

UK SBS Reference: DDaT22051

Dell Corporation Limited
Dell House The Boulevard
Cain Road
Bracknell
Berkshire
RG12 1LF

Friday, February 04, 2022

Dear Sir/Madam,

Contract Title: Procurement of [REDACTED] and [REDACTED] laptops for the UKRI
Contract Reference: DDaT22051

The Contract shall be subject to Desktops and Notebooks National Agreement Call-Off terms and conditions agreed with Dell.

Yours sincerely,

[REDACTED]
DDaT Procurement
UK SBS

Call Off Contract

National Desktop and Notebook Agreement (NDNA) framework Ref 2017/S 028-050664

Contract between:

UK Research and Innovation

And

Dell Corporation Limited

Call off contract reference: DDaT22051

THIS AGREEMENT is made on 07th February 2022

BETWEEN:

(1) UK Research and Innovation whose registered office is at Polaris House, North Star Avenue, Swindon, SN21FL (**the “Member Institution”**) (which includes any successors)

and

(2) Dell Corporation Limited (Company Number 2081369) of Dell House, The Boulevard, Cain Road, Bracknell, Berkshire RG12 1LF (**“the Supplier”**)

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

“Acceptance” means that Member Institution Authorised Officer has accepted that the Goods and / or Services as meeting the requirements of the Contract.

“Acceptance Date” means the date on which the Authorised Officer has Accepted the Goods and / or Services.

“Agreement Manager” shall have the meaning as set out in clause 3.

“Articles” means all tools, materials, drawings, specifications and other equipment and data provided or loaned to the Supplier by the Member Institution.

“Authorised” means signed by one of the Member Institution’s Authorised Officers.

“Authorised Officer” means the Member Institution’s employee authorised either generally or specifically by Member Institution to enter into the Contract and act on behalf of the Member Institution in relation to the Contract.

“Conditions” means the terms and conditions set out in this document.

“Contract” means the contract between the Member Institution and the Supplier for the supply of Goods and/or Services following the outcome of the Tender pursuant to the Framework Agreement and in accordance with clause 2.

“Contracting Authority” means UK Research and Innovation

“Data Controller” has the meaning set out in the Data Protection Act 1998

“Data Subject” has the meaning set out in the Data Protection Act 1998

“Day(s)” means one normal UK business working day and excludes weekends and bank holidays

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“Deliverables” means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data specification and reports.

“Delivery” means those locations in the UK (unless otherwise stated) as set out in the Tender and as set out in clause 5.

“Delivery Date” means the date specified in the Contract.

“Delivery Instructions” means the instructions set out in the Contract for the provision of the Goods and/or Services, including any other information the Member Institution considers appropriate to the provision of the Goods and/ or Services.

“Framework Agreement” means the Terms and Conditions governing the scope and implementation of the Tender process, between the Supplier and the LUPC.

“Goods” means the goods (or any part of them) set out in the Order.

“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 supply of goods and services similar to the Goods and Services under the same or similar circumstances as those applicable to the Contract.

“Goods Specification” means any specification for the Goods, including any related plans and drawings that are set out in the Tender or as may be agreed in writing by the Member Institution and the Supplier.

“Hour” means an hour during a Day (i.e. working day) in the country of the Member Institution between the time of 0900 and 1700 GMT Monday to Thursday or 1630 GMT Friday.

“Installation” means the installation of the Goods in the designated location and into the operating environment specified by Member Institution at the site and “Install” shall be interpreted accordingly.

“Intellectual Property Rights” means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

“Key Personnel” means those individuals nominated by the Member Institution as being of importance to the completion or delivery of the Services.

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body; including (but not limited to) the Modern Slavery Act 2015

“Member Institution” means an entity permitted to access the terms of this agreement by LUPC or a Participating Consortium

“Order” means in the Member Institution's purchase order form governed by this Contract.

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“Order Amendment” means an issued and Authorised order amendment from the Member Institution or series of Order Amendments

“Package” means any type of package including bags, boxes, cases, pallets and other containers.

“Participating Consortium” means any purchasing consortium making available the agreement to its Member Institutions

“Personal Data” has the meaning set out in the Data Protection Act 1998

“Premises” means the location(s) where the Goods and Services are to be delivered or performed

“Prices” means the prices for the Goods and Services as agreed in the Tender process and as will be adjusted during the term of the Contract.

“Quotation” means a formal statement of promise (submitted usually in response to a request for quotation, mini-tender or mini-competition) by the Supplier to supply the Goods and/or Services required by a Member Institution at specified prices and within a specified period.

“Regulation” means the Public Contracts Regulations 2015 and “Regulation” will be interpreted accordingly

“Request” has the meaning set out in the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR)

“Services” means the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

“Service Levels” means those levels of performance set out in the Service Specification.

“Service Specification” means the description or specification for Services as set out in the Tender or as agreed between the Member Institution and the Supplier.

“Specification” means any Goods Specification together with any Services Specification

“Supplier” means the person or firm from whom the Member Institution purchases the Goods and/or Services.

“Tender” means the Tender for the Supply of Goods and Services by the Reference number ITS5042 LU.

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

1.2 Construction. In these Conditions, unless the context requires otherwise, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and emails.

2. Quotations and the Basis of contract

- 2.1 The Supplier is expected to take all reasonable endeavours to quote on a best price basis against all opportunities presented by Member Institutions under the agreement and within the scope of the Supplier's Goods and Services. LUPC will continue to monitor instances where opportunities have been declined and will seek adequate explanation from the Supplier as part of ongoing discussions. All Quotation requests on which an Order may be potentially formed shall be acknowledged as received within 4 Hours by the Supplier and fully provided in writing the following Day unless mutually agreed with the Member Institution. One Day can be added to this Quotation request period for every 50 units above 50 up to a maximum of 5 Days except by mutual arrangement for Lot 1 and for every 25 units above 25 up to a maximum of 5 Days except by mutual arrangement for Lot 2 and Lot 3.
- 2.2 Each Quotation shall be sent with a unique quotation number and clearly specify and detail the build components down to manufacturer part number level. All Quotations shall be valid for minimum a period of 20 Days from their issue date. The parties acknowledge that a particular item within a Quotation may become unavailable within this period in which case the Member Institution shall be immediately informed on notification and an alternative of same or better specification at original or lower cost offered for acceptance.
- 2.3 In the event of the Supplier's response to Quotation taking two Days or more to be provided to the Member Institution from the timescales given in clause 2.1, the Supplier shall supply a credit note to the value of 25 GBP for each Day the Quotation is delayed at the discretion and written request of the Member Institution. The Supplier's total liability shall be limited to 100 GBP per unique Quotation. No liquidated damages for this clause shall apply if, to the satisfaction of the Member Institution, an agreed discount policy has been previously agreed that permits the Member to generate their own, correctly priced Quotation using a defined set of pricing rules from an open web-based configurator or by similar means.
- 2.4 Where the Member Institution's Quotation or Order is for Goods that cannot be built by the Supplier or is ascertained as one that cannot function under normal operating conditions, the Member Institution shall be informed by next Day.

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- 2.5 The Order constitutes an offer by the Member Institution to purchase the Goods and/or Services in accordance with the Contract.
- 2.6 Orders in writing will be made on an official order form and should carry a Member's Order number;
- 2.7 Orders given verbally shall quote the Member's Order number and the Supplier may communicate that it requires this to be confirmed in writing before the Supplier processes the Member's Order;
- 2.8 Orders may also be sent electronically and should include an official Order number. In the absence of an Order number the Supplier will not process the order.
- 2.9 The Contract shall comprise any Order Amendments, any Order, these Conditions and the Specification(s). In the event of any conflict between the provisions they shall be read in the following order of precedence:
 - (a) Any Order Amendments (each Order Amendments having precedence over any earlier Order Amendments)
 - (b) The Order
 - (c) The Specification(s)
 - (d) The Conditions
 - (e) Framework Agreement
 - (f) The Supplier's Tender response
- 2.10 The Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing a written acceptance of the Order; or
 - (b) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 2.11 The Supplier shall acknowledge receipt of the Order with written confirmation, by electronic or other means, by no later than the next Day subject to either the Order including contact information or recorded against their account. An Order received out of Hours will be deemed to have been placed on the next Day. The Supplier shall include confirmation of the type and specification, Prices and Delivery Date of the Goods and Services ordered.
- 2.12 Both parties shall have the right to cancel, in writing and at no charge to either party, the Order either in part or outright within 8 hours of the confirmation notice being served by the Supplier provided the Order has not entered production or been shipped to the Member Institution. If the Order has entered production and the Supplier wishes to claim additional costs in lieu of re-stocking, full on-line, real time evidence of production commencement must be provided to the Member Institution's satisfaction. If the Order is subsequently amended by the Member Institution the confirmation notice process will be re-started. Subsequent amendments to this delivery date shall only be made by prior agreement with the Member Institution and no less than 2 Days before anticipated delivery performance.
- 2.13 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. Agreement Management

- 3.1 The Supplier shall nominate an Agreement Manager who shall have sufficient authority to ensure that required Service Levels are met, to ensure sufficient resources are allocated to the Contract, and to maintain performance to the Specification, to pro-actively co-ordinate and communicate relevant orders and to provide comprehensive support and links between the Member Institution and the Supplier. This must include sales support, information and advice on all Goods. The Agreement Manager shall be the prime contact between the Supplier and Member Institution and any notice, communication, information or instruction given or made to or by the Agreement Manager shall be deemed given to / received by the Supplier. It shall be the responsibility of the Agreement Manager to ensure all staff involved in the Contract are fully aware of their obligations.

