



## **Standard Services Agreement**

**Contract Reference: NU xxxxxxxx**

**Contract Title: xxxxxxxxxxxxxxxx**

## Standard Services Agreement

### CONTRACT DETAILS

DATE:

<b>Contract No:</b>	[INSERT].
<b>Contract Start Date:</b>	[INSERT THE DATE THAT THE 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 PROVISION OF THE SERVICES, SUCH DATE TO BE AGREED BETWEEN THE PARTIES"].
<b>Initial Term:</b>	[INSERT].
<b>Renewal Term:</b>	[INSERT].
<b>Contract Expiry Date:</b>	The last day of the Initial Term or the Renewal Term (or any further Renewal Term) subject to clause 2.2 and clause 15.4 of the Conditions.
<b>University:</b>	means the University of Newcastle upon Tyne trading as Newcastle University.
<b>University's Representative:</b>	Name: [NAME]  Title: [TITLE]  Email: [EMAIL]  Telephone: [NUMBER]  Postal Address: [POSTAL ADDRESS]
<b>Supplier:</b>	Name: [INSERT [COMPANY NAME] LIMITED (No. [NUMBER])]  Address: [INSERT]  Email: [EMAIL ADDRESS]  Telephone: [NUMBER]
<b>Supplier's Representative:</b>	Name: [NAME]  Title: [TITLE]

	Email: [EMAIL]  Telephone: [NUMBER]  Postal Address: [POSTAL ADDRESS]
<b>Services:</b>	[INSERT DESCRIPTION], as further detailed in Schedule 1.
<b>Key Deliverables:</b>	[INSERT DESCRIPTION], as further detailed in Schedule 1.
<b>Service Levels:</b>	<p>[The Supplier shall perform the Services in accordance with the following Service levels:</p> <p><b>Services Availability Level:</b></p> <p>[%] per month] [per week] [per year]]</p> <p><b>Service Level Period:</b></p> <p>[three consecutive calendar months]</p> <p><b>Number of occasions before termination:</b></p> <p>[three separate occasions]</p> <p>The provisions in <b>Schedule 5</b> shall apply to the Service Levels unless agreed otherwise by the parties.]</p>
<b>Service Credits:</b>	<p>[INSERT DETAILS OF SERVICE CREDITS]</p> <p>The provisions in <b>Schedule 5</b> shall apply to the Service Credits unless agreed otherwise by the parties.]</p>
<b>Liquidated Damages:</b>	<p>[INSERT DETAILS OF LIQUIDATED DAMAGES]</p> <p>1.1 If performance of the Services falls below any of the Service Levels, the Supplier shall pay liquidated damages to the University at a rate of [£ AMOUNT] for each day of that the Supplier fails to meet the Service Level up to a maximum of [£AMOUNT].</p> <p>1.2 The liquidated damages shall accrue from time that the Supplier was first in default of the Service Levels and shall continue until the earlier of:</p> <p>1.2.1 completion of the relevant Services by the Supplier;</p> <p>1.2.2 termination of the Contract by the University;</p> <p>1.2.3 expiry of the Contract; or</p> <p>1.2.4 abandonment of the Contract by the parties.</p>

	The provision of Liquidated Damages is without prejudice to the right of the University to claim general damages arising out of the Supplier's failure to provide the Services.]
<b>Step-in Event time periods</b>	In relation to paragraph (b) of the definition "Step-in Event" in clause 1.1 of the Contract, Step-in Event includes an event where the Supplier is in breach of the Service Levels for a consecutive period of [TIME PERIOD], has breached the Service Levels more than [NUMBER] times in any [TIME PERIOD], or has accrued Service Credits in excess of [NUMBER] in any [TIME PERIOD];
<b>Supplier's Liability Cap:</b>	[AMOUNT]
<b>Sub-contracting:</b>	[YES/NO – INCLUDE DETAILS OF ANY RESTRICTIONS ON THE SUPPLIER'S RIGHT TO SUB-CONTRACT]
<b>Charges:</b>	[INSERT RELEVANT DETAILS HERE]
<b>Payment Terms:</b>	The University will pay each invoice, within 30 days of receipt, subject to the Conditions of Contract.
<b>Milestones:</b>	[INSERT RELEVANT DETAILS HERE]
<b>Supplier's Insurance requirements:</b>	<ul style="list-style-type: none"> <li>• professional indemnity insurance at an amount not less than £[AMOUNT]</li> <li>• public liability insurance at an amount not less than £[AMOUNT] to cover the liabilities that may arise under or in connection with this Contract</li> </ul> <p>[LIST OTHER INSURANCE REQUIREMENTS HERE]</p>
<b>Notices and Points of Escalation:</b>	<p>For the University: [INSERT: ADDRESS, NOTICE RECIPIENT, FIRST POINT OF ESCALATION, SECOND POINT OF ESCALATION]</p> <p>For the Supplier: [INSERT: ADDRESS, NOTICE RECIPIENT, FIRST POINT OF ESCALATION, SECOND POINT OF ESCALATION]</p>

<b>Special terms:</b>	<p>[The parties have agreed the following special terms which will take precedence over the Agreement Conditions: <b>DN: use the following wording if you have agreed price increases with the Supplier. REMOVE IF NOT.</b>]</p> <p>1. [The parties agree that clause 12.10 of the Agreement Conditions is deleted in its entirety and replaced with the new clause 12.10 below.</p> <p style="padding-left: 40px;">12.10The Supplier may increase the Charges with effect from the anniversary of the Agreement Start Date of each year in line with the percentage increases in the Consumer Price Index (CPI) (all items)(United Kingdom) during the previous year. The Supplier shall give the University not less than one month's prior written notice in writing of the proposed changes.]</p> <p>2. [[INSERT OTHER SPECIAL TERMS] <b>DN: You can agree other special conditions here, for example the ownership of IPR in the Deliverables.</b>]</p>
<b>Schedules:</b>	<p>Schedule 1: Services.</p> <p>Schedule 2: Charges.</p> <p>Schedule 3: Data protection.</p> <p>Schedule 4: TUPE on exit.</p> <p><b>Schedule 5:</b> Service Levels/KPIs.</p> <p><b>Schedule 6:</b> Change Control Procedure.</p> <p><b>Schedule 7:</b> Forms of Notices.</p>

1. This Contract incorporates the following documents (which, to the extent that there is any inconsistency between any of them, will be resolved in the following descending order of priority):
  - (a) The Contract Details (highest priority);
  - (b) The Conditions;
  - (c) The Schedules specified in the Contract Details; and
  - (d) The University Policies (lowest priority).
2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list will have priority over one contained in a document lower in the list.

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

**Signed by** **[insert name of signatory]**

.....

for and on behalf of the **Supplier**

Authorised signatory

**Signed by** **[insert name of signatory]**

.....

for and on behalf of the **University**

Authorised signatory

**OR**

**Executed** as a deed but not delivered until the date

stated at the beginning of the Contract by

affixing the Common Seal of

**The University of Newcastle upon Tyne**

(an exempt charity) in the presence of:

.....

Authorised signatory

.....

Authorised signatory

**Executed as a deed** but not delivered until the date

stated at the beginning of the Contract by **[insert**

**name of Supplier company]**

**DN: The Supplier should confirm if 2 Directors or a**

**Director and Secretary need to sign, in which case**

**this will need to be amended to add the extra**

**signatories**

acting by

a director in the presence of

.....

(signature of director)

.....

Signature of witness

.....

Name of witness

.....

Address

.....

