or other form, including all (if any) such information held by the Supplier as of the commencement of this Agreement

**"Consents"**

all consents, licences, authorisations, approvals, permissions, certificates and permits (whether statutory, regulatory, contractual or otherwise) in any relevant jurisdiction



<b>"Control"</b>	has the meaning set out in sections 450 and 451 Corporation Tax Act 2010
<b>"Data Protection Laws"</b>	<p>all Applicable Laws relating to data protection, the processing of personal data and privacy, including:</p> <ul style="list-style-type: none"> <li>(a) the Data Protection Act 2018;</li> <li>(b) the General Data Protection Regulation (EU) 2016/679; and</li> <li>(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);</li> </ul> <p>and references to <b>"Data Subjects"</b>, <b>"Personal Data"</b>, <b>"Process"</b>, <b>"Processed"</b>, <b>"Processing"</b>, <b>"Processor"</b> and <b>"Supervisory Authority"</b> have the meanings set out in, and will be interpreted in accordance with, such Applicable Laws</p>
<b>"Data Security Incident"</b>	<ul style="list-style-type: none"> <li>(a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed; or</li> <li>(b) any vulnerability in any technological and/or organisational measure(s) used to protect any Agreement Personal Data which may result in exploitation or exposure of that Agreement Personal Data</li> </ul>
<b>"Defect"</b>	an error, fault or defect affecting any element or part of the System which causes that or any other element or part to fail to comply with the Functional Specification
<b>"Deliverables"</b>	the Hardware, the Supplier Software and the Third Party Software
<b>"Disaster"</b>	any unplanned interruption which significantly impairs the ability of the Supplier to supply the System and/or perform the Services (in whole or in part) in accordance with this Agreement
<b>"Disaster Recovery Plan"</b>	the Supplier's plan for its emergency response, back-up procedures and business continuity in the event of the occurrence of a Disaster
<b>"Discretionary Exclusions"</b>	the circumstances set out in regulation 57(8) of the Public Agreements Regulations
<b>"Documentation"</b>	will have the meaning given to it in <b>clause 6.1</b>
<b>"EIR"</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
<b>"Escrow Agent"</b>	the escrow agent set out in the Contract Front Sheet

(where relevant)

**"Escrow Agreement Standard Software"**

an escrow agreement means the escrow agreement to be entered into between the parties and the Escrow Agent substantially in the Escrow Agent's standard form in respect of Standard Software

**"Escrow Agreements Third Party Software"**

the escrow agreements to be entered into between the University and each owner of Third Party Software and the Escrow Agent substantially in the Escrow Agent's standard form in respect of Third Party Software

**"European Single Procurement Document"**

a European Single Procurement Document consisting of an updated self-declaration confirming that the Relevant Sub-contractor fulfils the selection criteria that the Supplier is required to meet as part of any tender which relates to this Agreement

**"Exit Plan"**

the exit plan set out at **Schedule 11**

**"Final Acceptance Certificate"**

the final acceptance certificate issued by the University in accordance with **clause 7.5**

**"First Point of Escalation"**

the first person to whom a dispute will be escalated in accordance with **clause 35.2** as set out on the Contract Front Sheet

**"FOIA"**

the Freedom of Information Act 2000 and any subordinate legislation (as defined under the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 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 Event"**

any event or circumstance to the extent it is beyond the reasonable control of and could not have been contemplated by the relevant party, but excluding any (i) changes in law; (ii) acts or omissions by sub-contractors; (iii) strikes, lockouts or industrial disputes; and/or (iv) Union law (as that term is defined in any withdrawal agreement between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland, but other than any exceptions as described in any such withdrawal agreement) actually or potentially ceasing to be binding upon or applicable to the United Kingdom ("**UK**"), including whether relating to the repeal of the European Communities Act 1972 or the start, duration or end of any transition or implementation period agreed between the UK and the European Union ("**EU**") as part of the arrangements for the withdrawal of the UK from the EU and, in each case, any consequences thereof;

**"Functional Specification"**

the functional specification for the System set out in **Schedule 6**

**"Good Industry Practice"**

in relation to the performance of the Services and any ancillary performance obligations, the performance of the Services and such obligations using the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management using what the industry would (at the relevant time) regard as the best generally

accepted processes, techniques and materials

**“Hardware”**

the items of hardware to be supplied by the Supplier as set out in **Schedule 4** and the operating software associated with them

**“Indemnify”**

to indemnify, keep indemnified and hold harmless the relevant person in full and on demand from and against all Losses which the indemnified person incurs or suffers directly or indirectly in any way whatsoever; and **“Indemnity”** will be construed accordingly

**“Information”**

has the meaning given to it in Section 84 of the Freedom of Information Act 2000

**“Initial Term”**

the period set out in the Contract Front Sheet as the “initial term” (where applicable)

**“Insolvent”**

a party is Insolvent where it:

- (a) gives notice under section 84 Insolvency Act 1986 of or proposes or passes a resolution for, its winding up (save for the purpose of a solvent reconstruction or amalgamation);
- (b) has a winding-up order made or a notice of striking off filed in respect of it;
- (c)
  - (i) has an administration order made in respect of it; or
  - (ii) has a notice of appointment of an administrator filed in respect of it at any court;
- (d) proposes, makes or is subject to:
  - (i) a company voluntary arrangement;
  - (ii) a composition with its creditors generally;
  - (iii) an application to a court of competent jurisdiction for protection from its creditors generally; or
  - (iv) a scheme of arrangement under Part 26 Companies Act 2006 (save for the purpose of a solvent reconstruction or amalgamation);
- (e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;
- (f) ceases to trade;
- (g)
  - (i) is the subject of anything analogous

to the foregoing under the laws of any applicable jurisdiction; or

(ii) is the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000); or

(iii) is the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030)

**“Intellectual Property Rights”**

all intellectual and industrial property of any kind whatsoever including patents, rights in Know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions

**“International Transfer”**

a transfer of Agreement Personal Data which is undergoing Processing, or which is intended to be Processed after transfer, to a country outside the countries that comprise the European Economic Area from time to time and, in the event that the United Kingdom (or any part of it) falls outside the European Economic Area, the countries that comprise the European Economic Area and the United Kingdom (or that part of it)

**“Know-how”**

formulae, algorithms, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions

**“Liability”**

liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under the Contract, in each case howsoever caused including if caused by negligence

**“Liquidated Damages”**

the liquidated damages amounts as set out in the Contract Front Sheet (where applicable)

**“Liquidated Damages Period”**

the time period set out in the Contract Front Sheet (where applicable)

**“Losses”**

all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis including legal and other professional costs and costs of

	enforcement), damages and expenses that a party does or will incur or suffer, all claims or proceedings made, brought or threatened against that party by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis including legal and other professional costs and costs of enforcement), damages and expenses that party does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding
<b>"Mandatory Exclusions"</b>	the circumstances set out in regulation 57(1) of the Public Agreements Regulations
<b>"Milestones"</b>	the milestones detailed in the Contract Front Sheet
<b>"Modern Slavery Practice"</b>	any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol) (c) human trafficking or (d) the arranging or facilitation of the travel of another person with a view to that person being exploited
<b>"Month"</b>	means a calendar month
<b>"Open Source Software"</b>	third party software code which is licensed upon terms which materially conform to either (i) the open source definition laid down by the body known as the Open Source Initiative or (ii) any generally accepted replacement for or alternative to such open source definition
<b>"Price"</b>	the price for the supply of the Deliverables and the Services set out in the Contract Front Sheet
<b>"Project Manager"</b>	in respect of a party, the individual designated by that party from time to time to be that party's employee with day-to-day responsibility for managing that party's obligations under this Agreement
<b>"Project Plan"</b>	the plan for delivery, installation, configuration and integration of the Deliverables, performance of the Acceptance Tests and supply of the Services as set out in, or to be agreed pursuant to, <b>Schedule 7</b> , as that plan may be modified from time to time in accordance with <b>clause 3.4</b>
<b>"Protected Parties"</b>	the University and all the University Users and their respective agents, officers and employees
<b>"Public Agreements Directive"</b>	Directive 2014/24/EC
<b>"Public Agreements Regulations"</b>	the Public Agreements Regulations 2015 SI 2015/102 as amended and in force from time to time
<b>"Relevant Sub-</b>	any sub-contractors engaged or to be engaged by the Supplier in relation to the delivery of its obligations under

<b>Contractor(s)"</b>	this Agreement where the sub-contractors are engaged or will be engaged for the provision of works or in relation to the provision of services at a facility under the direct oversight of the University
<b>"Remedial Plan"</b>	the plan referred to in <b>clause 19</b> (Remedial Plan Process) to correct a material breach
<b>"Remedial Plan Process"</b>	the process set out in <b>clause 19</b> (Remedial Plan Process)
<b>"Replacement Supplier"</b>	any replacement service provider nominated by the University to provide the services performed by the Supplier following the expiry or termination of this Agreement
<b>"Request for Information"</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR
<b>"Second Point of Escalation"</b>	the second person to whom a dispute will be escalated in accordance with <b>clause 35.3</b> as set out on the Contract Front Sheet
<b>"Serious Infringement"</b>	means a contract for the Services should not have been awarded by the University to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Agreements Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 TFEU
<b>"Service Credits"</b>	the sums payable by the Supplier to the University for failure to achieve the Service Levels, as determined pursuant to <b>Schedule 3</b>
<b>"Service Levels"</b>	the minimum standards of performance to which the Services are to be performed at all times as listed in <b>Schedule 3</b>
<b>"Services"</b>	the Support and Maintenance Services and the Additional Services
<b>"Site(s)"</b>	the premises specified in the Contract Front Sheet
<b>"Standard Software"</b>	any Supplier Software which is not Bespoke Software (which, for the avoidance of doubt, includes any updates and upgrades to, and revisions, new releases and new versions of such software which are supplied to the University by the Supplier from time to time when remedying any Defects or under the Support and Maintenance Services)
<b>"Start Date"</b>	has the meaning given to it in the Contract Front Sheet
<b>"Sub-Processor"</b>	any third party appointed by the Supplier to Process Agreement Personal Data
<b>"Substantial Modification"</b>	a modification to the Services, Agreement and/or other related agreement other than as provided for in Regulation 72 of the Public Agreements Regulations and to which the University is required to conduct a new procurement procedure in accordance with Regulation

72(9) of the Public Agreements Regulations

<b>"Supplier Personnel"</b>	any person employed or engaged by the Supplier who is wholly or partly engaged in the supply of the System and/or the Services
<b>"Supplier Software"</b>	the software to be supplied to the University by the Supplier as described in <b>Schedule 4</b> and Bespoke Software, together with any updates and upgrades to, and revisions, new releases and new versions of such software which are supplied to the University by the Supplier from time to time when remedying any Defects or under the Support and Maintenance Services but excluding (in each case) any Third Party Software
<b>"Support and Maintenance Services"</b>	the support and maintenance services to be provided to the University by the Supplier as set out in <b>Schedule 3</b>
<b>"System"</b>	the Hardware, the Supplier Software, the Third Party Software
<b>"Term"</b>	the period starting on the Start Date and ending on the Termination Date
<b>"Termination Date"</b>	the date on which this Agreement expires or terminates for whatever reason
<b>"TFEU"</b>	Treaty on the Functioning of the European Union
<b>"Third Party Software"</b>	any software which is to be supplied with the Supplier Software and is proprietary to a person other than the Supplier and is identified as Third Party Software in <b>Schedule 4</b>
<b>"Treaties"</b>	the Treaty on European Union and TFEU
<b>"University Representative"</b>	means the person identified as University Representative on the Contract Front Sheet
<b>"University Platform"</b>	the University's hardware and operating system with which the System is intended to operate, as detailed in <b>Schedule 10</b> , as that hardware and/or operating system may be modified by or on behalf of the University from time to time
<b>"University Policies"</b>	those policies of the University that are notified in writing to the Supplier from time to time
<b>"University Requirements"</b>	the University's requirements for the System and Services (if any) as set out in <b>Schedule 5</b>
<b>"University Users"</b>	(a) the University;  (b) any person that is contracted to provide services to the University in relation to the University's IT systems (or any of them or any part of them); and  (c) any person that is required by the University to use the University's IT systems (or any of them or any part of them) in connection with the

operation of the University's business or any part of it (such as, for the purpose of illustration only, customers or suppliers)

<b>"VAT"</b>	value added tax
<b>"Virus"</b>	a program code or set of instructions intentionally or recklessly constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, including trojan horses, logic bombs, time bombs, data disabling code and any similar materials of any nature
<b>"Working Day"</b>	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
<b>"Year"</b>	each 12 month period during the Term of this Agreement commencing on each anniversary of the Start Date and the period (if any) starting on the day following expiry of the last such period of 12 months and ending on the expiry or termination of this Agreement, with the exception of the first Year which shall commence on the Start Date and continue up to and including 23:59 on the day immediately prior to the first anniversary of the Start Date

- 1.2 references to the background section, clauses and Schedules are to the background section and clauses of and schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.3 the Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
- 1.4 the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
- 1.5 unless the context otherwise requires:
- 1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender;
  - 1.5.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.6 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.7 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.8 the rule known as the ejusdem generis rule will not apply;
- 1.9 references to this Agreement are references to this Agreement as varied from time to time in accordance with **clause 22** and as assigned (in accordance with **clause 26.1**) or novated from time to time; and



- 1.10 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party.

