



Software as a Service Subscription Agreement

Contract Reference: NU xxxxxxxx

Contract Title: xxxxxxxxxxxxxxxx

Software as a Service Subscription Agreement

CONTRACT DETAILS

DATE:

Contract No:	[INSERT].
Contract Start Date:	[INSERT THE DATE THAT THE SUBSCRIPTION SERVICES WILL START TO BE PROVIDED].
Initial Subscription Term:	[INSERT].
Renewal Term:	[INSERT].
Contract Expiry Date:	The last day of the Initial Subscription Term or the Renewal Term (or any further Renewal Term) subject to clause 14.1.
University:	means the University of Newcastle upon Tyne trading as Newcastle University.
University's Representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
University's Services Manager:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Supplier:	Name: [INSERT [COMPANY NAME] LIMITED (No. [NUMBER])] Address: [INSERT] Email: [EMAIL ADDRESS] Telephone: [NUMBER]
Supplier's Representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL]

	Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Supplier's Services Manager:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Services:	[INSERT DESCRIPTION] subscription services provided by the Supplier to the University via [WEB ADDRESS] or any other website notified to the University by the Supplier from time to time, as more particularly described in the Documentation.
Software:	[INSERT DESCRIPTION] the online software applications provided by the Supplier as part of the Services.
Documentation:	[INSERT DESCRIPTION] the document(s) made available to the University by the Supplier online via [WEB ADDRESS] or such other web address notified by the Supplier to the University from time to time which sets out a description of the Services and the user instructions for the Services.
Support Services Policy:	the Supplier's policy for providing support in relation to the Services as set out in the Contract Details. as made available at [WEB ADDRESS] or such other website address as may be notified to the University from time to time.
Service Levels:	[INSERT FOLLOWING OR SAY "NOT APPLICABLE" The Supplier shall perform the Services in accordance with the following Service levels: Services Availability Level: [%] per month] [per week] [per year] Service Level Period: [three consecutive calendar months]

	<p>Number of occasions before termination:</p> <p>[three separate occasions]</p> <p>The provisions in Schedule 5 shall apply to the Service Levels unless agreed otherwise by the parties.]</p>
Service Credits:	<p>[[INSERT DETAILS OF SERVICE CREDITS OR SAY "NOT APPLICABLE"]]</p> <p>The provisions in Schedule 5 shall apply to the Service Credits unless agreed otherwise by the parties.]</p>
Liquidated Damages:	<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 that the Supplier fails to meet any or all of the Service Levels 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 relevant Service Level(s) and shall continue until the earlier of :</p> <p>1.2.1 the Supplier meeting the relevant Service Level(s) again;</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> <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.]</p>
Accreditations:	<p>are [ISO/IEC 27001 accredited; [SSAE [16][18] SOC 2 certified; and ISAE 3402 certified]</p>
University Information and Data Policies:	<p>the information security, confidentiality and data protection policies 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 Subscription Term.</p>
Supplier's Liability Cap:	<p>[AMOUNT]</p>
Sub-contracting:	<p>[NO SUB-CONTRACTING PERMITTED]</p>

	<p>OR</p> <p>[SUB-CONTRACTING TO [] IS PERMITTED ON TERMS TO BE FIRST APPROVED BY THE UNIVERSITY, SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD OR DELAYED]</p>
Subscription Fees:	<p>1. Subscription Fees</p> <p>The Subscription Fees shall amount to a total of £[AMOUNT], based on [NUMBER] User Subscriptions at £[AMOUNT] per User Subscription.</p> <p>2. Additional User Subscription Fees</p> <p>Additional User Subscriptions may be purchased by the University in accordance with clause 3 of the Conditions at £[AMOUNT] per User Subscription.</p> <p>3. Excess Storage Fees</p> <p>The Supplier's excess storage fees current as at the Contract Start Date are set out below: [EXCESS STORAGE FEES].</p> <p>4. Support Fees</p> <p>The Supplier's standard and enhanced support fees are set out below: [DETAILS]</p> <p>OR</p> <p>[The Subscription Fees are set out in Schedule 2 of the Contract.]]</p>
Payment Terms:	<p>[The University will pay each invoice, within 30 days of receipt, subject to the Conditions of Contract.]</p> <p>Increase on Subscription Fees in the Renewal Term(s)</p> <p>[The Supplier may increase the Subscription Fees at the start of each Renewal Term upon 90 days' prior written notice to the University by up to [PERCENTAGE %] [IN LINE WITH RPI] [IN LINE WITH CPI]. <i>DN: price increases will be covered here (if they are applicable).</i>]</p>