Occupation

## CONDITIONS OF CONTRACT

### 1. Interpretation

#### 1.1 Definitions:

<b>Affected Services</b>	has the meaning given in clause 8.1.1.
<b>Applicable Laws</b>	all applicable laws, statutes, regulations from time to time in force in England and Wales.
<b>Best Industry Practice</b>	the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the Service Levels, the Initial Term and Renewal Term (if applicable), the pricing structure and any other relevant factors.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Change</b>	any amendment to the scope, nature or execution of the Services under this Contract or any amendment to any other term or schedule of this Contract.
<b>Change Control Note</b>	the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure in <b>Schedule 6</b> .
<b>Change Control Procedure</b>	the procedure for changing this Contract, as set out in <b>Schedule 6</b> .
<b>Change in Control</b>	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 Contract 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 has the meaning set out in section 1162 Companies Act 2006)

**Charges**

the charges payable by the University for the supply of the Services by the Supplier set out in the Contract Details and Schedule 2.

**Conditions**

these terms and conditions set out in clause 1 (Interpretation) to clause 36 (Jurisdiction) (inclusive).

**Confidential Information**

the existence and terms of this Contract and all other information, however conveyed or presented, that relates to the business, affairs, operations, the University's students, customers, processes, budgets, charges, pricing policies (where applicable), product information (where applicable), strategies,

	developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.
<b>Consents</b>	all consents, licences, authorisations, approvals, permissions, certificates and permits (whether statutory, regulatory, contractual or otherwise) in any relevant jurisdiction.
<b>Contract</b>	the contract between the University and the Supplier for the supply of the Services in accordance with the Contract Details, these Conditions and any Schedules.
<b>Contract Details</b>	the contract details front sheet attached to these terms and conditions, signed by the Supplier and the University, which sets out the details of the Services the Supplier has agreed to supply to the University together with the Charges that the University has agreed to pay.
<b>Contract Expiry Date</b>	The last day of the Initial Term or the Renewal Term (or any further Renewal Term) subject to clause 2.2 and clause 15.4 as set out in the Contract Details.
<b>Contract Start Date</b>	the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.
<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010.
<b>Default</b>	any default of either party in complying with its obligations under this Contract.

<b>Deliverables</b>	all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts), and the Key Deliverables set out in the Contract Details.
<b>EIR</b>	the Environmental Information Regulations 2004.
<b>End Date</b>	has the meaning given in clause <b>8.6.1</b> .
<b>FOIA</b>	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.
<b>Force Majeure Event</b>	any cause affecting, preventing or hindering the performance by a party of its obligations under this Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.
<b>Good Industry Practice</b>	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.
<b>Information</b>	has the meaning given to it in Section 84 of the Freedom of Information Act 2000.
<b>Initial Term</b>	the period set out in the Contract Details as the "initial term".
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Milestones</b>	the milestones detailed in the Contract Details.
<b>Remediation Notice</b>	a written notice given by the University to the Supplier pursuant to clause 18 (Remediation plan process) to initiate the Remediation Plan Process.
<b>Remediation Plan</b>	the plan agreed in accordance with clause 18 (Remediation plan process).

<b>Remediation Plan Process</b>	the process for resolving certain of the Supplier's Defaults as set out in clause 18 (Remediation plan process).
<b>Renewal Term</b>	the period set out in the Contract Details as the "Renewal Term" (where applicable).
<b>Services</b>	the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the Contract, as described in Schedule 1. <b>[DN: Insert the details of the Services in Schedule 1 that are to be provided by the Supplier.]</b>
<b>Service Credits</b>	the service credits in the Contract Details and provided in accordance with Schedule 5 (if applicable).
<b>Service Failure</b>	a failure by the Supplier to deliver any part of the Services in accordance with the Service Levels.
<b>Service Levels</b>	the service levels to which the Services are to be provided (if applicable) set out in the Contract Details.
<b>Services Managers</b>	the University's Services Manager and the Supplier's Services Manager.
<b>Step-in Actions</b>	has the meaning given in clause 8.1.4.
<b>Step-in Event</b>	any of the following events: <ul style="list-style-type: none"> <li>(a) the Supplier is or the University has grounds for believing that the Supplier is reasonably likely to be in breach of any of its obligations under this Contract which, in the University's reasonable opinion, has, or is likely to have, a material adverse effect on the University or the performance of the Services generally or any substantial part of the Services;</li> </ul>

- (b) the Supplier is in breach of the Service Levels for the periods in the Contract Details.
- (c) the Supplier's failure to deliver the Services in accordance with this Contract causes the University to breach Applicable Law or the University has reasonable grounds for believing that the Supplier's inability to deliver the Services in accordance with this Contract will cause the University to breach Applicable Law;
- (d) a Force Majeure Event occurs that materially prevents or materially delays the performance of the Services, or any substantial part of the Services, by the Supplier for the period in clause 19;
- (e) the University is advised by a regulatory body to take a course of action and, in the University's reasonable opinion, the exercise by the University of its rights under clause 8 (Step-in rights) is necessary to achieve that course of action;
- (f) the University is entitled to terminate all or part of this Contract under clause 16 (Termination);
- (g) the Supplier undergoes a direct or indirect change of control which has, or is likely to have, a material adverse effect on the University or the Services;

- (h) either party has served notice to terminate this Contract in accordance with its terms for any reason;
- (i) the University considers that an emergency has arisen despite the Supplier not being in breach of its obligations under this Contract; or the University reasonably believes that a serious risk exists to the health or safety of persons, property or the environment in connection with the Services.

<b>Step-in Notice</b>	has the meaning given in clause 8.1.
<b>Step-in Party</b>	has the meaning given in clause 8.1.1.
<b>Step-in Period</b>	the duration of the step-in specified in the Step-in Notice in accordance with clause 8.1.5.
<b>Step-out Notice</b>	has the meaning given in clause 8.6.
<b>Supplier IPRs</b>	all Intellectual Property Rights either subsisting in the Deliverables (excluding any University Materials incorporated in them) or otherwise necessary or desirable to enable a University to receive and use the Services.
<b>Supplier's Liability Cap</b>	the amount set out in the Contract Details.
<b>Supplier Personnel</b>	all employees, staff, other workers, agents and consultants of the Supplier who are engaged in the provision of the Affected Services.
<b>Supplier's Representative</b>	The individual acting as the Supplier's representative set out in the Contract Details.
<b>Supplier's Services Manager</b>	the person identified as such in Schedule 1, or any replacement person appointed by the Supplier being the person responsible for managing the Services on behalf of the Supplier.

<b>Step-out Plan</b>	has the meaning given in clause 8.3.
<b>Supplier Resources</b>	has the meaning given in clause 8.2.2.1.
<b>Term</b>	the Initial Term and any Renewal Term.
<b>TUPE</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
<b>Unaffected Services</b>	has the meaning given in clause 8.1.6.
<b>University Materials</b>	all documents, information, items and materials in any form (whether owned by the University or a third party), which are provided by the University to the Supplier in connection with the Services, including the information provided pursuant to 5.1.2.
<b>University Policies</b>	the University's mandatory policies that are available at the website notified to the Supplier by the University or provided by the University to the Supplier from time to time during the Term.
<b>University's Representative</b>	The individual acting as the University's Representative set out in the Contract Details.
<b>University's Services Manager</b>	the person identified as such in Schedule 1 or any replacement person appointed by the University pursuant, being the person responsible for managing the Operational Services on behalf of the University.
<b>VAT</b>	value added tax chargeable in the UK.

## 1.2 Interpretation:

1.2.1 A reference to legislation or a legislative provision:

1.2.1.1 is a reference to it as amended, extended or re-enacted from time to time; and

1.2.1.2 will include all subordinate legislation made from time to time under that legislation or legislative provision.



1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** excludes fax but not email.

## **2. Commencement and term**

2.1 The Contract will commence on the Contract Start Date set out in the Contract Details and will, unless terminated earlier in accordance with clause 16 (Termination), continue for the duration of the Initial Term when it shall terminate automatically without notice, subject to clause 2.2.

