

PART 1 – ORDER FORM

UNITED KINGDOM HEALTH SECURITY AGENCY

PRENAX LIMITED
BARRINGTON HOUSE, WATERCOMBE PARK, YEOVIL, BA20 2HL
(Registered No. 03966286)

18/05/2023

Dear Sirs

Call-Off Contract No. D&T10861 for the supply of OpenAthens licence

Further to the Framework Agreement which commenced on 1st May 2019, we wish to instruct you to supply the Services described below in accordance with the terms of the Framework Agreement, this Order Form and the Call-Off Terms and Conditions, as further set out and described in Brief attached at Annex A.

1 The particulars of this Call-Off Contract are set out below:

Item	Description															
Order Form Reference: (Front page of Call-Off Terms and Conditions)	The Order Form Reference is [REDACTED]															
Parties	Between: (1) UK Health Security Agency whose registered office is at Noble House, Smith Square, London SW1P (Customer); and (2) PRENAX LIMITED (company number 03966286) whose registered office is at Barrington House, Watercombe Park, Yeovil, BA20 2HL (Supplier).															
Call-Off KPIs (Cl. 1.1)	<table><tr><th>#</th><th>KPI Title</th><th>Performance Indicator</th><th>Required Standard</th></tr><tr><td>1</td><td>Resolution of queries</td><td>Member Institution to be informed of resolution of queries or meaningful response where reliant on publisher for information, with details of action being taken and next steps.</td><td>Year 1 of Agreement, Supplier to monitor and report % of queries resolved or meaningful response sent within 3 working days. Subsequent years will require agreed targets to be met.</td></tr><tr><td>2</td><td>Requests for</td><td>Request for new title quotations.</td><td>Year 1 of</td></tr></table>				#	KPI Title	Performance Indicator	Required Standard	1	Resolution of queries	Member Institution to be informed of resolution of queries or meaningful response where reliant on publisher for information, with details of action being taken and next steps.	Year 1 of Agreement, Supplier to monitor and report % of queries resolved or meaningful response sent within 3 working days. Subsequent years will require agreed targets to be met.	2	Requests for	Request for new title quotations.	Year 1 of
#	KPI Title	Performance Indicator	Required Standard													
1	Resolution of queries	Member Institution to be informed of resolution of queries or meaningful response where reliant on publisher for information, with details of action being taken and next steps.	Year 1 of Agreement, Supplier to monitor and report % of queries resolved or meaningful response sent within 3 working days. Subsequent years will require agreed targets to be met.													
2	Requests for	Request for new title quotations.	Year 1 of													

		Quotation	excluding bulk requests, within 3 working days of receipt of the request	Agreement, Supplier to monitor % completed within 3 working days. Subsequent years will require agreed targets to be met
	3	Order confirmation	Written / email confirmation of all orders being placed with the publisher to be provided to member institution within 5 working days, including title, volume/issue, start and end date (orders only) current price (including original currency price where applicable), subscription period, delivery address and anticipated first delivery date.	85% of confirmations within 5 working days of receipt of order from Member Institution
	4	Cancellation confirmation	Written / email confirmation that cancellations have been passed to the publisher to be provided to member institution within 5 working days, including title, volume/issue, end date of final issue; last paid price (including original currency price where applicable), delivery address and anticipated final delivery date.	85% within 5 working days of order from Member Institution
	5	Order completion	Complete order for new subscriptions with the publisher within two days of receipt from the member institution	90% within 2 working days
	6	Accuracy of renewals and new orders	Achieve correct handling and accuracy of at least 99% of new orders and renewals. Order accuracy to include but not limited to: • Correct title; • Correct start date and issue volume / number • Correct pricing (including pricing tier / band, publisher list price etc. • Correct delivery address (print subscriptions) • Correct electronic access activation details provided	99% or more
	7	Speed of electronic access	Notify member libraries of access arrangement for new electronic subscription including all details and information required to establish access within 2 days of receipt from publisher or at least one week prior to subscription commencement date – whichever is the earliest date	95 % within 2 working days of receipt from publisher or at least one week before subscription commencement date - whichever is the earliest date
	8	Invoice and credit note accuracy	At least 99% of invoices, credit and financial statement transactions without error	99% or more

	9	Credit notes	(a) All credits raised from the supplier shall be sent to the member institution within 1 calendar month from when the need for a credit was identified (b) All credits raised as a result of publisher error / reliant on publisher shall be sent to the member within 1 calendar month from the point the refund or credit (as applicable) is received from the publisher by the supplier	100% 1 calendar month from identification of need 100% 1 calendar month from supplier receipt of refund / credit note from publisher
	10	Claims Processing	(a) All claims for missing printed material to be processed within two working days of notification by the member institution (b) Consolidation print claims to be processed within 24 hours of missing issues being identified by Consolidation team (c) All claims for loss of e-access to be processed on the same working day if received before 4pm, otherwise within 24 hours	85% Missing print material within 2 working days 85% Missing consolidation print material claims processed within 24 hours 85% Loss of e-access same working day if received before 4pm otherwise within 24 hours
	11	Claims Reporting	(a) Missing Print claims - Weekly updates / status reports as set out in 5.4 above to be sent to Member Institutions and be visible via the Subscription Management System (b) Missing consolidation Print claims - Weekly updates / status reports to be visible to customers via the SMS with additional notification being sent to members when 4 claims for a single issue have been made and including recommendations on options for resolution (c) E-access claims: immediate notification to member institution on resolution notification being received	Weekly Weekly with escalation and member institution notification on any titles where 4 claims for a single issue have issued but missing issue not supplied Direct communication to member institution every 48 hours until access issue is resolved. After

			from publisher. Regular updates to member institution every 48 hours as per section 4.4 above until issue is resolved and to include estimated time for resolutions and action being taken by agent in the event of lack of response / action by publisher.	initial 48 hours, communication to customer to include escalation processes for resolving issue
	12	Consolidation Services	Suppliers must provide consolidation services with 99% of consolidation requirements handled accurately, to include: - the correct delivery address, - correct content - correct and accurate processing to customer requirements including labels, class number, volume and issue details	99% of all consolidation to be despatched within one week of receipt from publisher or as otherwise agreed with the Member Institution 99% of all consolidation subscriptions to be sent to the correct address and with correct and accurate processing of the consolidated issues
	13	Transfer of Subscriptions	(a) Provided the Member Institution gives at least 3 months' notice, transfer of Supplier will be completed on 97% of current subscription holdings by the start of the next subscription period. (b) Resources provided to support review of subscriptions transfer and resolution of any outstanding issues at six calendar months after the notification of change by the member institution	97% or more within 3 calendar months 6 calendar months
	14	Transfer of Subscriptions	Outgoing Supplier to provide the Member Institution with full information on current subscription holdings, including original start dates and current expiry dates, within five working days of the request.	100% Within 5 working days of request from Member Institution
	15	Availability of Subscription Management System	Access to Subscription Management System 24 hours a day 7 days a week no less than 99.4% of the time	More than 99.4% availability

Premises (Cl. 1.1)	The services provided under the Agreement will be required to be delivered to the Customer's computers and laptops across the Customer's sites in the UK. Services will also be accessible to staff using UKHSA computers and laptops at home in the UK.
Services (Cl. 1.1)	The Services to be supplied under this Call-Off Contract are as follows: The provision of services associated with the supply of electronic and printed serials, journals, including domestic and overseas materials as set out in the Framework Agreement Specification. Include whether consolidation services are applicable. Please refer to Annex A for further details
Services Commencement Date (Cl. 1.1)	Supply of the Services is to commence on 01/06/2023
Services End Date (Cl. 1.1)	Supply of the Services is to end on 31/05/2026
Supplier Liability Cap (Cl. 1.1)	The annual total liability of the Supplier for all other Defaults will not exceed 100% of the Charges payable by the Customer to the Supplier during the preceding twelve (12) months of the Contract Term
Payments (Cl. 8.4)	Payment of undisputed invoices will be made within 30 days of receipt of invoice, which must be submitted promptly by the Supplier. All invoices must be sent, quoting a valid UKHSA Purchase Order Number (PO Number), to: [REDACTED] Within 10 Working Days of receipt of your countersigned copy of this Order Form, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice. To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, item number (if applicable) Non-compliant invoices may be sent back to you, which may lead to a delay in payment.
Notices (Clause 20)	Any written notice provided under Clause 20.1 shall be sent: In the case of the Customer: To: UK Health Security Agency, 61 Colindale Avenue, London, NW9 5EQ

	Marked for the attention of: Knowledge and Library Services In the case of the Supplier: To: Prenax Limited, Barrington House, Watercombe Park, Yeovil, BA20 2HL  Marked for the attention of: Prenax Enquiries
Data Protection Particulars (Schedule 4)	There is no Personal Data being processed, therefore there is no requirement to identify Data Controller relationship/responsibilities and there would be no Data Protection to consider.

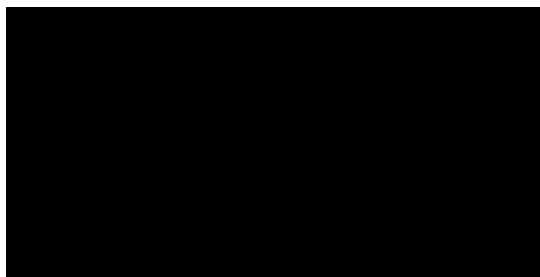
- 2 This Call-Off Contract incorporates all the terms and conditions of the Framework Agreement.
- 3 For the avoidance of doubt where you have carried out any work prior to the date of this Call-Off Contract in any way related to the Services to be supplied under this Call-Off Contract the terms and conditions of this Call-Off Contract and the Framework Agreement shall apply in respect of such work.
- 4 Words and expressions which are defined in the Framework Agreement shall have the same meaning in this Call-Off Contract unless expressly defined otherwise here.
- 5 You must not make any amendments to the Call-Off Terms and Conditions.
- 6 Nothing in this Call-Off Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of this letter pursuant to the Contracts (Rights of Third Parties) Act 1999.