4. Supply of Goods

- 4.1 The Supplier shall ensure that the Goods shall:
- (a) be free from defects in design, material and workmanship, correspond with their description and any applicable Goods Specification and shall remain so for 36 months after Acceptance; and
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Member Institution expressly or by implication, and in this respect the Member Institution relies on the Supplier's skill and judgement; and
 - (c) be new (unless otherwise specified on the Purchase Order) and free from defects in design, material and workmanship; and
 - (d) comply with all applicable Laws.
- 4.2 The Supplier warrants to the Member Institution that that the Goods will be provided:
- (a) in a proper, skilful and workmanlike manner.
 - (b) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice
 - (c) in accordance with the Contract.
 - (d) to the reasonable satisfaction of the Authorised Officer.
- 4.3 The Supplier warrants that to the extent that associated Services are performed, they shall be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.
- 4.4 The Supplier warrants that Goods not performing in accordance with clause 4.1 notified by the Member Institution within 20 Days of Acceptance shall be treated as a dead on arrival (DOA) event for the purpose of the agreement and all management reporting. The Member Institution shall be entitled to have the Supplier collect and deliver a new replacement within 5 Days where the Goods were originally supplied

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from finished stock, 10 Days where the Goodswere manufactured to order or provide a refund if so directed by the Member Institution. No charge must be made for this refund, and it should not just be allocated to the Member as a whole, it must go to the correct financial cost code as advised by the Member Institution.

- 4.5 The Supplier will make good at its expense any defect in the Goods that the Member Institution discovers under proper usage for a minimum of 36 months (the “warranty”) from Acceptance Date. Extended warranty periods may apply as either expressly given by the Supplier in its tender or as mutually agreed between the Member Institution and Supplier. Such defects may arise due to faulty design or instruction as to the use of the Goods or inadequate or faulty materials or poor workmanship or any other breach of the Supplier’s obligations whether in the Contract or at law. The Supplier shall be required to make good and remedy within the following timescales:
- (a) From the time and date the call was mutually agreed as being open and requiring further action by both parties and where an on-site warranty service was supplied at time of sale, the Supplier shall either complete an on-site repair to the satisfaction of the Member Institution within 2 Days or provide an acceptable loan system of equal or higher specification delivered and later collected by the Supplier while the repair is undertaken and completed.
 - (b) From the time and date the call was mutually agreed as being open and requiring further action by both parties and where a “collect and repair” warranty service was supplied at time of sale, the Supplier shall complete such repairs within 7 Days. If the Supplier is unable to complete repair a collect and return repair within 7 Days, they shall inform the Member not less than 2 Days before the end of this period and offer an acceptable loan system of equal or higher specification delivered and later collected by the Supplier while the repair is undertaken and completed.
- 4.6 Unless agreed otherwise with LUPC, all Goods designed for normal business operation as defined by the inclusion of Trusted Platform Module (TPM) version 1.2 or 2.0 (and any future iteration) shall be inclusive of the standard minimum warranty period of 36 months. Those Goods that exclude TPM functionality may be made available under the agreement with a limited 13 month warranty from the Acceptance Date.
- 4.7 Unless replaced on an equivalent basis without further investigation or repair, the place of warranty for all Goods within the scope of:
- (a) Lot 1 (including when sold combined under Lot 3) shall be the premises of the Member Institution unless agreed otherwise.
 - (b) Lot 2 (including when sold combined under Lot 3) shall either be the premises of the Member Institution or the Supplier’s nominated repair centre as stipulated at the time of purchase. Where the latter, the Supplier shall be responsible for the packaging, collection and return of the Goods to the Member Institution.
- 4.8 The Member Institution shall at their discretion, have the option of receiving replacement Goods of equivalent or better specification at no additional cost within 15 Days of notification if in 9 months from receipt, any three hardware faults occur requiring service intervention on behalf of the Supplier or in 12 months from receipt,

the same three hardware faults occur requiring service intervention on behalf of the Supplier. The replaced Goods shall be collected by the Supplier at their cost within 15 Days from delivery of the replacement.

- 4.9 Battery packs either sold with the machine or separately shall be subject to a minimum 12 month collect and return warranty from the date of acceptance or 350 charging cycles, whichever is sooner. Where the member has selected a 36 month system warranty at point of sale, the Supplier shall provide the same benefit in respect of the battery or, where the battery has been replaced, for 12 months or for the remainder of the 36 month warranty period if greater. For clarification, a failed battery shall be deemed to be holding less than a 30% charge against its initial properties.
- 4.10 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract or in the Delivery of the Goods.
- 4.11 Repairs will themselves be covered by this Contract but for a period of not less than 6 months from Acceptance by the Member Institution.
- 4.12 After commencement of the agreement, the Supplier shall not assign its warranty obligations to any (part or whole unit) manufacturer or distributor without notification and agreement with LUPC.
- 4.13 The Supplier shall ensure that Member Institutions have free access to Level 2 technical support (as defined at <http://www.appnomic.com/blog/?p=359>) during the hours of 0900 to 1700 via e-mail, telephone and web-based tools and for a minimum of six years from the Acceptance Date. The Supplier is responsible to ensure that its support is adequately resourced to provide a streamed service dedicated to the Member Institution's technical personnel for the purpose of enhanced diagnostic procedures as part of the resolution of issues.
- 4.14 The Supplier shall for a minimum of 6 years from purchase, provide an accessible, on-line means for Member Institutions to check and validate if Goods previously purchased from the Supplier still have a period of warranty remaining. The validation process will be undertaken from either one or both of the following; the serial number or equivalent on the Goods, the Member Institution Order number.
- 4.15 Within a minimum of 5 years from purchase, any defect in original construction, a component, or material of the Goods that represents a potential personal or property-related safety issue for Member Institutions shall be immediately identified and fully remedied by the Supplier to the satisfaction of the Member Institution, which may include for the full recall and replacement of the Goods (whole or part).
- 4.16 Subject to the remaining warranty provision on the Goods, any non-safety related defect in construction, a component, or material of the Goods shall be immediately identified and fully remedied by the Supplier to the satisfaction of the Member Institution, which may include for the full recall and replacement of the Goods (whole or part).

- 4.17 The Supplier shall be responsible for the sufficient availability of appropriately qualified personnel within their resolution team during normal Day Hours to ensure that all telephone calls are routed through to the correct resolution team within 45 seconds from the start of the Member Institution's call. The Supplier shall install the means to evidence the meeting or exceeding of these service levels to LUPC during the agreement term including the median and maximum time to reach the appropriate personnel of the Supplier on the normally quoted Contract or agreement support number or as agreed with the LUPC.
- 4.18 All valid communications shall be responded to within 4 Hours of initial contact confirming to the satisfaction of the Member Institution, the required action on behalf of the Supplier in order to close the call. All communications either directed or escalated to technical support shall be closed to the satisfaction of the Member by the end of the next Day.
- 4.19 Where the reported fault cannot be diagnosed and closed by either remote means or another agreed process including but not limited to on-site supplier engineers or self-certified replacement/repair, the Supplier shall respond with a field service call to the location of the Goods by the end of the next Day from the time first notification from the Member Institution is given, provided the requirement for the call has been determined by 1600 local time on the day of the initial call and reasonable endeavours have been made by the Member Institution in providing any requested information back to the Supplier sufficient to enable the call to be open in status.
- 4.20 At their discretion, the Member Institution reserves the right to retain any information storage device (ISD) from a system rather than return it in exchange for a service spare. Where the Supplier deems this unacceptable and requires the ISD, the Member Institution reserves the right to perform a full data overwrite before making the ISD available to the Supplier subject to the Supplier providing the means for the Member Institution to do so without additional charge. If the ISD has been rendered non-writable, the Member Institution reserves the right to degauss the ISD thus rendering it totally inoperative.
- 4.21 The Supplier shall provide suitable packaging where necessary and facilitate the collection and return, at the Supplier's cost, of all Goods for which a returns procedure has been agreed and authorised.
- 4.22 Warranties shall be freely transferable by Member Institutions to organisations of their choice within the normal geographic boundary of the Supplier's warranty. It is agreed that the Supplier requires notification in writing if a warranty is transferred in order that it can update its records. For the sake of clarification a warranty is attached to a specific piece of equipment and cannot be transferred from one piece of equipment to another.
- 4.23 The Member Institution's trained staff shall be allowed to install options, upgrades and security devices to the Goods and make repairs without invalidating the warranty.
- 4.24 The Supplier shall ensure that the warranty shall endure in the event of the Supplier's insolvency or liquidation. The Supplier shall provide the LUPC evidence confirming that this is so. For the purposes of this Agreement, insolvency shall mean one of the following:

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- (a) A judgement or order made against the Supplier that is not complied with within 7 days or a receiver or administrator is appointed of any part of the undertaking, assets, rights or revenues of the Supplier or a distress, execution or other process is levied or enforced upon any of the assets, rights, undertaking or revenues of the Supplier and is not discharged within 7 days;
 - (b) The Supplier stops or suspends payment of its debts or is unable to or admits inability to pay its debts (within the meaning of section 123 of the Insolvency Act 1986 or otherwise but ignoring the references in that section to determination by the court) or becomes insolvent or proposes or commences negotiations with one or more of its creditors with a view to the general rescheduling of its debts or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or any class of its creditors;
 - (c) A petition is presented or an order made for the winding up or administration of the Supplier;
 - (d) Any event occurs or proceeding is taken with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-paragraphs above;
- 4.25 LUPC and the Member Institutions reserve the right to withhold any outstanding monies due for payment to the Supplier against the forfeiture of any service obligation on the Supplier not performed arising from an event stated in clause 4.20. Such monies shall be calculated as reasonable and equal to meeting the outstanding obligations by an equivalent means.

5. Delivery of the Goods

- 5.1 The Supplier shall ensure that:
- (a) the Goods will be properly packaged to survive transit and storage without damage, clearly and legibly labelled and addressed. The Member Institution will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that either party requires returning will be done so at the Supplier's cost and risk;
 - (b) vehicles used for this purpose shall be fitted with tail lifts, as appropriate, to enable delivery to be made at either ground or loading dock level. The Supplier is advised that site access to some sites is restricted and the Premises may not be able to accept larger vehicles. Some Member Institutions will require delivery to more than one point and those delivery locations may vary by the type of Goods and delivery may be specified on the Order to be directed to a department or non-ground-floor location rather than to an external loading bay or outside store;
 - (c) it observes all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment;
 - (d) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Member Institution's Order number (if any), the

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type and quantity of the Goods (including the code number of the Goods, where applicable), the MAC addresses of the Goods where applicable and requested unless supplied electronically in advance of delivery, the gross weight of the Package, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

- (e) at the discretion and written request of the Member Institution, the Supplier shall use unbranded outer packaging to reduce the risk of theft in situations where delivery is made to a non-secure area;
- (f) at the discretion and written request of the Member Institution, the Supplier shall provide at no cost a collection and recycling and/or disposal service for all packaging shipped with the Order. Collection shall be made from a location with suitable access and on a minimum basis of 20 complete unit pieces within 10 Days of notification to permit the Supplier sufficient notice to schedule and make the collection in an economic manner. All reasonable endeavours will be used at all times to assist the Supplier with cost minimisation to the benefit of both parties.
- (g) If in Member Institution has acted in full accordance with 5.1 (f) and the Supplier fails to collect an agreed quantity packaging more than 5 Days after the collection date has been established, the Member Institution shall with prior notification to the Supplier, be entitled to use its chosen means of packaging removal and separately invoice or offset all reasonable and incurred costs against the Supplier's Goods and/or Services.
- (h) delivery is free of charge unless set out in the Tender Schedules or expressly agreed otherwise between the Member Institution and Supplier and;
- (i) deliveries may be requested to be made to non-ground floor locations during normal working hours. Where it is determined by the parties, each acting reasonably that there should be a charge for non-groundfloor deliveries, such charges will be agreed with the Member Institution at the time of Order. Under no circumstances shall such charges apply to Goods supplied under Lots 2 and 3.
- (j) A delivery charge of no more than £10 may be invoiced by the Supplier for each sale to a member of the Member Institution staff or a student where the Goods are shipped to a non-Member Institution site, for example, a home address.

5.2 The Supplier shall deliver the Goods:

- (a) on the Delivery Date specified in the Order. If no such date is specified, Delivery shall be made within 10 Days of receipt of a valid Order being received unless otherwise notified and agreed with the Member Institution. Where time is of the essence and delivery on or by a particular date of fewer than 10 Days is required, this shall be indicated to the Supplier at the time the Order is placed. Both parties shall agree the degree of scope and limit of before the Supplier accepts the Order in such circumstances. The Supplier shall not be liable for additional financial costs arising from late delivery outside this Agreement if the matter was not brought to the attention of the Supplier and agreed in writing. Where a stated Delivery Date cannot be

- achieved by the Supplier, the Member Institution shall be advised that the Order will be declined in the timescales set out in clause 2;
- (b) made during the Hours when the Member is normally open for the receipt of Goods unless otherwise specified by the Member. It should be noted that out-of-normal-working-hours deliveries may be permissible or even required in certain cases;
 - (c) to the point of delivery stated in the Order, or as stated by the Member Institution prior to delivery within their Delivery Instructions;
 - (d) to locations which may include none ground floor locations without access to a lift at no additional cost subject to advance notification and written agreement with the Supplier, which shall not be unreasonably withheld and;
 - (e) to multiple sites of the Member Institution on request at no additional cost.
- 5.3 The Supplier shall use all reasonable endeavours to meet the standard delivery schedule for the Goods as given in the Tender or where notified and agreed by the Supplier in advance in writing, the customer's issued delivery schedule.
- 5.4 Where the Goods are delivered by the Supplier, delivery shall occur when the Goods are removed from the transporting vehicle and delivered in accordance with the Delivery Instructions. Where the Goods are collected by the Member Institution, delivery shall occur when they are loaded onto the Member Institution's vehicle.
- 5.5 The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with the Contract, the Contract shall prevail.
- 5.6 If the Supplier:
- (a) delivers less than 90% of the quantity of Goods ordered without prior notification, the Member Institution may reject the Goods; or
 - (b) delivers more than 105% of the quantity of Goods ordered, the Member Institution may at its discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Member Institution accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 5.7 The Supplier shall not deliver the Goods in instalments without the Member Institution's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Member Institution to the remedies set out in clause 21.
- 5.8 Except where otherwise provided in the Contract, delivery shall include the uploading or stacking of the Goods by the Supplier at such places as the Member's Institution may direct. It is the Supplier's responsibility to ensure that deliveries are being made to the correctly designated employee within the Member Institution and obtain a signed receipt for all Goods delivered, unless expressly agreed otherwise with the Member. The Member Institution disclaims all responsibility for the security of Goods delivered and left on their Premises by the Supplier, should the Supplier fail to obtain a receipt for their acceptance from a person authorised to receive them. Under no

circumstances shall Goods be left at any Premises unattended, unless otherwise agreed in advance. All such deliveries will be signed for "unexamined" on the basis of number of Packages received. Goods shall be delivered and/or secured where appropriate in a manner that is to the satisfaction of the Member Institution and in accordance with all health and safety legislation current at the date of delivery provided such instructions have been given in writing prior to Delivery and agreed in writing by the Supplier.

- 5.9 The issue by Member Institution of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Member Institution shall not be deemed to have accepted any Goods other than in accordance with clause 6.
- 5.10 If the Supplier delivers the Goods to a delivery point other than that specified on the Order the Supplier will be responsible for correcting the delivery within 2 Days. The Goods will not be deemed as accepted and title and risk will remain with the Supplier until the Goods are supplied to address specified on the Order.
- 5.11 If the Supplier at any time becomes aware of any act or omission, or proposed act or omission by the Member Institution which prevents or hinders, or may prevent or hinder the Supplier from supplying the Goods and Services in accordance with the Contract, the Supplier shall inform, in writing, the Member Institution.

6 Acceptance

- 6.1 The Member Institution shall have the right to reject the Goods and Services in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance if they do not conform to the Order.
- 6.2 The Member Institution shall make reasonable endeavours to notify the Supplier of any rejection based on a defect in the quality or condition of the Goods and/or Services or their failure to correspond with the Order or specification within 10 Days from the date of delivery of the Goods and/or Services or where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure. Should the consignment of the Goods and/or Services require a delayed inspection over 10 Days from the date of delivery, this shall be advised and agreed in advance between the Member Institution and Supplier. The making of payment shall not prejudice The Member's right of rejection.
- 6.3 Further to clause 6.1, where Goods are rejected the Supplier shall be liable for the shipping costs and the cost for replacing the rejected Goods with alternative Goods conforming to the Member's requirements. Using all reasonable endeavours, this shall be within 5 Days from notification. If the replacement Goods are not or cannot be provided within the agreed time, the Member Institution shall have the right to purchase elsewhere as near as practicable to the same Order specifications and conditions as circumstances shall permit but without prejudice to any other right which The Member Institution may have against the Supplier. Any reasonable additional costs incurred in re-sourcing shall be met by the Supplier provided they are given in writing at the time of re-sourcing. At their full discretion, the Member Institution may be offered and accept an on-site fix or temporary loan unit of equal or better specification as an alternative means of resolution by the Supplier.

