



IT Master Services Agreement

Contract Reference: NU xxxxxxxx

Contract Title: xxxxxxxxxxxxxxxx

IT Master Services Agreement
AGREEMENT DETAILS

Date: [[INSERT]]

Agreement No:	[[INSERT]].
Agreement Start Date:	[[INSERT DATE ON WHICH THE TERM OF THE OVERARCHING FRAMEWORK AGREEMENT COMMENCES]].
Initial Term:	[[INSERT]].
Renewal Term:	[[INSERT]].
Agreement Expiry Date:	The last day of the Initial Term or the Renewal Term (or any further Renewal Term) subject to clause 2.2 of the Agreement Conditions.
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]
Supplier:	[[INSERT [COMPANY NAME] LIMITED (No. [NUMBER]) AND ADDRESS]. [EMAIL ADDRESS]
Supplier's Representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Available Services:	[The Services set out in <u>Schedule 1</u> of this Agreement which can be provided by the Supplier to the University pursuant to a Statement of Works.]

Deliverables:	[any output of the Works to be provided by the Supplier to the University as specified in a Statement of Work and any other documents, products and materials provided by the Supplier to the University in relation to the Works set out in the Statement of Work or otherwise agreed between the parties in writing.]
Key Personnel	the individuals identified as key personnel in a Statement of Work, or any replacement individuals appointed by the Supplier pursuant to Clause 5.3.3 or Clause 5.3.4
Service Levels:	[the service levels set out in a Statement of Works.]
[Service Credits:	[the service credits set out in a Statement of Works.]]
[Liquidated Damages:	[the liquidated damages set out in a Statement of Works.]]
Supplier's Liability Cap:	[AMOUNT].
Sub-contracting:	[YES/NO – INCLUDE DETAILS OF ANY RESTRICTIONS ON THE SUPPLIER'S RIGHT TO SUB-CONTRACT].
Charges:	[the sums payable for the Works as set out in a Statement of Works.]
Payment Terms:	[The University will pay each invoice for the Works, 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, subject to the Agreement Conditions.]
Milestones:	[the date by which a part or all of the Works is to be completed, as set out in a Statement of Work]
Supplier's Insurance requirements:	<ul style="list-style-type: none"> • professional indemnity insurance at an amount not less than £[AMOUNT] • public liability insurance at an amount not less than £[AMOUNT] to cover the liabilities that may arise under or in connection with this Agreement

	[LIST OTHER INSURANCE REQUIREMENTS HERE]
Notices and Points of Escalation:	<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 Agreement Conditions:</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;">12.10 The 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>[INSERT OTHER SPECIAL TERMS OR SAY "NOT APPLICABLE"]]</p>
Schedules:	<p>Schedule 1: Services.</p> <p>Schedule 2: Reference Charges.</p> <p>Schedule 3: Data Protection.</p> <p>Schedule 4: TUPE on exit.</p> <p>Schedule 5: Change Control Procedure.</p> <p>Schedule 6: Forms of Notices.</p> <p>Schedule 7: Template Statement of Work.</p>

1. This Agreement 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 Agreement Details (highest priority);
- (b) The Agreement Conditions;
- (c) The Statement of Works;

(d) The other Schedules specified in the Agreement Details (excluding the Order Form and Standard Term) if applicable; and

(e) 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 Agreement 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

AGREEMENT CONDITIONS

1. Interpretation

1.1 Definitions:

Agreement Conditions	these terms and conditions set out in clause 1 (Interpretation) to clause 36 (Jurisdiction) (inclusive).
Agreement Details	the agreement details front sheet attached to these terms and conditions, signed by the Supplier and the University.
Agreement Start Date	the day on which the Term of the Agreement commences as set out in the Agreement Details.
Applicable Laws	all applicable laws, statutes, regulations from time to time in force in England and Wales.
Available Services	the available services, including the provision of Software (where applicable) set out in Schedule 1 .
Business Day	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours	9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
Change	any amendment to the scope, nature or execution of the Works.
Change Control Note	the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure in Schedule 5 .
Change Control Procedure	the procedure for changing this Agreement, as set out in Schedule 5 .
Charges	the charges defined in the Agreement Details.

Confidential Information

the existence and terms of this Agreement 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.

Control

has the meaning given in section 1124 of the Corporation Tax Act 2010.

Deliverables

the deliverables defined in the Agreement Details (if applicable)..