2.2 No later than 30 days before the end of the Initial Term (or any Renewal Term agreed under this clause), the parties may agree in writing that the term of the Contract be extended for the Renewal Term. Unless it is further extended under this clause or terminated earlier in accordance with clause 16 (Termination), the Contract terminates automatically without notice at the end of the Renewal Term.

## **3. TUPE on exit**

3.1 When this Contract expires or is terminated earlier in accordance with Clause 16 (Termination), the provisions of Schedule 4 shall apply.

## **4. Supply of services**

4.1 The Supplier shall supply the Services to the University from the Contract Start Date in accordance with the Contract.

4.2 In supplying the Services, the Supplier shall:

4.2.1 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;

4.2.2 comply with all lawful and reasonable directions of the University relating to its supply of the Services and performance of the Services;

4.2.3 appoint or, at the written request of the University, replace without delay a manager, who will have authority to contractually bind the Supplier on all matters relating to the Services;

- 4.2.4 ensure that personnel are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
- 4.2.5 obtain, and maintain all Consents it may require and which are necessary to enable it to comply with its obligations in the Contract;
- 4.2.6 ensure that the Services and the Deliverables will conform in all respects with the requirements set out in this Contract including the Service Levels (if applicable) and ensure that they fulfil the purpose indicated by or to be reasonably inferred from such requirements;
- 4.2.7 provide all equipment, tools, vehicles and other items required to provide the Services;
- 4.2.8 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services will be free from defects in workmanship, installation and design;
- 4.2.9 comply with:
  - 4.2.9.1 all Applicable Laws; and
  - 4.2.9.2 the University Policies.
- 4.2.10 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the University's premises from time to time and are notified to the Supplier;
- 4.2.11 hold all University Materials in safe custody at its own risk, maintain the University Materials in good condition until returned to the University, and not dispose of or use the University Materials other than in accordance with the University's written instructions or authorisation;
- 4.2.12 not do or omit to do anything which may cause the University to lose any Consent on which it relies for the purposes of conducting its business; and
- 4.2.13 notify the University in writing immediately upon the occurrence of a Change in Control of the Supplier.

4.3 During the term of the Contract the Supplier shall provide to the University any information which the University may reasonably require to allow a tender process to be undertaken in respect of the Services provided by the Supplier, including but not limited to, any employee liability information in respect of any employees or workers engaged by the Supplier for the provision of the Services.

4.4 The Supplier shall ensure that the Services meet or exceed the Service Levels (if applicable) at all times during the Term.

## 5. **University's obligations**

5.1 The University will:

5.1.1 provide such access to the University's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the University in writing in advance, for the purposes of providing the Services; and

5.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

5.2 A failure by the University to comply with the terms of the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the University in writing and in reasonable detail of the University's failure and its effect or anticipated effect on the Services.

## 6. **Change control**

6.1 Any requirement for a Change shall be subject to the Change Control Procedure as set out in Schedule 6.

## 7. **Service Levels**

7.1 The Supplier shall ensure that the Services meet or exceed the Service Levels set out in the Contract Details (if applicable) at all times from the Contract Start Date and the provisions in Schedule 5 shall apply to the Service Levels unless agreed otherwise by the parties.

8. **Step-in rights**

- 8.1 If a Step-in Event occurs, the University may, by written notice to the Supplier (**Step-in Notice**), take over the performance or management of all or any part of the Services (**Affected Services**). The University's Step-in Notice will include the following information:
- 8.1.1 that the University, or a third party appointed by it, or the University jointly with that third party (**Step-in Party**) intends to perform or manage the Affected Services;
  - 8.1.2 details of the Step-in Event that has triggered the exercise of the Step-in Notice;
  - 8.1.3 details of the Affected Services;
  - 8.1.4 the actions that the Step-in Party intends to take in relation to the Affected Services (**Step-in Actions**);
  - 8.1.5 the effective date of the step-in and the estimated duration of the step-in;
  - 8.1.6 in the University's reasonable opinion, the impact that the University anticipates the Step-in Actions will have on the Supplier's obligation to provide the remaining Services that are not the Affected Services (**Unaffected Services**); and
  - 8.1.7 any other information that the University is reasonably able to provide in relation to how the Step-in Party intends to perform the Step-in Actions.
- 8.2 On receipt of the Step-in Notice, the Supplier must:
- 8.2.1 suspend the performance of the Affected Services to the extent required by the Step-in Notice; and
  - 8.2.2 provide, enable or procure access for the Step-in Party on request to:
    - 8.2.2.1 the Supplier's premises and systems, equipment, service records, software and other materials used by the Supplier in the administration, management and provision of the Affected Services (**Supplier Resources**);
    - 8.2.2.2 the Supplier Personnel; and
    - 8.2.2.3 any know-how, data or knowledge relating to the Affected Services;for the sole purpose of enabling the Step-in Party to perform the Step-in Actions during the Step-in Period;

- 8.2.3 ensure that the Step-in Party's personnel and representatives and the Supplier Personnel have full access to and use of any Supplier Resources required to perform the Affected Services; and
  - 8.2.4 take any steps that the University reasonably believes are required to address the Step-in Event.
- 8.3 Within 10 Business Days of receipt of being requested by the University to do so, the Supplier shall submit to the University a draft plan (**Step-out Plan**) for its approval setting out how the Supplier intends to:
  - 8.3.1 take back full responsibility for the provision of the Affected Services after the Step-in Period; and
  - 8.3.2 ensure the Affected Services will be fully compliant with the terms of this Contract after the Step-in Period.

If the University does not approve the Step-out Plan, it will inform the Supplier of its reasons. The Supplier shall revise the Step-out Plan taking those reasons into account and resubmit the plan to the University for approval. The University will not unreasonably withhold or delay its approval of the Step-out Plan. Once the Step-out Plan is approved by the University in writing, the parties will comply with their respective obligations in the Step-out Plan.
- 8.4 The University is not liable to pay the Charges relating to the Affected Services during the Step-in Period.
- 8.5 During the Step-in Period, the Supplier shall:
  - 8.5.1 be relieved of its obligations to provide the Affected Services;
  - 8.5.2 continue to provide the Unaffected Services and inform the University if the Step-in Actions impact on its ability to deliver the Unaffected Services;
  - 8.5.3 fully co-operate and provide all reasonable assistance to the Step-in Party for the sole purpose of enabling the Step-in Party to perform the Step-in Actions; and
  - 8.5.4 use best endeavours to ensure that the relevant Supplier Personnel promptly follow the reasonable and lawful instructions of the Step-in Party in pursuance of the Step-in Actions.

- 8.6 Before ceasing to exercise its step-in rights, the University will issue a written notice to the Supplier (**Step-out Notice**) that:
- 8.6.1 requires the Supplier to resume performance of the Affected Services from a specified time and date (**End Date**); and
  - 8.6.2 sets out the Step-in Actions in reasonable detail that the Step-in Party has actually taken up until the date of the Step-out Notice.
- 8.7 The University may issue a Step-out Notice at any time. The University will give the Supplier not less than 10 Business Days' notice if the Supplier is required to resume performance of the Affected Services before the end of the Step-in Period.
- 8.8 If the University issues a Step-out Notice:
- 8.8.1 the Supplier shall resume the performance of the Affected Services on the End Date; and
  - 8.8.2 the University will ensure the Step-in Party's personnel relinquish to the Supplier, on the End Date, the control and possession of any Supplier Resources used to operate the Affected Services.
- 8.9 The Supplier shall pay the University for all costs and expenses reasonably incurred by the Step-in Party in taking the Step-in Actions. The University shall use reasonable endeavours to mitigate those costs and expenses. For the purposes of this clause 8.9, costs and expenses include:
- 8.9.1 any costs and expenses related to the engagement (and termination) of any third party; and
  - 8.9.2 in relation to the University's internal resource costs and expenses, any costs and expenses in addition to those normally incurred by the University to support this Contract.
- 8.10 Save as expressly stated in this clause 8 (Step-in rights), nothing in this clause limits the Supplier's liability to the University for any breach of this Contract (including any breach giving rise to the step-in itself).
- 8.11 The exercise by the University of its rights under this clause 8 (Step-in rights) is without prejudice to its other rights or remedies, including any right to terminate this Contract.