Supplier's Insurance requirements:	<ul style="list-style-type: none"> professional indemnity insurance at an amount not less than £[AMOUNT] for each and every claim on and from the date of this Contract for a period of no less than 6 years. [DN: Note that there is a 6-year limitation period for issuing claims where the Contract has been signed under hand]. public liability insurance at an amount not less than £[AMOUNT] to cover the liabilities that may arise under or in connection with this Contract. <p>[LIST OTHER INSURANCE REQUIREMENTS HERE]</p>
Escalation points of contact in disputes:	<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>
Special terms:	<p>The parties have agreed the following special terms which will take precedence over the Conditions of Contract:</p> <ul style="list-style-type: none"> [INSERT SPECIAL TERMS]
Schedules:	<p>Schedule 1: Services. [Not used]</p> <p>Schedule 2: Charges.</p> <p>Schedule 3: Data Protection. [Not used]</p> <p>Schedule 4: TUPE on exit. [Not used]</p> <p>Schedule 5: Service Levels/KPIs.</p> <p>Schedule 6: Change Control Procedure. [not used]</p> <p>Schedule 7: Supplier's network and information systems security</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

(c) 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

CONDITIONS OF CONTRACT

1. Interpretation

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

Accreditations means the accreditations in the Contract Details.

Authorised Users those employees, agents and independent contractors of the University, its subsidiaries and affiliates, who are authorised by the University to use the Services and the Documentation.

Business Day a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Change of Control shall be as defined in section 1124 of the Corporation Tax Act 2010.

Confidential Information information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.1.

Contract the contract between the University and the Supplier for the supply of the Services in accordance with the Contract Details, these terms and conditions and any Schedules.

Contract Details 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 Subscription Fees that the University has agreed to pay.

Contract Expiry Date the last day of the Initial Subscription Term or the Renewal Term (or any further Renewal Term) subject to clause 14.1 as set out in the Contract Details.

Contract Start Date	the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.
Cybersecurity Requirements	all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, applicable to either party, relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI/506/2018) all as amended or updated from time to time.
Data Protection Legislation	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 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
Documentation	the document(s) made available to the University set out in the Contract Details.
EIR	the Environmental Information Regulations 2004.

EU GDPR	means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.
FOIA	the Freedom of Information Act 2000 and any subordinate legislation (as defined under the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Good Industry Practice	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
Incident	any Vulnerability, Virus or security incident which: <ul style="list-style-type: none"> (a) may affect the Software or the Services; (b) may affect the Supplier's network and information systems, such that it could potentially affect the University or the Software or the Services; or (c) is reported to the Supplier by the University.
Initial Subscription Term	the initial term of this Contract as set out in the Contract Details.
Intellectual Property Rights	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.

Known Vulnerability

any Vulnerability that has either:

- (a) been assigned a Common Vulnerabilities and Exposures (CVE) number;
- (b) been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or
- (c) been disclosed on the internet, or any open public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice.

First Point of Escalation

the first point of escalation for each party set out in the Contract Details.

Latent Vulnerability

any instances of typical classes of Vulnerability, including without limitation buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection.