Please sign and return the attached copy of this Order Form to signify your acceptance of its contents;

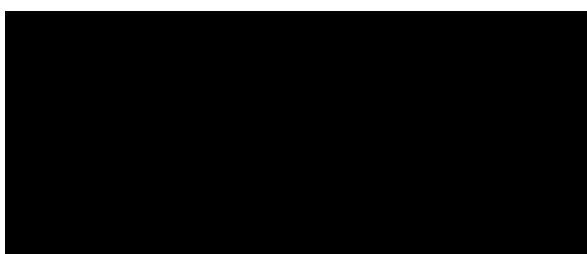
Please also sign and return the attached two copies of the Call-Off Terms and Conditions. We will sign Call-Off Terms and Conditions and date them as agreed between ourselves and will return one of the dated copies to yourselves.

Yours faithfully

Accepted and acknowledged by:



Date: 26.5.23



Date: 18.5.23

Annex A: Brief



Local directory
integration for UK H

The use of the above products is exclusively governed by the
<https://www.openathens.net/terms-and-conditions/>

Part 2 – Call-Off Terms & Conditions

UK Health Security Agency

and

PRENAX LIMITED

**Call-Off terms and conditions for the supply of Serials, Periodicals
and Associated Services**

ORDER FORM REFERENCE: XXXXXXXXXX

Contents

1	Definitions and Interpretation	3
2	Contract Documents	7
3	Appointment	8
4	No Partnership or Agency	8
5	Non Exclusivity	8
6	Supply of the Services	8
7	Variations to the Contract	10
8	Payment of the Charge(s) and and Exchange Rates	11
9	Set Off and Dedicated Client Account	13
10	Guarantee and Indemnity	13
11	Personnel	14
12	Premises	14
13	Assignment and Sub-contracting	14
14	Intellectual Property Rights	15
15	Confidentiality and publicity	15
16	Freedom of Information	16
17	Insurance	16
18	Suspension and/or Termination	17
19	Force Majeure	19
20	Communications	19
21	Indemnities	19
22	Limit of liability	20
23	Anti-bribery and Corruption	20
24	Data Protection	20
25	Conflicts of interest	20
26	The UK's decision to leave the European Union	21
27	Dispute Resolution	21
28	Records and Audit Access	22
29	Compliance with Anti-Slavery and Human Trafficking Laws and Policies	23
30	Handover	23
31	Contracts (Rights of Third Parties) Act 1999	23
32	Severability	23
33	Liability	23
34	Counterparts	23
35	Governing Law and Jurisdiction	23
36	Waiver	24

37	Amendments to this Contract	24
	Schedule 1 : Anti-bribery and Corruption	26
	Schedule 2 : Participating Consortia	28
	Schedule 3 : Re-tendering, handover and TUPE	29
	Schedule 4 : Data Protection	33
	Schedule 5 : Key Performance Indicators	38

Call-Off Terms and Conditions

Dated

Between:

- (3) The Customer; and
- (4) The Supplier.

(the identities of the Customer and Supplier are set out in the Order Form)

Whereas:-

- (A) The Authority acts as the lead organisation on behalf its Member Institutions (as defined below) providing its Member Institutions with pre-tendered arrangements for a variety of goods and services.
- (B) The Authority issued a contract notice 2018/S 246-564483 on 21st December 2018 in the Official Journal of the European Union seeking expressions of interest from potential suppliers for the provision of certain Goods and/or Services to Member Institutions and Participating Consortium (as defined below).
- (C) Following a tender process compliant with the requirements of the Public Contracts Regulations 2015, the Authority selected a group of suppliers to be eligible to provide the Goods and/or Services on a call-off basis and entered into individual framework agreements with those suppliers and this included the Authority and the Supplier entering into the Framework Agreement (as defined below).
- (D) Pursuant to the Framework Agreement, the Customer has appointed the Supplier to provide the Services in accordance with the Contract (as defined below).
- (E) These Call-off Terms and Conditions set out the terms and conditions for the provision of the Services and the obligations of the Supplier in the provision of the Services.

Now it is hereby agreed as follows:-

1 Definitions and Interpretation

- 1.1 In this Contract the following words and expressions shall have the following meanings:-

Authority means the Southern Universities Purchasing Consortium, an operating unit of Southern Universities Management Services (company number 02732244; registered charity number 1042175);

ADR Notice has the meaning given in Clause 27.5;

Anti-Slavery Laws has the meaning given in Clause 29.1;

Brief means the Customer's requirements for the supply of the [Goods and/or Services] annexed to the Order Form and any changes to the same notified by the Customer to the Supplier from time-to-time;

Brexit means the earlier of (i) the point at which the United Kingdom is no longer bound to comply with the terms of the Treaties; or (ii) the point at

which any phased transition arrangement agreed between the United Kingdom and the European Union leading to the withdrawal of the United Kingdom from the European Union commences;

Call-Off KPIs means the key performance indicators set out in the Order Form;

Call-Off Terms and Conditions means the terms and conditions set out in this Contract, as referred to in the Framework Agreement;

Charges means the charges set out in the Order Form (and **Charge** or **Charge(s)** shall be construed accordingly);

Claim(s) shall have the meaning as set out in the Specification for the Inter-regional Agreement for the supply of Serials, Periodicals and Associated Services

Consolidation Service shall have the meaning as set out in the Specification for the Inter-regional Agreement for the supply of Serials, Periodicals and Associated Services

Contract means the written agreement between the Customer and the Supplier consisting of the Order Form (and any appendices thereto), the Brief (annexed to the Order Form) and these Call-Off Terms and Conditions;

Contract End Date means the date detailed as such in the Order Form [as such date may be extended pursuant to Clause 3.3 of this Contract];

Customer Liability Cap means the amount detailed as such in the Order Form;

Customer's IP means all Intellectual Property Rights in any Documentation provided by the Customer under the Contract;

Data Protection Legislation means the Data Protection Act 2018 and GDPR and any national implementing laws, regulations and secondary legislation (as amended or updated from time to time and any successor legislation to the GDPR or the Data Protection Act 2018);

Delivery Date(s) means the date(s) detailed as such in the Order Form;

Defect means any part or parts of the Goods that are defective or not in accordance with the Contract;

Defects Rectification Period means the period set out as such in the Order Form;

Dispute means any dispute or difference of whatsoever nature in relation to the formation, operation or interpretation of, or otherwise in connection with, or arising out of, the Contract;

Dispute Notice means a written notice of any Dispute, setting out the Dispute's nature and full particulars of the Dispute and which states it is a "Disputes Notice";

Documentation means any information or documents in any form whatsoever (including paper or electronic form), including drawings, technical software, images, designs or records;

EIR means the Environmental Information Regulations 2004;

Exchange Rate Source means that specified by the Supplier in response to question 27 of the Award Questionnaire tab in the Tender Questionnaire;

FOIA means the Freedom of Information Act 2000;

Force Majeure Event has the meaning given in Clause 19.1;

Framework Agreement means the framework agreement for the supply of Serials, Periodicals and Associated Services made between the Authority (1) and the Supplier (2) which commenced on 1st May 2019.

Framework Agreement KPIs means the key performance indicators set out in Schedule 7 to the Framework Agreement;

GBP means the United Kingdom Pound Sterling;

GDPR means the General Data Protection Regulation (EU 2016/679);

Good Industry Practice means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the provision of [goods and/or services] similar to the [Goods and/or Services] under the same or similar circumstances as those applicable to this Contract;

Goods means the goods identified as such in the Order Form and only applicable where the Supplier is providing Consolidation Services;

Intellectual Property Rights means all intellectual property rights anywhere in the world including domain names, patents, design rights, copyrights including rights in computer software and databases (including database rights), rights in source code, topography right, trademarks, trade names, logos, trade secrets and know-how, and any applications or the right to make applications for any of the above, existing now or at any time in the future and whether registered or registrable or not;

KPIs means the Framework Agreement KPIs and the Call-Off KPIs;

Law means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, any applicable judgment of a relevant court of law which is a binding precedent in England and Wales, or directives or requirements of any Regulatory Body;

Losses means all liabilities, costs, expenses, damages and losses including but not limited to any direct loss, indirect loss or consequential loss, loss of contribution to incidental costs, loss of profit or overheads, loss of reputation and all interest, penalties and legal costs;

Member Institution has the meaning given in the Framework Agreement;

Mini Tender has the meaning given in the Framework Agreement;

Order means the order placed by the Customer to the Supplier in accordance with the Framework Agreement, which sets out the description of the [Goods and/or Services] to be supplied;

Order Form means the document used by the Customer to place the Order for this Contract;

Participating Consortium has the meaning given it in the Framework Agreement;

Personnel means those personnel of the Supplier as shall be appointed by the Supplier to supply the [Goods and/or Services] in accordance with the Contract including the Supplier's employees and subcontractors;

Premises means the premises detailed as such in the Order Form;

Project IP means all Intellectual Property Rights in any Documentation provided by the Supplier under the Contract and all other Intellectual Property Rights created or discovered by the Supplier as a result of, for or in connection with the performance of its obligations under the Contract, but excluding Supplier's Background IP;

PCR means the Public Contracts Regulations 2015;

Publishers Charges means the relevant charges further defined below under Publisher List Price relating to the goods and services provided by the Publishers to the Customer on behalf of the Supplier

Publisher List Price means the publisher's standard listed retail price or, where informed by the Member Institution, the NESLi2 publisher price (or future derivative), with no additional agent terms or discounts applied. This price should be the publisher's retail price listed for an institution, as applicable to the institution's banding, not for an individual person.