EIR

the Environmental Information Regulations 2004.

FOIA

the Freedom of Information Act 2000 and any subordinate legislation (as defined under the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event

any cause affecting, preventing or hindering the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including

acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

Information

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

Initial Term

the period set out in the Agreement Details as the "Initial Term".

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.

Milestones

means the milestones defined in the Agreement Details (if applicable).

Month

means a calendar month.

Remediation Notice	a written notice given by the University to the Supplier pursuant to clause 18 (Remediation plan process) to initiate the Remediation Plan Process.
Remediation Plan	the plan agreed in accordance with clause 18 (Remediation plan process).
Remediation Plan Process	the process for resolving certain of the Supplier's Defaults as set out in clause 18 (Remediation plan process).
Reference Charges	the standard charges for the Available Services or the framework for calculating them as set out in Schedule 2 .
Renewal Term	the period set out in the Agreement Details as the "Renewal Term" (where applicable).
Service Credits	the service credits defined in the Agreement Details (if applicable).
Service Failure	a failure by the Supplier to deliver any part of the Works in accordance with the Service Levels.
Service Levels	the service levels defined in the Agreement Details (if applicable).
Services Managers	the University's Services Manager and the Supplier's Services Manager.
Software	any software supplied to the University by the Supplier as described in the Statement of Works (if applicable) as it is updated from time to time with any updates and upgrades, revisions, new releases and new versions.
SOW Start Date	the start date in the Statement of Works being the date on which the provision of the Works by the Supplier starts.
SOW Term	the period set out in the Statement of Works.

Statement of Work	the detailed plan, agreed in accordance with clause 3 (Statements of work), describing the services to be provided by the Supplier, the timetable for their performance and the related matters listed in the template statement of work set out in Schedule 7 .
Supplier's Equipment	any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, subcontractors or consultants to the University and used directly or indirectly in the supply of the Works, including any such items specified in a Statement of Work.
Supplier's Manager	the individual identified as such in a Statement of Work, being the person responsible for managing the Works on behalf of the Supplier.
Supplier's Liability Cap	the amount set out in the Agreement Details.
Supplier's Representative	The individual acting as the Supplier's representative set out in the Agreement Details.
Supplier's Services Manager	the person identified as such in the Statement of Works, or any replacement person appointed by the Supplier being the person responsible for managing the Services on behalf of the Supplier.
Term	the Initial Term and any Renewal Term.
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
University's Equipment	any equipment, including tools, systems, cabling or facilities, provided by the University, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Statement of Work.

University's Manager	the individual identified as such in a Statement of Work, as appointed pursuant to clause 6.2.
University Materials	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 Works including the items provided pursuant to clause 6.4.
University Policies	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.
University's Representative	The individual acting as the University's Representative set out in the Agreement Details.
University's Services Manager	the person identified as such in the Statement of Works or any replacement person appointed by the University pursuant, being the person responsible for managing the Operational Services on behalf of the University.
VAT	value added tax chargeable in the UK.
Works	the Available Services which are provided by the Supplier under a Statement of Work.

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 duration**

2.1 This Agreement shall commence on the Agreement Start Date set out in the Agreement Details and will, unless terminated earlier in accordance with clause 15 (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 Agreement be extended for the Renewal Term set out in the Agreement Details. Unless it is further extended under this clause 2.2 or terminated earlier in accordance with clause 15 (Termination), the Agreement will terminate automatically without notice at the end of the Renewal Term.

2.3 If there are any uncompleted Statements of Work in force at the end of the Initial Term or the Renewal Term (if applicable) this Agreement shall not terminate until the day immediately after the day on which the last Statement of Work terminates or expires.

2.4 If there are no uncompleted Statements of Work at end of the Initial Term or the Renewal Term (if applicable) this Agreement will terminate with immediate effect.

2.5 The University may procure any of the Available Services by agreeing a Statement of Work with the Supplier pursuant to clause 3 (Statements of Work).

2.6 The Supplier shall provide the Works from the SOW Start Date specified in the relevant Statement of Work.

2.7 Notwithstanding clause 2.5, the parties agree and acknowledge that the University is under no obligation to procure the Works from the Supplier and the supply of the Works under a Statement of Works is not an exclusive arrangement and the University (and its Affiliates) may purchase any of the Works that are the same or similar to the Works from any third party.