## 2. **TERM**

This Agreement will commence on the Start Date and will, unless terminated earlier in accordance with its terms, continue in force.

## 3. **WARRANTIES AND OBLIGATIONS**

- 3.1 Without prejudice to any other warranties set out in this Agreement or implied by law, the Supplier warrants to the University that:

3.1.1 the Supplier:

3.1.1.1 has full capacity and authority and all necessary Consents to enter into and to perform this Agreement; and

3.1.1.2 is aware of the purposes for which the System and Services are required and acknowledges that the University is reliant upon the Supplier's skill, experience, expertise and knowledge in the supply of the System and Services;

3.1.2 all of the Supplier Personnel are certified in the relevant modules of the System in order to ensure successful implementation of the System;

3.1.3 the System will comply in all respects with the University Requirements and the Functional Specification;

3.1.4 the System does not and will not, at any time, contain any Open Source Software;

3.1.5 the Supplier will not, and will procure that no third party will, at any time without the University's express written consent include in or aggregate with the System or any part of it any Open Source Software, or make any changes to the System or any part of it which require it to be operated in conjunction with any Open Source Software;

3.1.6 the Supplier will not introduce into any of the University's computer systems anything, including any computer program code, Virus, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:

3.1.6.1 impair the operation of the System or any computer systems or programs in the possession of the University or impair the receipt of the benefit of the Services; or

3.1.6.2 cause loss of, or corruption or damage to, any program or data held on the University's computer systems

and this **clause 3.1.6** will apply notwithstanding that any such things are purported to be used for the purposes of protecting the Supplier's or any third party's Intellectual Property Rights or other rights;

3.1.7 the media on which the System is supplied will be free from defects in design, materials or workmanship;

3.1.8 the System will function accurately in any currency; and

3.1.9 the System does not and will not, at any time, contain any software which is proprietary to a third party other than the Third Party Software.

- 3.2 The Supplier will:
- 3.2.1 comprehensively perform, manage and provide the Services using Good Industry Practice or, where the required standard is higher, using all due skill, care, diligence and expertise and to the best of its ability;
  - 3.2.2 provide the Services in conformance in all respects with the requirements set out in this Agreement and so that they fulfil the purpose indicated by or to be reasonably inferred from such requirements;
  - 3.2.3 do nothing which will, or might reasonably be expected to, bring the University into disrepute;
  - 3.2.4 provide the Services in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
  - 3.2.5 fully co-operate with the University's agents, representatives and contractors (including other suppliers of computing products and services) and supply them with such information, materials and assistance as the University may reasonably request or authorise from time to time;
  - 3.2.6 in performing its obligations and exercising its rights under this Agreement ensure that it has and maintains all Consents required from time to time;
  - 3.2.7 ensure that the University is not, by virtue of the act or omission of the Supplier or the use of the System or the receipt of the benefit of the Services, in breach of any Applicable Law in force from time to time;
  - 3.2.8 in performing its obligations and exercising its rights under this Agreement comply with all Applicable Law in force from time to time;
  - 3.2.9 maintain such records as are necessary from time to time to demonstrate the Supplier's compliance and University's compliance with all Applicable Law in force from time to time;
  - 3.2.10 without prejudice to **clause 13.2.1**, comply with the University Policies; and
  - 3.2.11 comply with all lawful and reasonable directions of the University relating to its supply of the System and performance of the Services.
- 3.3 Subject only to **clause 3.4**, the Supplier will perform its obligations set out in this Agreement and the Project Plan in accordance with the dates for performance set out in the Project Plan, or, in the event no such date is specified, promptly having regard to the nature of the obligation.
- 3.4 If the Supplier becomes aware that it will fail, or is likely to fail, for any reason, to perform any of its obligations set out in the Project Plan by the date for performance set out in the Project Plan:
- 3.4.1 the Supplier will promptly give written notice to the University of the actual or likely delay in performance of its obligations, a detailed explanation of the reasons and an assessment of the responsibility for this and the steps it is taking and/or proposes to take to comply with its obligations under **clause 3.4.2**;
  - 3.4.2 the Supplier will use all reasonable endeavours to minimise the period and impact of the delay; and
  - 3.4.3 provided that the Supplier complies with its obligations under **clauses 3.4.1** and **3.4.2**, if and to the extent that the Supplier's failure to perform or delay in performing any of its obligations set out in the Project Plan is the direct cause

of the University's failure to perform or delay in performing any of its obligations set out in the Project Plan, the date for performance by the Supplier of the affected obligations will be extended by the minimum period necessary to allow the Supplier to deal with or work around the delay caused by the University. For the avoidance of doubt the Supplier will not be entitled to any additional payment for any additional time spent or materials used by the Supplier in performing its obligations under this **clause 3.4**.

- 3.5 The Supplier will ensure that at all times it has in place a Disaster Recovery Plan and that the Disaster Recovery Plan is adequate to minimise the effect of any Disaster. In the event of a Disaster, the Supplier will immediately implement the Disaster Recovery Plan. The Supplier will continue to perform those of its obligations which are not affected by the Disaster in accordance with the provisions of this Agreement and will perform any of its obligations which are affected by the Disaster in accordance with the Disaster Recovery Plan and the provisions of this Agreement.
- 3.6 The Supplier acknowledges that the System is to be used by the University in conjunction with the University Platform.
- 3.7 The Supplier will assign to the University the benefit of all warranties, guarantees and conditions that it receives in respect of the System or any part of it.
- 3.8 The Supplier warrants on an ongoing basis that at all times all information provided by or on behalf of the Supplier to the University in connection with a tender for any of the System and Services (as applicable) is complete and accurate.

#### 4. **CONTRACT MANAGEMENT AND CHANGE CONTROL**

- 4.1 Before or promptly following the Start Date each party will nominate an individual to act as its Project Manager for the purposes of this Agreement and will give written notice to the other party of the identity of and contact details for that individual. If a party replaces its Project Manager at any time, whether on a temporary or permanent basis, that party will promptly give written notice to the other party of the identity of and contact details for the replacement Project Manager.
- 4.2 Each Project Manager will be responsible for liaising with the other Project Manager on the operational management of this Agreement, including the conduct of the Acceptance Tests.
- 4.3 Each party will ensure that:
  - 4.3.1 its Project Manager is available for consultation by the other party at all reasonable times; and;
  - 4.3.2 its Project Manager and any other relevant personnel attend all meetings reasonably requested by the other party.
- 4.4 Changes will only be made in accordance with the Change Control Procedure.
- 4.5 Without prejudice to the generality of the foregoing and for the avoidance of doubt, creation of updates and upgrades to, and revisions and new releases of, software ("**Updates**") will not constitute Changes and accordingly do not fall within the Change Control Procedure (except for new major versions of software requested by the University, which shall constitute Changes). However, the Supplier will not install Updates without the University's prior written agreement. The Supplier will give the University reasonable notice (which in all cases will be not less than 30 days' notice) of its intention to install and test Updates together with details of the suggested timings for such installation and testing and the parties will agree when such installation and testing will take place. The University will not be obliged to implement any Updates which may have any adverse effect on the remainder of the System or the University Platform or which do not comply with the Functional Specification or which require other upgrades or increased running costs or changes to business processes.

## 5. DELIVERY AND INSTALLATION

5.1 The Supplier will:

5.1.1 deliver:

5.1.1.1 [the number of copies of the source code version of the Bespoke Software comprised within the Standard Software on the storage media specified in **Schedule 4**;

5.1.1.2 the number of copies of the object code version of the Supplier Software and the Third Party Software in machine-readable form on the storage media specified in **Schedule 4**;

5.1.1.3 the Hardware;

5.1.1.4 the Documentation,

(each as applicable) to the relevant Site(s);

5.1.2 [install the Deliverables;]

5.1.3 [configure the Deliverables;] and

5.1.4 [integrate the Deliverables and the University Platform].

in accordance with the Project Plan and **clauses 3.3** and **6**.

## 6. DOCUMENTATION

6.1 The Supplier will provide the University with [[NUMBER] copies of an / an electronic] operating manual containing:

6.1.1 sufficient information to enable the University and the University Users to make full and proper use of the System (including with the University Platform);

6.1.2 full loading and testing instructions; and

6.1.3 any other information reasonably required by the University,

("Documentation") and will provide the University with such updated Documentation as is necessary from time to time.

6.2 The University and the University Users will be entitled to use the Documentation for the purpose of exercising their rights under this Agreement.

6.3 Except where otherwise agreed by the parties on the Contract Front Sheet, the University and the University Users will be entitled to make copies and duplicates of the Documentation.

## 7. ACCEPTANCE TESTING AND LIQUIDATED DAMAGES

7.1 Following delivery, installation, configuration and integration of the Deliverables in accordance with **clause 5.1**, the [parties]/[Supplier]/[University] will carry out the Acceptance Tests.

7.2 An Acceptance Test will be recorded as successful where all relevant Acceptance Criteria for that Acceptance Test are met and as unsuccessful where any of the relevant Acceptance Criteria for that Acceptance Test are not met.

- 7.3 The University will issue an interim acceptance certificate for an element of the Deliverables upon the Acceptance Tests for that element of the Deliverables being recorded as successful within the meaning of **clause 7.2**.
- 7.4 The Supplier will promptly and without delay remedy all Defects discovered during performance of the Acceptance Tests.
- 7.5 The University will issue a final acceptance certificate when all Acceptance Tests for all Deliverables (including any end to end testing of the Deliverables as a whole as integrated with the University Platform, where applicable) have been recorded as successful within the meaning of **clause 7.2**.
- 7.6 Without prejudice to **clauses 7.8** and **7.9**, if any of the Acceptance Tests have not been recorded as successful within the meaning of **clause 7.2** by the Completion Date the University will be entitled, at its sole discretion:
- 7.6.1 to grant a further period of time during which the Supplier will be required to remedy all Defects so that all Acceptance Tests are recorded as successful within the meaning of **clause 7.2**;
  - 7.6.2 to give written notice to the Supplier that it wishes to accept the Deliverables or part of them at such reduced Price as is equitable in which case Acceptance will be deemed to occur on service of such notice; or
  - 7.6.3 to reject the Deliverables and terminate this Agreement immediately by giving written notice to that effect to the Supplier without incurring any Liability to the Supplier including any Liability to pay any outstanding monies which, at the time of (and but for) such termination, remain outstanding and are due to be paid, on the basis of a total failure of consideration.
- 7.7 If the University exercises its rights under **clause 7.6.1** and the Supplier fails to remedy the relevant Defects within the relevant timescale, the University will be entitled to exercise its rights at **clause 7.6** again.
- 7.8 *[The parties agree that if Acceptance has not occurred by the Completion Date the University will suffer loss and damage. Accordingly, if Acceptance has not occurred by the Completion Date then, without prejudice to the University's other rights under this Agreement or otherwise, the Supplier will pay to the University on demand Liquidated Damages for each week (pro rata for any part week) starting on the day following the Completion Date and ending on the earlier of:*
- 7.8.1 *Acceptance;*
  - 7.8.2 *expiry of the Liquidated Damages Period; and*
  - 7.8.3 *termination of this Agreement.*
- 7.9 *The parties agree that the Liquidated Damages are a genuine negotiated pre-estimate of the University's loss resulting from delay in achieving Acceptance up to expiry of the Liquidated Damages Period and will not be regarded as penalty provisions. The Supplier waives any right to question or challenge the validity of the obligation to pay the Liquidated Damages. The University's right to Liquidated Damages will be without prejudice to **clause 20.3** and to any other rights which the University may have under this Agreement or otherwise. Without prejudice to the generality of the foregoing, the parties agree that the Liquidated Damages do not reflect the University's loss if Acceptance is delayed beyond expiry of the Liquidated Damages Period or if this Agreement is terminated in accordance with **clause 7.6.3** or if this Agreement is terminated by the University in accordance with **clauses 15.2, 18.1, 18.2, 18.4** or **18.5**, without Acceptance occurring. Accordingly, if Acceptance is delayed beyond expiry of the Liquidated Damages Period or if this Agreement is terminated in accordance with **clause 7.6.3** or if this Agreement is terminated by the University in accordance with **clauses 15.2, 18.1, 18.2, 18.4** or **18.5** without Acceptance occurring, the University*