Publisher(s) means such publishing agents as appointed from time to time by the Supplier Group to assist in the provision of the [Goods and/or Services]

Regulatory Body means any government department and regulatory, statutory and other entity, committee, ombudsman and/or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;

Returning Employees has the meaning given in 0;

Schedule(s) means any one or more of the schedules attached to these Call-Off Terms and Conditions;

Serial(s) shall have the meaning as set out in the Specification for the Inter-regional Agreement for the supply of Serials, Periodicals and Associated Services

Services means the services identified as such in the Order Form

Services Commencement Date means the date detailed as such in the Order Form;

Services End Date means the date detailed as such in the Order Form;

Supplier Liability Cap means the amount detailed as such in the Order Form;

Supplier's Background IP means all Intellectual Property Rights existing prior to the date of the Contract and used by the Supplier for or in connection with the performance of its obligations under the Contract;

Supply Rates means the rates set out in Schedule 2 of the Framework Agreement as may be amended pursuant to the procedures set out in Schedule 2;

Term means the period from the date of the Contract up to and including the earliest of:

- (a) the Contract End Date; or
- (b) the date the Contract is terminated in accordance with Clause 18;

Third Party Agreements has the meaning given in Clause 6.9;

Treaties means those referred to in section 2 of the European Communities Act 1972;

Value Added Tax means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; and

Variation has the meaning given in Clause 7.

1.2 In these Call-Off Terms and Conditions unless the context otherwise requires:

1.2.1 clause headings are inserted for convenience only and shall not affect the construction and interpretation of this Contract and all references to Clauses, Sub-clauses, or Schedules are to Clauses and Sub-clauses of, and Schedules to, these Call-Off Terms and Conditions; and

1.2.2 words denoting the singular number include the plural and vice versa; and

1.2.3 words denoting the masculine include the feminine and vice versa; and

1.2.4 references to persons include reference to bodies corporate and unincorporate; and

1.2.5 references to statutes or statutory instruments or any Law are to be construed as references to any consolidation, modification, extension, amendment, replacement or re-enactment of them from time to time and any subordinate legislation under it.

2 **Contract Documents**

2.1 The Contract consists of the following documents:

- (a) these Call-Off Terms and Conditions;
- (b) the Schedule(s) to these Call-Off Terms and Conditions;
- (c) the Order Form (and any appendices thereto); and
- (d) the Brief (annexed to the Order Form).

2.2 The Contract is made pursuant to the Framework Agreement.

2.3 In the event of any inconsistency or conflict between the Framework Agreement and the Contract, the Framework Agreement shall prevail.

2.4 Save in respect of the Framework Agreement, the Contract supersedes all other oral and/or written communications, representations, agreements or undertakings between the parties.

3 Appointment

3.1 The Customer appoints the Supplier as the supplier of the Services set out in the Order Form.

3.2 The Contract shall take effect on and from the date of the Contract and shall expire automatically at the end of the Term.

3.3 The Customer may, by giving written notice to the Supplier not less than 3 (three) month(s) before the Contract End Date, extend the Contract End Date for any further period or periods specified in the Order Form provided that the total Term does not exceed 4 (four) years. The provisions of the Contract will apply throughout any such extended period.

3.4 Any omission on the part of the Customer to inspect, review or disapprove shall not diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.

3.5 The Supplier shall be responsible for the accuracy of all drawings, documents and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein

4 No Partnership or Agency

4.1 Nothing in this Contract is intended to, or shall be deemed to:

4.1.1 establish any partnership or joint venture between any of the parties;

4.1.2 constitute any party as the agent of another party; or

4.1.3 authorise any party to make or enter into any commitments for or on behalf of any other party.

4.2 The Supplier confirms it is acting on its own behalf and not for the benefit of any other person.

5 Non Exclusivity

The Supplier acknowledges that, in entering the Contract, no form of exclusivity has been granted by the Customer for the supply of any services and that the Customer is at all times entitled to enter into other contracts and arrangements with any other suppliers for the supply of any services which are the same or similar to that which the Supplier may supply.

6 Supply of the Goods and/or Services

6.1 The Supplier warrants to the Customer that:

(a) it shall and shall continue to supply the relevant Services diligently and in accordance with the Contract and in compliance with all applicable Laws and Good Industry Practice;

- (b) it has exercised and shall continue to exercise in the performance of all its duties under the Contract all the skill, care and diligence reasonably to be expected of a properly qualified and competent supplier experienced in the supply of services] of a similar nature to the Services;
 - (c) it shall supply the relevant Services] in such a manner and at such times so that no act, omission or default of the Supplier shall cause or contribute to any breach of Law;
 - (d) it shall supply the relevant Services] in compliance with all reasonable instructions given in writing under or in connection with the Contract;
 - (e) it shall at all times observe and provide the Services] in accordance with the KPIs;
- 6.2 Upon delivery of the Goods, the Supplier shall provide the Customer with a packing list specifying: name and address of recipient, account number, order number, date of shipment, box number in relation to total number of boxes, Serial title and number, volume number, issue number, issue date, number of copies and the box number the title is packed in. *Not Used*
- 6.3 Notwithstanding the provisions of Clause 6.6, the Customer shall be entitled to reject the Goods by notice to the Supplier within 30 (thirty) days of delivery to the Premises if they do not comply with the terms of the Contract. Any rejected Goods shall be returned to the Supplier at the Supplier's risk and expense and the Supplier shall be required to deliver replacement Goods to the Customer within 15 (fifteen) days of receipt of the Customer's rejection notice, at no extra cost to the Customer. A Customer's right to reject under this Clause 6.3 shall apply equally to any Goods replaced hereunder. *Not Used*
- 6.4 No failure by a Customer to reject the relevant Goods under Clause 6.3 shall constitute acceptance or acknowledgment by the Customer of the relevant Goods or the condition in which they were delivered, or in any way diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract. *Not Used*
- 6.5 Notwithstanding Clause 6.6, during the Term and the applicable Defects Rectification Period, the Supplier shall make good any Defect(s) discovered in the Goods (by replacement or otherwise) at its own cost and expense (except where the Defect(s) is due to the fault of the Publisher, in which case at the cost and expense of the Publisher) within 30 (thirty) days,(or such other time period as may be agreed between the relevant Customer and the Supplier) of receiving notice from the Customer regarding the Defect, provided always that such Defect did not arise as a result of the Customer using the Goods other than in accordance with their proper usage. If the Supplier fails to comply with its obligations under this Clause 6.5, the Customer shall be entitled to engage another supplier to make good any Defect(s) discovered in the relevant Goods and the Customer shall be entitled to recover the cost of doing so from the Supplier as a debt. *Not Used*
- 6.6 Title to the Goods (or part thereof) shall pass to the Customer upon:
 - 6.6.1 delivery of the Goods (or part thereof) to the Premises in accordance with the Contract;

6.6.2 NOT USED

[Drafting note: Clause 6.6 will need to be amended if the Customer's internal policies require title to transfer at any other stage or in accordance with a different process.]

[Drafting note: Clause 6.6 is only relevant to the provision of Goods. If the Call-Off Contract is for services only amend/delete/replace with "not used", as appropriate.]

6.7 If title to the Goods (or part thereof) passes to the Customer prior to delivery, the Supplier shall arrange for the Goods to be marked as the Customer's property and shall ensure that they are stored and handled separately from other goods. *Not Used*

6.8 Risk of loss or damage to the Goods (or part thereof) shall pass to the Customer when title to the relevant Goods (or part thereof) passes to the Customer pursuant to Clause 6.7, save to the extent that any loss or damage to the Goods (or part thereof) which occurs after title to the Goods (or part thereof) has passed to the Customer is attributable to an act of the Supplier or its Personnel. *Not Used*

6.9 The Supplier shall have regard to all obligations on the part of the Customer in any third party agreements or in any other documentation relating to the Contract to which the Customer is a party to and of which copies (subject to the deletion of any confidential information therein) have been provided by or on behalf of the Customer (**Third Party Agreements**). The Supplier warrants and undertakes to the Customer that the Supplier will supply the relevant Services and will perform its obligations under the Contract in such a manner and at such times that no act, omission or default of the Supplier shall cause or contribute to any breach by the Customer of any of its obligations under the Third Party Agreements or other documentation mentioned in this Clause 6.9.

[Drafting note: wording to be updated as necessary depending on relevant third party agreements – to be considered on a case by case basis.]

6.10 If the Supplier becomes aware of any matter that may impact on its ability to deliver the relevant Services in accordance with the Contract, it must immediately notify the Customer and shall propose and, if accepted by the Customer, implement any measures which may be practical to overcome or reduce any adverse impact on the Customer. The Supplier shall bear the cost of implementing such measures save where the relevant matter is a direct result of any wilful act, negligence or breach by the Customer of its obligations under the Contract.

6.11 The Supplier shall comply with the provisions of Schedule 5 (KPIs).

7 Variations to the Contract

7.1 The parties acknowledge that the Customer may, at any time:

7.1.1 instruct the Supplier to add or omit any Services to or from that which is being supplied under the Contract; or

7.1.2 instruct a change to the Brief annexed to the Order Form,
(a **Variation**)

provided always that such Variation shall not amount to a substantial variation for the purposes of regulation 72 of PCR (which the Customer shall determine in its sole discretion).

- 7.2 If any Variation instructed by the Customer shall:
- 7.2.1 in respect of the Services being supplied under the Contract, increase or decrease the relevant Charge(s); and/or
- the Supplier shall submit a quotation to the Customer within 10 (ten) days of the Variation instruction setting out the proposed increase or decrease to the relevant Charge(s) (calculated solely on the basis of the Supply Rates) [and, where Clause **Error! Reference source not found.** applies, the proposed extension(s) to the relevant Delivery Date(s)]. Not required
- 7.3 Within 10 (ten) days of receipt of a Supplier's quotation pursuant to Clause 7.2, the Customer shall either accept the quotation, in which case the relevant Charge(s) and Delivery Date(s) (if applicable) shall be adjusted accordingly, or withdraw the Variation instruction. Not required
- 7.4 Until the Supplier's quotation is accepted in accordance with Clause 7.3, the Supplier shall continue to perform its obligations under the Contract as if the Variation had not been instructed and the Supplier agrees that the preparation of a quotation to be provided under Clause 7.2 will not cause any delay to the supply of the relevant Services.
- 7.5 The Supplier shall have no entitlement to any increase in the relevant Charge [or any extension(s) to the relevant Delivery Date(s)] where it complies with a Variation instruction prior to its quotation being accepted in accordance with Clause 7.3. Not required
- 7.6 The Customer shall be entitled to refuse any Variation which does or could amount to a substantial variation for the purposes of regulation 72 of PCR.
- 7.7 The Supplier may request, in writing, a variation to the Charge(s) in the event there is a change in Law which was not reasonably foreseeable prior to the date of the Contract which impacts on the Charge under the Contract. If the Supplier so requests a variation, the parties shall meet within 10 (ten) days of the date of such written request and shall agree any changes to the Charge in writing.
- 7.8 The Supplier and Customer acknowledge that in the event that the Supply Rates are amended in accordance with the procedures set out in Schedule 2 of the Framework Agreement, such amendments shall not apply to the Charge under this Contract unless agreed otherwise in writing between the parties and the Authority (in accordance with paragraph 8 of Schedule 2 of the Framework Agreement).