**9. Title to Deliverables and University Materials**

**9.1** Subject to clause 11:

9.1.1 title to any Deliverables that are goods or in any physical media on which Deliverables are stored and title to any goods or materials transferred to the University as part of the Services will pass to the University on the earlier of their delivery to the University or payment of the Charges for them. The Supplier transfers the Deliverables and all such goods and materials to the University free from all liens, charges and encumbrances.

9.1.2 all University Materials are the exclusive property of the University.

**10. Data protection**

10.1 The parties will comply with their data protection obligations as set out in Schedule 3 (*Data protection*) (if applicable).

**11. Intellectual property**

11.1 Where the Services and Deliverables have been created by the Supplier specifically for the University in the provision of the Services (if this is not the case and the Services and Deliverables provided are generic then clauses 11.2 11.2.2 and 11.2.3 shall apply):

11.1.1 any Intellectual Property Rights which come into existence as a result of the performance of the Services by the Supplier, including the Deliverables, will be the property of the University;

11.1.2 the University and its licensors will retain ownership of all Intellectual Property Rights in the University Materials;

11.1.3 the Supplier assigns to the University free from all charges and other encumbrances all right, title and interest in and to all Intellectual Property Rights subsisting in or relating to the Deliverables, together with all rights of action arising or accrued in relation to those Intellectual Property Rights, including the right to take proceedings and to seek and recover damages, the right to obtain delivery-up of all infringing copies and all other remedies for past infringement; and

11.1.4 at the request and expense of the University, the Supplier shall and will procure that their personnel will:

- 11.1.4.1 do all things necessary or desirable to enable the University or its nominee to confirm absolute title to and ownership of and to obtain the benefit of the invention, development, discovery, improvement, process, design or copyright work (as the case may be) and to secure patent or other appropriate forms of protection for it throughout the world; and
- 11.1.4.2 provide to the University all such assistance as the University may require in relation to the resolution of any questions concerning patent, copyright or other intellectual property proprietary rights assigned by virtue of this clause 11, and decisions as to the procuring of a patent or other appropriate protection and exploitation will be in the sole discretion of the University.

11.2 Where the Services are generic, off the shelf services and the Deliverables provided by the Supplier have not been created specifically for the University:

- 11.2.1 the Supplier and its licensors will retain ownership of all Supplier IPRs. The University and its licensors (if applicable) will retain ownership of all Intellectual Property Rights in the University Materials;
- 11.2.2 the Supplier grants the University, or will procure the direct grant to the University of, a fully paid-up, worldwide, non-exclusive, perpetual, irrevocable, royalty-free, licence to copy and modify the Supplier IPRs together with the right to grant sub-licences to copy and modify the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables;
- 11.2.3 the University grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the University Materials for the term of the Contract for the purpose of providing the Services to the University in accordance with the Contract; and
- 11.2.4 the Supplier shall grant or use its best endeavours to obtain the grant of an irrevocable royalty free, perpetual, transferable non-exclusive licence to the



University to use such pre-existing Intellectual Property Rights as will be necessary for the use of the Deliverables.

- 11.3 The Supplier hereby waives and will procure that any relevant third party will waive (to the extent that such rights may be waived) all moral rights which now or in the future may subsist anywhere in the world in the Deliverables.
- 11.4 The Supplier warrants that neither the Deliverables nor the provision or receipt of the Services by the University and its permitted sub-licensees will infringe any third party Intellectual Property Rights.
- 11.5 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 Deliverables and/or receipt of the Services, materials or other items to a Protected Party by or on behalf of the Supplier (**Indemnified Items**) infringes the Intellectual Property Rights of that third party or of another person (**IPR Claim**), the Supplier shall Indemnify each Protected Party in full against all liabilities, costs, expenses, damages and losses suffered or incurred by that Protected Party arising out of or in connection with that IPR Claim. The **Protected Parties** or **Protected Party** means the University and all of its agents, officers, employees, sub-licensees or any one of them.
- 11.6 If there is an IPR Claim:
- 11.6.1 the University will as soon as reasonably practicable notify the Supplier of the IPR Claim, provided that the giving of such notice will not be a condition precedent to the liability of the Supplier under clause 11.5;
- 11.6.2 the Supplier shall 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
- 11.6.3 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.

11.7 If the University 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:

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

11.7.2 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 the Contract 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.

## 12. **Charges and payment**

12.1 In consideration for the provision of the Services, the University will pay the Supplier the Charges in accordance with this clause 12.

12.2 All amounts payable by the University exclude amounts in respect of value added tax (**VAT**) which the University will additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

12.3 The Supplier shall submit invoices for the Charges plus VAT if applicable to the University at the intervals specified in the Contract Details. Each invoice will include all supporting information reasonably required by the University.

12.4 Where the Supplier submits an invoice (including an electronic invoice) to the University in accordance with this clause 12, the University will consider and verify that invoice in a timely fashion.

12.5 Subject to clause 12.4 the University will pay each invoice submitted by the Supplier in accordance with this clause 12 within 30 days from the date on which the University has determined that the invoice is valid, properly due and undisputed to a bank account nominated in writing by the Supplier.

12.6 If the invoice is an electronic invoice it must comply with the standard on electronic invoicing. For these purposes "electronic invoice" means an invoice which has been issued

transmitted and received in a structured electronic format that allows for its automatic and electronic processing. An electronic invoice complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice) and uses a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution.

12.7 If the University fails to comply with clause 12.4, the invoice shall be regarded as valid and undisputed for the purposes of clause 12.5 after a reasonable time has passed.

12.8 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

12.8.1 provisions having the same effect as clauses 12.4 to 12.7 of this Contract; and

12.8.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 12.4 to 12.7 of this Contract.

In this clause 12.8, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the University in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

12.9 If the University fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 14.2 (Termination), the University will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

12.10 The University may at any time, without notice to the Supplier, set off any liability of the Supplier to the University against any liability of the University to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either

liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the University may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the University of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

- 12.11 The parties agree and acknowledge that the Charges may not be increased for any reason without the prior written consent of the University and unless agreed otherwise.

**13. Limitation of liability**

- 13.1 References to liability in this clause 13 include every kind of liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise.
- 13.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.3 Nothing in the Contract will limit the Supplier's liability under clause 11.5 (IPR Indemnity) and Schedule 4 (TUPE on exit) of the Contract. Any liability which falls within this clause 13.3 will not be taken into account in assessing whether the Supplier's financial caps in clause 13.5 have been reached.
- 13.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 13.4.1 death or personal injury caused by negligence;
  - 13.4.2 fraud or fraudulent misrepresentation; and
  - 13.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) and any other liability which cannot be limited or excluded by Applicable Law.
- 13.5 Subject to clause 13.2 (No limitations for deliberate default), clause 13.3 (Liability under identified clauses) and clause 13.4 (Liabilities which cannot legally be limited) the Supplier's total aggregate liability to the University for all loss or damage howsoever arising under or in connection with this Contract (except for loss arising from the Supplier's failure to comply with its data processing obligations under clause 10 (Data protection) or loss arising from

the Supplier's breach of clause 11) will not exceed the Supplier's Liability Cap for any one event or series of connected events.

13.6 Subject to clause 13.2 (No limitations for deliberate default) and clause 13.4 (Liabilities which cannot legally be limited) the University's total aggregate liability to the Supplier for all loss or damage howsoever arising under or in connection with the Contract (including by negligence) and for loss arising from the University's failure to comply with its data processing obligations under clause 10 (Data protection) shall not exceed the Charges actually paid to the Supplier at the time at which the liability arose.