3. Statements of Work

3.1 Each Statement of Work shall be agreed in the following manner:

3.1.1 the University shall ask the Supplier to provide any or all of the Available Services and to prepare a draft Statement of Work for Available Services required by the University;

3.1.2 within 3 Business Days of the University's request, the Supplier shall notify the University of any additional information it reasonably requires in order to prepare a Statement of Work;

3.1.3 within 5 Business Days of receipt of the required information from the University, the Supplier shall provide the University with the draft Statement of Work requested;

3.1.4 the Supplier and the University shall discuss and agree that draft Statement of Work; and

3.1.5 both parties shall sign the draft Statement of Work when it is agreed. Until the Statement of Works is signed by both parties it shall have no effect.

3.2 Unless otherwise agreed, the Charges shall be calculated in accordance with the Reference Charges.

3.3 Once a Statement of Work has been agreed and signed in accordance with clause 3.1.5, no amendment shall be made to it except in accordance with clause 7 (Change control) or clause 21 (Variation).

3.4 Each Statement of Work shall be part of this Agreement and shall not form a separate contract to it.

4. Tupe on exit

4.1 If TUPE is applicable when this Agreement expires or is terminated earlier in accordance with Clause 15 (Termination), the provisions of Schedule 4 shall apply.

5. Supplier's responsibilities

5.1 The Supplier shall:

5.1.1 provide the Works and the Deliverables in accordance with the Statement of Work;

- 5.1.2 ensure that the Works and the Deliverables will conform in all respects with the Statement of Work and the Service Levels (if applicable) and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the University;
- 5.1.3 perform the Works with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 5.1.4 ensure that the Deliverables, and all standards and techniques used in providing the Works are of the best quality and are free from defects in workmanship, installation and design;
- 5.1.5 co-operate with the University in all matters relating to the Works, and comply with the University's instructions;
- 5.1.6 before the date on which the Works are to start, obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to:
 - 5.1.6.1 the Works; and
 - 5.1.6.2 the installation and use of the Supplier's Equipment.
- 5.1.7 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 that have been communicated to it under clause 6.6. The University reserves the right to refuse any of the Supplier's personnel involved in the provision of the Works access to the University's premises, which shall only be given to the extent necessary for the performance of the Works;
- 5.1.8 hold all University Materials in safe custody at its own risk, maintain such 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 authorisations;
- 5.1.9 take good care of any University's Equipment provided by the University pursuant to clause 6.5;

- 5.1.10 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;
 - 5.1.11 notify the University in writing immediately upon the occurrence of a change of Control of the Supplier;
 - 5.1.12 comply with:
 - 5.1.12.1 all Applicable Laws; and
 - 5.1.12.2 the University Policies.
 - 5.1.13 comply with any additional obligations imposed on it as set out in a Statement of Work.
- 5.2 Time is of the essence in relation to any performance dates or Milestones (if applicable) specified in a Statement of Work. If the Supplier fails to meet the relevant performance dates or Milestones, then (without prejudice to the University's right to terminate this Agreement under clause 15 and any other rights it may have), the University may:
- 5.2.1 refuse to accept any subsequent performance of the Works under the relevant Statement of Work which the Supplier attempts to make;
 - 5.2.2 purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier;
 - 5.2.3 hold the Supplier accountable for any loss and additional costs incurred; and
 - 5.2.4 have any sums previously paid by the University to the Supplier in respect of the affected Works refunded by the Supplier.
- 5.3 In relation to the Supplier's personnel, the Supplier shall:
- 5.3.1 ensure that all personnel involved in the provision of the Works have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this Agreement;
 - 5.3.2 ensure that the Supplier's Manager has authority to contractually bind the Supplier on all matters relating to the Works (including by signing Change Orders);

- 5.3.3 promptly inform the University of the absence (or the anticipated absence) of any of the Key Personnel as set out in a Statement of Works, and if so required by the University (acting reasonably), provide a suitably qualified replacement for such individual; and
- 5.3.4 not to make any changes to the Key Personnel throughout the SOW Term of the relevant Statement of Work and obtain the prior written approval of the University (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals.
- 5.4 During the term of the Agreement 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 Available Services or Works 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 Available Services or Works.
- 5.5 The Supplier shall ensure that the Works meet or exceed the Service Levels in accordance with clause 8 (if applicable).