8 Payment of the Charge(s) and and Exchange Rates

Payment of the Charge(s)

- 8.1 The Customer shall pay the Supplier the Charge(s) as stated in Order Form and calculated from the Supply Rates and the Publishers Charges as full remuneration for the supply of the Services in accordance with the Contract.

- 8.2 Each Charge is fully inclusive of all costs and expenses of every kind incurred by the Supplier in connection with the supply of the Services, except for the Publisher's List Price.
- 8.3 For the avoidance of doubt each Charge shall be exclusive of Value Added Tax. The Customer shall account for and pay the total amount of Value Added Tax properly due thereon.
- 8.4 The Charge(s) shall be paid to the Supplier in accordance with and as set out in the Order Form and within 30 (thirty) days of receipt of properly rendered invoice(s) in accordance with Clause 8.5.
- 8.5 The Supplier shall submit invoices to the Customer in respect of any of the Charge(s) properly due to the Supplier under the Contract and all invoices submitted by the Supplier shall be accurate and show amounts due, amounts invoiced to date and any other requirements set out in the Specification section 11 or as otherwise specified in the Order Form.
- 8.6 NOT USED
- 8.7 If the Customer fails to pay an amount due on properly rendered invoices in accordance with Clause 8.5 to the Supplier by the relevant due date, simple interest shall be added to the unpaid sum from the final date for payment until the actual date for payment. Such interest shall be calculated on a daily basis at the annual rate of 8% above the Bank of England base rate, together with any fixed charges, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and the late payment of Commercial Debts Regulations 2013.
- 8.8 The Supplier acknowledges and agrees that the Authority, or any other Participating Consortia or any Member Institution has no liability to the Supplier for the payment of any Charges due to the Supplier pursuant to the Contract, unless the Authority or such Participating Consortia or Member Institution is the Customer under the Contract.

Exchange Rate(s)

- 8.9 The Supplier will invoice the Customer only in EUR, GBP or USD as agreed with the Customer.
- 8.9.1 The Supplier reserves the right not to place orders for the Customer if the original invoice is not in EUR, GBP or USD.
- 8.9.2 The Supplier shall invoice the customer in the same original currency for each order and will not convert from one currency into another unless agreed in writing between the Supplier and the Customer pursuant to clause 8.9.4.
- 8.9.3 Any amount due to the Supplier by the Customer in respect of a particular Call-Off Contract and/or Order Form shall be paid in the relevant currency or currency unit.
- 8.9.4 The Supplier shall not be entitled to add any additional charges other than for the provision of the Goods and/or Services in accordance with the Supply Rates to a Call-Off Contract and/or Order Form nor seek to recover any additional sums from the Customer and without limitation shall not seek to recover from the Customer any costs of currency exchange or additional profit margin howsoever arising except as follows:

- (a) The Customer agrees to accept additional charges in relation to currency exchange rate costs, capped at 3% of the applicable and published exchange rate. Such agreement to be expressed in writing between the Supplier and the Customer.

9 Set Off and Dedicated Client Account

Set Off

- 9.1 The parties acknowledge that the Customer may at any time, without notice to the Supplier, set-off any liability owed by the Supplier to the Customer against any liability owed by the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated and whether or not liability arises under and/or in respect of any Call-Off Contract. Any such exercise of set-off by the Customer shall not limit or affect any of the Authority's rights or remedies available under this Framework Agreement and/or the Customer's rights or remedies available under any Call-Off Contract.
- 9.2 For the avoidance of doubt, all amounts due from the Supplier to the Authority or any other Participating Consortium under this Framework Agreement and/or to any Customer pursuant to any Call-Off Contract shall be paid in full without any set-off, counterclaim, deduction or withholding by the Supplier.

Dedicated Client Account

- 9.3 The Supplier shall hold proceeds collected in advance of payment of Publisher Charges from the Customer relating to the Publishers Charges in a dedicated client account, until such time as they are paid over to the Publishers under the Framework Agreement or any applicable Call-off Contract and /or Order Form. For the avoidance of doubt, it is understood that the advance payment proceeds belong to the Customer and cannot be used for any other purpose whatsoever.
- 9.4 The proceeds collected in advance of payment of Publisher Charges by the Supplier from the Customer relating to the Publishers Charges shall remain the property of the Customer until such time as they are paid to the Publishers under the Framework Agreement or any applicable Call-off Contract and/or Order Form. At no time will title to the advance payment proceeds pass to the Supplier and until paid to the Publishers, the Supplier shall hold those advance payment proceeds on trust on behalf of the Customer and shall not pledge in any way, or charge by way of security, the advance payment proceeds for any other indebtedness of the Supplier.

10 Guarantee and Indemnity

- 10.1 In consideration of the Authority entering into the Framework Agreement, the Supplier hereby irrevocably and unconditionally:
 - 10.1.1 guarantees the payment to the Publisher of the Publishers Charges in advance of invoicing the Customer for the Charges and Publishers Charges and receiving the same in accordance with clause 8 except where otherwise agreed with the Customer in the case of advance payment in which case clause 9.3 and 9.4 above shall apply;
 - 10.1.2 indemnifies the Customer against all liabilities, costs, expenses, damages and losses suffered or incurred by the Customer arising out of or in

connection with the Supplier's breach, negligent performance or non-performance of this clause (including, but not limited to, the Supplier's failure to pay the Publishers Charges to the Publishers on receipt of any advance payment relating to the same by the Customer).

- 10.2 The Supplier expressly agrees that this guarantee shall extend from time to time to any variation, increase, extension or additional of or to the relevant Call-Off Contract

11 Personnel

- 11.1 The Supplier warrants to the Customer that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to perform their duties as required under the Contract.
- 11.2 The Supplier warrants to the Customer that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to meet the standards offered by the Supplier under the Contract.
- 11.3 The Supplier shall provide such details of its Personnel that may require access to the Premises to perform their duties as required under the Contract as are reasonably requested by the Customer.
- 11.4 The Supplier shall ensure that when on the Premises, its Personnel at all times comply with all Laws and other requirements that may be in force from time to time in relation to the Premises.
- 11.5 The Customer may request the removal of any Supplier's Personnel, where in the Customer's reasonable opinion such Personnel's performance or conduct is or has been unsatisfactory. The Supplier shall promptly remove and replace such Personnel at the Supplier's own cost and expense.

12 Premises

NOT USED

13 Assignment and Sub-contracting

- 13.1 Subject to Clause 13.2, the Supplier shall not assign, charge or transfer any right or obligation under this Contract or in any way deal or part with its interest in this Contract or any part of it to any person, without the Customer's prior written consent, which shall not be unreasonably withheld (provided always that the Customer shall be entitled to refuse to consent to any assignment, charge or transfer which could or does breach any regulation(s) of the PCR).
- 13.2 The Supplier shall not sub-contract to any person the performance of any of its obligations under this Contract:
- (a) except with the Customer's prior written consent, such consent not to be unreasonably withheld;
 - (b) if any such sub-contracting would be inconsistent with the Supplier's tender in the Original Tender Process and/or the Mini Tender; and
 - (c) if any such sub-contracting could or would in the sole opinion of the Customer breach any regulation(s) of the PCR.

- 13.3 If the Customer consents to the Supplier to sub-contract, then the Supplier shall co-ordinate and integrate such services provided by the sub-supplier with his own and no sub-contracting by the Supplier and no consent by the Customer shall in any way relieve the Supplier from any liability or obligation in respect of the performance of its obligations under this Contract.
- 13.4 The Customer may at any time assign by absolute legal assignment the benefit of all the Supplier's obligations and the entire benefit arising under or out of this Contract to
- 13.4.1 any Contracting Authority (as defined in the PCR);
- 13.4.2 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer;
- 13.4.3 any private sector body which substantially performs the functions of the Customer
- provided that any such assignment shall not increase the Supplier's obligations under the Contract.
- 13.5 If the Supplier sub-contracts the Contract in accordance with this Clause 13, the sub-contract must be entered into on equivalent and no less onerous terms than the terms of this Contract.

14 Intellectual Property Rights

- 14.1 Any Customer's IP shall remain vested in the Customer and the Customer shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use such IP for the purpose of performing its obligations under this Contract.
- 14.2 The Project IP shall immediately vest in the Customer upon its creation or discovery and the Customer shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use the Project IP for the purpose of performing its obligations under this Contract.
- 14.3 The Supplier's Background IP shall remain vested in the Supplier and the Supplier shall grant the Customer an irrevocable, transferable non-exclusive, royalty free licence to use the Supplier's Background IP for any purpose related to this Contract and the Services supplied hereunder.
- 14.4 The licences granted under this Clause 14 include a right to sub-licence.
- 14.5 All royalties or other sums payable in respect of the supply and use of any patented article, processes or inventions required for and in relation to the performance of the Supplier's obligations under this Contract shall be paid by the Supplier.
- 14.6 The Supplier shall not be liable for any use of the Supplier's Background IP or Project IP other than that for which they were prepared.