Mitigate

the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good industry Practice to mitigate against the Incident in

	<p>question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety) provided these are approved by the University in writing in advance, and the terms Mitigated and Mitigation shall be construed accordingly.</p>
Normal Business Hours	<p>[8.00 am to 5.00 pm] local UK time, each Business Day.</p> <p>[DN: These times to be confirmed by the University as they will apply to all SaaS agreements.]</p>
Remediation Plan	<p>the plan agreed in accordance with clause 15 (Remediation plan process).</p>
Remediation Plan Process	<p>the process for resolving certain of the Supplier's Defaults as set out in clause 15 (Remediation plan process).</p>
Renewal Term	<p>the period set out in the Contract Details as the "Renewal Term" (where applicable).</p>
Second Point of Escalation	<p>the second point of escalation for each party set out in the Contract Details.</p>
Services	<p>the subscription services provided by the Supplier to the University under this Contract as set out in the Contract Details.</p>
Services Availability Level	<p>means the availability of the Services set out in the Service Levels in the Contract Details.</p>
Service Credits	<p>means the service credits set out in the Contract Details.</p>
Service Failure	<p>a failure by the Supplier to deliver any part of the Services in accordance with the Service Levels.</p>

Service Levels	means the service levels by which the performance of the Services will be measured set out in the Contract Details.
Services Managers	the University's Services Manager and the Supplier's Services Manager.
Software	the online software applications provided by the Supplier as part of the Services as set out in the Contract Details.
Subscription Fees	the subscription fees payable by the University to the Supplier for the User Subscriptions set out in the Contract Details and the Schedule 2.
Subscription Term	means the Initial Subscription Term together with any subsequent Renewal Terms as set out in the Contract Details.
Supplier's Representative	The individual acting as the Supplier's representative set out in the Contract Details.
Supplier's Services Manager	the person identified as such in Contract Details, or any replacement person appointed by the Supplier being the person responsible for managing the Services on behalf of the Supplier.
Support Services Policy	the Supplier's policy for providing support in relation to the Services as set out in the Contract Details.
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
University Data	the data inputted by the University, Authorised Users, or the Supplier on University's behalf for the purpose of using the Services or facilitating the University's use of the Services and any data generated by, or derived

	from the University's use of the Services, whether hosted or stored within the Services or elsewhere.
University Information and Data Policies	information security, confidentiality and data protection policies relating to the privacy and security of the University Data set out in the Contract Details.
University Policies	the University's mandatory policies 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.
University's Representative	The individual acting as the University's Representative set out in the Contract Details.
University's Services Manager	the person identified as such in the Contract Details or any replacement person appointed by the University pursuant, being the person responsible for managing the Operational Services on behalf of the University.
User Subscriptions	the user subscriptions purchased by the University pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Contract.
Virus	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or

part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability

a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 Interpretation:

1.2.1 Unless expressly provided, otherwise in this Contract, 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. User subscriptions

2.1 The Supplier hereby grants to the University a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term.

2.2 In relation to the Authorised Users, the University undertakes that:

2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

2.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another

individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

2.3 The University shall not knowingly:

2.3.1 distribute or transmit to the Supplier, via the Services, any Viruses;

2.3.2 store, access, publish, disseminate, distribute or transmit via the Services any material which:

2.3.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.3.2.2 facilitates illegal activity;

2.3.2.3 depicts sexually explicit images;

2.3.2.4 promotes unlawful violence;

2.3.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

2.3.2.6 is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, on no less than thirty (30) days' prior written notice to the University, such notice specifying the breach of this clause and requiring it to be remedied within a period of no less than thirty (30) days' from the date that the University receives the notice (depending on the scale of the breach), to disable the University's access to the Services for the duration of time that the breach remains unremedied (subject to University demonstrating to the Supplier that it has taken all reasonable steps to mitigate the impact of the breach).

2.4 The University shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, if there is any such unauthorised access or use, promptly notify the Supplier.

2.5 The rights provided under this clause 2 are granted to the University and any group company of the University.

3. **Additional user subscriptions**

3.1 Subject to clause 3.2 and clause 3.3, the University may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out

in the Contract Details and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Contract.

3.2 If the University wishes to purchase additional User Subscriptions, the University shall notify the Supplier in writing and the Supplier shall activate the additional User Subscriptions within 3 days of the University's request.