6. **University's obligations**

The University shall:

- 6.1 provide the Supplier with all necessary co-operation in all matters relating to the Works;
- 6.2 appoint a manager in respect of the Works to be performed under each Statement of Work (the **University's Manager**). The University's Manager shall have authority to contractually bind the University on all matters relating to the relevant Works;
- 6.3 provide 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 advance, for the purposes of the Works;
- 6.4 provide the Supplier with documents, information, items and materials required under a Statement of Work;
- 6.5 provide such of the University's Equipment to the Supplier as required under a Statement of Work for the provision of Works; and

- 6.6 inform the Supplier of all health and safety and security requirements that apply at the University's premises to which the Supplier will require access.
7. **Change control**
- 7.1 Either party may propose changes to the scope or execution of the Works in accordance with Schedule 5.
8. **Service Levels**
- 8.1 The Supplier shall ensure that the Works meet or exceed the Service Levels set out in the Statement of Works (if applicable) at all times from the Agreement Start Date.
9. **Data protection**
- 9.1 The parties will comply with their data protection obligations as set out in Schedule 3 (Data protection) (if applicable).
10. **Intellectual property**
- 10.1 In relation to the University Materials:
- 10.1.1 the University and its licensors shall retain ownership of all Intellectual Property Rights in the University Materials; and
- 10.1.2 the University grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the University Materials for the term of this Agreement for the purpose of providing the Works to the University.
- 10.2 In relation to the Works and the Deliverables and unless agreed otherwise between the parties:
- 10.2.1 the Supplier and its licensors will retain ownership of all Intellectual Property Rights in the Works and the Deliverables (excluding the University Materials);
- 10.2.2 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 Deliverables (excluding the University Materials) together with the right to grant sub-licences for the purpose of receiving and using the Works and the Deliverables.

- 10.3 The Supplier warrants that the receipt, use and onward supply of the Works and the Deliverables by the University and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 10.4 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 Works, 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.
- 10.5 If there is an IPR Claim:
- 10.5.1 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 10.4;
- 10.5.2 the Supplier will at its own cost and expense control the defence of the IPR Claim and any related proceedings or settlement negotiations, except that the University will be entitled to take any action which it deems necessary if the Supplier fails to take action, or (in the University's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of the University, prejudice the interests of any Protected Party; and
- 10.5.3 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.
- 10.6 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:

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

10.6.2 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 Agreement and without adversely affecting or limiting in any respect the performance, scope or functionality of the infringing items or any other Indemnified Item or any part of them.

11. **Charges and payment**

11.1 In consideration of the provision of the Works by the Supplier, the University shall pay the Charges in accordance with this clause 11.

11.2 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.

11.3 The Supplier shall invoice the University for the Charges at the intervals specified, or on the achievement of the Milestones indicated (if applicable), in the Statement of Work. If no intervals are specified, the Supplier shall invoice the University at the end of each month for Works performed during that month.

11.4 When the Supplier submits an invoice (including an electronic invoice) to the University in accordance with this clause 11, the University will consider and verify that invoice in a timely fashion and no later than 7 days from receipt of the invoice. 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.

11.5 Subject to clause 11.4 the University will pay each invoice submitted by the Supplier in accordance with this clause 11 and within the period set out in the Agreement Details.

11.6 If the University fails to comply with clause 11.4, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.5 7 days after the receipt of the invoice by the University.

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

11.7.1 provisions having the same effect as clauses 11.4 to 11.6 of this Agreement; and

11.7.2 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 11.4 to 11.6 of this Agreement.

In this clause 11.7, "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 Agreement.

11.8 If the University fails to make a payment due to the Supplier under this Agreement by the due date then, without limiting the Supplier's remedies under clause 15 (Termination), the University shall 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 11.8 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%.

11.9 [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 this Agreement. 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 11.9 shall

not limit or affect any other rights or remedies available to it under this Agreement or otherwise.]

11.10 Where the Charges are calculated on a time and materials basis:

11.10.1 the Supplier's daily fee rates for each individual person as set out in the Statement of Work are calculated on the basis of an eight (8) hour day, worked during Business Hours (unless agreed otherwise between the parties);

11.10.2 the Supplier shall not be entitled to charge on a pro rata basis for part days worked by the Supplier's team during Business Hours, unless it has the University's prior written consent to do so; and

11.10.3 the Supplier shall ensure that every individual whom it engages on the Works completes time sheets to record time spent on the Works, and the Supplier shall indicate the time spent per individual in its invoices.

11.11 Where the Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a Statement of Work.

11.12 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.

12. **Audit**

12.1 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 Agreement are accurate.