*will be entitled to claim damages for any loss it suffers in relation to the delay or failure in achieving Acceptance and (if applicable) termination of this Agreement, but the amount of any Liquidated Damages paid by the Supplier in respect of the same loss will be taken into account in making any claims for general damages for delay or failure in achieving Acceptance.]*

## 8. SERVICE LEVELS AND SERVICE CREDITS

- 8.1 The Supplier will perform the Services in accordance with the Service Levels.
- 8.2 The Supplier's performance of the Support and Maintenance Services and relevant Additional Services will be measured and recorded against each applicable Service Level in respect of each Month. The Supplier will within five Working Days of the end of a Month provide the University with a report (the "**Service Level Report**") detailing the Supplier's performance in respect of each of the Service Levels during the relevant Month. The Service Level Report will highlight any failures to meet Service Levels and detail all Service Credits accruing to the University and remedial steps being taken by the Supplier as a result.
- 8.3 The Supplier will, on request, provide to the University such further information as the University may reasonably require in order to understand or verify the contents of any Service Level Report.
- 8.4 Without prejudice to the University's other rights and remedies, if the Services are not supplied in accordance with the Service Levels the Supplier will credit the University with Service Credits calculated in accordance with **Schedule 3** (which will take effect as a credit against subsequent invoices issued to the University).
- 8.5 Service Credits accrued will be deducted from the Price invoiced in the Month following the Month to which the Service Credits relate. Upon expiry or termination of the relevant Services and/or this Agreement whichever the earlier) any accrued Service Credits which have not already been reflected in an invoice will be deducted from the Price set out in the final invoice issued by the Supplier. If there is no such final invoice (or if for any reason such deduction (whether in whole or in part) is not made from it), a sum equal to such Service Credits (or the relevant part of them) together with VAT on that sum will be paid by the Supplier to the University and the Supplier will issue the University with a valid VAT credit note for that sum.
- 8.6 Service Credits are regarded by the parties as being the most effective way of compensating the University for part or all of its loss arising from a failure by the Supplier to meet Service Levels and it is the parties' intention that the University should be able to recover damages as well as Service Credits in circumstances where they can prove that they have suffered loss in excess of the Service Credits. Accordingly the right of the University to any Service Credits will be without prejudice to any other rights which the University may have under this Agreement or otherwise in respect of a failure to meet Service Levels, including the right to sue for damages or other relief and/or to terminate the affected Services or this Agreement but a claim for general damages in relation to a failure to achieve a Service Level will be reduced by the amount of Service Credits actually applied or paid in respect of the relevant Service Level failure. The fact that the Service Credit provisions anticipate or provide for a particular eventuality will not be interpreted as implying that the relevant eventuality should not constitute a breach (or material breach) of this Agreement and are therefore without prejudice to any other remedies (including any termination rights) that might otherwise accrue as a result of one or more Service Level failures.

## 9. PRICE AND PAYMENT

- 9.1 Subject to the Supplier performing its obligations in accordance with the terms of this Agreement, the University will pay the Price to the Supplier in accordance with this **clause 9**.
- 9.2 With the exception of expenses that are stated in the Contract Front Sheet as payable by the University that are properly incurred and evidenced by the Supplier and approved by

the University in writing in advance, the only monies to be paid by the University in connection with the supply of the Services and the System are the Price which will be inclusive of all costs and expenses incurred by the Supplier including all packaging, insurance, carriage and delivery costs and travel, accommodation and subsistence expenses.

- 9.3 No increase in the Price may be made for any reason without the prior written consent of the University. The University shall be entitled to any discounts for prompt payment, bulk purchase, volume or purchase customarily granted by the Supplier.
- 9.4 The Supplier will invoice the University for the relevant percentage of the Price as specified in the Contract Front Sheet and any related expenses that have been approved by the University (as applicable) following the date on which the Milestone corresponding to that percentage (as specified in the Contract Front Sheet) is achieved.
- 9.5 Invoices shall be valid VAT invoices (unless the Services are exempt from VAT) in such form as requested by the University in writing and accompanied by such information as the University may reasonably require in order to verify the Supplier's entitlement to payment. VAT, where applicable, shall be shown separately on all invoices, as a strictly net extra charge. The Supplier shall, if so requested by the University, furnish such information as may reasonably be required by the University as to the amount of VAT chargeable on the value of the Services supplied in accordance with this Agreement and payable by the University to the Supplier in addition to this Agreement Price.
- 9.6 Unless stated in this Agreement, payment of any sums due under this Agreement becomes due 28 days following receipt of any undisputed and properly submitted invoice.
- 9.7 Where the University disputes an invoice, the University is entitled to withhold the whole or part of the invoice to the extent of the amount in dispute, and shall pay the balance (if any) that is undisputed; the University shall promptly notify the Supplier of its reasons for withholding any amount under this **clause 9.7**. Should a dispute arise in relation to an invoice, the parties will negotiate in good faith and attempt to resolve the dispute.
- 9.8 The Supplier is not discharged from performance of its obligations by reason only that some or all of this Agreement Price is withheld under **clause 9.7**. No payment made by the University will constitute acceptance or approval by the University of the Services or otherwise prejudice any rights or remedies which the University may have against the Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.
- 9.9 The University may set off against Price any sums owed to it by the Supplier, in connection with this Agreement or any other agreement entered into by the parties.
- 9.10 If any sum payable under this Agreement is not paid on or before the due date for payment the Supplier will be entitled to charge the University interest on that sum at 4% per annum above the base lending rate from time to time of Barclays Banks Plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any sum disputed in accordance with **clause 9.7** for any period during which the payment of such sum remains disputed. The parties agree that this **clause 9.10** is a substantial remedy for late payment of any sum payable under this Agreement for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998, in particular because:
- 9.10.1 the interest rate is greater than the interest rate available to the Supplier in respect of cash on deposit which is immediately available; and
- 9.10.2 the other provisions of this Agreement reflect, and take into account, the overall relationship between the parties, and so it would be inappropriate for a higher interest rate to apply.
- 9.11 The provisions of **clause 9.10** are in lieu of statutory interest, which shall not accrue on any late payments.

10. **DATA PROTECTION**

10.1 The University authorises the Supplier to Process the Agreement Personal Data during the Term as a Processor solely for the purpose and to the extent described in **Schedule 12**.

10.2 In providing the System and performing the Services and its other obligations under this Agreement the Supplier will:

10.2.1 comply with the Data Protection Laws;

10.2.2 not cause the University to breach any obligation under the Data Protection Laws; and

10.2.3 notify the University without undue delay if it identifies any areas of actual or potential non-compliance with the Data Protection Laws or this **clause 10**, without prejudice to its obligations to comply with, or to any rights or remedies which the University may have for breach of, the Data Protection Laws or this **clause 10**.

10.3 The Supplier will not engage or use any third party for the Processing of Agreement Personal Data or permit any third party (including a Sub-Processor to Process Agreement Personal Data without the prior written consent of the University.

10.4 If the Supplier appoints a Sub-Processor, the Supplier will ensure that, prior to the Processing taking place, there is a written contract in place between the Supplier and the Sub-Processor that specifies the Sub-Processor's Processing activities and imposes on the Sub-Processor:

10.4.1 the same data protection obligations as those imposed on the Supplier in this **clause 10** where the Sub-Processor is carrying out specific Processing activities on behalf of the University; and

10.4.2 in all other cases, equivalent and no less onerous data protection obligations as those imposed on the Supplier in this **clause 10**.

The Supplier will procure that Sub-Processors will perform all obligations set out in this **clause 10** and the Supplier's contract with the Sub-Processor. The Supplier will remain responsible and liable to the University for all acts and omissions of Sub-Processors as if they were its own.

10.5 The Supplier will:

10.5.1 Process the Agreement Personal Data only on documented instructions (including this Agreement) from the University (unless the Supplier or the relevant Sub-Processor is required to Process Agreement Personal Data to comply with United Kingdom, European Union (as it is made up from time to time) or European Union member state Applicable Laws, in which case the Supplier will notify the University of such legal requirement prior to such Processing unless such Applicable Laws prohibit notice to the University on public interest grounds);

10.5.2 immediately inform the University in writing if, in its reasonable opinion, any instruction received from the University infringes any Data Protection Laws;

10.5.3 without prejudice to **clause 10.5.1**, ensure that Agreement Personal Data will only be used for the purpose and to the extent described in **Schedule 12**;

10.5.4 without prejudice to **clause 10.5.3**, not without the prior written consent of the University:

10.5.4.1 convert any Agreement Personal Data into anonymised, pseudonymised, depersonalised, aggregated or statistical data;



- 10.5.4.2 use any Agreement Personal Data for “big data” analysis or purposes; or
  - 10.5.4.3 match or compare any Agreement Personal Data with or against any other Personal Data (whether the Supplier’s or any third party’s);
  - 10.5.5 ensure that any individual or other person authorised to Process Agreement Personal Data (including all Supplier Personnel) accesses such Agreement Personal Data strictly on a need to know basis as necessary to perform their role in the performance of this Agreement, and:
    - 10.5.5.1 has committed themselves to confidentiality or is under an appropriate statutory obligation of confidentiality;
    - 10.5.5.2 complies with the requirements of this **clause 10**; and
    - 10.5.5.3 is appropriately reliable, qualified and trained in relation to their Processing of Agreement Personal Data;
  - 10.5.6 keep all Agreement Personal Data confidential in accordance with the provisions of **clause 27**, provided that in the event and to the extent only of any conflict between this **clause 10** and **clause 27**, this **clause 10** will prevail; and
  - 10.5.7 at the option of the University, securely delete or return to the University [or transfer to any Replacement Supplier (in the format required by the University acting reasonably) all Agreement Personal Data promptly after the end of the provision of Services relating to Processing or at any time upon request, and securely delete any remaining copies and promptly certify (via a director) when this exercise has been completed.
- 10.6 The Supplier will not make an International Transfer without the University’s prior written consent. If the University gives its prior written consent to an International Transfer, before making that International Transfer the Supplier will demonstrate or implement, to the University’s satisfaction, appropriate safeguards for that International Transfer in accordance with Data Protection Laws and will ensure that enforceable rights and effective legal remedies for Data Subjects are available. If the appropriate safeguards demonstrated or implemented by the Supplier (or the relevant Data Processor/Processor) in accordance with this **clause 10.6** are deemed at any time not to provide an adequate level of protection in relation to Agreement Personal Data, the Supplier will implement such alternative measures as may be required by the University to ensure that the relevant International Transfer and all resulting Processing are compliant with Data Protection Laws. The Supplier or the relevant Sub-Processor will not need to comply with the conditions set out in this **clause 10.6** if it is required to make an International Transfer to comply with United Kingdom, European Union (as it is made up from time to time) or European Union member state Applicable Laws, in which case the Supplier will notify the University of such legal requirement prior to such International Transfer unless such Applicable Laws prohibit notice to the University on public interest grounds.
- 10.7 The Supplier will:
- 10.7.1 establish and maintain all appropriate technical and organisational measures against Data Security Incidents;
  - 10.7.2 ensure that the measures adopted under **clause 10.7.1** implement a level of security appropriate to the risk of varying likelihood and severity of harm that might result from a Data Security Incident and the nature, scope, context and purposes of the processing of Agreement Personal Data, having regard to the state of the art and the cost of implementing the measures;