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- 6.4 The right of rejection shall not be prejudiced or invalidated by the use of marking, branding or tagging either by or on behalf of the Member Institution.
- 6.5 The Member Institution shall retain the right to reject and seek credit for the supplied Goods up to a maximum value of £10,000 per Order including where the Goods are supplied and accepted in full working order in accordance with the Order. Where their written instructions are to cancel this requirement, the Supplier shall issue a separate credit note against all issued invoices and collect the Goods within 20 Days of notification. The Supplier may separately charge the Member Institution at its discretion and with reasonable prior notification, an administration and re-stocking fee permissible up to a maximum percentage figure of the ex-VAT Order value of the Goods as follows and stated as Days from the Acceptance Date.
- (a) 0 to 10 Days: 10
 - (b) 11 to 15 Days: 15
 - (c) 15 to 30 Days: 20

For the avoidance of doubt it is understood that returns under Clause 6.5 are subject to an annual cap of 0.5% of total revenue of the Framework Agreement and the right of rejection will continue to be reviewed on a case by case basis.

- 6.6 Further to 6.5, the Supplier shall retain a right to refuse rejection where the Goods have been rendered by the Member Institution as not in a reasonable condition for resale and in particular where the Goods have been:
- (a) Removed from packaging and the Goods physically damaged;
 - (b) Deployed to desk and used in a way that would render the Goods unfit for resale at its original sale value;
 - (c) Software added in a way that its removal would render the Goods unfit for resale at its original sale value;
 - (d) Hardware tagged or marked on the outside in a way that would render the Goods unfit for resale at its original sale value;
- 6.7 If the notification is submitted within 30 days of delivery in anticipation of the application of a return and refund/credit on a goodwill basis, in accordance with the provisions of Clause 6.5 above, such request shall be subject to the Supplier's prior consent (which shall not be unreasonably withheld or delayed) and in any event shall not apply to Goods which have been customized or configured to the Member Institution's specific requirements i.e. not off-the-shelf Supplier's Goods sold to the market in general. Any dispute relating to this facility shall be resolved in good faith by the Parties pursuant to the escalation process set out in Clause 40.9 below.

7 Third Party Products

- 7.1 The Member Institution reserves the right to procure third party products of equivalent fit and function to be used on or with the Goods from the Supplier or such other source as the Member Institution deems appropriate. Such procurement of third party products from a source other than Supplier shall not invalidate the Member Institution's rights under the Contract and in no way affect the provisions in

respect of warranties given under the Contract or otherwise provided that the third party products utilised meet the minimum standards as published by Supplier or the manufacturer of the Goods, or where no published standards are available, the standards generally accepted as being appropriate to use on or with the Goods concerned.

- 7.2 In the event that the Supplier shall claim that the use of specific third party products is adversely affecting the standards of performance of the Goods and/or increasing the cost to Supplier of meeting its obligations to provide repair or maintain the Goods it shall be for Supplier to prove that the third party products do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Supplier's costs. If the Supplier shall prove that the third party products do not meet the requisite minimum standards the Member Institution shall cease using the third party products concerned and procure alternatives which meet the standards required.

8 Maintenance

- 8.1 If required by the Member Institution the Supplier shall enter into a separate contract for the maintenance of the Goods on substantially the same terms as those set out in the Contract.

9 Spares

- 9.1 The Supplier shall make available to the Member Institution, or any nominated third party maintenance provider, on request, with reasonable dispatch and at reasonable prices, all spares, modules and replacement parts for the Goods as the Member Institution shall require.
- 9.2 The Supplier shall maintain a supply of such spares, modules or replacement parts for a period of five (5) years from the date of delivery. After this period, the Supplier agrees to use its reasonable endeavours to provide spares for out of warranty requests where it is able to source those spares from the distributor or original manufacturer.
- 9.3 Such spares or replacement parts shall be fully compatible with, and maintain as a minimum the same levels of performance as the Goods originally supplied including image and driver support where applicable, but need not be identical to those items.

10 Operating manuals

- 10.1 Unless requested otherwise and in a media format of their choosing, the Supplier shall supply to the Member Institution all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation so required. If after the Acceptance Date the operating manuals and documentation need updating or replacing the Supplier shall be responsible for notifying the Member Institution of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of written instructions.

11 Attachment to the Goods

- 11.1 The Member Institution shall have the right to attach to, or install into or onto the Goods any other items or goods which the Member Institution considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as

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required by the Member Institution. If the Member Institution attaches or installs such items or goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve Supplier from meeting its obligations under the Contract provided that:-

- (a) the goods attached or installed are not specified in any of the Supplier's and/or the manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the Member Institution's rights under the Contract; and
- (b) the Supplier has not otherwise notified the Member Institution in writing that the attachment or Installation of specific goods will degrade the standards of performance or invalidate the Member Institution's rights under the Contract; and
- (c) The goods have been attached or installed in accordance with the published instructions of Supplier.

11.2 In the event that the attachments and/or Installation is made by the Member Institution and the Supplier can prove that such attachment or Installation is adversely affecting the standard of performance of the Goods then the Supplier shall be entitled to be reimbursed any associated direct costs which the Supplier can demonstrate as being reasonably and necessarily incurred in returning the Goods to the normal standards of performance in accordance with this Contract as a direct result of the attachment or Installation made by the Member Institution (other than where such attachment or Installation has been with the approval of the Supplier).

12 Training

12.1 Where appropriate, the Price shall include the cost of instructing the Member Institution's personnel in the use or operation of the Goods, such instructions shall be in accordance with the requirements of the Contract.

13 Hazardous Goods and Safety

13.1 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the Member Institution on or before Delivery with all data necessary to allow the Member Institution to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all relevant applicable Laws.

14 Supply of Services

14.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Member Institution in accordance with the terms of this Contract.

14.2 The Supplier shall meet any performance dates for the Services specified in the Order or agreed with the Supplier by the Member Institution.

14.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Member Institution in all matters relating to the Services, and comply with all instructions of the Member Institution including unless

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agreed otherwise, the wearing of a photo-inclusive identification badge showing the Supplier and wearer's name with an expiry date and be highly visible at all times;

- (b) perform the Services with the best care, skill and diligence in accordance with Good Industry Practice;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure the Services and the Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly (subject to advance notification and prior written agreement with the Supplier) or impliedly made known to the Supplier by the Member Institution;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Member Institution will be free from defects in workmanship, Installation and design;
- (g) obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Member Institution's Premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Member Institution to the Supplier ("The Member Institution's Materials") in safe custody at its own risk, maintain The Member Institution's Materials in good condition until returned to the Member Institution and not dispose of or use The Member Institution's Materials other than in accordance with the Member Institution's written instructions or authorisation; and
- (j) not do or omit to do anything which may cause the Member Institution to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Member Institution may rely or act on the Services.
- (k) provide the Services via the Key Personnel (if any) who shall not be released from providing the Services to the Member Institution, except for reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Member Institution, or the element of the Service in respect of which the individual was engaged has been completed to the Member Institution's satisfaction or other extenuating circumstances explained to the Member Institution. Any replacements for the Key Personnel shall be subject to the agreement of the Member Institution and such replacements shall be of at least equal status or of

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equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by Supplier; and

- (l) provide such Services to the reasonable satisfaction of the Authorised Officer.

15 Progress and Inspection

- 15.1 The Supplier shall at its expense provide any programmes for the provision of the Goods and Services delivery that the Member Institution may reasonably require.
- 15.2 The Supplier shall notify the Member Institution, in writing, without delay if manufacturing or production progress falls behind or may fall behind any of these programmes.
- 15.3 The Member Institution shall have the right to check progress at the Supplier's manufacturing facilities or offices (including home working) or the offices (including home working) of the Supplier's sub-contractors at all reasonable times to inspect and to reject Goods and Services that do not comply with the Contract. The Supplier's sub-contracts shall reserve such rights for the Member Institution.
- 15.4 Any inspection or approval shall not relieve the Supplier from its obligations under the Contract.

16 Offsite provision of Goods and Services

- 16.1 The Member Institution recognises that some or all of the Goods and Services may be provided from a site or sites (including home working) of the Supplier and for their sub-contractors. In all circumstances where the Goods and Services or part of the Goods and Services are provided from such site or sites Supplier shall comply with the following requirements:
 - (a) give the Authorised Officer a minimum of one (1) weeks' written notification that off-site working will take place, setting out the reasons for such working, personnel resources (including name, position and role) used and the specific outputs to be delivered by each of the personnel.
 - (b) facilitate the Authorised Officer to contact each of the personnel including but not restricted to, telephone number and/or e-mail addresses for the purpose of ascertaining that the Goods and Services are being provided.
 - (c) ensure that all invoices submitted have signed and authorised daily approval sheets confirming the details as at clause 16.1(a) above
 - (d) give the Authorised Officer or his nominee a right to inspect, test, examine any methods, schedules, calculations, analysis, materials, equipment, reports, working documents used or to be used in connection with the performance of the Services.
- 16.2 The Supplier's failure to comply with the terms of this clause 16 shall give the Member Institution the right not to pay for the Goods and Services provided off-site.
- 16.3 Neither failure of the Member Institution to inspect nor failure to discover or reject any portion of faulty Goods shall be deemed to imply acceptance thereof or in any way relieve Supplier from its responsibilities under the Contract.