12.2 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.

12.3 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.

12.4 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.

13. Limitation of liability

- 13.1 References to liability in this clause 13 (Limitation of liability) 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.
- 13.2 Neither party may benefit from the limitations and exclusions set out in this clause 13.2 in respect of any liability arising from its deliberate default.
- 13.3 Nothing in this Agreement shall limit the Supplier's liability under clause 10.4 (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 this Agreement 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; or
 - 13.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or other liability which cannot be limited or excluded by Applicable Law.
- 13.5 Subject to clause 13.2 (no limitations in respect of 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 Agreement (except for loss arising from the Supplier's failure to comply with its data processing obligations under clause 9 (Data protection) or loss arising from the Supplier's breach of clause 10) 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 in respect of deliberate default), clause 13.3 (liability under identified clauses) 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 this Agreement (including by negligence) and for all loss arising

from the University's failure to comply with its data processing obligations under clause 9 (Data protection) shall not exceed the Charges actually paid to the Supplier for the particular Statement of Works under which the liability arose at the time that 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 10.4 (IPR indemnity) and Schedule 4 (TUPE on exit) or any other terms of this Agreement (including a Statement of Works); 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 in respect of deliberate default) 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 Agreement. For the avoidance of doubt, the parties will be liable for loss of or damage to goodwill to each other.

14. **Insurance**

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

14.2 The Supplier will 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. **Termination**

15.1 Unless the parties agree to extend the Term of the Agreement no later than 30 days before the end of the Initial Term (or any Renewal Term agreed under clause 2.2) or the Agreement is terminated earlier in accordance with this clause 15, the Agreement will terminate automatically without notice at the end of the Initial Term or at the end of the Renewal Term (if applicable).

- 15.2 Without affecting any other right or remedy available to it, the University may terminate the Agreement (in whole or in part) with immediate effect by giving written notice to the Supplier if:
- 15.2.1 any circumstance(s) arise which impact the particular project to which the Works 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 Works relate, in which case the University will provide as much evidence of the circumstance(s) as the Supplier reasonably requires;
 - 15.2.2 there is a Change of Control of the Supplier;
 - 15.2.3 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 Agreement has been placed in jeopardy;
 - 15.2.4 the Supplier commits a breach of clause 5.1.12;
 - 15.2.5 the University reasonably believes that a termination ground in any Applicable Law relating to the procurement of supplies, services and works applies; or
 - 15.2.6 if performance of the Works falls below the Service Levels (if applicable) on the number of occasions during the Service Level Period.
- 15.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 15.3.1 the other party commits a material breach of any term of this Agreement 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;
 - 15.3.2 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;

- 15.3.3 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;
- 15.3.4 the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- 15.3.5 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;
- 15.3.6 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);
- 15.3.7 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;
- 15.3.8 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;
- 15.3.9 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;
- 15.3.10 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 15.3.1 to clause 15.3.9 (inclusive); or

15.3.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.4 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement will remain in full force and effect.

15.5 Termination or expiry of this Agreement 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 Agreement which existed at or before the date of termination or expiry.

15.6 Termination of the Agreement shall not terminate all existing incomplete Statements of Work and this Agreement shall not terminate until the day immediately after the day on which the last Statement of Work terminates or expires.

16. Obligations on termination

On termination or expiry of this Agreement for whatever reason:

16.1 the Supplier shall immediately deliver to the University all Deliverables whether or not then complete, and return all University Materials and the University's Equipment. 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 this Agreement; and

16.2 the Supplier shall, if so requested by the University, provide all assistance reasonably required by the University to facilitate the smooth transition of the Works to the University or any replacement supplier appointed by it including the exit assistance as set out in the relevant Statements of Work (if applicable).

17. Inadequacy of damages

Without prejudice to any other rights or remedies that the University may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Supplier. Accordingly, the University shall be entitled to the

remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

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 15 (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 15.1 (Termination for Supplier's Default) or the Supplier experiences one of the events described in clause 15.3.
- 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 Agreement 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 Agreement 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 32.
- 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 32 or terminate this Agreement 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 Agreement immediately on notice to the Supplier.
19. **Force majeure**
- 19.1 Subject to the remaining provisions of this clause 19.1, neither party to this Agreement shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Agreement 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 Agreement 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 Agreement; 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 Agreement. 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 Agreement. Following such notification, this Agreement 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 Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement 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 Agreement by giving 30 days' written notice to the other party.
20. **Assignment and other dealings**
- 20.1 Save as set out in the Agreement 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 Agreement.