15 Confidentiality and publicity

- 15.1 Subject to Clauses 16 and 24, the Supplier will keep confidential all financial information, supplier lists, manuals, software (including its source code), trade secrets, business forecasts, specifications, correspondence,

books, records, documents, agreements, photographs, quotations, invoices, files, plans, drawings, any other similar material or information relating in any way to this Contract, and/or the business of the Customer. The Supplier will not disclose details of these to any person, other than to its professional advisers, insurers and the Supplier's Personnel, without the consent of the Customer, and then only insofar as such disclosure is necessary for the effective performance of the Supplier's obligations under this Contract. The provisions of this Clause will continue to apply notwithstanding any novation and/or termination of this Contract for any reason and notwithstanding the completion of the performance of the Supplier's obligations under this Contract.

15.2 The Supplier shall not be liable for the disclosure of any confidential material which is referred to in Clause 15.1 which:

- (a) is or becomes available to the public, other than by means of a breach of this Contract; or
- (b) is required by Law to be disclosed.

15.3 The Supplier shall not, without the Customer's prior written consent, use the Customer's corporate name or any other unnamed trademark associated with the Customer for any purpose, including but not limited to by illustration, advertising, publicising, marketing or selling services and/or products, except as may otherwise be required by Law. In that event, the Supplier shall provide the Customer with written notice of such request as soon as reasonably practicable, sufficient to allow the Customer an opportunity to object prior to such disclosure.

15.4 Notwithstanding the provisions in this Clause 15 and Schedule 4 (Data Protection), the parties shall comply with the Data Protection Legislation.

15.5 To the extent there are any inconsistencies and/or conflicts between this Clause 15 and any separate confidentiality agreement entered into between the Authority and the Supplier (pursuant to the Original Tender Process) and/or between the Customer and the Supplier, the terms of any such confidentiality agreement(s) will prevail.

16 **Freedom of Information**

16.1 The Supplier acknowledges that the Customer is subject to the FOIA and the EIR and the Supplier shall, at its cost, use all reasonable endeavours and take all necessary steps to assist the Customer in complying with the FOIA and/or the EIR.

16.2 If the Supplier receives a 'request' from any third party (as that term is defined in the FOIA and the EIR, as applicable), it shall immediately provide the Customer with a written copy of that request.

16.3 The Supplier shall ensure that the provisions of this Clause 16 are included in any subcontract it enters into in respect of this Contract.

17 **Insurance**

17.1 The Supplier warrants that it currently maintains and shall continue to maintain:

17.1.1 public liability insurance - the minimum cover required is £5,000,000 in respect of Services and £2,000,000 in respect of Goods.

17.1.2 employer's liability insurance - the minimum cover required is £10,000,000

for the periods set out in Clause 17.1 of the Framework Agreement, all with a well-established and reputable insurance office or underwriter of repute carrying on business in the United Kingdom and the European Union with a limit and basis of indemnity as set out in Article 3 of the Memorandum of Agreement in the Framework Agreement for each and every claim provided always that such insurance is generally available in the United Kingdom and the European Union to the business of the Supplier at commercially reasonable rates and terms. The Supplier shall immediately inform the Customer if such insurance ceases to be generally available at commercially reasonable rates and terms and for the avoidance of doubt it is hereby agreed and declared that any increased or additional premium required by insurers by reason of the Supplier's own claims record or other acts, omissions, matter or things particular to the Supplier shall be deemed to be within commercially reasonable rates.

17.2 As and when the Supplier is reasonably requested in writing to do so by the Customer, the Supplier shall produce for inspection sufficient documentary evidence in the form of a standard insurance broker's certificate that the insurance required under Clause 17.1 is being maintained in accordance with the terms of this Contract. If the Supplier fails to supply the relevant evidence, the Customer shall be at liberty to effect such insurance cover as it deems necessary at the Supplier's cost.

17.3 The Supplier shall not, once a claim under Clause 17.1 of this Contract has been notified to it, voluntarily do anything which would reduce or tend to reduce the scope of indemnity under its insurance policies or the amount of indemnity monies which will be available thereunder were the claim against it to succeed in full.

18 **Suspension and/or Termination**

18.1 The Customer may, in addition to any other rights and remedies which it may have, by giving not less than 7 (seven) days' written notice to the Supplier, suspend or terminate the Supplier's appointment under this Contract. If the Supplier's appointment is suspended pursuant to this Clause 18.1 then the Customer may, by giving not less than 7 (seven) days' written notice, require the Supplier to resume performance at any time within a period of 6 (six) months from the date of suspension. The Supplier shall use all reasonable endeavours to resume performance of its obligations under this Contract as soon as possible after receipt of the Customer's written notice. If the Customer has not required the Supplier to resume performance within such period, then the Supplier's appointment under this Contract shall be deemed to have been terminated.

18.2 The Customer or the Supplier may suspend and/or terminate the Supplier's appointment under this Contract upon serving written notice on the other in the event that:

- (a) the other is in breach of this Contract in any material respect and the other has failed within 30 (thirty) days of the service of the other's written notice to remedy such breach or breaches; and/or

(b) distress or execution is levied or threatened upon any of the other's property or any judgement against the other remains unsatisfied for more than 14 (fourteen) days or the other (being an individual) is bankrupt or unable to pay his debts or seeks an arrangement with his creditors, or the other (being a company) has an administrator appointed of it or a receiver or manager or administrative receiver is appointed of it or any of its assets or it enters into liquidation or it proposes or makes any voluntary arrangement with its creditors; any petition is presented or any resolution passed or any steps or proceedings taken which may lead to any of the foregoing occurrences; the other ceases to carry on business; and/or

(c) if any of the termination provisions of regulation 73(1) of PCR apply.

18.3 The Customer may terminate this Contract in accordance with

18.3.1 0 (Anti-bribery and Corruption); or

18.3.2 Schedule 5 (KPIs).

18.4 NOT USED

18.5 Suspension or termination of the Supplier's appointment under this Contract, howsoever arising, shall be without prejudice to the rights and remedies of either of the parties in relation to any negligence, omission or default of the other prior to such termination.

18.6 If the Supplier's appointment under this Contract has been suspended or terminated by the Customer pursuant to Clause 18.1, or terminated by the Supplier pursuant to Clause 18.2 then:

18.6.1 after suspension or termination of the Supplier's appointment under this Contract, the Supplier shall immediately provide to the Customer copies of all Documentation for and in relation to this Contract which has been prepared by it or on its behalf or is in its possession;

18.6.2 the Supplier shall be entitled to send an invoice to the Customer for all outstanding Charges earned by the Supplier for the Services properly performed (whether wholly or in part) and Value Added Tax due thereon;

18.6.3 the Customer shall not be liable for any Losses howsoever arising out of or in connection with the suspension or termination of this Contract;

18.6.4 pursuant to the terms of this Contract, the Customer shall pay to the Supplier any instalments of any Charge and any other amounts which have accrued due prior to the date of suspension or termination, together with a proportion of the next following instalment of any Charge commensurate with the Services properly performed up to the date of suspension or termination carried out prior to the date of suspension or termination; and

18.6.5 NOT USED

18.7 If the Supplier's appointment under this Contract has been suspended or terminated by the Customer pursuant to Clause 18.2, 18.3:

18.7.1 after termination of the Supplier's appointment under this Contract, the Supplier shall immediately provide the Customer with copies of all Documentation for and in relation to this Contract which has been prepared by it or on its behalf or is in its possession;

18.7.2 the Customer shall not be liable for any Losses howsoever arising out of or in connection with the suspension or termination of this Contract; and

18.7.3 NOT USED

19 **Force Majeure**

19.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract (except in relation to payment) if such delay or failure result from events, circumstances or causes beyond its reasonable control (**Force Majeure Event**).

19.2 In such circumstances the relevant party shall use all reasonable endeavours to mitigate any such delays and the time for performance shall be extended by a period equivalent to the period during which the performance of the obligation has been delayed or failed to be performed by the Force Majeure Event or the affected party shall be entitled to a reasonable extension of time for performing such obligations.

20 **Communications**

20.1 Except as otherwise provided for in this Contract, all notices or other communications under or in respect of this Contract to either party must be in writing and shall be deemed to be duly given or made when delivered, in the case of personal delivery or sent by prepaid recorded delivery or registered post, or when posted, deemed to have been received 48 (forty-eight) hours after the same shall have been posted, or when despatched, in the case of e-mail, to the party addressed to him at the address stated in Clause 20.3 or such other address as such party may by notice in writing nominate for the purpose of service.

20.2 A written notice includes a notice by e-mail (confirmed in either case by letter). A notice or other communication received on a non-working day or after normal business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place.

20.3 Any written notice provided under Clause 20.1 shall be sent:

20.3.1 in the case of the Customer, as set out in the relevant Order Form; and

20.3.2 in the case of the Supplier, as set out in the relevant Order Form.

20.4 Either party may change its respective notice correspondence information referred to in Clause 20.3 by prior written notice to the other party.