13.7 The caps on the Supplier's liabilities shall not be reduced by:

13.7.1 payment of an uncapped liability;

13.7.2 amounts awarded or agreed to be paid under clause 11.5 (IPR Indemnity) and Schedule 4 (TUPE on exit) or any other terms of this Contract; and

13.7.3 amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

13.8 Subject to clause 13.2 (No limitations for deliberate default), clause 13.3 (Liability under identified clauses) and clause 13.4 (Liabilities which cannot legally be limited), neither party shall in any circumstances have any liability for any special, indirect or consequential loss, costs, damages, charges or expenses arising under or in connection with this Contract.

#### 14. **Insurance**

14.1 During the term of this Contract, the Supplier shall maintain in force, with a reputable insurance company the amount of insurance set out in the Contract Details; and

14.2 The Supplier shall produce to the University on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

#### 15. **Suspension**

15.1 The University may, on 14 days' written notice to the Supplier, require the Supplier to suspend or delay the performance of all or any part of the Services or the supply of any Deliverables for up to 14 days (**Suspension Notice**). The Supplier must comply with the requirements of the Suspension Notice.

- 15.2 The University may issue a Suspension Notice at any time and any number of times during the term of this Contract.
- 15.3 Subject to clause 15.1, the University may at any time extend or cancel a Suspension Notice by giving the Supplier notice of that extension or cancellation.
- 15.4 The Supplier shall resume the full performance of the Services and provision of Deliverables as soon as reasonably practicable, and in any event within 7 days, after receiving the University's notice to cancel a Suspension Notice or the expiry of a Suspension Notice and the parties acknowledge and agree that the Term of the Contract will be extended accordingly to allow for the completion of the Services and or provision of the Deliverables affected by the Suspension Notice.

## 16. **Termination**

- 16.1 Without affecting any other right or remedy available to it, the University may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Supplier if:
- 16.1.1 any circumstance(s) arise which impact the particular project to which the Services relate and the project is unable to continue as planned including, but not limited to, where the University's funding decreases or ceases for the project to which the Services relate, in which case the University will provide as much evidence of the circumstance(s) as the Supplier reasonably requires;
  - 16.1.2 there is a Change of Control of the Supplier;
  - 16.1.3 the Supplier's financial position deteriorates to such an extent that in the University's reasonable opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
  - 16.1.4 the Supplier commits a breach of clause 4.2.9, clause 14, clause 20, clause 24;
  - 16.1.5 the University reasonably believes that a termination ground in any Applicable Law relating to the procurement of supplies, services and works applies; or
  - 16.1.6 if performance of the Services falls below the Service Levels (if applicable) on the number of occasions during the Service Level Period in the Contract Details.

- 16.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 16.2.1 the other party commits a material breach of any term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - 16.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
  - 16.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 16.2.4 the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
  - 16.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 16.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

- 16.2.7 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 16.2.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 16.2.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 16.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.1 to clause 16.2.9 (inclusive); or
- 16.2.11 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract will remain in full force and effect.
- 16.4 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## **17. Obligations on termination**

On termination of the Contract for whatever reason:

- 17.1 the Supplier shall immediately deliver to the University all Deliverables whether or not they are complete, and return all University Materials unless any law, regulation, or government or regulatory body requires the Supplier to retain any of them. If the Supplier fails to do so, then the University may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and



- 17.2 the Supplier shall, if so requested by the University, provide all assistance reasonably required by the University to facilitate the smooth transition of the Services to the University or any replacement supplier appointed by it.
18. **Remediation Plan Process**
- 18.1 If the Supplier commits a Default and the Default is capable of remedy then, without prejudice to its rights at clause 16 (Termination), the University may operate the Remediation Plan Process in accordance with this clause 18. If the Supplier commits such a Default, the University shall give a remediation notice to the Supplier (**Remediation Notice**) which shall specify the Default in outline and the actions the Supplier needs to take with respect to remedying the Default.
- 18.2 The University shall be under no obligation to initiate the Remediation Plan Process if it issues a termination notice pursuant to clause 16.1 (Termination for Supplier's Default) or the Supplier experiences one of the events described in clause 16.2.
- 18.3 Within 5 Business Days of receipt of a Remediation Notice, the Supplier shall either:
- 18.3.1 submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
- 18.3.2 inform the University that it does not intend to submit a Remediation Plan, in which event the University shall be entitled to serve a termination notice and terminate the Contract with immediate effect.
- 18.4 The University shall either approve the draft Remediation Plan within 10 Business Days of its receipt pursuant to clause 18.3, or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to the University within 10 Business Days of its receipt of the University's comments. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.
- 18.5 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.

- 18.6 If, despite the measures taken under Clause 18.4, a Remediation Plan cannot be agreed within 10 Business Days then the University may elect to end the Remediation Plan Process and serve a Termination Notice.
- 18.7 If a Remediation Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required remedial plan completion date, the University may:
- 18.7.1 terminate this Contract immediately on notice to the Supplier; or
  - 18.7.2 give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
  - 18.7.3 escalate any issues arising out of the failure to implement the Remediation Plan to the Supplier's Representative under the dispute resolution procedure in clause 34.
- 18.8 If, despite the measures taken under clause 18.7 (Supplier's failure to implement the remediation plan) the Supplier fails to implement the Remediation Plan in accordance with its terms, the University may elect to end the Remediation Plan Process and refer the matter for resolution by the dispute resolution procedure in clause 34 or terminate this Contract immediately on notice to the Supplier.
- 18.9 The University shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default as had previously been addressed in a Remediation Plan within a period of 2 months following the conclusion of such previous Remediation Plan. In such event, the University may terminate this Contract immediately on notice to the Supplier.
19. **Force majeure**
- 19.1 Subject to the remaining provisions of this clause 19, neither party to this Contract shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such delay or non-performance is due to a Force Majeure Event.
- 19.2 In the event that either party is delayed or prevented from or hindered in performing its obligations under this Contract by a Force Majeure Event, such party shall:

- 19.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause of the delay or prevention and its estimated duration;
- 19.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
- 19.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 19.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 19.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 19.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the affected party, it shall take or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 19.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 19.7 Neither party will be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving 30 days' written notice to the other party.

**20. Equal Opportunities and the Equality Act 2010**

20.1.1 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.

20.1.2 The Supplier shall in performing the Contract 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.

20.1.3 The Supplier shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.

20.1.4 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.

20.1.5 The Supplier shall, when required, answer queries raised by the University on matters referred to in this clause 20 and breach of statutory obligations will entitle the University to immediately terminate this Contract.

20.1.6 The Supplier shall establish, maintain and enforce its own policies and procedures, to ensure compliance with the requirements of the EA.

**21. Assignment and other dealings**

21.1 Save as set out in the Contract Details, the Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

21.2 The University may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Contract, provided that it gives prior written notice of such dealing to the Supplier.

**22. Variation**

22.1 Subject to clause 6 (Change control), no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**23. Audit**

- 23.1 The Supplier shall allow the University (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the University under this Contract are accurate.
- 23.2 Subject to the Supplier's confidentiality obligations, the Supplier shall provide the University (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 23.3 The University shall provide at least 5 Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.
- 23.4 The University and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

**24. Corrupt Gifts**

- 24.1 The Supplier shall, and shall procure that their employees, officer, agents, sub-contractors, or anyone else acting on their 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 the Contract 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 the Contract 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 the Contract; and

24.1.5 promptly notify the University of any breach of this clause 24.1.

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

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

## **25. Confidentiality and Freedom of Information**

25.1 Each party will, subject to clauses 25.2 and 25.3:

25.1.1 keep all Confidential Information secret, safe and secure;

25.1.2 not use or disclose the Confidential Information except for the purposes of performing their obligations under this Contract.