3.3 The University shall, within 30 days of receipt of a properly due invoice submitted to it by the Supplier, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Contract Details and, if such additional User Subscriptions are purchased by the University part way through the Initial Subscription Term or any Renewal Term (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Term (as applicable).

4. **Services**

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the University on and subject to the terms of this Contract.

4.2 The Supplier shall use commercially reasonable efforts to make the Services available 24 hours a day, seven days a week, except for:

4.2.1 planned maintenance carried out during the maintenance window of [10.00 pm to 2.00 am UK time]; and [**DN these times can be locked in, if you are happy with them. They seem reasonable.**]

4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the University at least [7] [Normal Business Hours'] notice in advance. [**DN: same as comment above.**]

4.3 The Supplier will, as part of the Services and at no additional cost to the University, provide the University with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy on no less than ninety (90) days' notice in writing to the University and shall ensure that any amendment to the Support Services Policy does not adversely affect, reduce, or change the Support Services. If the University does not agree to the Supplier's updated Support

Services Policy, the University may terminate this Contract on no less than thirty (30) days' prior written notice to the Supplier.

5. **Data protection**

The parties will comply with their data protection obligations as set out in Schedule 3 (Data protection) (if applicable). **DN: the data protection schedule covers processing and sharing of personal data.**

6. **Supplier's obligations**

- 6.1 The Supplier shall perform the Services in accordance with the Documentation and with reasonable skill and care in accordance with Good Industry Practice.
- 6.2 The Supplier's obligations at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the terms of clause 6.1, Supplier will, at its expense, and without prejudice to the University's other rights or remedies, correct any such non-conformance promptly.
- 6.3 This Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Contract.
- 6.4 The Supplier does not warrant that the University's use of the Services will be uninterrupted or error-free.
- 6.5 The Supplier warrants and undertakes that that:
 - 6.5.1 it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract;
 - 6.5.2 it will comply with all applicable laws and regulations with respect to its obligations under this Contract including the University Policies and the Cybersecurity Requirements;
 - 6.5.3 it will co-operate with the University in all matters relating to the Services and comply with the University's instructions;

- 6.5.4 it will not do or omit to do anything which may cause the University to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
 - 6.5.5 it will notify the University in writing immediately upon the occurrence of a change of control of the Supplier.
- 6.6 The Supplier:
 - 6.6.1 warrants that the Services conform with the Accreditations in the Contract Details;
 - 6.6.2 in relation to the Software and the Services shall maintain such accreditation(s) and certifications throughout the term of this Contract;
 - 6.6.3 shall provide to the University with a complete copy of each audit or other report received by the Supplier in connection with such accreditation(s) and certification(s) within 10 Business Days after the Supplier's receipt of such report; and
 - 6.6.4 shall not introduce any Viruses or Known Vulnerabilities or Latent Vulnerabilities into the University's network and information systems via the Services or Software or otherwise.
- 6.7 The Supplier shall, in providing the Services, comply with University Information and Data Policies set out in the Contract Details.
- 7. **University's obligations**
- 7.1 The University shall:
 - 7.1.1 provide the Supplier with:
 - 7.1.1.1 all necessary co-operation in relation to this Contract; and
 - 7.1.1.2 all necessary access to such information as may be required by the Supplier;
 - in order to provide the Services, including but not limited to University Data, security access information and configuration services;
 - 7.1.2 without affecting its other obligations under this Contract, comply with all applicable laws and regulations with respect to its activities under this Contract; and
 - 7.1.3 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time.

7.2 The University shall own all right, title and interest in and to all of the University Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such University Data.