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17 Work on the Premises

- 17.1 If the Contract involves any Goods and Services which Supplier Delivers, Installs or performs on the Premises then the following clauses shall apply:
- (a) The Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other persons associated with the Supplier will adhere in every respect to the obligations imposed upon the Supplier by applicable Laws.
 - (b) The Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other person associated with the Supplier will comply with any regulations or policies that the Member Institution may notify to the Supplier in writing which the Supplier (acting reasonably) accepts.
 - (c) When required, the Supplier and their employees, sub-contractors and their employees shall comply with any reasonable security requirements including a right to search when entering or leaving the Premises. The Member Institution reserves the right to remove from the Premises anyone suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.
- 17.2 Not Required
- 17.3 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Member Institution may reasonably require.
- 17.4 The Member Institution shall have the power at any time during the progress of the Contract to order in writing:
- (a) the removal from the Premises of any materials which in the Member Institution's opinion are either hazardous or not in accordance with the Contract, and/or;
 - (b) the substitution of proper and suitable materials, and/or;
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods and Services which, in respect of material or workmanship, is not in the Member Institution's opinion in accordance with the Contract.
- 17.5 Not Required
- 17.6 The Supplier shall ensure that their employees, sub-contractors and their employees and any other persons associated with Supplier shall be dressed appropriately. The Member Institution reserves the right to remove from the Premises anyone who is, in the Member Institution's absolute discretion, not complying with this requirement.
- 17.7 Any land or Premises made available from time to time to the Supplier by the Member Institution in connection with the Contract, shall be made available to Supplier on a non-exclusive basis free of charge and shall be used by the Supplier solely for the

purpose of performing its obligation under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- 17.8 The Supplier shall limit access to the land or Premises to such personnel as is necessary to enable it to perform its obligations under the Contract.
- 17.9 The Supplier agrees that there is no intention on the Member Institution's part to create a tenancy of any nature whatsoever in favour of the Supplier or its personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Member Institution retains the right at any time to use any Premises owned or occupied by the Member Institution in any manner it sees fit.

18 Variation & Substitution

- 18.1 The Member Institution shall have the right, before delivery, to send the Supplier an Order Amendment adding to, deleting or modifying the requirements. If the Order Amendment will cause a change to the price or Delivery Date then the Supplier must suspend performance of the Order and notify the Member Institution without delay, calculating the new price, Delivery Date immediately at the same level of cost and profitability as the original price. The Supplier must allow the Member Institution at least ten (10) Days to consider any new price or Delivery Date. The Order Amendment shall take effect when, but only if, the Authorised Officer accepts it in writing. Subject to other provisions of the Contract, if the Authorised Officer fails to confirm the Order Amendment within the time stipulated then performance of the Agreement shall immediately resume as though the Order Amendment had not been issued.

19 Compliance with applicable Laws

- 19.1 The Supplier shall (at no additional cost to the Member Institution) at all times, prepare, manufacture, Deliver, Install, carry out and provide the Goods and Services in compliance with all Laws. The Supplier shall maintain such records as are necessary pursuant to such Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Member Institution (or its authorised representative).

- 19.2 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms of the Contract nor be entitled to an increase in the price as the result of any modifications to the Laws.
- 19.3 Without prejudice to clause 19.2, the Supplier shall monitor and shall keep the Member Institution informed in writing of any changes in the Laws which may impact the Goods and Services and shall provide the Member Institution with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 19.4 The Supplier shall consult with the Member Institution (and wherever possible agree with the Member Institution) on the manner, form and timing of changes it proposes to make to meet any changes in Laws where they would impact the Goods or Services.
- 19.5 Without prejudice to the rest of this clause 19, the Supplier shall use reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this clause 19.

20 Service Improvement and Technology Refresh

- 20.1 The Supplier shall at all times inform the Member Institution on the emergence of new and evolving relevant technologies and processes and similarly all relevant life-cycle matters impacting on either the introduction or removal of Goods and Services from the Supplier's portfolio. Such information shall be provided in sufficient detail to enable the Member Institution to evaluate properly the benefits of the new technology or process and equivalently, the value proposition associated with the life-cycle changes.
- 20.2 The Supplier shall furthermore advise to the best of its knowledge and capability of any;
 - (a) supply difficulties in respect of any Goods including any components or materials; or
 - (b) changes in the supplier of components, firmware and software upgrades;
- 20.3 If the Member Institution wishes to incorporate any improvement identified by the Supplier pursuant to clause 20.1, the parties shall discuss the implementation of the associated change provided always that if the Supplier's costs in providing the Supplies as a result of any business change implemented by the Member Institution, an agreed % of the cost savings shall be passed on to Member Institutions by way of a consequential and immediate reduction in the Charges for the Supplies.

21 Remedies

- 21.1 If the Supplier fails to deliver the Goods on the Delivery Date and/or perform the Services by the applicable date(s), or if the Goods do not comply with the undertakings set out in clause 4, or the Services do not conform with clause 14, then, without limiting any of its other rights or remedies, the Member Institution shall have the right to any one or more of the following remedies:
 - (a) to terminate the Order with immediate effect;
 - (b) to reject the Goods or Services (in whole or in part) and (in the case of Goods) return them to the Supplier at the Supplier's own risk and expense;

- (c) to require the Supplier to re-perform, repair or replace the rejected Goods or Services, or to provide a full refund of the price of the rejected Goods or Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any reasonable costs incurred by the Member Institution in obtaining substitute Goods and/or Services from a third party; and
- (f) to claim liquidated damages for to cover loss of amenity and any unascertained costs and expenses incurred by the Member Institution which are in any way attributable to the Supplier's failure to carry out its obligations under clause 5 (Delivery) whereby the Supplier shall offset the invoice or supply a credit note to the value of 1% of the order value per Day or 20 GBP (whichever is greater) for each Day the delivery is delayed. The Supplier's maximum liability shall be limited to 100 GBP per whole unit item per Order except on spares and accessories where the limit shall be 40 GBP. The Supplier agrees that no further representation from the Member is required in terms of reasonableness and this is without prejudice to the Member with regards to other terms in the agreement. This charge will only apply if: (1) in respect of any Order, less than a 3 Day notice was given to the Member Institution that the previously agreed Delivery Date will not be met and a revised Delivery Date cannot be agreed between both parties in writing; or (2) in respect of a particular Order, greater than a 3 Day notice has been given to the Member Institution that the agreed Delivery Date will not be met, in respect of that particular Order, on two previous occasions and a revised Delivery Date cannot be agreed between both parties in writing.
- (g) to claim liquidated damages for to cover loss of amenity and any unascertained costs and expenses incurred by the Member Institution which are in any way attributable to the Supplier's failure to carry out its obligations under clause 4.4 (DOA) whereby the Supplier shall offset the invoice or supply a credit note where the order is not fulfilled to the value of 1% of the order value per Day or 20 GBP (whichever is greater) for each Day the replacement device is delayed. The Supplier's maximum liability shall be limited to 100 GBP per whole unit item per order except on spares and accessories where the limit shall be 40 GBP. The Supplier agrees that no further representation from the Member is required in terms of reasonableness and this is without prejudice to the Member with regards to other terms in the agreement.
- (h) to claim liquidated damages for to cover loss of amenity and any unascertained costs and expenses incurred by the Member Institution which are in any way attributable to the Supplier's failure to carry out its obligations under clause 4.5 (warranty) whereby the Supplier shall offset the invoice or supply a credit note to the value of 1% of the applicable Order value per day or 20 GBP (whichever is greater) for each Day the remedy (including loan replacement) of the Goods is delayed from the stated obligations. The

Supplier's maximum liability shall be limited to 100 GBP per whole unit item per order except on spares and accessories where the limit shall be 40 GBP.

- 21.2 The Contract shall apply to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Supplier.
- 21.3 The Supplier shall keep the Member Institution indemnified in full against all costs, expenses, damages and losses, including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Member Institution as a result of or in connection with:
- (a) any claim made against the Member Institution for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;
 - (b) any claim made against the Member Institution by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
 - (c) any claim made against the Member Institution by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or Services, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (d) the provision of the Goods and Services, including advice and recommendations made and accepted by the Member Institution;
 - (e) any Installation and/or any Goods and Services and/or advice given or anything done or omitted to be done under, or in connection with the Contract by the Supplier; and
 - (f) any damage to the Member Institution's property or Premises (including any materials, tools or patterns sent to Supplier for any purpose).