- 10.7.3 notify the University immediately if at any time the Supplier or a Sub-Processor is, or ought to be, aware of any reason why it is unable to comply with **clause 10.7.1**, without prejudice to its obligation to comply with, or to any rights or remedies which the University may have for breach of, **clause 10.7.1**;
- 10.7.4 notify the University promptly and in any event within 24 hours of a reasonably suspected, "near miss" or actual Data Security Incident, including the nature of the Data Security Incident, the categories and approximate number of Data Subjects and Agreement Personal Data records concerned, the likely consequences of the Data Security Incident and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue delay, but the Supplier (and Sub-Processors) may not delay notification under this **clause 10.7.4** on the basis that an investigation is incomplete or ongoing;
- 10.7.5 notify the University immediately (and in any event within 72 hours) if it receives any:
  - 10.7.5.1 request for the exercise of any Data Subject's rights under the Data Protection Laws; and
  - 10.7.5.2 communication, correspondence, complaint and/or request for information from any Data Subject or Supervisory Authority or other third party in connection with Agreement Personal Data;
- 10.7.6 provide reasonable assistance to the University in responding to requests for exercising Data Subjects' rights under the Data Protection Laws and communications and complaints from Data Subjects and Supervisory Authorities and other third parties in connection with Agreement Personal Data, including by appropriate technical and organisational measures, insofar as this is possible;
- 10.7.7 not, without the University's prior written consent, make or permit any announcement in respect of a Data Security Incident or respond to any request for exercise of a Data Subject's rights under the Data Protection Laws or communication or complaint from a Data Subject or Supervisory Authority in connection with Agreement Personal Data; and
- 10.7.8 provide assistance to the University in:
  - 10.7.8.1 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects;
  - 10.7.8.2 taking measures to address Data Security Incidents, including, where appropriate, measures to mitigate their possible adverse effects; and
  - 10.7.8.3 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.
- 10.8 The Supplier will:
  - 10.8.1 make available to the University all information necessary to demonstrate compliance with the obligations set out in this **clause 10**; and
  - 10.8.2 allow for and contribute to audits, including inspections, conducted by the University or another auditor mandated by the University.

- 10.9 The Supplier will prepare and securely maintain a record of all categories of Processing activities carried out on behalf of the University in relation to the Agreement Personal Data, including as a minimum: (i) its name and contact details and details of its Data Protection officer or other person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of the University; (iii) International Transfers; (iv) a general description of the technical and organisational security measures referred to in **clause 10.7.1**; and (v) the same information in relation to any Sub-Processor, together with its name and contact details (together the "**Data Record**"). The Supplier will promptly upon request securely supply a copy of the Data Record to the University.
- 10.10 The Supplier will Indemnify the University in respect of any breach by the Supplier or any Sub-Processor of any of its obligations under this **clause 10** (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations).
- 10.11 In addition to any other remedy available to the University, the Supplier shall Indemnify, the University, its servants or agents directly or indirectly in connection with the following matters:
- 10.11.1 any breach by the Supplier, any Sub-Processor or other third party connected with the Supplier (whether directly or indirectly, including its sub-contractors, agents and personnel) of **clause 10**;
  - 10.11.2 any breach by the Supplier, any Sub-Processor or other third party connected with the Supplier (whether directly or indirectly, including its sub-contractors, agents and personnel) of Data Protection Laws;
  - 10.11.3 any breach of confidence by the Supplier, any Sub-Processor or other third party connected with the Supplier (whether directly or indirectly, including its sub-contractors, agents and personnel);
  - 10.11.4 any claims, proceedings or regulatory action made, brought or threatened against the University in relation to information that is subject to the Data Protection Laws; and/or
  - 10.11.5 the defence or settlement or payment made or other action taken as a result of or in response to any such actual or threatened claim, proceeding or regulatory action in relation to information that is subject to the Data Protection Laws.
- 10.12 Any breach of this **clause 10** by the Supplier or any Sub-Processor will be a material breach of this Agreement which is not capable of being remedied, irrespective of whether any financial loss or reputational damage arises, and irrespective of the level of any financial loss or deprivation of benefit arising, as a consequence of such breach.
- 10.13 Where, under this **clause 10**, the Supplier is required to notify the Customer of any matter or thing, such notification will be marked for the attention of the Customer's [Data Protection Officer]/[INSERT JOB TITLE] and sent by e-mail to the following e-mail address: [INSERT E-MAIL ADDRESS].
- 10.14 The Supplier will execute all such documents and do all such things as the University Representative may reasonably request from time to time in order to ensure that the University complies with Data Protection Laws and/or any analogous laws in any jurisdiction to which it is subject.
- 10.15 The Supplier will notify the University immediately in writing if at any time it does or will Process Agreement Personal Data as Controller. In such cases, the Supplier will promptly enter into such contractual provisions as required by the University (acting reasonably) to ensure that such Processing and the contractual provisions governing such Processing each comply with the Data Protection Laws.

10.16 Should there be a change in Data Protection Laws during the Term, the parties agree to negotiate in good faith to review and revise or substitute this **clause 10** to accommodate any changes required. Where the Supplier acts as a Processor, the Supplier agrees that it shall, if required by the University, enter into any standard contractual clause data transfer agreement produced by the European Commission or by the relevant data protection supervisory authority.

## 11. **LOSS OF SOFTWARE AND DATA SECURITY**

11.1 If, during performance of its obligations under this Agreement, the Supplier gains access to any University computer system including any software, hardware, firmware, database, data or file, whether directly or remotely:

11.1.1 all access will be strictly limited to that part of the computer system as is required for proper performance of its obligations under this Agreement;

11.1.2 the Supplier will comply with all security, audit and other procedures and requirements of the University in relation to access; and

11.1.3 the Supplier will procure that only the Supplier Personnel will be permitted access and such access will be to the extent strictly necessary for the proper performance of their duties in relation to the obligations of the Supplier under this Agreement.

11.2 Without prejudice to its other obligations under this Agreement, the Supplier will, in the course of performing its obligations under this Agreement provide appropriate measures to the prevent unauthorised access, and the introduction of Viruses to, any of the University's computer systems, software and data.

11.3 The Supplier will not, without the consent of the University, be entitled to delete any software or data belonging to the University to which the Supplier has access in the performance of its obligations under this Agreement.

11.4 The Supplier will take all necessary precautions to preserve the integrity of the University's software and data, and to prevent any corruption or loss to it, during any receipt, creation, collection, processing, storage and/or transmission by the Supplier, including such precautions as are specified by the University from time to time.

11.5 In the event that any of the University's software or data is corrupted or lost or so degraded as to be unusable due to any act or omission of the Supplier, the Supplier Personnel or the Supplier's sub-contractors then, in addition to any other remedies that may be available to the University under this Agreement or otherwise:

11.5.1 the Supplier will to the extent technically feasible promptly, at the Supplier's cost and expense, restore or procure the restoration of the University's software and data to the University's satisfaction, as notified in writing, such that the Supplier has made good the corruption, loss or degradation of the software or data; and

11.5.2 in the event that the University itself has to restore or procure the restoration of the University's software and data, then the Supplier will repay the University's costs and expenses incurred in carrying out such restoration.

11.6 In the event that any of the University's software or data is corrupted or lost or sufficiently degraded as to be unusable otherwise than due to an act or omission by the Supplier, the Supplier Personnel or the Supplier's sub-contractors, the Supplier will nevertheless carry out such remedial actions to the extent technically feasible to restore that software and data or such other actions as may be necessary to restore that software and data as the University and the Supplier may agree and the reasonable cost of such actions will be borne by the University.

11.7 The Supplier will:

- 11.7.1 obtain the University's consent before performing any actions in respect of any of the University's software or data other than those expressly stated in this Agreement;
- 11.7.2 before performing any actions in respect of any the University's software or data other than those expressly stated in this Agreement, ensure that it has performed back-ups of such software or data, as agreed in writing from time to time or where none are agreed, as are reasonable in the circumstances; and
- 11.7.3 perform its obligations in conformance with the security policies comprised within the University Policies.

Nothing in this Agreement will relieve the Supplier's obligations under this **clause 11.7**.

11.8 The Supplier acknowledges the University's ownership of Intellectual Property Rights which may subsist in the University's data. The Supplier will not delete or remove any copyright notices contained within or relating to the University's data.

11.9 The Supplier will Indemnify the University in respect of any breach by the Supplier of its obligations under this **clause 11**.

## 12. **SUPPLIER PERSONNEL**

12.1 The Supplier will at all times:

- 12.1.1 ensure that all Supplier Personnel are suitably qualified and experienced to perform their obligations in accordance with the terms of this Agreement and all Applicable Laws and that all continuing checks are made and documents obtained and/or verified as required by law or the United Kingdom Border Agency to demonstrate the continuing right of such Supplier Personnel to work in the United Kingdom;
- 12.1.2 ensure that there are an adequate number of Supplier Personnel to perform the Supplier's obligations under this Agreement properly;
- 12.1.3 ensure that all of the Supplier Personnel comply with all of the University Policies;
- 12.1.4 individually assess all Supplier Personnel to ensure that such persons are:
  - 12.1.4.1 diligent, careful, honest, skilled, competent and experienced in the work which they are to perform in connection with the performance of this Agreement and at all times remain so;
  - 12.1.4.2 properly supervised and sufficiently trained, and informed about:
    - (a) the System and Services to be supplied;
    - (b) the duty or duties which that person has to perform in relation to the supply of the System and Services;
    - (c) any aspect of this Agreement which is or may be relevant to the duties to be performed by the Supplier Personnel;
    - (d) all relevant rules, procedures and statutory and regulatory requirements concerning health and safety and safety at work; and
    - (e) the need to observe the highest standards of integrity, courtesy and consideration in the performance of their duties; and

- 12.1.5 implement such ongoing training for the Supplier Personnel (including the use of and access to information technology) as is necessary from time to time to ensure that they perform their duties in accordance with the requirements of this Agreement.
- 12.2 Following service of a notice from the University, the Supplier will immediately remove from any involvement in or responsibility for the supply of the System or Services any Supplier Personnel who, in the reasonable opinion of the University:
- 12.2.1 does not fulfil any of the conditions set out in **clauses 12.1**; and/or
- 12.2.2 is not performing his or her role in respect of the supply of the System or Services properly, efficiently or effectively.
- 12.3 The Supplier will:
- 12.3.1 following the removal of any Supplier Personnel (for any reason), ensure such person is replaced promptly with another person with the necessary training, experience and skills to supply the System and Services in accordance with this Agreement;
- 12.3.2 if any Supplier Personnel are replaced ensure that a full and effective knowledge transfer process is in place and fully adhered to for the transfer of any relevant knowledge from the outgoing Supplier Personnel to the replacement Supplier Personnel;
- 12.3.3 ensure that all Supplier Personnel who cease to be engaged in the supply of the System and Services (for any reason) return all Confidential Information held by them to the Supplier or the University (as appropriate); and
- 12.3.4 bear all costs associated with effecting the replacement of any Supplier Personnel (including any required to be removed by the University under **clause 12.2**.)
- 12.4 The parties confirm that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE Regulations**") are not envisaged to apply on either the commencement or the expiry or termination of this Agreement.
- 12.5 The Supplier shall Indemnify the University and shall keep the University and any Replacement Supplier Indemnified at all times hereafter in relation to any and all claims made by or on behalf of or in respect of any persons employed or engaged by the Supplier (including for the avoidance of doubt all persons employed or engaged by any sub-contractor of the Supplier appointed in accordance with **clause 26.1**) in relation to the provision of any or all of the System or Services hereunder ("**Claimant**"), and whether arising during the Agreement, or on or after the termination of the Agreement, and including in particular any claim by or on behalf of any such Claimant pursuant to the TUPE Regulations.
- 12.6 Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstances will the relationship of employer and employee be deemed to arise between either party and an employee of the other party.
13. **ACCESS TO THE SITE(S)**
- 13.1 During the Term the University will, subject to compliance by the Supplier with the remaining provisions of this **clause 13**, provide to the Supplier (or as appropriate procure the provision of) non-exclusive access, at such times as the University Representative may agree, to such parts of the Site(s) as the Supplier reasonably requires for the purpose of performing its obligations under this Agreement.
- 13.2 The Supplier will (and will procure that the Supplier Personnel and its sub-contractors will), whilst present at any Site(s), at all times:

- 13.2.1 comply with all of the University Policies that are relevant to the performance of the Supplier's obligations and any other on site regulations (including security rules and safety requirements) specified by the University for personnel working at the Site(s);
- 13.2.2 comply with any requirements of or instructions that may be given by the University (including any request to leave immediately any Site(s));
- 13.2.3 not create any nuisance, annoyance, damage or disturbance on the Site(s) or to any assets on the Site(s);
- 13.3 The Supplier will promptly notify the Supplier Personnel and sub-contractors and the University of any health and safety hazards that exist or may arise in connection with the performance of the Supplier's obligations under this Agreement.
- 13.4 The Supplier may bring onto the Site(s) such of its materials as may be necessary for the performance of the Supplier's obligations under this Agreement, provided that risk in such materials will be with the Supplier at all times.
- 13.5 The Supplier will Indemnify the University in respect of any damage to any of the Site(s) caused by the Supplier or Supplier Personnel or sub-contractors.