8. **Charges and payment**

8.1 The University shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 8 and the Contract Details. The Supplier shall not increase the Subscription Fees during the Initial Term and any increases during any Renewal Term (if agreed by the parties) shall not exceed the percentage set out in the Contract Details. **[DN:**

***Check that this process works for you and note that any price increases are to be dealt with in the Contract Details.*]**

8.2 The University shall on the Contract Start Date provide to the Supplier an approved purchase order acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and the Supplier shall invoice the University:

8.2.1 on the Contract Start Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

8.2.2 subject to clause 14.1, at least 30 days prior to each anniversary of the Contract Start Date for the Subscription Fees payable in respect of the next Renewal Term; and the University will pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt. **[DN: this is in line with the payment terms in the standard services agreement.]**

8.3 All amounts and fees stated or referred to in this Contract:

8.3.1 shall be payable in pounds sterling (unless agreed otherwise in the Contract Details);

8.3.2 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.4 If, at any time whilst using the Services, the University exceeds the amount of data storage specified in the Documentation, the Supplier shall charge the University, and the University shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Contract Start Date are set out in the Contract Details. **[DN:**

Include any price increases and excess storage fees in the Contract Details (if they are applicable).

9. Proprietary rights

9.1 The University acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated in this Contract, this Contract does not grant the University any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

9.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Contract.

10. Confidentiality and Freedom of Information

10.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Contract in connection with this Contract, including but not limited to:

10.1.1 the terms of this Contract;

10.1.2 any information that would be regarded as confidential by a reasonable business person relating to:

10.1.2.1 the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and

10.1.2.2 the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party.

10.1.3 any information developed by the parties in the course of carrying out this Contract and the parties agree that:

10.1.3.1 details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and

10.1.3.2 University Data shall constitute University Confidential Information;

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

10.2 Each party will subject to clauses 10.3 and 10.4:

10.2.1 keep all Confidential Information secret, safe and secure;

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

10.3 The provisions of clause 10.2 shall not apply to Confidential Information to the extent that it is or was:

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

10.3.2 in the public domain other than as a result of a breach of clause 10.2; or

10.3.3 required to be disclosed by regulatory or legal requirement.

10.4 Notwithstanding the provisions of clauses 10.2 to 10.3 the University is committed to meeting its responsibilities under the FOIA and EIR and the Supplier acknowledges that the University is subject to the requirements of the FOIA and EIR and shall assist and cooperate with the University (at no expense to the University) to enable the University to comply with the University's responsibilities under the FOIA and EIR.

11. **Security of network and information systems**

11.1 The Supplier warrants that the information in Schedule 7 (Other Documents) on the security of its network and information systems is up to date and accurate and that it will update the University immediately if there are any changes to such information. **[DN: Schedule 7**

contains other documents including the information on the security of its network and information systems.]

11.2 The Supplier shall notify the University immediately it becomes aware of any Incident, and respond without delay to all queries and requests for information from the University about any Incident, whether discovered by the Supplier or the University, in particular bearing in mind the extent of any reporting obligations the University may have under the Network and Information Systems Regulations 2018 (NIS Regulations) and Data Protection Legislation and that the University may be required to comply with statutory or other regulatory timescales.

- 11.3 The Supplier will use its best endeavours to ensure the continuity of the Services at all times in accordance with the information on business continuity management set out in [Schedule 7] and any relevant policies referred to in clause 11.5.1, with a view to ensuring the continuity of any services to be provided by the University that rely on the Services or Software.
- 11.4 The Supplier agrees to co-operate with the University in relation to:
- 11.4.1 all aspects of its compliance with the NIS Regulations (if applicable);
 - 11.4.2 any requests for information, or inspection, made by any regulator (including in connection with the NIS Regulations);
 - 11.4.3 any request for information made in respect of any of the information provided in [Schedule 7] or any of the policies referred to in clause 11.5(a); and
 - 11.4.4 any Incident.
- 11.5 The Supplier shall (and warrants and represents that it shall) at all times in accordance with Good Industry Practice:
- 11.5.1 implement, operate, maintain, and adhere to, appropriate policies to cover the issues specified in Schedule 7, including an incident management process which shall enable the Supplier, as a minimum, to discover and assess Incidents, and to prioritise those Incidents, sufficient to meet its reporting obligations under clause 11.2; and
 - 11.5.2 Mitigate against all Incidents.
- 11.6 The Supplier shall provide copies of the policies referred to in clause 11.5.1 promptly on request by the University.
- 11.7 The Supplier shall indemnify the University against any loss or damage suffered by the University in relation to any breach by the Supplier of its obligations under this Contract, which cause the University to breach any Cybersecurity Requirements.
12. **Indemnity**
- 12.1 The Supplier shall defend the University, the Authorised Users, its affiliates and subsidiaries and its and their officers, directors and employees against any and all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the University arising out of or in connection with any claim brought against the University for actual or alleged