21 **Indemnities**

21.1 The Supplier shall indemnify and keep indemnified in full the Customer from and against all Losses suffered or incurred by the Customer arising out of or in connection with:

21.1.1 the Supplier infringing or being held to infringe any Intellectual Property Rights in the performance of the Supplier's obligations under this Contract;

21.1.2 the Customer infringing or being held to infringe any Intellectual Property Rights through the use of the Supplier's Background IP, the Project IP or the relevant Services;

- 21.1.3 any wilful act, breach or negligent performance or non-performance of its obligations under this Contract by the Supplier;
- 21.1.4 subject to the provisions of Clause 22.2.1, the death or personal injury of any person or physical damage to any property attributable to the Supplier's performance or non-performance of its obligations under this Contract; and/or
- 21.1.5 any breach by the Supplier of its obligations pursuant to Schedule 4 (Data Protection) of this Contract.
- 21.2 The indemnities in Clause 21.1 shall not apply to the extent that the relevant Losses are attributable to the Customer's breach, wilful act or negligent performance or non-performance of this Contract.
- 21.3 In addition to the indemnities set out in this Clause 21, the parties acknowledge the indemnities set out in Schedule 3 (Re-tendering, handover and TUPE)

22 Limit of liability

- 22.1 Except where expressly stated elsewhere in this Contract:
 - 22.1.1 the Supplier's total liability to the Customer for all losses howsoever arising under, for breach of, or in connection with this Contract is limited to, and shall not exceed the Supplier Liability Cap.
 - 22.1.2 the Customer's total liability to the Supplier for all losses howsoever arising under, for breach of, or in connection with this Contract is limited to, and shall not exceed the Customer Liability Cap in the aggregate; and
 - 22.1.3 neither party shall be liable to the other for any indirect loss or consequential loss, loss of contribution to incidental costs, loss of profit or overheads or loss of reputation, howsoever arising under, for breach of, or in connection with this Contract.
- 22.2 Nothing in this Contract shall limit or exclude:
 - 22.2.1 either party's liability to the other for death or personal injury resulting from that party's negligence; or
 - 22.2.2 any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other.

23 Anti-bribery and Corruption

The parties shall comply with 0 in relation to anti-bribery and corruption.

24 Data Protection

The parties shall comply with Schedule 4 in relation to data protection.

25 Conflicts of interest

- 25.1 The Supplier may not, without the Customer's prior written consent, be directly or indirectly engaged, concerned or have any financial interest in any capacity with the Customer.
- 25.2 The Supplier shall promptly notify the Customer in writing of any actual or potential conflict of interest which arises during the Term and the Customer

shall be entitled to require the Supplier to take such reasonable steps to remedy any conflict of interest as are reasonably required by the Customer.

26 The UK's decision to leave the European Union

- 26.1 Neither Brexit, nor any fluctuations in the GBP exchange rate (whether resulting directly or indirectly from Brexit), shall affect in any way the obligations of either party under this Contract and neither party shall be entitled to rely on Brexit and/or any fluctuations in the GBP exchange rate to make any claim against the other, whether for additional time, money or otherwise, on any basis, including for the avoidance of doubt in contract, tort or equity.
- 26.2 An event of Brexit and/or any fluctuations in the GBP exchange rate (whether resulting directly or indirectly from Brexit) shall not permit either party to vary and/or to terminate this Contract (or any part of this Contract) save where that party is otherwise entitled to vary and/or terminate the Contract (or any part of this Contract).
- 26.3 Both parties acknowledge that they have assessed the potential impact of Brexit on their ability to perform their obligations under this Contract and have taken all associated risks into account when entering into this Contract.
- 26.4 Both parties acknowledge and agree that any impact of Brexit on their ability to perform their obligations under this Contract shall not be deemed to be a Force Majeure Event for the purposes of Clause 19 of this Contract.

27 Dispute Resolution

- 27.1 If a Dispute arises in respect of this Contract then the procedure set out in this Clause 27 shall apply.
- 27.2 In the event of a Dispute, either party shall serve on the other party a Dispute Notice, together with any relevant supporting documentation.
- 27.3 Following the service of any Dispute Notice pursuant to Clause 27.2, Commercial Lead of the Customer and SALES DIRECTOR of the Supplier shall use reasonable endeavours to resolve the Dispute, in good faith.
- 27.4 If Commercial Lead of the Customer and SALES DIRECTOR of the Supplier are for whatever reason unable to resolve the Dispute within 30 (thirty) days of service of the relevant Dispute Notice, the Dispute shall be referred to Head of Category, Commercial Digital & Technology of the Customer and SALES DIRECTOR of the Supplier who shall use reasonable endeavours to resolve the Dispute, in good faith.
- 27.5 If Head of Category, Commercial Digital & Technology of the Customer and SALES DIRECTOR of the Supplier are for whatever reason unable to resolve the Dispute within 30 (thirty) days of the Dispute being referred to them pursuant to Clause 27.4, the parties will seek to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. The Mediator shall be nominated by CEDR Solve, unless otherwise agreed (in writing) between the parties. To initiate the mediation, a party must provide a written notice (**ADR Notice**) to the other party to the Dispute, requesting mediation. A copy of any such ADR Notice must be sent to CEDR Solve. The mediation will not start later than 15 (fifteen) after the date of the ADR Notice and the party providing the ADR Notice shall be responsible for all

costs associated with the provision of such ADR Notice (subject to any agreement made between the parties in relation to costs associated with such mediation).

27.6 In the event that:

27.6.1 the Dispute is not resolved within 30 (thirty) days after the service of an ADR Notice; or

27.6.2 either party fails to participate or fails to continue to participate in the mediation before the expiry of such 30 (thirty) days; or

27.6.3 the mediation terminates before the expiry of such 30 (thirty) days,

the Dispute shall be referred to the Courts of England and Wales in accordance with Clause 35 of this Contract.

27.7 No party may commence any court proceedings under Clause 35 of this Contract in relation to the whole or any part of a Dispute until 60 (sixty) days after the service of the ADR notice (provided that the right to issue proceedings is not prejudiced by a delay).

28 Records and Audit Access

28.1 The Supplier shall keep and maintain until 6 (six) years after the date of the end of the Term, full and accurate records and accounts of the operation of this Contract including but not limited to the Services provided under it in accordance with good accountancy practice.

28.2 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of 6 (six)] years after the date of the end of the Term to the Customer and/or the auditor and/or any statutory body entitled by Law on written request and shall provide the Customer and/or the auditor and/or any statutory body entitled by Law access to such records and accounts as may be required from time to time.

28.3 Subject the provisions of Clause 15, the Supplier shall on written request provide the auditor with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the auditor within the scope of the audit;
- (b) reasonable access to sites controlled by the Supplier and to equipment and materials used in the provision of the Services; and
- (c) access to the Supplier's Personnel.

28.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 28 unless the audit reveals a material breach by the Supplier of good accountancy practice and/or this Contract, in which case the Supplier shall reimburse the Customer for the reasonable costs it incurs in relation to the audit.

29 **Compliance with Anti-Slavery and Human Trafficking Laws and Policies**

29.1 In performing its obligations under this Contract the Supplier shall comply with all applicable labour, anti-slavery and human trafficking legislation and regulations in force from time to time in the United Kingdom, including but not limited to the Modern Slavery Act 2015 (**Anti-Slavery Laws**).

29.2 The Supplier represents and warrants that, as at the date of this Contract, neither the Supplier nor any of its officers, employees or agents have been convicted of any offence involving slavery and/or human trafficking, nor have they been or are the subject of an investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and/or human trafficking whether pursuant to the Anti-Slavery Laws or any other relevant legislation in force from time to time.

29.3 NOT USED

30 **Handover**

30.1 In the event that there are any Returning Employees then the provisions of 0 shall apply. *[Drafting note: delete if not relevant to the Contract, e.g. where just goods or limited services are being provided.]*

31 **Contracts (Rights of Third Parties) Act 1999**

Nothing in this Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

32 **Severability**

If any part of this Contract becomes, or is determined by any court or tribunal to be, illegal or unenforceable, the remaining provisions shall remain in full force and effect.

33 **Liability**

The parties hereby agree that the Supplier shall remain liable under this Contract until the expiry date of the last Serial subscription period after the Contract End Date of the Call-Off Contract or until any and all outstanding Claims have been resolved after the Contract End Date of the Call-Off Contract, whichever is the latest, after the date of the end of the Term.

34 **Counterparts**

This Contract may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by all the parties shall constitute a full original of this Contract for all purposes.

35 **Governing Law and Jurisdiction**

35.1 The terms and conditions of this Contract and any Dispute shall be governed by the laws of England and Wales.

35.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute.

36 Waiver

- 36.1 A party's failure or delay to exercise a power or right under this Contract does not operate as a waiver of that power or right.
- 36.2 A waiver of a power or right will only be effective:
 - 36.2.1 if it is in writing and signed by the party who has the benefit of the power or right being waived; and
 - 36.2.2 in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 36.3 Communications between the parties made before the date of the Contract which are not expressly contained within the Contract shall not be deemed to be incorporated into the Contract.
- 36.4 Notwithstanding any other provision of the Contract, the terms approval or comment or consent when used in the context of any approval, comment or consent to be given by the Customer shall have the meaning acceptance of general principles only and no such approval, comment or consent shall diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.

37 Amendments to this Contract

- 37.1 An amendment or variation to this Contract shall not be effective or binding unless it is in writing and signed by the Supplier and the Customer.
- 37.2 No amendment or variation to this Contract shall be permitted which could or does amount to a substantial variation for the purposes of regulation 72 of PCR (which the Customer shall determine in its sole discretion).
- 37.3 For the avoidance of doubt, the Customer shall be entitled to refuse any proposed amendment or variation to this Contract which does or could amount to a substantial variation for the purposes of regulation 72 of PCR.

In witness of which this document has been executed by the parties as a **Deed** and **delivered** on the date set out at the beginning of this Deed

Executed as a Deed by)
CUSTOMER)
acting by:)

sign here: _____
Director

print name: _____

sign here: _____
Director/Secretary

print name: _____

Executed as a Deed by)
SUPPLIER)
acting by:)

sign here: _____
Director

print name: _____

sign here: _____
Director/Secretary

print name: _____

Schedule 1: Anti-bribery and Corruption

1. The term **Prohibited Act** means
 - (a) directly or indirectly offering, promising or giving any person working for or engaged by the Customer a financial or other advantage of any kind to:
 - (i) induce that person to improperly perform a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
 - (b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
 - (c) committing any offence;
 - (i) under the Bribery Act 2010;
 - (ii) under Law creating offences in respect of fraudulent acts;
 - (iii) at common law, in respect of fraudulent acts; or
 - (iv) at common law, in respect of fraudulent acts relating to this Contract or any other contract with the Customer or any other public body; or
 - (d) defrauding, attempting to defraud or conspiring to defraud the Customer.
2. The Supplier:
 - (a) shall not, and shall procure that the Supplier's Personnel shall not, in connection with Contract, commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that any agreement has been reached to that effect, in connection with the execution of this Contract; and
 - (c) warrants that in entering into this Contract it has not committed any Prohibited Act (as declared by the Supplier pursuant to the Original Tender Process in accordance with regulation 57 of the PCR).
3. The Supplier shall:
 - (a) if requested in writing, provide the Customer, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - (b) within 20 (twenty) days of the date of this Contract, and annually thereafter, certify in writing to the Customer compliance with this 0 by the Supplier and all persons associated with it or any other persons who are supplying the Services in connection with this Contract. The

Supplier shall provide any such supporting evidence of compliance with this 0 as the Customer may reasonably request.