25.2 The provisions of clause 25.1 shall not apply to Confidential Information to the extent that it is or was:

25.2.1 already in the possession of a party free of any duty of confidentiality on the date of its disclosure;

25.2.2 in the public domain other than as a result of a breach of clause 25.1; or

25.2.3 required to be disclosed by regulatory or legal requirement.

25.3 Notwithstanding the provisions of clauses 25.1 and 25.2 the Supplier acknowledges and agrees that the University is committed to meeting its responsibilities under the FOIA and EIR and to external auditors where the University may need to disclose information about the subject matter of this Contract and the Charges and the Supplier shall assist and cooperate with the University (at no expense to the University) to enable the University to comply these responsibilities.

## **26. Waiver**

26.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy.

26.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.

**27. Rights and remedies**

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

**28. Severance**

28.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

28.2 If any provision or part-provision of this Contract is deemed deleted under clause 28.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**29. Entire agreement**

29.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

29.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

29.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

**30. No partnership or agency**

30.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

30.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**31. Third party rights.**

31.1 This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

**32. Notices.**

32.1 Any notice or other communication given to a party under or in connection with the Contract will be in writing and will be:

32.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

32.1.2 or sent by email to the email address specified in the Contract Details.

32.2 Any notice or communication will be deemed to have been received:

32.2.1 if delivered by hand, at the time the notice is left at the proper address;

32.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

32.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 32.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

32.3 This clause 32 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**33. Counterparts**

33.1 This Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

33.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.



**34. Multi-tiered dispute resolution procedure**

- 34.1** If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then each party will follow, and procure that its representatives set out in the Contract Details follow, the procedure set out in this clause 34.
- 34.2** Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents (in the form attached in Schedule 7). Once the Dispute Notice has been served in relation to the Dispute, the Dispute will be referred to each party's First Point of Escalation set out in the Contract Details. Those representatives will meet at the earliest convenient time and in any event within 7 Days of the date of service of the Dispute Notice and will attempt in good faith to resolve the Dispute.
- 34.3** If the Dispute has not been resolved within 7 days of the date of service of the relevant Dispute Notice each party will refer the Dispute to their Second Point of Escalation set out in the Contract Details. Those representatives will meet at the earliest convenient time and in any event within 14 days of the date of service of the Dispute Notice and will attempt in good faith to resolve the Dispute.
- 34.4** Subject to clause 34.5, the procedure set out in clauses 34.1 to 34.3 will be followed prior to the commencement of any proceedings by either party in relation to the Dispute. However, if the Dispute is not resolved within 30 days of the date of service of the relevant Dispute Notice either party may commence proceedings in accordance with clause 36 or, if both parties agree in writing to do so, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Either party may withdraw from mediation at any time.
- 34.5** Nothing in this clause 34 will prevent or delay either party from:
- 34.5.1** seeking orders for specific performance, interim or final injunctive relief;
  - 34.5.2** exercising any rights it has to terminate the Contract; or
  - 34.5.3** commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

**35. Governing law**

- 35.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, will be governed by, and construed in accordance with, the law of England and Wales.

**36. Jurisdiction**

- 36.1 Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## **Schedule 1**

### **Services**

Details of Services: [INSERT DETAILS OF THE SERVICES]

University Materials: [SPECIFY]

Timetable for the Services: [TIMETABLE FOR PERFORMANCE OF SERVICES]

Deliverables: [DELIVERABLES FOR SERVICES]

Key Deliverables: [INSERT]

University's Services Manager: [INSERT]

Supplier's Services Manager: [INSERT]

## **Schedule 2**

### **Charges**

**1. Charges for the services**

[DETAILS OF THE CHARGES].

**2. Invoicing arrangements**

[DETAILS OF WHEN INVOICES ARE TO BE RAISED FOR THE SERVICES].

## Schedule 3

### Data protection

**[DN: example data protection provisions included.]**

#### Part 1

#### Data protection provisions

#### 1. Interpretation

The following definitions and rules of interpretation apply in this Schedule 3 (Data protection).

##### 1.1 Definitions:

1.1.1 **Applicable Data Protection Laws:** means: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data; and (c) all applicable data protection and privacy legislation in force from time to time including the Data Protection Act 2018 (**DPA 2018**) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.1.2 **Data Discloser:** a party that discloses Shared Personal Data to the other party.

1.1.3 **EU GDPR:** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

1.1.4 **Permitted Recipients:** the Supplier and the University, the employees of each party, any third parties engaged to perform obligations in connection with this Contract, and **[ADD ANY OTHER PERMITTED RECIPIENTS]**.

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

1.1.6 **Shared Personal Data:** the personal data to be shared between the parties under paragraph 5.1 of this Schedule 3. Shared Personal Data shall be confined to the

following categories of information relevant to the following categories of data subject:

1.1.6.1 [type of personal data];

1.1.6.2 [type of personal data], and

1.1.6.3 [type of personal data].

1.1.7 For the purposes of this Schedule 3, the terms Commissioner, controller, data subject, personal data, personal data breach, processor and processing, shall have the meaning given to them in the UK GDPR, and supervisory authority shall have the meaning given to it in the EU GDPR.

## 2. General compliance and roles

2.1 The parties will comply with all applicable requirements of Applicable Data Protection Laws. This Schedule 3 is in addition to, and does not relieve, remove or replace a party's obligations or rights under Applicable Data Protection Laws.

2.2 The parties acknowledge that on occasion a party (**Processor**) may process personal data on another party's behalf (**Controller**). If the processing of personal data occurs then paragraph 3 below shall apply.

2.3 The parties also acknowledge that on occasion they might share personal data as separate Controllers. If the sharing of personal data occurs then paragraph 4 below shall apply.

## 3. Data Processing Obligations

3.1 The parties have determined that for purposes of the Applicable Data Protection Laws the University is the [Controller OR Processor] and the Supplier is the [Controller OR Processor]. **[DN: amend depending on the circumstances.]** Part 2 of this Schedule 3 sets out the scope, nature and purpose of processing by the Processor, the duration of the processing and the types of personal data and categories of data subject.

3.2 Without prejudice to the generality of paragraph 2.1, the Controller will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the personal data to the Processor and/or lawful collection of the personal data by the Processor on behalf of the Controller for the duration of this Contract.

- 3.3 Without prejudice to the generality of paragraph 3.2, the Processor shall, in relation to any personal data processed in connection with the performance by the Processor of its obligations under this Contract:
- 3.3.1 process that personal only on the documented instructions of the Controller, unless the Processor is required by other Applicable Laws to otherwise process that personal data. Where the Processor is relying on other Applicable Laws as the basis for processing personal data, the Processor shall promptly notify the Controller of this before performing the processing required by other Applicable Laws unless those laws prohibit the Processor from so notifying the Controller on important grounds of public interest. The Processor shall immediately inform the Controller if, in the opinion of the Processor, the instructions of the Controller infringe Applicable Data Protection Laws;
  - 3.3.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the personal data and against its accidental loss, damage or destruction, including:
    - 3.3.2.1 the pseudonymisation and encryption of personal data;
    - 3.3.2.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
    - 3.3.2.3 the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
    - 3.3.2.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
  - 3.3.3 ensure, and procure, that any personnel engaged and authorised by the Processor to process personal data keep the personal data confidential;
  - 3.3.4 promptly assist the Controller, at the Processor's expense, in responding to any request from a data subject and in ensuring compliance with the Controller's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner,

supervisory authorities or other regulators and, in particular, the Processor shall promptly notify the Controller if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of personal data;

3.3.5 notify the Controller without undue delay (and no later than 48 hours) after becoming aware of a personal data breach and on suspecting the same, the Processor shall promptly conduct an initial assessment to determine, with a reasonable degree of certainty, whether the event or incident qualifies for notification to the Controller under this paragraph 3.3.5 and shall provide a copy of this initial assessment along with such notification; **[DN: review this wording where**

**the University acts as the processor.]**

3.3.6 at the written direction of the Controller, delete or return to the Controller all personal data on termination or expiry of the Contract, and certify to the Controller in writing it has done so, unless the Processor is required by Applicable Law to continue to process that personal data, in which case the Processor shall promptly notify the Controller, in writing, of what that Applicable Law is and shall only be permitted to process that personal data for the specific purpose so-notified, and all other requirements set out in this **Schedule 3** shall continue to apply to such personal data notwithstanding the termination or expiry of this Contract for as long as such personal data is processed by the Processor. For the purposes of this paragraph 3.3.6 the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and

3.3.7 maintain adequate records, and, on the Controller's request, make available such information as the Controller may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Controller or the



Controller's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this **Schedule 3**.