This clause 21.3 shall survive termination of the Contract.

- 21.4 The Member Institution's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.
- 21.5 The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and for a period of 6 years thereafter and in any event shall take out and maintain:
- (a) Product Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and
 - (b) Professional Indemnity Insurance coverage of not less than two million pounds sterling (£2,000,000) for any one, or series of claims that may arise; and

- (c) Public Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise.
- (d) Employer Liability Insurance coverage of not less than ten million pounds sterling (£10,000,000) for any one, or a series of claims that may arise.

21.6 The Supplier will take out and maintain such insurances as set out in this clause 21 with a reputable insurance company and shall at the Member Institution's request provide evidence of the insurance policy or policies and of payment of the premiums. Supplier's failure to maintain such insurances shall be treated as a material breach of the Contract and shall give Member Institution the right to terminate the Contract in accordance with clause 30.

22 Liability (Member Institution)

22.1 This clause sets out the Member Institution's entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the Supplier in respect of any breach by the Member Institution of:

- (a) The Public Contracts Regulations 2015 or
- (b) The Contract

and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

22.2 Nothing in the Contract limits or excludes the Member Institution's liability:

- (a) for death or personal injury resulting from its negligence; or
- (b) for any damage or liability incurred by that party as a result of its fraud or its fraudulent misrepresentation

22.3 The Member Institution shall not be liable for:

- (a) loss of profits; or
- (b) loss of business, goodwill or reputation; or
- (c) loss of contract; or
- (d) loss due to corruption of data and/or software or
- (e) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

22.4 The Member Institution's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract or in respect of any correspondence between the parties (including any competitive process) shall be limited to and shall not exceed £10,000.

22a Liability (Supplier)

22a.1 This clause sets out the Suppliers entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the Member Institution in respect of any breach by the Member Institution of:

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- (a) The Public Contracts Regulations 2015 or
- (b) The Contract

and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

22a.2 Nothing in the Contract limits or excludes the Suppliers liability:

- (a) for death or personal injury resulting from its negligence; or
- (b) for any damage or liability incurred by that party as a result of its fraud or its fraudulent misrepresentation

22a.3 The Supplier shall not be liable for:

- (a) loss of profits; or
- (b) loss of business, goodwill or reputation; or
- (c) loss of contract; or
- (d) loss due to corruption of data and/or software or
- (e) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

22a.4 Subject to Clauses 22.a.2 and 22.a.3 inclusive, the liability of the Supplier for any direct losses under this Clause for any breach or default (whether in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to a sum equivalent to one hundred and twenty five per cent (125%) of that Order value (excluding VAT) or £25,000 (whichever is the greater) to enable a responsive service.

23 Title and risk

23.1 Risk in the Goods shall pass to the Member Institution upon Delivery and Acceptance. Title to Goods shall pass to the Member Institution when payment in full has been received by the Supplier except where the Member Institution is selling the Goods on to its own staff or students as anticipated under the Framework Agreement, in which event title to the Goods shall pass to the Member Institution from the Supplier upon Delivery and Acceptance at the agreed delivery address.

23.2 While Goods are at any time stored or warehoused in premises which are under the control of or paid for by a party, risk in those Goods shall be the responsibility of that party. The same party shall also be responsible for ensuring that those Goods, in the event that Title to them has vested in the other party, shall during such time be stored in a separate bonded area suitable for such storage and adequately marked and recorded as being the property of the other party.

24 Price and payment

24.1 The Member Institution shall open one or more separate accounts with the Supplier before Ordering. The Supplier shall be capable of submitting invoices both individually and by using consolidated monthly statements depending upon the needs and requests of individual account.

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- 24.2 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence. No extra charges shall be effective unless agreed in writing and signed by the Member Institution.
- 24.3 The price of the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Member Institution, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 24.4 The Supplier may invoice the Member Institution at point of Order. Each invoice shall include such supporting information required by the Member Institution to verify the accuracy of the invoice, including but not limited to the relevant Order number.
- 24.5 The Member Institution shall pay correctly rendered invoices within 30 calendar days of date of a valid invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 24.6 Where the Supplier has not received payment from a Member Institution account within forty-five (45) days of date of an undisputed invoice then the Supplier shall serve upon the Member Institution a further thirty (30) days written notice of the debt due to it. If the Member Institution then fails to discharge the sum due within that further 30 day notice period, the Supplier shall, without prejudice to any other rights or remedies available to it in such circumstances, have the right to suspend delivery of either Goods and/or Services (as the case may be) to the debtor account within that Member Institution, until such debt has been repaid by the Member Institution provided the Supplier's appointed Account Manager or equivalent senior contact has been informed of the circumstances and given at a minimum of 10 Days to resolve the situation and prevent suspension of the individual account. Under no circumstances shall other individual accounts under the control of the Member Institution be held responsible for the cause and resolution of non-payment and affected by suspension of the account.
- 24.7 All amounts payable by the Member Institution under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Member Institution, the Member Institution shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 24.8 Credit notes must be issued as a separate document in instances of cancelled and invoiced, incorrectly supplied and/or returned Goods within 10 Days of notification from the Member Institution. Credit notes shall refer to the original Order, delivery note (where applicable) and invoice number.

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- 24.9 The Member Institution may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
- 24.10 Orders supported by a valid VAT Zero Rating Certificate at the time of the order shall be invoiced net of VAT.
- 24.11 The Supplier shall ensure that provisions equivalent to clause 24.5 will be effective within any subcontract concluded by the Supplier and any third party; and further, the Supplier shall require such subcontractors to ensure that their subcontracts contain within them an equal and equivalent provision.

25 Confidential information

- 25.1 A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. Subject to any express provisions of the Contract, the receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.
- 25.2 Confidential information shall not include;
- (a) information known to the receiving party prior to disclosure by the disclosing party;
 - (b) information which is or becomes publicly available; and
 - (c) information now or later disclosed to the receiving party by a third party having the right to do so.

26 Publicity

- 26.1 Unless expressly permitted in writing by the Member Institution, the Supplier shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with the Contract or the work of the Member Institution.

27 Intellectual Property

- 27.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material shall be retained by its owner.
- 27.2 The Supplier shall defend, at its expense, any action brought against the Member to the extent that it is based on a claim that the Goods in normal possession and use, infringe any UK patent, copyright, trade secret or other Intellectual Property Right and shall pay any settlements or final judgements to the extent based thereon, provided that the Member;
- (a) promptly notifies the Supplier in writing of the existence or threat of any such claim, suit or proceeding; and
 - (b) gives the Supplier sole control of any such action or settlement negotiations; and
 - (c) provides all reasonable assistance in connection therewith.
- 27.3 If any of the Goods are finally adjudged to so infringe, or in the opinion of the Supplier such a claim is likely to succeed, the Supplier shall at its option;
- (a) procure for the Member Institution the right to continue using the Goods; or
 - (b) replace or modify the Goods so there is no infringement.
- 27.4 Unless agreed in writing, the Supplier shall have no liability regarding, and the Member Institution shall hold the Supplier harmless from and against, any claim arising out of:
- (a) compliance with the Members Institution's designs, specifications or instructions; or
 - (b) use of the Goods in combination with, data or third party Goods, if they directly caused the infringement; or
 - (c) any failure arising from modification of the Goods by the Member.
- 27.5 The foregoing states the sole and exclusive liability of the Supplier and the exclusive remedy for the Member Institution for Intellectual Property Rights infringement or claims of infringement and the provisions thereof are in lieu of any other express, implied or statutory warranties or conditions against infringement.
- 27.6 The Member Institution shall hold the Supplier harmless from and against any expense or loss resulting from infringement of patents, copyrights, trademarks or other intellectual property rights arising from compliance with the Member Institution's designs, specifications or instructions or resulting from the Member Institution combination of the Goods with devices or elements not provided by the Supplier.
- 27.7 The sale of the Goods by the Supplier does not convey any license, by implication, under patent claims covering combinations of the Goods with other devices or elements.
- 27.8 The Supplier shall make available and maintain within 6 months from award notification, a database of preloaded software and license details against any Goods

previously supplied for up to 5 years. This shall be made accessible to the Member Institution at their written request and without additional cost.

28 Anti-Bribery

28.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 28.1(b), and will enforce them where appropriate; and
- (d) promptly report to the Member Institution any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;

28.2 Breach of this clause 28 shall entitle the Member Institution to terminate the Contract with immediate effect.

29 Data Protection

- 29.1 The Supplier shall process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with the Member Institution's instructions from time to time and shall not process the Personal Data for any other purpose. The Supplier will keep a record of any processing of Personal Data it carries out under the Contract.
- 29.2 The Supplier shall promptly comply with any request from the Member Institution requiring the Supplier to amend, transfer or delete the Personal Data.
- 29.3 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Act 1998 which will contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes 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.
- 29.4 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Act 1998 and the data protection principles set out therein, it shall immediately notify the Member Institution and it shall provide the Member Institution with full co-operation and assistance in relation to any such complaint, notice or communication.