4. The Supplier shall put in place and maintain an anti-bribery policy (a copy of which shall be provided to the Customer within 20 (twenty) days of the date of this Contract) which shall, as a minimum, prevent any Personnel from committing a Prohibited Act and shall enforce it where appropriate.
5. If at any time any breach of paragraph 2 above is suspected or known, the Supplier must notify the Customer immediately with the details of any such breach to follow in writing as soon as reasonably practicable.
6. If the Supplier notifies the Customer that it suspects or knows that there may be a breach of this 0, the Supplier will respond promptly to all of the Customer's enquiries in relation to any such suspected or actual breach and will co-operate at all times with any investigation, and permit the Customer access to and audit of any books, records and any other relevant documents. The obligation under this paragraph shall continue for 7 (seven) years following the expiry or termination of this Contract.
7. The Customer may terminate this Contract by written notice with immediate effect if the Supplier, its Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches paragraph 2 of this 0. Any such termination shall be without prejudice to any right or remedy which has already accrued or which subsequently accrues to the Customer.
8. Any notice provided by the Customer pursuant to paragraph 7 must specify:
 - (a) the nature of the Prohibited Act;
 - (b) the identity of the party who the Customer believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate in accordance with the applicable provisions of this 0.
9. Notwithstanding Clause 27 (Dispute Resolution) of this Contract, the Customer shall determine any Dispute relating to the interpretation of this 0 and/or the amount or value of any gift, consideration or commission and any such determination by the Customer shall be final and binding upon the parties.

Schedule 2: Participating Consortia

The Participating Consortia are as follows:

- Southern Universities Purchasing Consortium (SUPC)
<https://www.supc.ac.uk/about-us/our-members/our-members>
- North Eastern Universities Purchasing Consortium (NEUPC)
<http://www.neupc.ac.uk/our-members>
- North Western Universities Purchasing Consortium (NWUPC)
<http://www.nwupc.ac.uk/our-members>
- London Universities Purchasing Consortium (LUPC)
<http://www.lupc.ac.uk/member-list>
- Higher Education Purchasing Consortium Wales (HEPCW)
<http://www.hepcw.ac.uk/members/>
- North East and Yorkshire Academic Libraries (NEYAL)
<https://neyal.org.uk/neyal-member-libraries/>
- Midlands Universities Academic Libraries (MUAL)
- North Western Academic Libraries (NoWAL)
<https://www.nowal.ac.uk/about-nowal/membership>
- Wales Higher Education Libraries Forum (WHELF)
<http://whelf.ac.uk/representatives/>

Schedule 3: Re-tendering, handover and TUPE

1. In this Schedule, the following words and expressions shall have the following meanings:-

Assigned Employees has the meaning given in paragraph 2 (a) of this 0;

Deliverables Provision Change means the date of any transfer of all or part of the [Goods and/or Services] to the or a New Supplier whether pursuant to regulations 3(1)(a) and/or 3(1)(b) of TUPE and/or otherwise;

Employee Liability Information means the information specified in regulation 11(2) of TUPE;

New Supplier means any person who following the end of the Term who provides all of the [Goods and/or Services] which immediately before such end of the Term were provided by the Supplier or its subcontractors pursuant to this Contract;

Retendering Information has the meaning given in paragraph 2(a) of this 0;

Returning Employees means those employees of the Supplier and its subcontractors who are wholly or mainly engaged in the provision of [Goods and/or Services] at or immediately before the expiry or termination of the provision by the Supplier or its subcontractor of such [Goods and/or Services] and whose employment transfers to a New Supplier pursuant to TUPE; and

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Re-Tendering and handover (employee related information)

2. Without prejudice to Clause 29.1 of this Contract and subject to any restriction on processing of information under the Data Protection Legislation (in which case the definition of Retendering Information set out in paragraph 2 (a) below shall be limited accordingly), the Supplier shall within the period of 12 (twelve) months immediately preceding any Contract End Date or immediately following any notice to terminate this Contract:
 - (a) on receiving a written request from the Customer, provide in respect of any person engaged or employed by the Supplier or any subcontractor in the provision of the Services] (**Assigned Employees**) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment and of other matters affecting each such individuals who it is expected, if they remain in the employment of the Supplier until immediately before the relevant Contract End Date or immediately before the date this Contract is terminated (as relevant), would be Returning Employees (the **Retendering Information**);
 - (b) provide the Retendering Information promptly and at no cost to the Customer or any New Supplier;
 - (c) promptly notify the Customer and/or any New Supplier forthwith in writing of any material changes to the Retendering Information as and when such changes arise.

3. The Supplier shall not and shall procure that its subcontractors shall not within the period of 12 (twelve) months immediately preceding any Contract End Date or immediately following any notice to terminate Contract:
 - (a) make any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed);
 - (b) make any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed);
 - (c) transfer any of the Assigned Employees to another part of its business or move other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services, to provide any of the Services], save with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
4. Without prejudice to paragraph 2 and 3 of this 0, the Supplier shall provide the Employee Liability Information at such time or times as are required by TUPE and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such Employee Liability Information as are required by TUPE.

Transfer of Returning Employees

5. The Supplier will comply with all reasonable instructions from the Customer with regard to arrangements connected with any Deliverables Provision Change (including the orderly transfer of any Returning Employees) and will take all reasonable steps to mitigate any costs which the Customer as a result of any Deliverables Provision Change.
6. On the expiry or earlier termination of this Contract, the parties agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any services equivalent to the Services but the position shall be determined in accordance with Law in force at such time, and the following provisions of this 0 are without prejudice to such determination.
7. Upon expiry or termination of this Contract, the following provisions shall apply:
 - (a) the Supplier shall, or shall procure that, all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Supplier and its subcontractors and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Supplier or its subcontractors up to the relevant date of expiry or termination are satisfied; and
 - (b) without prejudice to paragraph 7(a), the Supplier shall:
 - (i) remain responsible for all of its and its subcontractors' employees (other than the Returning Employees) on or after the relevant date of expiry or termination and shall indemnify and

keep indemnified in full the Customer for itself and any New Supplier against all Losses incurred by the Customer or any New Supplier resulting from any claim whatsoever whether arising before on or after the relevant date of expiry or termination, by or on behalf of, any of the employees of the Supplier or any of its subcontractors who do not constitute the Returning Employees;

(ii) in respect of Assigned Employees or former Assigned Employees, indemnify and keep indemnified in full the Customer and any New Supplier against all Losses incurred by the Customer or any New Supplier resulting from any claim whatsoever, by or on behalf of, any of the Assigned Employees or former Assigned Employees in respect of the period on or before the relevant date of expiry or termination (whether any such claim, attributable to the period up to and on the relevant date of expiry or termination, arises before, on or after such date) including but not limited to any failure by the Supplier or any of its subcontractors to comply with its or their obligations under regulations 13 and 14 of TUPE and any award of compensation under regulation 15 of TUPE and/or Article 6 of Directive as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of the Customer or any New Supplier;

(iii) indemnify and keep indemnified in full the Customer and any New Supplier against all Losses arising out of any claim or allegation by any person (other than an Assigned Employee) that his/her employment transfers to the Customer and/or any New Supplier by virtue of TUPE including the employment and/or dismissal of any such individuals by the Customer and/or any New Supplier; and

(c) the Customer shall be entitled to assign the benefit of this paragraph 7 to any New Supplier.

8. If TUPE does not apply on the relevant expiry or termination date, the Customer shall use its reasonable endeavours to procure that any New Supplier shall offer employment to the persons employed by the Supplier or its subcontractors and assigned immediately before the relevant expiry or termination date to the provision of the Services which the Supplier and its subcontractors are to cease to provide from such date and the following provisions shall apply:

(a) if an offer of employment is made in accordance with this paragraph 8, the employment shall be on the same terms and conditions (except for any entitlement to membership of an occupational pension scheme) as applied immediately before the relevant expiry or termination date including full continuity of employment, except that the Customer or the New Supplier may, at its absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of paragraph 3 of this 0;

- (b) where any such offer as referred to in paragraph 8(a) is accepted, the Supplier shall indemnify and keep indemnified in full the Customer and any New Supplier on the same terms and conditions as those set out in paragraph 7(b) as if there had been a "relevant transfer" for the purposes of TUPE in respect of each and every employee who has accepted any such offer and for the purposes of this Clause, each and every such employee shall be treated as if they were a Returning Employee; and
 - (c) where such offer as referred to in paragraph 8(a) is not accepted and TUPE does not apply, the employee shall remain an employee of the Supplier or its subcontract as appropriate.
- 9. No later than 14 (fourteen) days following the relevant expiry or termination date, the Supplier shall provide to the Customer and any New Supplier, updated payroll information following the final payroll run and P45 details in respect of all Returning Employees.
- 10. For a period of 12 (twelve) months after the relevant expiry or termination date, the Supplier shall within 21 (twenty one) days of receipt forward to the New Supplier as directed by the Customer or the New Supplier, any notices, correspondence, information or enquiries which relate to any Returning Employees who are employed by the Customer or any New Supplier after the relevant expiry or termination date.