3.4 The Processor shall not, without the prior written consent of the Controller (and in any event subject to the Processor providing the Controller with reasonable evidence that such activity is being undertaken in full compliance with Applicable Data Protection Laws):

3.4.1 appoint or replace (or change the terms of the appointment of) any other processor in relation to the personal data or transfer any personal data to the same; or

3.4.2 carry out, via itself or via any other processor, any processing of personal data, or transfer any personal, outside of the UK, including processing personal data on equipment situated outside of the UK until the following conditions are fulfilled:

3.4.2.1 the Controller or the Processor has provided appropriate safeguards in relation to the transfer;

3.4.2.2 the data subject has enforceable rights and effective legal remedies;

3.4.2.3 the Processor complies with its obligations under the Applicable Data Protection Laws by providing an adequate level of protection to any personal data that is transferred; and

3.4.2.4 the Processor complies with reasonable instructions notified to it in advance by the Controller with respect to the processing of the personal data. **[DN: this clause will apply where you have Suppliers who are situated/processing personal data outside of the UK and will need to be reviewed on a case-by-case basis.]**

3.5 Either party may, at any time on not less than 30 days' notice, revise the clauses in this **Schedule 3** by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

#### 4. **Data Sharing Provisions**

4.1 This paragraph 4 sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as

the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

4.2 Where the parties are separate controllers of personal data, they shall each ensure their own respective compliance with the Applicable Data Protection Laws in respect of any personal data shared between them, and any material breach of the Applicable Data Protection Laws by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Contract with immediate effect.

4.3 **Particular obligations relating to data sharing.** Each party shall:

4.3.1 ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

4.3.2 give full information to any data subject whose personal data may be processed under this Contract of the nature of such processing. This includes giving notice that, on the termination of the Contract, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

4.3.3 process the Shared Personal Data only for the Agreed Purposes;

4.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

4.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by these data sharing provisions;

4.3.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;

4.3.7 not transfer any personal data received from the Data Discloser outside the [UK] OR [EEA] ***DN: to be amended depending on where the parties are situated and***

**where the sharing will take place.** unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

**4.4 Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- 4.4.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- 4.4.2 promptly inform the other party about the receipt of any data subject rights request;
- 4.4.3 provide the other party with reasonable assistance in complying with any data subject rights request;
- 4.4.4 not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
- 4.4.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- 4.4.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- 4.4.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of the Contract unless required by law to store the Shared Personal Data;

- 4.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- 4.4.9 maintain complete and accurate records and information to demonstrate its compliance with this **Schedule 3** and allow for audits by the other party or the other party's designated auditor; and
- 4.4.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Applicable Data Protection Laws, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Applicable Data Protection Laws.

## **Part 2**

### **Parties Roles'**

1. Where Supplier acts as processor [DETAILS OF THE PERSONAL DATA WHICH THE SUPPLIER WILL BE PROCESSING]
2. [[Where Supplier acts as controller] [DETAILS OF THE PERSONAL DATA WHERE THE SUPPLIER IS A CONTROLLER]]

## **Part 3**

### **Parties Roles'**

1. Scope of processing  
[INSERT]
2. Nature of processing  
[INSERT]
3. Types of personal data  
[INSERT]
4. Duration of processing  
[INSERT]
5. Categories of data subject  
[INSERT]

## **Part 4**

## **Technical and organisational measures**

[DETAILS OF TECHNICAL AND ORGANISATIONAL MEASURES]

### **[Part 5**

## **Supplier Privacy Policy**

[COPY OF SUPPLIER'S PRIVACY POLICY!]

## Schedule 4

### TUPE on exit

- 1.1 In this Schedule 4 the following definitions apply:
- 1.1.1 **New Supplier:** another party chosen by the University to take over the provision of all or part of the Services following termination of this Agreement.
  - 1.1.2 **Returning Employees:** those persons listed in a Schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the Services immediately before the Subsequent Transfer Date.
  - 1.1.3 **Subsequent Transfer Date:** means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Supplier and the University and/or a New Supplier (as the case may be).
  - 1.1.4 **TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*) (as amended).
- 1.2 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier for any reason and where all or part of the Services continue to be provided by the University and/or a New Supplier, there may be a relevant transfer of the Returning Employees to the University and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the University and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.
- 1.3 Save where the parties reasonably believe and both agree that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the University and/or the New Supplier.
- 1.4 The Supplier shall no later than 12 months prior to the expiry of this Contract (or, if terminated earlier, within 7 days of notice being given of termination of this Contract) to the extent lawfully permitted provide the University with the following details:

- 1.4.1 a list of those personnel engaged in the Services (**Potential Returning Employees**);
- 1.4.2 job title, age, length of continuous services, current remuneration, working hours, contract type, holiday entitlement, benefits (including share scheme membership), and notice periods of the Potential Returning Employees;
- 1.4.3 terms and conditions of employment of the Potential Returning Employees, including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;
- 1.4.4 any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding 2 years;
- 1.4.5 any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;
- 1.4.6 all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees;
- 1.4.7 information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.

The Supplier shall provide updates of the details listed above at regular intervals to be specified by the University.

- 1.5 In respect of each of the Returning Employees, the Supplier agrees that it shall prior to the Subsequent Transfer Date :
  - 1.5.1 perform all obligations and duties required to be performed by it (and settle all outstanding claims, demands, actions, complaints and proceedings) whether arising under contract, statute, at common law or in equity or under or otherwise derived from any treaties or any laws of the European Union or otherwise;
  - 1.5.2 abide by the terms of any agreement or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not) which may affect the Returning Employees;

- 1.5.3 fully comply with its obligations under regulation 13 and regulation 13A of TUPE and section 188 of TULRCA to inform and, if required, consult with trade union or other employee representatives (or directly with employees if permitted under TUPE) on any matter concerning or arising from this agreement or affecting the Returning Employees;
  - 1.5.4 maintain adequate, suitable and up-to-date records relating to the Returning Employees; and
  - 1.5.5 pay to HMRC and any other appropriate authority all taxes, National Insurance contributions and other levies due in respect of the Employees on account of their employment by the Seller up to and including the Subsequent Transfer Date.
- 1.6 The Supplier shall indemnify the University (both for itself and on behalf of a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) (**Losses**) incurred by the University and/or a New Supplier in connection with or as a result of:
- 1.6.1 any failure by the New Supplier to comply with its obligations under clause 1.6;
  - 1.6.2 any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier on or before the Subsequent Transfer Date, including in relation to the terms of any agreement or arrangement with any trade union, employee representative or body of employees or their representatives which may affect the Returning Employee;
  - 1.6.3 any failure by the Supplier to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the University and/or New Supplier to comply with its or their duties under regulation 13 of TUPE;
  - 1.6.4 a claim by any person who transfers or alleges that they have transferred to the University or the New Supplier but whose name is not included in the list of Returning Employees.