infringement of a third party's (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by the University and its licensees and sub-licensees. This clause 12.1 shall survive termination of the Contract.

12.2 In the defence or settlement of any claim, the Supplier may procure the right for the University to continue using the Services, replace or modify the Services without a reduction or alteration in functionality so that they become non-infringing.

12.3 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the University to the extent that the alleged infringement is based on:

12.3.1 a modification of the Services or Documentation by anyone other than the Supplier or its agents, subcontractors or partners or with the Supplier's consent or approval; or

12.3.2 the University's use of the Services or Documentation otherwise than in accordance with the Documentation; or

12.3.3 the University's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or

12.3.4 the University's breach of this Contract.

13. **Limitation of liability**

13.1 Except as expressly and specifically provided in this Contract, the University assumes sole responsibility for results obtained from the use of the Services and the Documentation by the University, and for conclusions drawn from such use.

13.2 Nothing in this Contract excludes the liability of the Supplier:

13.2.1 for death or personal injury caused by the Supplier's negligence; or

13.2.2 for fraud or fraudulent misrepresentation; or

13.2.3 under clause 5, clause 6.5, clause 10, clause 11 or clause 12.

13.3 Subject to clause 13.1 and clause 13.2:

13.3.1 neither party shall have any liability for any special, indirect or consequential loss; and

13.3.2 the losses for which the Supplier assumes liability and which shall (subject to clause 13.3.3) be recoverable by the University include:

13.3.2.1 sums paid by the University to the Supplier pursuant to this Contract;

- 13.3.2.2 wasted expenditure;
- 13.3.2.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
- 13.3.2.4 losses incurred by the University arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier personnel, regulator or customer of the University) against the University caused by the act or omission of the Supplier;
- 13.3.2.5 loss of, corruption or damage to, data; and
- 13.3.2.6 losses under the indemnities in clause 11.7 or clause 12.
- 13.3.3 the Supplier's total aggregate liability (not including liability under the indemnities in clause 11.7, clause 12 or for loss arising from the Supplier's failure to comply with its data processing obligations under clause 5 (Data protection)) in respect of all breaches of duty shall be limited to the Supplier's Liability Cap for any one event or series of connected events.
- 13.3.4 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 all loss arising from the University's failure to comply with its data processing obligations under clause 5 (Data protection) shall not exceed the Charges actually paid to the Supplier at the time at which the liability arose.
- 13.4 References to liability in this clause 13 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation, restitution or otherwise.
- 14. **Term and termination**
- 14.1 This Contract shall, unless otherwise terminated as provided in this clause 14, commence on the Contract Start Date and shall continue for the Initial Subscription Term and, thereafter, this Contract shall be automatically renewed for the successive Renewal Term(s), but limited to the maximum number of Renewal Terms in the Contract Details (if

any), unless: **[DN: Recommend including a limit on the Renewal Terms in the Contract Details if you want control over the term of the Contract.]**

14.1.1 the University notifies the Supplier that it wishes to terminate the Contract, in writing, at least **[60 days]** before the end of the Initial Subscription Term or any Renewal Term, in which case this Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Term; or

14.1.2 otherwise terminated in accordance with the provisions of this Contract;

and the Initial Subscription Term together with any subsequent Renewal Terms shall constitute the **Subscription Term**.

14.2 The University may terminate this Contract at any time on no less than 60 days prior written notice to the Supplier. The Supplier shall refund to the University any amounts paid in advance as at the date of termination of this Contract under this clause 14.