Schedule 4: Data Protection (Not required)

In this Schedule, the following words and expressions shall have the following meanings:

Controller means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;

Data Protection Particulars means, in relation to any Processing under the Contract: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects as set out in the Order Form;

Data Subject means the identified or identifiable natural living person to whom the Personal Data relates;

Personal Data means any information relating to an identified or identifiable living individual;

Personal Data Breach means any act or omission that (i) compromises the security, confidentiality or integrity of the Personal Data that the Supplier Processes for and on behalf of the Customer (including, by way of example, the unauthorised loss or disclosure of any such Personal Data by the Supplier); (ii) compromises the physical, technical, administrative or organisational safeguards put in place by the Supplier that relate to the protection of the security, confidentiality or integrity of such Personal Data (including any breach of the IT and data security requirements); or (iii) causes the Customer or Supplier to be in breach of data protection Law (in particular the Data Protection Legislation);

Processor means the person which processes Personal Data on behalf of the Controller;

Processing means any operation or set of operations which is performed on Personal Data, whether or not by automated means and "**Process**", "**Processes**" and "**Processed**" shall be construed accordingly; and

Sensitive Personal Data means Personal Data that reveals such categories of data as are listed in Article 9(1) of the GDPR.

1 Data Protection

1.1 The parties acknowledge and agree that:

- (a) the Contract will require the Processing of Personal Data by the Supplier on behalf of the Customer;
- (b) the Customer shall determine the purposes for which and the manner in which Personal Data will be processed by the Supplier on behalf of the Customer under the Contract;
- (c) the Customer is the Controller and the Supplier is the Customer's Processor in respect of all such Personal Data; and
- (d) the only Processing of Personal Data that the Supplier is authorised to do is listed in the Data Protection Particulars

- 1.2 Where, under or in connection with the Contract, the Supplier Processes Personal Data on behalf of the Customer and the Customer's Processor, the Supplier shall Process the Personal Data only:
- (a) to the extent, and in such as manner, as is necessary for the performance by the Supplier of its obligations under the Contract and in accordance with the Customer's written instructions; and
 - (b) as otherwise required by European Union law or individual European Union member state law to which the Supplier is subject, in which case the Supplier shall inform the Customer of that legal requirement before Processing the Personal Data (unless that law, on important grounds of public interest, prohibits the Supplier from informing the Customer).
- 1.3 If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Schedule 4, the Supplier shall immediately inform the Customer of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law). The Supplier shall immediately inform the Customer if, in its opinion, Processing the Personal Data in accordance with written instruction received from the Customer or in the performance of its obligations under the Contract infringes Data Protection Legislation to which either the Customer or the Supplier is subject.
- 1.4 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any data protection impact assessment, as defined in the GDPR, prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the performance of the Contract;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.5 The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the EEA except with the Customer 's prior written consent and where such consent is given, take such actions and enter into such agreements as the Customer may require to ensure that such transfer or disclosure complies with Law.
- 1.6 The Supplier will keep a record of any Processing of Personal Data it carries out under the Contract.
- 1.7 The Supplier shall not disclose Personal Data to any person except under the Contract or with the Customer's written consent.
- 1.8 The Supplier shall ensure that access to Personal Data is limited to:
- (a) those employees who need access to Personal Data to meet the Supplier's obligations under the Contract; and

- (b) in the case of any access by any employee, such part or parts of Personal Data as is strictly necessary for performance of that employee's duties.
- 1.9 The Supplier shall ensure that employees that require access to Personal Data:
 - (a) are informed of the confidential nature of Personal Data;
 - (b) have undertaken training in Law (including Data Protection Legislation) relating to handling Personal Data; and
 - (c) are aware both of the Supplier's duties and their personal duties and obligations under Law (including Data Protection Legislation) and the Contract.
- 1.10 Without prejudice to clause 14 of the Contract, the Supplier shall ensure that all persons authorised to Process Personal Data are under an appropriate contractual or other legal obligation of confidentiality in respect of Personal Data.
- 1.11 The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in the Contract.
- 1.12 The Supplier shall, taking into account the nature of the Processing, implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and to ensure the security of the Personal Data and prevent Personal Data Breaches, having taken account of the:
 - (a) nature of the Personal Data to be protected;
 - (b) harm that might result from a Personal Data Breach;
 - (c) state of technological development; and
 - (d) cost of implementing any measures.
- 1.13 Appropriate technical and organisational measures include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, taking reasonable steps to ensure the reliability of its employees with access to Personal Data and regularly assessing and evaluating the effectiveness of such measures adopted.
- 1.14 The Supplier shall, upon becoming aware, immediately and in any event within 24 hours notify the Customer of any Personal Data Breach and shall work together with the Customer to provide the Customer with full co-operation and assistance, including to investigate the Personal Data Breach (including by (i) assisting with any investigation launched by the Customer; (ii) facilitating interviews with the Supplier's employees and others involved in the matter; and (iii) making available all relevant records reasonably required by the Customer to investigate the Personal Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Personal Data Breach or its investigation).

- 1.15 The Supplier shall not engage another Processor to Process Personal Data on behalf of the Customer except with the Customer's prior specific written authorisation and, where such authorisation is given, enter into a contract with the Processor that imposes the same contractual obligations set out in this Schedule 4 on that Processor, and remain liable for any Processor that it engages in accordance with the terms of this Schedule 4.
- 1.16 The Supplier shall assist and fully co-operate with the Customer to enable it to comply with its obligations as a Controller under and in accordance with Law (including the Data Protection Legislation) including in relation to the security of Processing, data subject right requests, reporting Personal Data Breaches to the supervisory authority and conducting data privacy impact assessments. The Supplier shall notify the Customer within 24 hours if it receives a request from a Data Subject to exercise its rights under Law or any communication from a Data Subject, the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract.
- 1.17 The Supplier shall promptly comply with any request from the Customer requiring the Supplier to amend, transfer or delete Personal Data. At the Customer's request, the Supplier shall provide to the Customer a copy of all Personal Data held by it in the format and on the media reasonably specified by the Customer.
- 1.18 The Supplier shall at any time on the request of the Customer, return all Confidential Information and/or data (including any Personal Data that the Supplier Processes for and on behalf of the Customer) to that Customer and/or permanently delete the same from its systems, including any back-up copies.
- 1.19 The Supplier shall at the Customer's option, delete or return to the Customer all Personal Data on termination of the Contract and delete any existing copies of Personal Data except to the extent that the Customer is required to retain Personal Data by Law (including the Data Protection Legislation).
- 1.20 The Supplier shall make available to the Customer all information necessary to demonstrate the Customer's compliance with the obligations under this Schedule 4 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
- 1.21 The Supplier shall immediately inform the Customer if, in its opinion, an instruction from the Customer infringes Law (including the Data Protection Legislation).
- 1.22 The Supplier shall, in connection with the Contract, comply in all respects with Law relating to data protection (including the Data Protection Legislation) and have established procedures to ensure continued compliance with Law (including the Data Protection Legislation). The Supplier shall comply with its obligations as a Processor under and in accordance with Law (including the Data Protection Legislation).
- 1.23 The Supplier shall only collect any Personal Data in a form which is fully compliant with Law which will contain a data protection notice informing the data subject of the identity of the Controller, the identity of any data protection representative it may have appointed, the purposes or purpose

for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair and compliant under Law.

- 1.24 The Customer may, at any time on not less than 30 working days' notice, revise this Schedule 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 1.25 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 working days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.26 The Supplier shall Process Personal Data the performance of the Contract as notified by the Customer only for as long as required and for no longer than the term of this Contract.
- 1.27 The Supplier warrants that it shall:
 - (a) Process the Personal Data in compliance with Law (including the Data Protection Legislation); and
 - (b) take appropriate technical and organisational measures against Personal Data Breaches occurring.
- 1.28 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Customer against all costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Schedule 4.

Schedule 5: Key Performance Indicators

1. The Call-Off KPIs are as set out in the Order Form.
2. The parties acknowledge the provisions of Schedule 7 of the Framework Agreement.
3. The parties agree that the Customer may amend the Call-Off KPIs during the term as agreed, in writing, with the Supplier.
4. The Supplier shall establish suitable processes to ensure it can monitor its performance of the provision of the Services in accordance with the Call-Off KPIs under this Contract and that it is able to report on the same to the Customer.
5. Within two weeks of the end of each quarter during the Term, the Supplier shall provide the Customer (and, pursuant to the Framework Agreement, the Authority) with a report containing sufficient data setting out the Supplier's performance of the Call-Off KPIs. The Supplier acknowledges that the Customer will review such reports to determine the Supplier's effectiveness and efficiency of the Supplier's performance of the Call-Off KPIs.
6. If in the Customer's opinion, acting reasonably, the Supplier is not meeting the requirements of the Call-Off KPIs following a review of the reports provided pursuant to paragraph 5 above, the Customer may within 15 (fifteen) days give written notice (an **Initial KPI Warning Notice**) to the Supplier setting out:
 - (a) the matter or matters giving rise to such notice;
 - (b) the date by which such matters must be rectified by; and
 - (c) a reminder of the implications of such notice.

Any such Initial KPI Warning Notice shall state on it that is an Initial KPI Warning Notice.
7. If the Supplier (in the Customer's reasonable opinion) fails to adequately address the matter or matters set out in the Initial KPI Warning Notice by the date contained in such Initial KPI Warning Notice, the Customer may (at its discretion) issue a further written notice (a **Final KPI Warning Notice**) to the Supplier setting out:
 - (a) the matter or matters continuing rise to such notice;
 - (b) the date by which such matters must be rectified by; and
 - (c) a reminder of the implications of such notice.

Any such Final KPI Warning Notice shall state on it that is a Final KPI Warning Notice.
8. Without prejudice to any other rights under this Contract if the Supplier (in the Customer's reasonable opinion) fails to adequately address the matter or matters set out in the Final KPI Warning Notice by the date contained in such Final KPI Warning Notice, the Customer may terminate this Contract by giving not less than 30 (thirty) days written notice to the Supplier.

9. In the event that the Framework Agreement is terminated in accordance with Schedule 7 of the Framework Agreement, the Supplier acknowledges that the Customer may terminate this Contract.