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- 29.5 At the Member Institution's request, the Supplier shall provide to the Member Institution a copy of all Personal Data held by it in the format and on the media reasonably specified by the Member Institution.
- 29.6 The Supplier shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the Member Institution
- 29.7 The Supplier shall promptly inform the Member Institution if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will restore such Personal Data at its own expense.
- 29.8 The Supplier shall ensure that access to the Personal Data is limited to:
- (a) those employees who need access to the Personal Data to meet the Supplier's obligations under this Contract; and
 - (b) in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.

- 29.9 The Supplier shall ensure that all employees:
- (a) are informed of the confidential nature of the Personal Data;
 - (b) have undertaken training in the laws relating to handling Personal Data; and
 - (c) are aware both of the Supplier's duties and their personal duties and obligations under such laws and this Contract.
- 29.10 The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees who have access to the Personal Data.
- 29.11 The Supplier shall notify the Member Institution within 2 Days if it receives a request from a Data Subject for access to that person's Personal Data.
- 29.12 The Supplier shall provide the Member Institution with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.
- 29.13 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Member Institution or as provided for in this Contract.
- 29.14 The Member Institution is entitled, on giving at least a 2 Day notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data by the Supplier.
- 29.15 The requirement to give notice set out in clause 29.14 will not apply if the Member Institution believes that the Supplier is in breach of any of its obligations under this Contract.
- 29.16 The Supplier warrants that:
- (a) it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
 - (b) it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure the Member Institution's compliance with the seventh data protection principle.
- 29.17 The Supplier shall notify the Member Institution immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data;
- 29.18 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Member Institution against all costs, claims, damages or expenses incurred by the Member Institution or for which the Member Institution may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this clause 29.
- 29.19 The Supplier may not authorise any third party or sub-contractor to process the Personal Data.

30 Termination

- 30.1 Without limiting its other rights or remedies the Member Institution may terminate the Order:
- (a) in respect of the supply of Services, by giving the Supplier [2] weeks' written notice; and

- (b) in respect of the supply of Goods, at any time before Delivery with immediate effect by giving the Supplier written notice, in which case the Member Institution shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 30.2 Either party may terminate the Contract with immediate effect by giving written notice if:
 - (a) Either Party commits a material or persistent breach of the Contract or if the parties fail to reach agreement on price change in line with the Agreement and (if such breach is remediable) fails to remedy that breach within 30 Days of receipt of notice in writing of the breach;
 - (b) either party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (c) either party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 calendar days;
- (g) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier or Member Institution;
- (h) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier or Member Institution in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 30.2(b) to clause 30.2(i) inclusive;
- (k) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business other than in the circumstances of non-payment as covered in clause 24.5;
- (l) the Supplier's financial position deteriorates to such an extent that in the Member Institution's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

30.3 The Member Institution may immediately terminate this Contract where—

- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9);
- (b) the Supplier has, at the time of Contract award, been in one of the situations referred to in Regulation 57(1), including as a result of the application of

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Regulation 57(2), and should therefore have been excluded from the procurement procedure; or

- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaty on European Union and the Public Contracts Directive 2014/24 or the Treaty on the Functioning of the European Union that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union

31 Consequences of Termination

31.1 On termination of the Contract for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to the Member Institution all Deliverables, whether or not then complete, and return the Articles. If the Supplier fails to do so, then the Member Institution may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall solely be responsible for their safe keeping and will not use them for any purpose not connected to this Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

32 Force majeure

32.1 Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 30 Days, the Member Institution may terminate this Contract immediately by giving written notice to the Supplier.

33 Freedom of Information and Environmental Regulations

- 33.1 Except for the Supplier's right to withhold commercially sensitive information in circumstances as defined within the Act, the Supplier acknowledge that the Member Institution is subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the Member Institution (at the Supplier's expense) as mandated by the Member Institution in relation to these Laws.
- 33.2 Any Requests received by the Supplier shall be forwarded to the Member Institution immediately.
- 33.3 The provisions of clause 33 shall extend to sub-contractors and the Supplier shall ensure compliance with this requirement.

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- 33.4 Except for the Supplier's right to withhold commercially sensitive information in circumstances as defined within the Act, the Supplier acknowledges that the Member Institution may, acting in accordance with the FOIA, or the EIR be obliged otherwise to disclose information:-
- (a) without consulting with the Supplier; or
 - (b) following consultation with the Supplier and having taken the Supplier's views into account.
- 33.5 If the Supplier has a reasonable belief that any of the information that it has or is to provide in connection with this agreement can be withheld due to its commercial sensitivity, the Supplier shall inform the Member Institution of exactly which information the Supplier believes can be withheld and a clear and reasonable rationale for its belief that such information is commercially sensitive. Unless and until the Supplier has provided satisfactory notice and explanation, the Member Institution shall in no way be held liable (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with the disclosure of information provided by the Supplier to the Member Institution in connection with this agreement deemed necessary in order to comply with the FOIA.

34 Articles on Loan

- 34.1 All Articles loaned by the Member Institution to the Supplier in connection with the Contract shall remain always the Member Institution's property and shall be surrendered to the Member Institution upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by the Supplier solely for the purpose of completing the Contract. The Supplier agrees that no copy of any of the Articles will be made without the consent in writing of the Authorised Officer. Until the Supplier return all the Articles to the Member Institution they shall be at the Supplier's risk and shall be insured by the Supplier at the Supplier's expense against the risk of loss, damage or theft. Any loss of or damage to such Articles shall be made good by Supplier at their expense. All scrap arising from the supply of such Articles must be disposed of at the Member Institution's discretion and all proceeds of sales of such scrap must be promptly paid to the Member Institution.

35 Supplier Employees

- 35.1 Provided that the member institution complies with the relevant data protection legislation (as if clause 29 was expressed to be reciprocal) and subject to the confidentiality provisions hereunder, when directed by the Member Institution, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Member Institution may reasonably require.
- 35.2 The Supplier's employees and those (if any) of the Supplier's sub-contractors or agents engaged within the boundaries of any of the Member Institution Premises, shall comply with such rules, regulations and requirements (including those relating

to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment, and when outside that establishment.

- 35.3 The Member Institution's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the Member Institution shall be final and conclusive.
- 35.4 The Supplier shall replace any of its employees who, the Member Institution shall have reasonably decided, have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's employees for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.
- 35.5 The Supplier shall bear the cost of or costs arising from any notice, instructions or decision of the Member Institution under this clause 35.
- 35.6 The Supplier shall take all reasonable steps to ensure that any employees, servants or agents of the Supplier and any sub-contractors, their employees, servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming any benefit payable to persons registered as unemployed.
- 35.7 Where the appointed Agreement Manager leaves the employment of the company, lead institution must be informed immediately of interim arrangements made.

36 Re-tendering and Handover

- 36.1 Within twenty one (21) calendar days of being so requested by the Member Institution, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Member Institution to issue invitations to tender for the future provision of the Goods and Services.
- 36.2 Where, in the opinion of the Member Institution, TUPE is likely to apply to the Contract on its termination or expiration, the information to be provided by the Supplier under clause 36.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):-
 - (a) the number of employees who would be transferred, but with no obligation on the Supplier to specify their names; and
 - (b) in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment; and
 - (c) the general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements,

and any other relevant collective agreements, facility time arrangements and additional employment benefits.

- 36.3** The Supplier shall indemnify the Member Institution against any claim made against the Member Institution at any time by any person in respect of the liability under the Transfer of Undertakings (Protection of Employment) Regulations 2006 connected with or arising from or relating to the provision of the information which the Supplier is required to provide under clause 36.1..
- 36.4** The Supplier shall co-operate fully with the Member Institution during the handover arising from the completion or earlier termination of the agreement. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition.

37 TUPE

- 37.1** The Supplier shall indemnify and keep indemnified the Member Institution against any loss incurred by the Member Institution connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the Member Institution in respect of any or all of the Supplier's staff or employees or any other employee of the Supplier or its sub-contractors and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.
- 37.2** The Supplier shall indemnify and keep indemnified the Member Institution against any third party claims connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any of the Supplier's staff or any other person at any time employed by (or engaged as a consultant by) the Supplier or its sub-contractors made against the Member Institution at any time for breach of such contract, policy or redundancy, pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Supplier and which results from any act, fault or omission of the Supplier or such other person was employed by the Supplier, save to the extent that the liability arises from any wrongful act by the Member Institution or its employees.
- 37.3** The Supplier shall indemnify and keep indemnified the Member Institution against any third party claims incurred from any change or proposed change to the terms and conditions of employment of any or all of the Supplier's staff or any other employee of the Supplier or its sub-contractors where such change is or is proposed to be effected following the transfer of any such person pursuant to the agreement and in respect of any loss incurred by the Member Institution arising from the employment or proposed employment of any such person otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.
- 37.4** Except with the proper written consent of the Member Institution, the Supplier shall not vary any terms and conditions of employment of any employee or any policy collective agreement applicable to any employee then assigned by the Supplier or its

sub-contractors to the discharge of the Contract (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience) after the Member Institution has served notice of the termination of the Contract or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this agreement, any Contract or the provision by it of the Goods and Services.