14.3 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:

14.3.1 any circumstance(s) arise which impact the particular project to which the Services relate and the project is unable to continue as planned including 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;

14.3.2 there is a Change of Control of the Supplier;

14.3.3 the Supplier commits a breach of clause 6.5.2, clause 17 or clause 20;

14.3.4 the University reasonably believes that a termination ground in any Applicable Law relating to the procurement of supplies, services and works applies; or

14.3.5 if the availability of the Services availability falls below the Service Availability Level in the Service Levels in the Contract Details (if applicable) on the number of occasions during the Service Level Period in the Contract Details.

14.4 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

- 14.4.1 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;
- 14.4.2 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;
- 14.4.3 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;
- 14.4.4 the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- 14.4.5 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;
- 14.4.6 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);
- 14.4.7 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;
- 14.4.8 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;

- 14.4.9 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;
- 14.4.10 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 14.4.1 to clause 14.4.9 (inclusive); or
- 14.4.11 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.
- 14.5 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.
- 14.6 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.
- 14.7 On termination of this Contract for any reason:
- 14.7.1 all licences granted under this Contract shall terminate and the University shall cease all use of the Services and/or the Documentation within [60 days] of the date of termination of this Contract;
- 14.7.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 14.7.3 the Supplier shall provide all assistance and information requested by the University and shall co-operate with the University and any replacement provider of the Services to facilitate a smooth transition from the Supplier; and
- 14.8 On termination of this Contract for any reason, the Supplier:
- 14.8.1 shall make no further use of the University Data;
- 14.8.2 at the written direction of the University, the Supplier shall destroy or return the University Data or, in the case of any University Data in electronic form, delete such

University Data and any electronic data shall be considered deleted, for the purpose of this clause where it has been put beyond use by the Supplier; and

14.8.3 the Supplier shall preserve all University Data in its possession until it has received any such instructions.

15. **Remediation Plan Process**

15.1 If the Supplier commits a Default and the Default is capable of remedy then, without prejudice to its rights at clause 14 (Termination), the University may operate the Remediation Plan Process in accordance with this clause 15. 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.

15.2 The University shall be under no obligation to initiate the Remediation Plan Process if it issues a termination notice pursuant to clause 14.3 or the Supplier experiences one of the events described in clause 14.4.

15.3 Within 5 Business Days of receipt of a Remediation Notice, the Supplier shall either:

15.3.1 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

15.3.2 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.

15.4 The University shall either approve the draft Remediation Plan within 10 Business Days of its receipt pursuant to clause 15.3, 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.

15.5 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.

- 15.6 If, despite the measures taken under clause 15.4, 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.
- 15.7 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:
- 15.7.1 terminate this Contract immediately on notice to the Supplier; or
 - 15.7.2 give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
 - 15.7.3 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 30.
- 15.8 If, despite the measures taken under clause 15.7 (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 30 or terminate this Contract immediately on notice to the Supplier.
- 15.9 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.

16. **Force majeure**

Neither party shall 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 7 days written notice to the other party.

17. Equal Opportunities and the Equality Act 2010

17.1.1 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.

17.1.2 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.

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

17.1.4 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.

17.1.5 The Supplier shall, when required, answer queries raised by the University on matters referred to in this clause 17 and breach of statutory obligations will entitle the University to immediately terminate this Contract.

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

18. Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. Audit

19.1 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.

19.2 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.

19.3 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.

19.4 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.

20. **Corrupt Gifts**

20.1 The Supplier shall, and shall procure that their employees, officer, agents, sub-contractors, or anyone else acting on their behalf shall:

20.1.1 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;

20.1.2 not, offer or give, or agree to give either directly or indirectly, to any employee or the 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;

20.1.3 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 20, and permit the University to inspect those records as reasonably required;

20.1.4 promptly notify the University of:

20.1.4.1 any request or demand for any financial or other advantage received by it; and

20.1.4.2 any financial or other advantage it gives or intends to give whether directly or indirectly in connection with the Contract; and

20.1.5 promptly notify the University of any breach of this clause 20.