#### 14. **INSURANCE REQUIREMENTS**

- 14.1 The Supplier represents, warrants and undertakes to the University that at the date of this Agreement there are in force insurance policies on standard rates and terms with a reputable insurance company covering any and all of the Supplier's liabilities in respect of any act or omission for which the Supplier may become liable to indemnify or otherwise pay the Protected Parties under the terms of this Agreement, including one or more policies of insurance in respect of:
  - 14.1.1 Public/Products Liability Insurance, with a minimum limit of £5,000,000 (five million pounds sterling) any one claim, unlimited any one period of insurance, and in the aggregate in respect of Products Liability.
  - 14.1.2 Employer's Liability Insurance with a minimum limit of £5,000,000 (five million pounds sterling) any one claim and unlimited any one period of insurance.
  - 14.1.3 *[Professional Indemnity Insurance with a minimum limit of £5,000,000 (five million pounds sterling) any one claim and in the aggregate any one period of insurance.]*
  - 14.1.4 *[Motor Insurance with a minimum limit of £1,000,000 (one million pounds sterling) any one claim in respect of Third Party Property Damage, and Unlimited any one claim in respect of Third Party Bodily Injury.]*
  - 14.1.5 *[Cyber risk insurance which will provide cover in respect of the Services and the performance by the Supplier and by any Sub-Processor or Relevant Sub-Contractor of obligations under this Agreement covering both third party liability and first party loss resulting from a peril including: disclosure of data including confidential or sensitive commercial and/or disclosure of personal information; a failure in network or computer security; a breach of Data Protection Laws; destruction, corruption or theft of information assets and/or data due to failure of a computer system or network or otherwise; [and threats or extortion relating to release of confidential, sensitive or personal information or breach of computer security] with a minimum per claim limit of indemnity of [AMOUNT], a minimum aggregate limit of indemnity per year of [AMOUNT] and a maximum excess per occurrence of [AMOUNT].]*
- 14.2 The Supplier shall promptly on request supply written evidence of such insurances to the University.

15. **ANTI-CORRUPTION**

- 15.1 In performing its obligations under this Agreement, the Supplier shall ensure that neither its officers nor employees shall offer, promise or give a financial or other advantage to any of the University's employees, representatives, agents or any other entity acting on behalf of the University with the intention of inducing that person to improperly perform any activity connected with the Supplier's or the University's business, or to reward that person for the improper performance of any activity connected with the Supplier's or the University's business, or in any other way contravene Sections 1 and/or 2 of the Bribery Act.
- 15.2 the University may terminate this Agreement immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of any of its obligations under **clause 15.1**.

16. **EXCLUSIONS AND LIMITATIONS OF LIABILITY**

- 16.1 Subject to **clauses 16.3** and **16.4**, the University's maximum aggregate Liability which arises from an act, event, omission or circumstance which occur in any one Year shall be limited to the Price payable by the University pursuant to this Agreement in that Year.
- 16.2 Subject to **clauses 16.3** and **16.4**, the Supplier's maximum aggregate Liability which arises from an act, event, omission or circumstance *[which occur in any one Year]* will be limited to the Supplier's Liability Cap *[in that Year]*.
- 16.3 Neither party will have any Liability to the other for any indirect, consequential or special loss, subject always to **clause 16.4** *[and any liability arising as [Liquidated Damages] and/or [Service Credits]]*. The parties acknowledge and agree that the University's Losses arising due to the following events or circumstances shall be deemed to be direct loss for the purposes of this Agreement:
- 16.3.1 the System and the University's systems being unavailable;
  - 16.3.2 a requirement for additional staff and operational expenses; and
  - 16.3.3 liability incurred by the University to third parties.
- 16.4 Neither the University nor the Supplier excludes or limits its Liability (if any) to the other:
- 16.4.1 for personal injury or death resulting from its negligence;
  - 16.4.2 for breach of its obligations arising under section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
  - 16.4.3 for breach of **clause 10** (Data Protection);
  - 16.4.4 for breach of a third party's Intellectual Property Rights and for breach of **clause 17** (Intellectual Property Rights Infringement);
  - 16.4.5 for breach of **clause 27** (Confidentiality);
  - 16.4.6 for any indemnity given under this Agreement;
  - 16.4.7 for fraud or fraudulent misrepresentation; or
  - 16.4.8 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 16.5 Any Liability of the Supplier which falls within **clause 16.4** will not be taken into account in assessing whether any relevant financial limit in **clause 16.2** has been reached.



- 16.6 Without prejudice to **clause 16.4**, nothing in this Agreement will operate to exclude or restrict the Supplier's Liability:
- 16.6.1 under **clause 7.8** (Liquidated Damages);
  - 16.6.2 for breach of **clause 10** (Data Protection and Information Security);
  - 16.6.3 for any breach of **clause 11** (Loss of Software and Data Security);
  - 16.6.4 for any breach of **clause 15** (Anti-corruption), **clause 24** (Corrupt Gifts) and/or **clause 25** (Anti-slavery);
  - 16.6.5 under **clause 17** (Intellectual Property Rights Infringement);
  - 16.6.6 for a wilful default of the Supplier under this Agreement which deprives the University of the whole or substantially the whole of the benefit of this Agreement.

Any Liability of the Supplier which falls within this **clause 16.6** will not be taken into account in assessing whether the financial limit in **clause 16.2** has been reached.

- 16.7 Nothing in this **clause 16** will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.

## 17. **INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT**

- 17.1 If any third party claims that the possession and/or use by a Protected Party or the supply of all or any part of the System and/or receipt of the Services ("**Indemnified Items**") infringes the Intellectual Property Rights of that third party or of another person ("**IPR Claim**"), the Supplier will Indemnify each Protected Party in respect of that IPR Claim (including the defence and any settlement of such claim).

- 17.2 If there is an IPR Claim:

17.2.1 the University will as soon as reasonably practicable notify the Supplier of the IPR Claim;

17.2.2 the Supplier will at its own cost and expense control the defence of the IPR Claim and any related proceedings or settlement negotiations, except that the University will be entitled to take any action which it deems necessary if the Supplier fails to take action, or (in the University's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of the University, prejudice the interests of any Protected Party; and

17.2.3 at the cost and expense of the Supplier, the University will take all reasonable steps to co-operate with the Supplier in the defence or settlement of such IPR Claim.

- 17.3 If a Protected Party is (or reasonably believes it is likely to be) subject to any IPR Claim the University may by written notice require the Supplier to promptly (and at the Supplier's cost and expense) either:

17.3.1 obtain for the Protected Parties the right to continue possessing, using and receiving the Indemnified Items in the manner permitted under this Agreement free from any liability for such infringement or likely infringement; or

17.3.2 modify, substitute or replace the relevant Indemnified Item so as to avoid the infringement or alleged infringement, without prejudice to any representations, warranties and Indemnities in this Agreement, and without adversely affecting or limiting in any respect the performance, scope or functionality of the infringing items or any other Indemnified Item or any part of them.

18. **TERMINATION**

18.1 Subject to clause 19.1, if a party:

18.1.1 commits a material breach of this Agreement which cannot be remedied; or

18.1.2 commits a material breach of this Agreement which can be remedied but fails to remedy that breach within 30 days of a written notice setting out the breach and requiring it to be remedied being given by the other party,

the other party may terminate this Agreement immediately by giving written notice to that effect to the party in breach.

This **clause 18.1** will not apply to any failure by the University to make any payment due to the Supplier under this Agreement on or before the due date. **Clause 18.3** will apply instead to any such failure.

18.2 The University may terminate this Agreement immediately by giving written notice to that effect to the Supplier if the Supplier commits more than three breaches of this Agreement (including Service Levels) in any rolling period of six months, whether such breaches are of the same, similar or different provisions of this Agreement (including Service Levels) and whether or not such breaches are material breaches, have been remedied and/or can be remedied.

18.3 Subject to **clause 9.7**, the Supplier may terminate this Agreement by giving not less than 30 days written notice to that effect to the University if the University fails to make any payment due to the Supplier under this Agreement within a period of 30 days from the Supplier giving written notice specifying that such payment is overdue.

18.4 Either party may terminate this Agreement immediately by giving written notice to that effect to the other party if the other party becomes Insolvent.

18.5 Notwithstanding the provisions of **clause 18.6** below, the University may terminate this Agreement by giving not less than three (3) months' written notice to the Supplier in the event that the University considers any of the following circumstances have arisen:

18.5.1 where there is a Substantial Modification;

18.5.2 where any of the circumstances detailed in the Mandatory Exclusions or Discretionary Exclusions apply to the Supplier at the time that a decision to award a contract to the Supplier is made in respect of any tender to which this Agreement relates; or

18.5.3 where there is a Serious Infringement.

18.6 The Supplier shall notify the University in writing within 10 calendar days of becoming aware of any of the circumstances listed in **clauses 18.5.1 to 18.5.3** above applying.

18.7 Subject to **clause 16.4**, no termination of the Supplier's engagement under this Agreement in accordance with **clause 18.5** shall render the University liable to the Supplier for any claim for loss of profit, loss of fees or other similar losses.

18.8 The University may terminate this Agreement by giving not less than 30 days written notice to that effect to the Supplier if there is a Change in Control of the Supplier without the prior written consent of the University (such consent not to be unreasonably withheld or delayed).

18.9 The Supplier will give the University written notice of any event listed in **clause 18.5** occurring within 30 days prior to it occurring.

18.10 The University's rights of termination set out in this Agreement are in addition to and not in substitution for any rights of termination which may exist at common law.

19. **REMEDIAL PLAN PROCESS**

19.1 If the Supplier commits a material breach and the breach is capable of remedy, the University [may not terminate this Agreement in whole or in part without first operating the Remedial Plan Process / choose by giving the Supplier notice in writing to operate the Remedial Plan Process prior to exercising its right to terminate this Agreement under clause 18.1].

19.2 The Remedial Plan Process is as follows:

19.2.1 the University notifies the Supplier that it considers that the Supplier is in material breach and that it requires a Remedial Plan. The notice may specify the matters complained of in outline but must contain sufficient detail so that it is reasonably clear what the Supplier has to remedy.

19.2.2 The Supplier shall serve a draft Remedial Plan within 20 days (or any other period agreed by the Parties) even if the Supplier disputes that it is responsible for the matters complained of.

19.2.3 If the University considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the matters complained of then it may either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan to [INSERT ROLES OF INDIVIDUALS WHO THE REMEDIAL PLAN WILL BE ESCALATED TO AND THE METHOD FOR REMEDYING SUCH ISSUES – E.G. BY MEETING WITHIN A SPECIFIC TIMESCALE].

19.2.4 If despite the measures taken under **clause 19.2.3** a Remedial Plan cannot be agreed within [10 Working Days] of the date of its submission then the University may elect to end the Remedial Plan Process at the end of the escalation period set out in **clause 35** and serve a written notice to terminate the Agreement which will take effect unless the Supplier remedies the breach within a period specified in such notice which shall not be less than 30 days from the date on which the notice is sent to the Supplier.

19.2.5 If a Remedial Plan is agreed between the parties but the Supplier fails to implement the Remedial Plan, the University may either give the Supplier a further opportunity to resume full implementation of the Remedial Plan or escalate any issues arising out of the failure to implement the Remedial Plan to [INSERT ROLES OF INDIVIDUALS WHO THE REMEDIAL PLAN WILL BE ESCALATED TO AND THE METHOD FOR REMEDYING SUCH ISSUES – E.G. BY MEETING WITHIN A SPECIFIC TIMESCALE].