20.2 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 Agreement, provided that it gives prior written notice of such dealing to the Supplier.

21. Variation

Subject to clause 7 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. Confidentiality and Freedom of Information

22.1 Each party will, subject to clauses 22.2 and 22.3:

22.1.1 keep all Confidential Information secret, safe and secure;

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

22.2 The provisions of clause 22.1 shall not apply to Confidential Information to the extent that it is or was:

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

22.2.2 in the public domain other than as a result of a breach of clause 22.1; or

22.2.3 required to be disclosed by regulatory or legal requirement.

22.3 Notwithstanding the provisions of clauses 22.1 and 22.2 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 Agreement 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.

23. Waiver

23.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

23.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall 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 this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

24. Rights and remedies

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

25. Severance

25.1 If any provision or part-provision of this Agreement 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 Agreement.

25.2 If any provision or part-provision of this Agreement is deemed deleted under clause 25.1 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.

26. Entire agreement

26.1 This Agreement 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.

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

27. Conflict

If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Statements of Work, the provisions of this Agreement shall prevail.

28. No partnership or agency

28.1 Nothing in this Agreement 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.

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

29. **Third party rights**

29.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

30. **Notices**

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

30.1.1 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

30.1.2 or sent by email to the email address specified in the Agreement Details.

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

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

30.2.2 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

30.2.3 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 30.2.3, 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.

30.3 This clause 30 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.

31. **Counterparts**

31.1 This Agreement 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.

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

32. Multi-tiered dispute resolution procedure

- 32.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then each party will follow, and procure that its representatives set out in the Agreement Details follow, the procedure set out in this clause 32.
- 32.2 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 6). 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 Agreement 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.
- 32.3 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 Agreement 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.
- 32.4 Subject to clause 32.5, the procedure set out in clauses 32.1 to 32.3 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 33 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.
- 32.5 Nothing in this clause 32 will prevent or delay either party from:
- 32.5.1 seeking orders for specific performance, interim or final injunctive relief;
 - 32.5.2 exercising any rights it has to terminate the Agreement; or
 - 32.5.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

33. Governing law

This Agreement 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 shall be governed by and construed in accordance with the law of England and Wales.

34. Jurisdiction

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

Schedule 1

Available Services

[LIST OUT THE AVAILABLE SERVICES].

Schedule 2

Reference charges and payment terms

Fixed price: [PRE-AGREED PRICES FOR PARTICULAR SERVICES OR METHOD OF CALCULATING FIXED PRICE]

Time and materials:

- Daily rates: [DAILY RATES FOR MEMBERS OF THE SUPPLIER'S TEAM]
- Weekend/overtime rates: [WEEKEND/OVERTIME RATES OF MEMBERS OF THE SUPPLIER'S TEAM]

Additional charges: The following materials and services procured from third parties shall be invoiced to the University in addition to the Charges: [DETAILS OF THIRD PARTY MATERIALS AND SERVICES TO BE CHARGED IN ADDITION TO THE CHARGES]

Payment terms: [PAYMENT TERMS FOR PARTICULAR SERVICES]

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 Agreement, 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]. 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 Agreement.

- 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 Agreement:
- 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 Agreement, 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 Agreement 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.
- 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 Agreement).

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 Agreement 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 Agreement of the nature of such processing. This includes giving notice that, on the termination of the Agreement, 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] 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 Agreement 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 Works.
 - 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 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 not later than 12 months prior to the expiry of this Agreement (or, if earlier, within 7 days of notice being given of termination of this Agreement) 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, benefits, 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 12 months;
- 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 The Supplier shall indemnify the University (both for itself and a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the University and/or a New Supplier in connection with or as a result of:
 - 1.5.1 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;
 - 1.5.2 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;

1.5.3 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.