If TUPE applies to transfer the employment of any person whose name is not included in the list of Returning Employees to the University or any New Supplier then the University or such New Supplier may serve a notice terminating the employment of such person within 6 months after the date of such transfer. The Supplier shall indemnify the University (for itself and on behalf of a New Supplier) in respect of all Losses suffered or incurred by the University or New Supplier arising out of or in connection with such termination.

**Schedule 5**  
**Service Levels / KPIs**

**1. Service Levels**

- 1.1 The Supplier shall provide the University with a monthly report detailing its performance in respect of each of the Service Levels.
- 1.2 Without prejudice to the University's other rights and remedies, if there is a Service Failure, the Supplier shall:
  - 1.2.1 notify the University immediately of the Service Failure;
  - 1.2.2 credit the University with the [Service Credits OR Liquidated Damages]; **[DN: optional wording to be amended depending on whether you are using Service Credits or Liquidated Damages – see below.]**
  - 1.2.3 provide the University with a Remediation Plan in accordance with clause 18 (Remediation plan process);
  - 1.2.4 deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and
  - 1.2.5 carry out the actions identified in Remediation Plan in accordance with its terms.
- 1.3 The Services Managers shall have regular monthly meetings to monitor and review the performance of this Contract, the achievement of the Service Levels and the provision of the Services. Such meetings shall be minuted by the University's Services Manager and copies of those minutes shall be circulated to and approved by both parties.
- 1.4 Before each monthly meeting, the University's Services Manager shall notify the Supplier's Services Manager, and vice versa, of any issues relating to the provision of the Services for discussion at the monthly meeting. At the meeting, the parties shall agree a plan to address such issues. In the event of any issue being unresolved, or a failure to agree on the plan, the procedures set out in clause 18 (Remediation plan process) shall apply. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
- 1.5 A review meeting to assess the performance of the Supplier in the delivery of the Services shall be held at three monthly intervals throughout the Term or at such other time agreed

between the Supplier and the University. Each meeting shall be attended by senior representatives of the University and of the Supplier, together with the Services Managers.

- 1.6 The University and the Supplier shall review the Service Levels every 3 months throughout the Term and make any changes in accordance with the Change Control Procedure to reflect changes to the Services.

## 2. **Service Credits**

- 2.1 If performance of the Services falls below any of the Service Levels in the Contract Details, the Supplier shall pay to the University the Service Credits in the Contract Details.

- 2.2 Service Credits accrued will be deducted from the Charges invoiced in the Month following the Month to which the Service Credits relate. Upon expiry or termination of the Contract any accrued Service Credits which have not already been reflected in an invoice will be deducted from the Charges 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.

- 2.3 The right of the University to any Service Credits will be without prejudice to any other rights which the University may have under the Contract 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 Contract 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 the Contract 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.

- 2.4 If performance of the Services falls below the Service Levels on the number of occasions during the Service Level Period, the University may terminate the Contract immediately on notice in writing to the Supplier.



## **Schedule 6**

### **Change Control Procedure**

#### **1. Principles**

- 1.1 Where the either University or the Supplier sees a need for a Change, the University may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this **Schedule 6**.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the University and the Supplier shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the University and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this **Schedule 6**, shall be undertaken entirely at the expense and liability of the Supplier.
- 1.5 The Supplier acknowledges and agrees that any increase to the Charges resulting from a Change will not be effective unless the University has agreed to such change in the Charges.

#### **2. Change Procedure**

- 2.1 Discussion between the University and the Supplier concerning a Change shall result in any one of the following:
  - 2.1.1 no further action being taken; or
  - 2.1.2 a request to change this Contract by the University; or
  - 2.1.3 a recommendation to change this Contract by the Supplier.
- 2.2 Where a written request for a Change is received from the University, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the University within [two weeks] of the date of the request.

- 2.3 A recommendation for a Change by the Supplier shall be submitted directly to the University in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The University shall give its response to the Change Control Note within two weeks of the date of the recommendation.
- 2.4 Each Change Control Note shall be in the form contained under paragraph 3 of this Schedule.
- 2.5 For each Change Control Note submitted by the Supplier the University shall, within the period of the validity of the Change Control Note:
- 2.5.1 allocate a sequential number to the Change Control Note; and
  - 2.5.2 evaluate the Change Control Note and, as appropriate:
    - 2.5.2.1 request further information for the Supplier (in which case the Supplier shall respond to such request for further information within 5 Business Days of the date of the request); or
    - 2.5.2.2 arrange for two copies of the Change Control Note to be signed by or on behalf of the University and return one of the copies to the Supplier; or
    - 2.5.2.3 notify the Supplier of the rejection of the Change Control Note.
- 2.5.3 A Change Control Note signed by the University and by the Supplier shall constitute a Change.
- 2.6 If the parties are unable to agree a Change Control Note:
- 2.6.1 either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 34 (Multi-tiered dispute resolution procedure); or
  - 2.6.2 in the case of a Change Control Note from the University, notwithstanding paragraph 2.6.1, the University may serve a Step-In Notice on the Supplier in accordance with clause 8 and appoint another party to perform the additional services to be provided under the Change Control Note.

### 3. **Form of Change Control Note**

- 3.1 See overleaf



### Form of Change Control Note

Title of the Change:	
The originator and date of the request or recommendation for the Change:	
Reason for the Change:	
Full details of the Change, including any specifications:	
Price, if any, of the Change:	
Timetable for implementation, together with any proposals for acceptance of the Change:	
Schedule of payments if appropriate:	
<p>Details of the likely impact, if any, of the Change on other aspects of this Contract including:</p> <ul style="list-style-type: none"> <li>• Timetable for the provision of the Change;</li> <li>• Personnel to be provided;</li> <li>• The Charges;</li> <li>• Documentation to be provided;</li> <li>• Training to be provided;</li> <li>• Working arrangements; and</li> <li>• Other contractual issues.</li> </ul>	
Date of expiry of validity of the Change Control Note:	
<b>Signed by [insert name of signatory]</b> for and on behalf of the <b>Supplier</b>	..... Authorised signatory
<b>Signed by [insert name of signatory]</b> for and on behalf of the <b>University</b>	..... Authorised signatory



**Schedule 7**  
**Forms of Notices**

<b>Dispute Notice (for use in accordance with clause 34 of the Contract)</b>	
<b>Date:</b>	
<b>Full details of the Dispute (including, its nature and full particulars):</b>	
<b>Supporting Documents:</b>	
<b>Signed by [insert name of signatory] for and on behalf of the University</b>	..... <b>Authorised signatory</b>

<b>Step-in Notice (for use in accordance with clause 8.1 of the Contract)</b>	
<b>Date:</b>	
<b>Services affected by the Step-in Notice:</b>	
<b>Full details of the Step-in Event:</b>	
<b>Effective date and duration of the Step-in:</b>	
<b>Name of the Step-in Party:</b>	
<b>Actions to be taken/works to be performed by the Step-in Party:</b>	
<b>Impact on the Supplier's obligations and remaining Services under the Contract:</b>	
<b>Supporting Documents:</b>	
<b>Signed by [insert name of signatory] for and on behalf of the University</b>	..... <b>Authorised signatory</b>

<b>Step-out Notice (for use in accordance with clause 8.6 of the Contract)</b>	
<b>Date:</b>	
<b>Services affected by the Step-out Notice:</b>	

Date when the Supplier shall resume performance of the affected services:	
Name of the Step-in Party:	
Actions performed by the Step-in Party up to the date of the Step-out Notice:	
Signed by <b>[insert name of signatory]</b> for and on behalf of the University	..... Authorised signatory

Suspension Notice (for use in accordance with clause 14.2 of the Contract)	
Date:	
Services and/or Deliverables affected by the Suspension Notice:	
Date when suspension of the Services and/or Deliverables occurs:	
Duration of the suspension:	
Signed by <b>[insert name of signatory]</b> for and on behalf of the University	..... Authorised signatory