19.2.6 If the reasons for the Supplier's failure to implement the Remedial Plan have not been resolved despite escalating such issues in accordance with **clause 19.2.5**, and the Supplier has not otherwise remedied the breach, then the University may serve a written notice to terminate the Agreement and the Agreement shall terminate on the last day of the period specified by the University in its notice, which shall not be less than 30 days from the date on which such notice is sent to the Supplier.

19.3 The University shall not be obliged to follow the Remedial Plan Process if a Remedial Plan has been implemented but the Supplier has failed to remedy the breach by those means or if there is a repetition of substantially the same material breach within a period of three months following the conclusion of the Remedial Plan. In either case the University may serve a written notice to terminate the Agreement and the Agreement shall terminate on the last day of the period specified by the University in its notice, which shall not be less than 30 days from the date on which such notice is sent to the Supplier, unless the Supplier remedies the breach within that period.]

20. **CONSEQUENCES OF EXPIRY OR TERMINATION**

20.1 Following the Termination Date:

20.1.1 the following provisions will continue in force: **[Clauses 1, 2,, 6, 7.8, 7.9, 8, , 10, 11.9, 12.4 , 13.5, 16, 17, 20, 27, 28 and 36 and Appendices Error! Reference source not found., Error! Reference source not found. and Error! Reference source not found.]** and together with any other provisions which expressly or impliedly continue to have effect after expiry or termination of this Agreement; and

20.1.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the Termination Date.

20.2 *[For the avoidance of doubt, unless:*

20.2.1 *this Agreement is terminated in accordance with **clause 7.6.3**; or*

20.2.2 *this Agreement is terminated by the University in accordance with **clauses 15.2 or 18.1 to 18.4** without Acceptance being achieved,*

*then, following the Termination Date, the Supplier Software and Third Party Software licences granted to the University will continue in force and accordingly, notwithstanding anything contained in **clauses 20.5 to 20.8**, the University will be entitled to retain all copies of Supplier Software, Third Party Software, and Documentation in its possession or control.]*

20.3 If the University terminates this Agreement in accordance with **clause 7.6.3**, or if the University terminates this Agreement in accordance with **clauses 15.2 or 18** and Acceptance has not been achieved then, without prejudice to the University's other rights under this Agreement or otherwise:

20.3.1 the University will be entitled to claim damages for any loss it suffers in relation to the Supplier's failure to supply the System and the Services in accordance with this Agreement;

20.3.2 if either the University terminates this Agreement in accordance with **clause 7.6.3**, or the University terminates this Agreement in accordance with **clauses 15.2 or 18.1 to 18.4**, the University will return the System (or the relevant parts of it) to the Supplier and the Supplier will, within 30 days of the Termination Date, refund to the University all monies paid under this Agreement; and

20.3.3 if the University wishes to complete the supply of the System and/or the Services (or any part of it or them) itself or to enter into a contract with a third party to effect such completion:

20.3.3.1 the Supplier will provide all such information and assistance as the University and any third party contractors may require in connection with completion of the supply;

20.3.3.2 the Supplier will pay to the University the amount by which the cost to the University of completion of the supply of the System (or the relevant part of it) and/or the Services (or the relevant part of them) exceeds the relevant part of the Price and the University may recover such amount as a debt due from the Supplier; and

20.3.3.3 the University will be entitled to use or have used on its behalf free of charge all Intellectual Property Rights owned or controlled

by the Supplier used in or in connection with the System and/or the Services for the purposes of completion of the obligations which were to be performed by the Supplier under this Agreement.

- 20.4 For the avoidance of doubt and without prejudice to **clause 20.1.2**, any termination of this Agreement will not entitle the Supplier to claim compensation or any further remuneration from the University, regardless of any activities carried out or agreements with third parties entered into before termination.
- 20.5 Without prejudice to **clause 10.5.7**, within 90 days after the Termination Date each party will, subject to the exception set out in **clause 20.6** and to **clause 20.2** and unless otherwise stated in the Exit Schedule:
- 20.5.1 return to the other party all Confidential Information (including all copies and extracts) and all other property (whether tangible or intangible) of the other party in its possession or control;
- 20.5.2 destroy or permanently erase (if technically feasible) all documents and all records (in any media) created by it or on its behalf that use, concern or are based on any Confidential Information of the other party ("**Records**"); and
- 20.5.3 cease to use the Confidential Information of the other party.
- 20.6 Each party may retain any Confidential Information of the other party and/or Records which it has to keep to comply with any applicable laws or which it is required to retain for insurance, accounting or taxation purposes. **Clause 27** will continue to apply to retained Confidential Information and Records, which may only be used for the purposes for which they have been retained.
- 20.7 Each party will, upon request, confirm to the other party in writing that it has complied with **clauses 20.5** and **20.6**.
- 20.8 If either party fails to comply with **clause 20.5** the other party will, subject to **clause 20.6**, be entitled to enter upon the first party's property for the purpose of removing its Confidential Information and/or its property and/or any Records.
- 20.9 On the expiry or termination of this Agreement (for whatever reason):
- 20.9.1 the parties will comply with the Exit Plan;
- 20.9.2 the Supplier shall, and shall procure that the Supplier Personnel shall as soon as reasonably practicable deliver to the University sufficient details, designs, plans and corresponding documentation and materials relating to the System (and each of its constituent parts) and the Services provided pursuant to this Agreement to enable the University and/or a Replacement Supplier to continue the development and support of the System;
- 20.9.3 the Supplier will provide to the University all data (including all copies and extracts) in any format reasonably requested by the University and all other records (whether tangible or intangible) relating to the System and/or Services.
- 20.10 On expiry or earlier termination of this Agreement and/or the Support and Maintenance Services, the Supplier shall (at no cost to the University) co-operate with and provide such assistance as is reasonably necessary to the University so as to effect a full and orderly transfer of Support and Maintenance Services to the University and/or any Replacement Supplier, and shall provide any Replacement Supplier with any information or documentation reasonably required by the University including the data contained within the System

## 21. **EQUAL OPPORTUNITIES AND THE EQUALITY ACT 2010**

- 21.1 The University is committed to a comprehensive policy of equal opportunities and to meeting its responsibilities under the Equality Act 2010 (the "EA") and the Code of Practice on Racial Equality in Employment 2005.
- 21.2 The Supplier shall in performing this Agreement comply with the provisions of section 149 of the EA as if the Supplier were a body within the meaning of Schedule 19 of the EA.
- 21.3 The Supplier shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.
- 21.4 The Supplier shall comply with all of its legal obligations regarding the prevention of discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, and the promotion of equality.
- 21.5 The Supplier shall, when required, answer queries raised by the University on matters referred to in this clause and breach of statutory obligations will entitle the University to immediately terminate this Agreement.
- 21.6 The Supplier shall comply with all of the University's equal opportunities and equality policies. Such policies are available on request.

## 22. **VARIATION AND ENTIRE AGREEMENT**

- 22.1 Save as otherwise expressly provided in this Agreement, no variation to this Agreement will be effective unless:
- 22.1.1 in the case of a Change it is agreed and executed in accordance with the Change Control Procedure;
- 22.1.2 in the case of a Change effected under **paragraph 7 of Schedule 9**, it is notified to the Supplier by the University in accordance with the procedure set out at **paragraph 7 of Schedule 9**; and
- 22.1.3 in the case of any other variation to the terms of this Agreement it is in writing and signed by a duly authorised representative on behalf of each of the parties.
- 22.2 This Agreement constitutes the entire agreement between the parties and supersede any prior agreement or arrangement in respect of their subject matter and:
- 22.2.1 neither party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person) which is not expressly set out in this Agreement;
- 22.2.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement and which is expressly set out in this Agreement will be for breach of contract; and
- 22.2.3 nothing in this **clause 22.2** will be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

## 23. **AUDIT**

- 23.1 The Supplier will and will procure that its sub-contractors will maintain a complete, detailed, accurate and up to date set of records and books of account pertaining to all activities relating to the performance of this Agreement and all transactions entered into

for the purposes of this Agreement and all payments made and received and all other advantages given and received by the Supplier in connection with this Agreement (the "**Retained Records**"). The Supplier will ensure that those records and books of account are sufficient to enable the University to verify the Supplier's compliance with this Agreement.

23.2 The Supplier will and will procure that its sub-contractors will at any time whilst the Supplier or the sub-contractor is required to retain Retained Records pursuant to **clause 23.3**, promptly on request from time to time, provide copies of the Retained Records to the University and will permit the Retained Records to be copied to or examined or inspected by the University, and any of its representatives or any representative of any regulatory authority.

23.3 Subject to **clause 10**, the Supplier will and will procure that its sub-contractors will retain the Retained Records for the longer of:

23.3.1 six years from the date on which this Agreement expires or is terminated; and

23.3.2 the period of time (if any) required by Applicable Law,

except as otherwise notified by the University to the Supplier in writing.

23.4 The Supplier will and will procure that its sub-contractors will, during the term of this Agreement and for a period of six years thereafter, permit the University and any persons nominated by it, to have such access on demand to the Supplier's premises, personnel, systems, books and records (including the Retained Records) as the University may require in order to fulfil any request by any regulatory authority and as the University may reasonably require in order to:

23.4.1 undertake verifications of the accuracy of the Prices or investigate suspected fraud;

23.4.2 undertake verification that the Supplier's obligations are being performed in accordance with this Agreement;

23.4.3 assess and verify the Supplier's compliance with all Applicable Laws; and/or

23.4.4 enable the University to:

23.4.4.1 fully comply with all Applicable Laws (including any accounting, tax and filing obligations);

23.4.4.2 respond to enquiries raised by any regulatory authority or deal with any investigation by, or order or direction of, any regulatory authority; or

23.4.4.3 deal fully with enquiries, complaints or claims made by third parties.

23.5 The University will, to the extent the same is within its control, use its reasonable endeavours to procure that each exercise of the University's rights under **clause 23.4** does not unreasonably delay the performance by the Supplier of its obligations under this Agreement and that, where possible, the exercise of those rights is coordinated so as to minimise disruption.

23.6 The Supplier will and will procure that its sub-contractors will provide the University with all reasonable co-operation, access and assistance in relation to each audit.

## 24. **CORRUPT GIFTS**

24.1 The Supplier shall, and shall procure that its employees, officers, agents, subcontractors, or anyone else acting on its behalf shall:

- 24.1.1 not commit any act or omission which causes or could cause it or the University to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
- 24.1.2 not, offer or give, or agree to give either directly or indirectly, to any employee or representative of the University, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the University, or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such other contract;
- 24.1.3 keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this Agreement and the steps it takes to comply with this **clause 24.1**, and permit the University to inspect those records as reasonably required;
- 24.1.4 promptly notify the University of:
  - 24.1.4.1 any request or demand for any financial or other advantage received by it; and
  - 24.1.4.2 any financial or other advantage it gives or intends to give whether directly or indirectly in connection with this Agreement; and
- 24.1.5 promptly notify the University of any breach of this **clause 24.1**.

The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

24.2 The University may terminate this Agreement immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of **clause 24.1**.