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

20.3 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 20.

21. Waiver

21.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

21.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

22. Rights and remedies

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

23. Severance

23.1 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.

23.2 If any provision or part-provision of this Contract is deemed deleted under clause 23.1 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.

24. Entire agreement

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

24.2 Each party acknowledges that in entering into this Contract it does not rely on, and 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.

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

24.4 Nothing in this clause shall limit or exclude any liability for fraud.

25. Assignment

25.1 The University may at any time, 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.

25.2 Save as set out in the Contract Details, the Supplier may not at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this Contract without the prior written consent of the University.

26. No partnership or agency

Nothing in this Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. Third party rights

Except as provided in 12.1, this Contract does not confer any rights on any person or party (other than the parties to this Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

28. Counterparts

28.1 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.

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

29. Notices

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

29.1.1 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

- 29.1.2 or sent by email to the email address specified in the Contract Details.
- 29.2 Any notice or communication will be deemed to have been received:
- 29.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 29.2.2 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
- 29.2.3 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 29.2.3, 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.
- 29.3 This clause 29 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.
30. **Multi-tiered dispute resolution procedure**
- 30.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow, and procure that its representatives set out in the Contract Details follow, the procedure set out in this clause 30.
- 30.2 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.
- 30.3 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.
- 30.4 Subject to clause 30.5, the procedure set out in clauses 30.1 to 30.3 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 32 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.

30.5 Nothing in this clause 30 will prevent or delay either party from:

30.5.1 seeking orders for specific performance, interim or final injunctive relief;

30.5.2 exercising any rights it has to terminate the Contract; or

30.5.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

31. **Governing law**

31.1 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.

32. **Jurisdiction**

32.1 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

[Not used]

Schedule 2

Charges

[Not used]

Schedule 3

Data protection

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. Note that it is highly unlikely that they University will act as the processor under a SaaS agreement and this Data Protection schedule has been drafted for wider use in the suite of contracts.]**
- 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 you have Suppliers who are situated/processing personal data outside of the UK and will need to 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

[Not used]

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 15 (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 15 (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

[Not used]

Schedule 7

Supplier's network and information systems security

1. Security of systems and facilities

[A description or mapping of the Supplier's information system insofar as it relates to the University and any policies the Supplier has in place for managing information security, including risk analysis, human resources, security of operations, security architecture, secure data and system life cycle management and, where applicable, encryption and its management.

Its measures to protect the security of its network and information systems from damage using an all-hazards risk-based approach, addressing for instance system failure, human error, malicious action or natural phenomena.

Its measures including any policies to ensure the accessibility and traceability of critical supplies used in the provision of the Services.

Any measures to ensure that the physical and logical access to network and information systems, including administrative security of network and information systems, is authorised and restricted based on business and security requirements.]

2. Incident handling

[Its detection processes and procedures for ensuring timely and adequate awareness of anomalous events and details of the ways in which it maintains and tests these processes and procedures.

Its processes and policies on reporting incidents and identifying weaknesses and vulnerabilities in its information systems.

Its procedures for assessing the severity of a security incident, documenting knowledge from incident analysis which may serve as evidence and support a continuous improvement process].

3. Business continuity management

[Its contingency procedures for ensuring business continuity for the websites its Suppliers and details of the ways in which it regularly assesses and tests these.

Its disaster recovery capabilities and details of the ways in which these are regularly assessed and tested].

4. Monitoring, auditing and testing

[Its policies and the maintenance of such policies on:

Conducting planned sequences of observations or measurements to assess whether network and information systems are operating as intended.

Inspection and verification to check whether a standard or set of guidelines is being followed, records are accurate, and efficiency and effectiveness targets are being met.

A process (including technical processes and personnel involved in the operation flow) intended to reveal flaws in the security mechanisms of a network and information system that protect data and maintain functionality as intended].

5. **International standards**

[Any information or policies on compliance with international standards].]