1.6 If TUPE applies to transfer the employment of any person employed by the Supplier to the University or any New Supplier then if the University or such New Supplier shall 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 a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the University is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

Schedule 5

Change Control Procedure

1. Principles

- 1.1 The University may at any time request a Change, and the Supplier may at any time recommend a Change, only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 5.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the University and the Supplier shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the University and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 5, 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 Agreement by the University; or
 - 2.1.3 a recommendation to change this Agreement 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 32 (Multi-tiered dispute resolution procedure);

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:	
Details of the likely impact, if any, of the Change on other aspects of this Agreement including: <ul style="list-style-type: none"> • Timetable for the provision of the Change; • Personnel to be provided; • The Charges; • Documentation to be provided; • Training to be provided; • Working arrangements; and • Other contractual issues. 	
Date of expiry of validity of the Change Control Note:	
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

Schedule 6
Forms of Notices

Dispute Notice (for use in accordance with clause 32.2 of the Agreement)	
Date:	
Full details of the Dispute (including, its nature and full particulars):	
Supporting Documents:	
Signed by [insert name of signatory] for and on behalf of the University	<div style="text-align: center;"> Authorised signatory </div>

Schedule 7

Template Statement of Work

[DN: suggested headings for the template statement of work. Feel free to amend the headings. Please note that the Supplier might have their own form of Statement of Work for use by the University when procuring the services.]

Statement of Work Number	[001]
Works	[LIST OUT THE SCOPE OF WORKS TO BE PROVIDED UNDER THIS STATEMENT OF WORK. THE WORKS SHOULD BE FROM THE LIST OF AVAILABLE SERVICES IN SCHEDULE 1]
University's Services Manager	[[INSERT]
Supplier's Services Manager	[[INSERT]
Key Personnel	[[INSERT]
SOW Start Date	[[INSERT]
SOW Term	[[INSERT]
Timetable	[SET OUT THE TIMETABLE FOR PERFORMING THE WORKS].
Milestones	SET OUT ANY MILESTONES FOR THE WORKS].
Deliverables	[SET OUT ANY DELIVERABLES FOR THE WORKS].
Details of Software Licences provided	[[INSERT]
Charges and payment terms	[[INSERT]
University Materials	[[INSERT]
Supplier's Equipment	[[INSERT]
[Service levels]	[The Supplier shall perform the Works in accordance with the following Service Levels: Services Availability Level: [%] per month] [per week] [per year]] Service Level Period: [three consecutive calendar months] Number of occasions before termination: [three separate occasions]]
[Service level provisions]	[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 in the Agreement, if there is a Service Failure (defined in the Agreement), 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];
- 1.2.3 provide the University with a Remediation Plan in accordance with clause 19 (Remediation plan process) of the Agreement Conditions;
- 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 Agreement, the achievement of the Service Levels and the provision of the Works. 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 Works 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 19 (Remediation plan process) of the Agreement Conditions shall apply.
- 1.5 Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
- 1.6 A review meeting to assess the performance of the Supplier in the delivery of the Works shall be held at three monthly intervals throughout the Term of the Statement of Works 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.

1.7 The University and the Supplier shall review the Service Levels throughout the term of the Statement of Works at the intervals specified in the Statement of Works (if any) and make any changes in accordance with the Change Control Procedure in the Agreement to reflect changes to the Works.

[Service Credits]

1.1 If performance of the Works falls below any of the Service Levels, the Supplier shall pay to the University the Service Credits described in this Statement of Works.

1.2 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 relevant Works and/or this Statement of Works (whichever the earlier) 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.

1.3 The right of the University to any Service Credits will be without prejudice to any other rights which the University may have under the Agreement or otherwise in respect of a failure to meet Service Levels, including the right to sue for damages or other relief and/or to terminate the affected Works or the Agreement but a claim for general damages in relation to a failure to achieve a Service Level will be reduced by the amount of Service Credits actually applied or paid in respect of the relevant Service Level failure. The fact that the Service Credit provisions anticipate or provide for a particular eventuality will not be interpreted as implying that the relevant eventuality should not constitute a breach (or material breach)

of the Agreement and are therefore without prejudice to any other remedies (including any termination rights) that might otherwise accrue as a result of one or more Service Level failures.

1.4 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 Agreement immediately on notice in writing to the Supplier.]

[Liquidated Damages]

[
1.1 If performance of the Works 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].

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:

1.2.1 completion of the relevant Works by the Supplier;

1.2.2 termination of the Agreement by the University;

1.2.3 expiry of the Agreement; or

1.2.4 abandonment of the Agreement by the parties.

1.3 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 Works.]

Acceptance Criteria
Exit Assistance

[[INSERT].
[[INSERT].

.....

Signed by [NAME OF UNIVERSITY REPRESENTATIVE] for and on behalf of the University.

.....

Signed by [NAME OF SUPPLIER REPRESENTATIVE] for and on behalf of the Supplier.