## 25. **ANTI-SLAVERY**

25.1 The Supplier will not engage in any Modern Slavery Practice.

25.2 The Supplier will:

- 25.2.1 comply with the Anti-Slavery Policy and the [University of Newcastle upon Tyne Code Of Safety Practice For Suppliers Working For Academic Departments] at all times and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Contract will comply with the same at all times;
- 25.2.2 conduct proper and adequate checks on any agency or person used by the Supplier to provide labour, employees, contractors or other persons to undertake tasks for the Supplier (in each case whether on a permanent or temporary basis) to ensure that any such agency or person does not engage and has not in the past engaged in any Modern Slavery Practice;
- 25.2.3 provide the University with such assistance and information as it may require from time to time to enable the University to:
  - 25.2.3.1 perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws or as required by the University;



- 25.2.3.2 prepare its slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015 and to include the matters referred to in section 54(5) of that Act;
- 25.2.3.3 identify any non-compliance with the Anti-Slavery Policy or the University of Newcastle upon Tyne Code Of Safety Practice For Suppliers Working For Academic Departments; and
- 25.2.3.4 conduct due diligence and to measure the effectiveness of the steps the University is taking or wishes to take to ensure that Modern Slavery Practices are not taking place in its business or supply chains;
- 25.2.4 permit the University, and any person nominated by it for this purpose, to have such access on demand to the Supplier's premises, personnel, systems, books and records as the University may require to verify the Supplier's compliance with this **clause 25**.
- 25.3 The Supplier will immediately give written notice to the University upon the occurrence of a breach or suspected breach of any of its obligations referred to in this **clause 25**. The notice will set out full details of the breach or suspected breach.
- 25.4 Any breach of this **clause 25** by the Supplier will be a material breach of this Contract, irrespective of whether any financial loss or reputational damage arises and irrespective of the level of any financial loss or deprivation of benefit arising as a consequence of the breach.
- 25.5 The University will be entitled, by giving written notice to that effect to the Supplier, to require the Supplier to:
  - 25.5.1 remove from the performance of this Contract any of the Supplier's officers, employees, agents or sub-contractors whom the University believes to be engaging in any Modern Slavery Practice; or
  - 25.5.2 take such action as the University requires to ensure that the Supplier fully complies with any Anti-Slavery Law, the Anti-Slavery Policy and the University of Newcastle upon Tyne Code Of Safety Practice For Suppliers Working For Academic Departments.
- 26. **ASSIGNMENT AND SUB-CONTRACTING**
- 26.1 Without prejudice to **clause 10.3**, the Supplier may not subcontract, assign or transfer its rights or obligations under this Agreement (including to Relevant Sub-Contractors) except with the University's written consent as set out in the Contract Front Sheet (and subject to any restrictions set out in the Contract Front Sheet). Where the Supplier is permitted to subcontract by the University, the Supplier shall remain responsible and liable for the acts and omissions of its subcontractors.
- 26.2 Subject to **clause 26.1**, the Supplier shall provide to the University details of the name, contact details and legal representatives of its permitted Relevant Sub-Contractors by no later than the Start Date.
- 26.3 During the period during which this Agreement remains in force, the Supplier shall notify the University in writing within five calendar days of:
  - 26.3.1 any changes to the information required to be notified to the University in accordance with **clause 26.2** above; and/or
  - 26.3.2 the name contact details and legal representatives of any Relevant Sub-Contractors appointed since the Start Date.

- 26.4 Where the Supplier is required to notify the University in accordance with **clauses 26.3.1** and **26.3.2** it must obtain the written consent of the University to the appointment or continued use of the Relevant Sub-Contractor(s).
- 26.5 In considering whether to grant written consent in accordance with **clause 26.4**, the Supplier shall provide the University with a European Single Procurement Document for the Relevant Sub-Contractor. The University may withhold its consent to the appointment or continued use of any Relevant Sub-Contractor where the European Single Procurement Document provided to it in accordance with this **clause 26.5** does not meet any of the selection criteria that the Supplier is required to meet as part of any tender which relates to this Agreement.
- 26.6 Where the University withholds its consent in accordance with **clause 26.5** the Supplier shall replace the Relevant Sub-Contractor and shall propose a new sub-contractor by following the process detailed in **clauses 26.3 to 26.5** above.
- 26.7 Where the University has consented to the Supplier appointing a subcontractor, this Agreement will, promptly following the relevant subcontract(s) coming into force, provide copies of each subcontract and related orders to the University.
- 26.8 The University will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under this Agreement.

## 27. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 27.1 Except to the extent required by law the Supplier shall not disclose to another party the existence of this Agreement or the Prices or any other terms and conditions of this Agreement.
- 27.2 The Supplier will, subject to **clauses 27.3** and **27.4**:
- 27.2.1 keep all Confidential Information secret, safe and secure;
  - 27.2.2 not disclose Confidential Information without the University's prior written consent to any other person except those of its employees who have a need to know the Confidential Information so that it can perform its obligations and exercise its rights under this Agreement;
  - 27.2.3 not use Confidential Information except for the purposes of performing its obligations under this Agreement (and in particular not use Confidential Information to obtain a commercial, trading or any other advantage); and
  - 27.2.4 to keep separate from all other information all Confidential Information in its possession or control.
- 27.3 The provisions of **clause 27.2** shall not apply to Confidential Information to the extent that it is or was:
- 27.3.1 already in the possession of the Supplier free of any duty of confidentiality on the date of its disclosure;
  - 27.3.2 in the public domain other than as a result of a breach of **clause 27.2**.
- 27.4 Each party may disclose the other party's Confidential Information:
- 27.4.1 pursuant to applicable law or regulation or requirement of a competent authority, or the rules of any recognised exchange on which the securities of a party are or are to be listed; or
  - 27.4.2 in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,

but only to the extent necessary for to achieve the relevant purpose(s) set out in this **clause 27.4**.

- 27.5 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of **clause 27.2** and accordingly the University will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of **clause 27.2**.
- 27.6 Notwithstanding the provisions of **clauses 27.1 to 27.5** the University is committed to meeting its responsibilities under the FOIA and EIR and the Supplier acknowledges that the University is subject to the requirements of the FOIA and EIR and shall assist and cooperate with the University (at no expense to the University) to enable the University to comply with the University's responsibilities under the FOIA and EIR.
- 27.7 Accordingly, any and/or all information submitted to the University may need to be disclosed and/or published in accordance with the FOIA and/or EIR. In the event that any of the information held in connection with this Agreement would give rise to an actionable breach of confidence and/or would prejudice the Supplier's commercial interests and/or constitute trade secrets ("**Commercially Sensitive Information**"), the Supplier must promptly following such information coming into existence or being shared between the parties (whichever the earlier) identify such information and provide an explanation (in broad terms) what harm might result from the disclosure and/or publication of such information.
- 27.8 The Supplier shall procure that its employees, and agents shall:
- 27.8.1 transfer any Request for Information received by the Supplier to the University as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
  - 27.8.2 provide the University with a copy of all Information in its possession or power in the form that the University requires as soon as is practicable and in any event within 5 Working Days (or such other period as the University acting reasonably may specify) of the University requesting that Information;
  - 27.8.3 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; and
  - 27.8.4 not respond directly to a Request For Information unless authorised in writing to do so by the University.
- 27.9 The University shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information is:
- 27.9.1 exempt from disclosure in accordance with the provisions of the FOIA; or
  - 27.9.2 to be disclosed in response to a Request for Information and in no circumstances shall the Supplier respond directly to a Request for Information unless expressly authorised by the University.
- 27.10 The Supplier acknowledges that the University may, acting in accordance with the Code of Practice in the Discharge of Functions of Public Authorities under Part I of the FOIA (the '**FOIA Code**') be obliged under the FOIA to disclose information:
- 27.10.1 without consulting the Supplier; or
  - 27.10.2 following consultation with the Supplier and having taken its views into account,

provided always that where **clause 27.10.1** applies, the University shall in accordance with the recommendations of the FOIA Code, draw this to the attention of the Supplier prior to any disclosure.

27.11 The Supplier shall ensure that all Information produced in the course of or relating to this Agreement is retained by the Supplier in case required for disclosure under the FOIA and/or EIR.

## 28. **FORCE MAJEURE**

28.1 Neither party shall be liable for failure to perform or delay in performing its obligations under this Agreement to the extent that such failure results from a Force Majeure Event and, if the affected party is the Supplier, the impact of that Force Majeure Event could not have reasonably been avoided or prevented by the Supplier.

28.2 If a Force Majeure Event occurs, the party affected will:

28.2.1 promptly upon becoming aware of the Force Majeure Event give the other party written notice of the occurrence, anticipated duration and impact of the Force Majeure Event;

28.2.2 use reasonable endeavours to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end; and

28.2.3 continue to perform all of its obligations under this Agreement the performance of which are not affected by the Force Majeure Event.

28.3 If any Force Majeure Event prevents, hinders or delays performance of all or any part of the obligations of a party for more than 30 days, then by written notice to the Supplier the University may terminate this Agreement without liability as of the date specified by the University in the notice.

## 29. **WAIVER**

A delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

## 30. **NOTICE**

30.1 Subject to **clause 30.5**, any notice or other communication given under or in connection with this Agreement will be in writing, marked for the attention of the specified representative of the party to be given the notice or communication and:

30.1.1 sent by pre-paid first class post or recorded delivery to that party's address; or

30.1.2 sent by e-mail to that party's e-mail address (with a copy sent by pre-paid first class post or recorded delivery to that party's address within 24 hours after sending the e-mail).

The address, e-mail address and representative for each party are set out in the Contract Front Sheet and may be changed by that party giving at least 60 days' notice in accordance with this **clause 30**.

30.2 Any notice or communication given in accordance with **clause 30.1** will be deemed to have been served:

30.2.1 if given as set out in **clause 30.1.1**, at 9.00 am on the second Working Day after the date of posting; and

30.2.2 if given as set out in **clause 30.1.2**, at the time of sending (except that if an automatic electronic notification is received by the sender within 24 hours after sending the e-mail informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office, that e-mail will be deemed not to have been served),

provided that if a notice or communication is deemed to be served before 9.00am on a Working Day it will be deemed to be served at 9.00am on that Working Day and if it is deemed to be served on a day which is not a Working Day or after 5.00pm on a Working Day it will be deemed to be served at 9.00am on the immediately following Working Day.

30.3 For the purposes only of this **clause 30**, references to time of day are to the time of day at the address of the recipient party as referred to in **clause 30.1**.

30.4 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 30.1** were complied with.

30.5 This **clause 30** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

### 31. **NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement and no action taken by the parties in connection with it will create a partnership or joint venture or relationship of employer and employee between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.

### 32. **INDEPENDENT CONTRACTORS**

Each party agrees that it is an independent contractor and is entering into this Agreement as principal and not as agent for or for the benefit of any other person.

### 33. **ENFORCEABILITY**

If any term of this Agreement is held by any competent authority to be illegal, unenforceable or invalid such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect.

### 34. **RIGHTS OF THIRD PARTIES**

#### 34.1

34.1.1 The University Users will be entitled to enforce **clauses 3, 6 and 17**; and

34.1.2 The University User's and the University's employees, agents and sub-contractors will be entitled to enforce **clause 16**,

in each case subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of this Agreement.

34.2 The parties may vary or rescind this Agreement without the consent of the University Users or the University's employees, agents or sub-contractors.

34.3 Save as provided in **clause 34.1**, the parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

## 35. **DISPUTE RESOLUTION**

- 35.1 If a dispute arises out of or in connection with this Agreement (including in relation to any non-contractual obligations) (a "**Dispute**") either party may during the Term by written notice (a "**Referral Notice**") to the other party refer the matter for resolution. Each party will procure that its representatives referred to in **clause 35.2** will comply with the provisions of this **clause 35**.
- 35.2 Once a Referral Notice has been served in relation to a Dispute, that Dispute will be referred for resolution to each party's First Point of Escalation. Those representatives will meet at the earliest convenient time and in any event within 5 Working Days of the date of service of the relevant Referral Notice and will attempt to resolve the Dispute.
- 35.3 If a Dispute has not been resolved within 5 Working Days of the date of service of the relevant Referral Notice it will be referred each party's Second Point of Escalation. Those representatives will meet at the earliest convenient time and in any event within 10 Working Days of the date of service of the relevant Referral Notice and will attempt to resolve the Dispute.
- 35.4 Subject to **clause 35.5**, the procedure set out in **clauses 35.1** to **35.2** will be followed prior to the commencement of any proceedings by either party in relation to a Dispute. However, if a Dispute is not resolved within 30 days of the date of service of the relevant Referral Notice either party may commence proceedings in accordance with **clause 36**.
- 35.5 Nothing in this **clause 35** will prevent or delay either party from:
- 35.5.1 seeking orders for specific performance, interim or final injunctive relief;
  - 35.5.2 exercising any rights it has to terminate this Agreement; or
  - 35.5.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

## 36. **GOVERNING LAW AND JURISDICTION**

- 36.1 The language of this Agreement shall be English.
- 36.2 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 36.3 The University's rights and remedies set out in this Agreement are in addition to and not exclusive of any rights and remedies provided by law.
- 36.4 Subject to clause 36.5, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).
- 36.5 Either party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.

# SCHEDULE 1

## SCHEDULE SOFTWARE SPECIFIC TERMS

### 1. SOFTWARE LICENCE

1.1 With effect from the Start Date the Supplier grants (and will procure that each relevant Supplier Personnel will grant) to the University:

1.1.1 a royalty-free, worldwide, transferable, non-exclusive, perpetual and irrevocable licence together with the right to grant sub-licences to access and use and support and maintain the Supplier Software and Documentation; and

1.1.2 a perpetual, irrevocable non-exclusive, world-wide, royalty free licence to use, copy, translate and amend all Intellectual Property Rights in any software, documentation, spreadsheets, data or other materials provided to the University by or on behalf of the Supplier (or any other Supplier Personnel) in the course of providing the Services or otherwise in accordance with the terms of this Agreement; such right will include the right for the University to grant sub-licences to all providers of services to it from time to time on terms no wider than the terms granted to the University from time to time under this provision.

1.2 *[The University will enter into a direct licence with the relevant proprietor of any Third Party Software if:*

1.2.1 *the Supplier gives the University written notice that the relevant proprietor requires this, such notice to include a copy of the proposed licence terms which the Supplier will procure are equivalent to the licence terms set out in **paragraph 1.1** of this **Schedule 1** including as to use of the relevant software by staff, students and related bodies of the University;*

1.2.2 *the Supplier provides such assistance as the University may reasonably require, including negotiating directly with the relevant proprietor, to obtain any changes to the proposed licence terms that the University may reasonably require; and*

1.2.3 *the University gives written notice to the Supplier that it agrees to enter into that licence (as amended under **paragraph 1.2.2** of this **Schedule 1** if applicable).*

1.3 *The terms of any such direct licence which the University enters into will apply to the use of the relevant Third Party Software by staff, students and related bodies of the University.]*

1.4 The Supplier will, at its own cost, execute all such documents and do all such things as the University may reasonably request from time to time in order to give full effect to this **paragraph 1**.

### 2. ESCROW

2.1 *[Immediately following execution of this Agreement:*

2.1.1 *each party will execute, and the Supplier will procure that [INSERT NAME OF ESCROW AGENT, EG NCC] will execute, the Escrow Agreement - Standard Software; and*

2.1.2 *the University will execute, and the Supplier will procure that [INSERT NAME OF ESCROW AGENT, EG NCC] and the relevant third party will execute, each Escrow Agreement - Third Party Software.]*

3. **SOFTWARE WARRANTIES**

3.1 Without prejudice to any other warranties set out in this Agreement or implied by law, the Supplier warrants, represents and undertakes to the University that:

3.1.1 the Supplier Software is proprietary to the Supplier; and

3.1.2 the Supplier has all necessary rights to grant the licences granted under this Agreement.

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## SCHEDULE 2

### HARDWARE SPECIFIC TERMS

1. Title to the Hardware will pass to the University on the earlier of delivery of the Hardware at the relevant Site(s) and payment of the part of the Price that relates to that Hardware.
2. Risk of damage to or loss of the Hardware and the media on which the Supplier Software, the Third Party Software is recorded will pass to the University on the Acceptance Date. If any part of the Hardware or that media is subsequently lost, destroyed or damaged the Supplier will promptly replace it upon being requested to do so by the University, subject to the University paying the cost of such replacement.
3. Without prejudice to any other warranties set out in this Agreement or implied by law, the Supplier warrants, represents and undertakes to the University that the Hardware will:
  - 3.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - 3.2 be fit for purpose;
  - 3.3 conform to all requirements of the University including the Functional Specification; and
  - 3.4 be free from defects in design, materials or workmanship.
4. Without prejudice to **clause 6.1**, the Supplier will provide the University with any documentation relating to Hardware which is supplied by the manufacturer of that Hardware.

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**SCHEDULE 3**

**SUPPORT AND MAINTENANCE SERVICES TERMS**

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## **SCHEDULE 4**

### **HARDWARE, SOFTWARE AND ADDITIONAL SERVICES**

#### **Part A – Hardware**

**[INSERT DETAILS]**

#### **Part B - Software**

1. **Supplier Software**

**[INSERT DETAILS OF SUPPLIER AND BESPOKE SOFTWARE INCLUDING STORAGE MEDIA REQUIREMENTS AND NUMBER OF COPIES TO BE PROVIDED]**

2. **Third Party Software**

**[INSERT DETAILS INCLUDING STORAGE MEDIA REQUIREMENTS AND NUMBER OF COPIES TO BE PROVIDED]**

#### **Part C – Additional Services**

**[INSERT DETAILS OF ALL SERVICES TO BE PROVIDED EXCEPT FOR SUPPORT AND MAINTENANCE SERVICES WHICH SHOULD BE SET OUT IN SCHEDULE 3]**

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## **SCHEDULE 5**

### **UNIVERSITY'S REQUIREMENTS**

**[Include details of the University's requirements for the solution here (including any requirements set out in any relevant RFP).]**

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## **SCHEDULE 6**

### **FUNCTIONAL SPECIFICATION**

**[Include details of the Functional Specification here. This is likely to be taken from the Supplier's tender response and should cover the Supplier's proposed solution designed to meet the University's requirements.]**

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## SCHEDULE 7

### PROJECT PLAN

1. The parties will agree the project plan, which is to be a written timetable for the delivery, installation, configuration and integration of the Deliverables, performance of the Acceptance Tests and supply of the Services, no more than [NUMBER] days after the Start Date. The project plan will, as a minimum, include [the Milestones / the following dates] [INSERT DETAILS OF KEY EVENTS, EG DELIVERY OF DELIVERABLES, INSTALLATION OF DELIVERABLES, ACCEPTANCE TESTS, COMPLETION DATE, TRAINING DATES].
2. If the parties fail to reach agreement in accordance with **paragraph 7** of this **Schedule 7**, the matter will be referred to dispute resolution under **clause 35**.

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## **SCHEDULE 8**

### **ACCEPTANCE TESTS AND ACCEPTANCE CRITERIA**

1. **ACCEPTANCE TESTS**
2. **ACCEPTANCE CRITERIA**

**DRAFT**

## SCHEDULE 9

### CHANGE CONTROL PROCEDURE

1. If a party wishes to request a Change, its Project Manager will give written notice of the requested Change to the other party's Project Manager
2. If either party requests a Change in accordance with **paragraph 9** of this **Schedule 9**, the Supplier will prepare within **[5]** Working Days of the request two copies of a Change Control Notice substantially in the form of the appendix to this **Schedule 9** ("CCN").
3. Each CCN will contain:
  - 3.1 the title of the Change;
  - 3.2 the originator and date of the request for the Change;
  - 3.3 the reason for the Change;
  - 3.4 full details of the Change including any specifications;
  - 3.5 the price, if any, of the Change;
  - 3.6 a timetable for implementation of the Change;
  - 3.7 a schedule of payments if appropriate;
  - 3.8 details of the impact, if any, of the Change on other aspects of this Agreement and the provision of the System and the Services including:
    - 3.8.1 the Project Plan;
    - 3.8.2 the Functional Specification;
    - 3.8.3 the Acceptance Tests;
    - 3.8.4 the Price; and
    - 3.8.5 contract terms;
  - 3.9 the date of expiry of validity of the CCN; and
  - 3.10 provision for signature by the Supplier and by the University.
4. The Supplier will at all times act reasonably and properly in relation to all Changes and the preparation of all CCNs and will also take all reasonable steps to minimise:
  - 4.1 the costs of each Change;
  - 4.2 the time taken to implement each Change;
  - 4.3 any disruption to the System and the Services; and
  - 4.4 any impact on other aspects of this Agreement and the provision of the System and the Services.
5. Following receipt by the University of the CCN the parties will discuss the CCN. **[Subject to paragraph 7,]** the Supplier will not unreasonably withhold its agreement to any Change. The University will be entitled to withhold its agreement to any Change at its sole



discretion, save that it will not unreasonably withhold its agreement to any Change required to implement a new applicable laws or a change in applicable laws.

6. No Change will be effective unless and until the relevant CCN is signed by or on behalf of each party.

7. [Without prejudice to either party's right to dispute the price of a Change, the consent of the Supplier is not required to the implementation of any of the following changes notified to the Supplier by the University:]

7.1 [the addition or removal of licences for Supplier Software and/or Third Party Software;]

7.2 [the additional or removal of any Hardware or part thereof;]

7.3 [the removal of any Services or part thereof; and]

7.4 [the reduction of a Service Level,]

and any such change notified to the Supplier by the University shall be deemed to be a variation in accordance with **clause 22.1**. In the event that the parties fail to agree a reasonable adjustment to the change in Price of a variation implemented in accordance with this **paragraph 7 of Schedule** Error! Reference source not found. within a period of 14 days following the University issuing the relevant notice, the Price adjustment resulting from the Change will be determined by independent expert who will be selected and appointed in accordance with the following provisions of this **paragraph 7**:

(a) The independent expert will be a member of the Chartered Institute of Accountants of England and Wales of not less than ten years standing.

(b) If within a period of 28 days following the relevant notice being issued by the University, the parties have not selected and then contractually appointed an appropriate expert, then the expert will (on the written request of either party) be selected by the President from time to time of the Institute of Chartered Accountants of England and Wales. If, following his appointment, the expert dies or becomes unwilling or incapable of acting, either party may serve a new written notice to request the appointment of a new expert. If the parties have not contractually appointed a new expert within a period of 14 days of such new notice, the expert will be selected by the President from time to time of the Institute of Chartered Accountants of England and Wales.

(c) Each party will co-operate in doing everything that is reasonably necessary to procure the appointment of any expert that has been selected pursuant to this **paragraph 7** (including by acting reasonably in agreeing the terms of engagement of any such expert).

(d) The expert will make his determination in writing and will give reasons. The expert will act as expert and not as arbitrator. The expert's determination will (save in the event of manifest error) be final and binding.

(e) The expert's fees and any costs and expenses incurred in relation to his appointment will be borne by the parties in such proportions as the expert determines and in the absence of such determination by the parties equally.]  
**[Note: Include paragraph 7 (and the words "Subject to paragraph 7" in paragraph 5) if the University should be able to force through certain changes.]**

8. If a CCN is not signed by or on behalf of each party on or before the date of expiry of validity of that CCN then it will automatically expire.

9. If a CCN is signed by or on behalf of each party on or before the date of expiry of validity of that CCN then the Supplier will implement the Change in accordance with the terms of the CCN and the University will perform any obligations imposed on it in the CCN in

accordance with the terms of the CCN or (if applicable) the relevant provisions of this Agreement, including the payment of any charges and/or any increase to the Price.

10. Until such time as a Change is agreed in accordance with this Change Control Procedure, each party will continue to perform its obligations under this Agreement in compliance with the terms and conditions of this Agreement without taking account of the requested Change.
11. Each party will bear its own costs incurred in complying with this Change Control Procedure.

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## APPENDIX

<b>Change Request Number</b>	[UNIQUE ID NUMBER OF REQUEST]	
<b>Title of Change</b>	[TITLE OF CHANGE]	
<b>Originator:</b>	[NAME OF INDIVIDUAL]	
<b>Originator's Organisation:</b>	[UNIVERSITY/SUPPLIER]	
<b>Date of Notice:</b>		
<b>Proposed Change:</b>	[DESCRIBE CHANGE, INCLUDING ANY SPECIFICATIONS]	
<b>Reasons for Change:</b>	[DESCRIBE RATIONALE FOR CHANGE]	
<b>Timetable for implementing Change:</b>	[INCLUDE TIMETABLE, SEPARATE DESCRIPTION OF IMPACTS AND PAYMENT PROFILE]	
<b>Price of Change and schedule of payments:</b>		
<b>Impact of the implementation of the Change:</b>	[DESCRIBE IMPACT OF IMPLEMENTATION OF THE CHANGE, INCLUDING ON SERVICES, SYSTEM, PROJECT PLAN, FUNCTIONAL SPECIFICATION, ACCEPTANCE TESTS, PRICE]	
<b>Amendments required to the Agreement:</b>	[DESCRIBE NECESSARY CHANGES]	
<b>Date of expiry of validity of Notice</b>		
Signature of the Supplier:		Date:
Signature of the University:		Date:

## **SCHEDULE 10**

### **THE UNIVERSITY PLATFORM**

**[Include details of the University's Platform here. In many cases, these details can be replicated from the Request for Proposal and supplemented as required.]**

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**SCHEDULE 11**

**EXIT PLAN**

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## SCHEDULE 12

### AGREEMENT PERSONAL DATA

<b>Subject matter of Processing</b>	[DETAILS]
<b>Duration of Processing</b>	[DETAILS]
<b>Nature of Processing</b>	[DETAILS]
<b>Purpose of Processing</b>	[DETAILS]
<b>Type of Personal Data</b>	[DETAILS]
<b>Categories of Data Subject</b>	[DETAILS]

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