38 End of Life including Recycling and Disposal

38.1 At the discretion and request of the Member Institution, the Supplier shall within 20 Days of notification and at no cost, provide a collection and accompanying environmental reuse, recycling and/or disposal service for:

(a) Goods purchased under this and any previous agreement carrying the Supplier's brand on a minimum basis of 25 units.

(b) Goods purchased under this and any previous agreement not carrying the Supplier's brand on a minimum basis of 25 units but only where Goods of an equivalent number or value (when new) are purchased by the Member Institution from the Supplier.

The Supplier shall be entitled to request that all collections are made from a ground floor location with suitable access on a date of its choosing within the notification period to assist the Supplier in scheduling the collection in an economic manner. The Member Institution shall at all times use reasonable endeavours to assist the Supplier with cost minimisation to the benefit of both parties.

38.2 At the written request of the Member Institution and within 20 Days of collection, the Supplier shall provide an itemised manifest of the Goods collected at serial number level and full evidence that all data has been removed to U.S. DOD 5220.22-M standards or equivalent. The Supplier may at its discretion invoice for these services, the charges for which shall be no more than that given by the Supplier in the tender.

38.3 The Member Institution is not required to guarantee that the Goods for collection:

- (a) are in full working order;
- (b) due to data sensitivity for example, have not had one or more hard disk drives removed;
- (c) free from all markings, branding, tagging or similar;
- (d) be accompanied by a Goods manifest.

38.4 For the purpose of these terms in the context of the WEEE (Waste Electrical and Electronic Equipment) Regulations 2013 as amended, a Member Institution site shall be considered a collection point.

38.5 The Supplier shall indemnify the Member Institution fully and shall keep the Member fully indemnified against all liability, loss, damages, injury, costs, claims and expenses (including legal expenses) incurred by the Member Institution as a direct result of any

act or omission of the Supplier in respect of the applicable WEEE Regulations 2013. The Supplier shall ensure that any WEEE for which they are responsible shall meet the minimum, licensed requirements for transporting and treatment at an authorised treatment facility in accordance with the WEEE Regulations.

39 Export Control

- 39.1 The Supplier expects the Member Institution to comply with all laws and regulations of the European Union or the United States of America, in force from time to time, affecting the export, or re-export of the Goods from the United Kingdom of Great Britain and Northern Ireland, or the Republic of Ireland.
- 33.2 The Supplier expects the Member Institution to make every reasonable endeavour to not export, or re-export the Goods, whether directly or indirectly;
- (a) to any destination that is restricted under the laws and regulations of the European Union and/or the United States of America; or
 - (b) to any end-user who has been prohibited from receiving such goods by the laws and regulations of the European Union or the United States of America; or
 - (c) to any party who the Member Institution knows or has any reason to know will illicitly use the items directly or indirectly in any nuclear activity, the design or development of missiles, missile technology, bacteriological or chemical weapons, prohibited under the laws and regulations of the European Union or the United States of America.

40 General

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40.1 Assignment and subcontracting.

- (a) The Member Institution may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Member Institution's prior written consent.

40.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 40.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

40.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

40.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 40.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 40.6 **Variation.** Except as set out in the Contract, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Member Institution.
- 40.7 **Conflict.** Any employee of the Supplier shall not be directly or indirectly engaged, concerned or have any financial interest in any capacity with a Member Institution or any of their employees, unless prior written approval is obtained from the Member Institution concerned.
- 40.8 **Governing law and jurisdiction.** This Contract and proceedings relating to any dispute or claim, arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be brought in the courts whereby the Member Institution and/or Supplier is domiciled. Each party agrees that the specified courts shall have exclusive jurisdiction over such disputes or claims save that any counterclaim may be brought in any proceedings already commenced.
- 40.9 **Dispute Resolution.** The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between senior executives of the parties, who have authority to settle the same. Should the dispute not be resolved within a reasonable period of time, the LUPC shall be advised of the facts of the dispute and respond on a best endeavours basis within 2 Days of notification. If the matter is still not resolved by negotiation within 30 calendar days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators.

If the matter has not been resolved by an ADR procedure within 60 calendar days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief. If the Supplier is not based within the United Kingdom then all disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

Signature Page

Signed for and on behalf of **UK Research and Innovation** by its authorised representative:



Name: 

Title: **DDaT - Category Manager**

Date: 07/ 02 /2022

Signed for and on behalf of **Dell Corporation Limited** by its authorised representative:



Name: 

Title: **Vice President**

Date: 07/ 02 /2022

Call off contract reference: DDaT22051

Annex 1 Scope & Charges

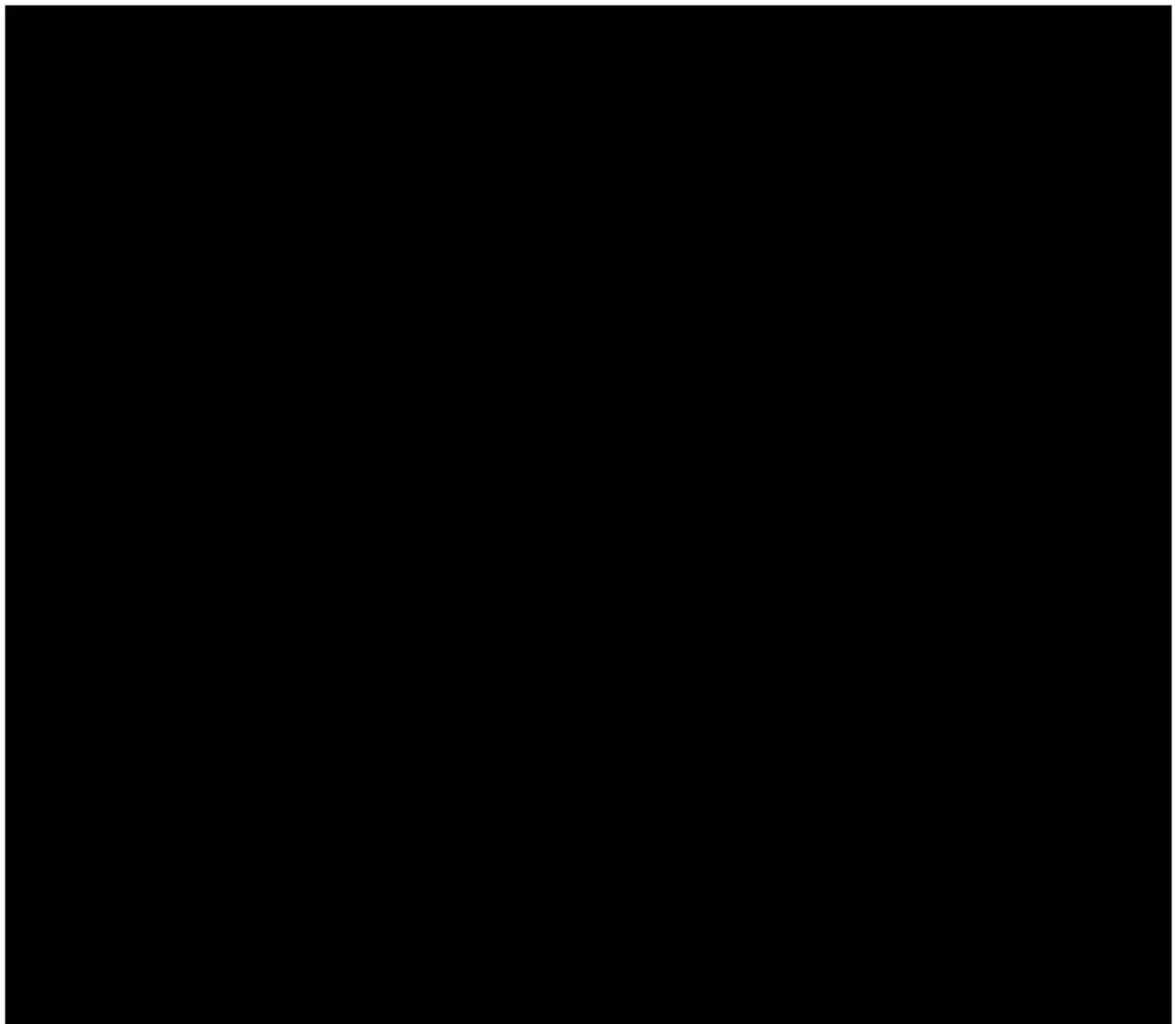
1.1 Contract Duration

The contract shall cover a period of 3 years in line with the auxiliary service duration within this annex (1.2 – Specification) commencing on Monday 7th February 2022 and expiring on Thursday 6th February 2025.

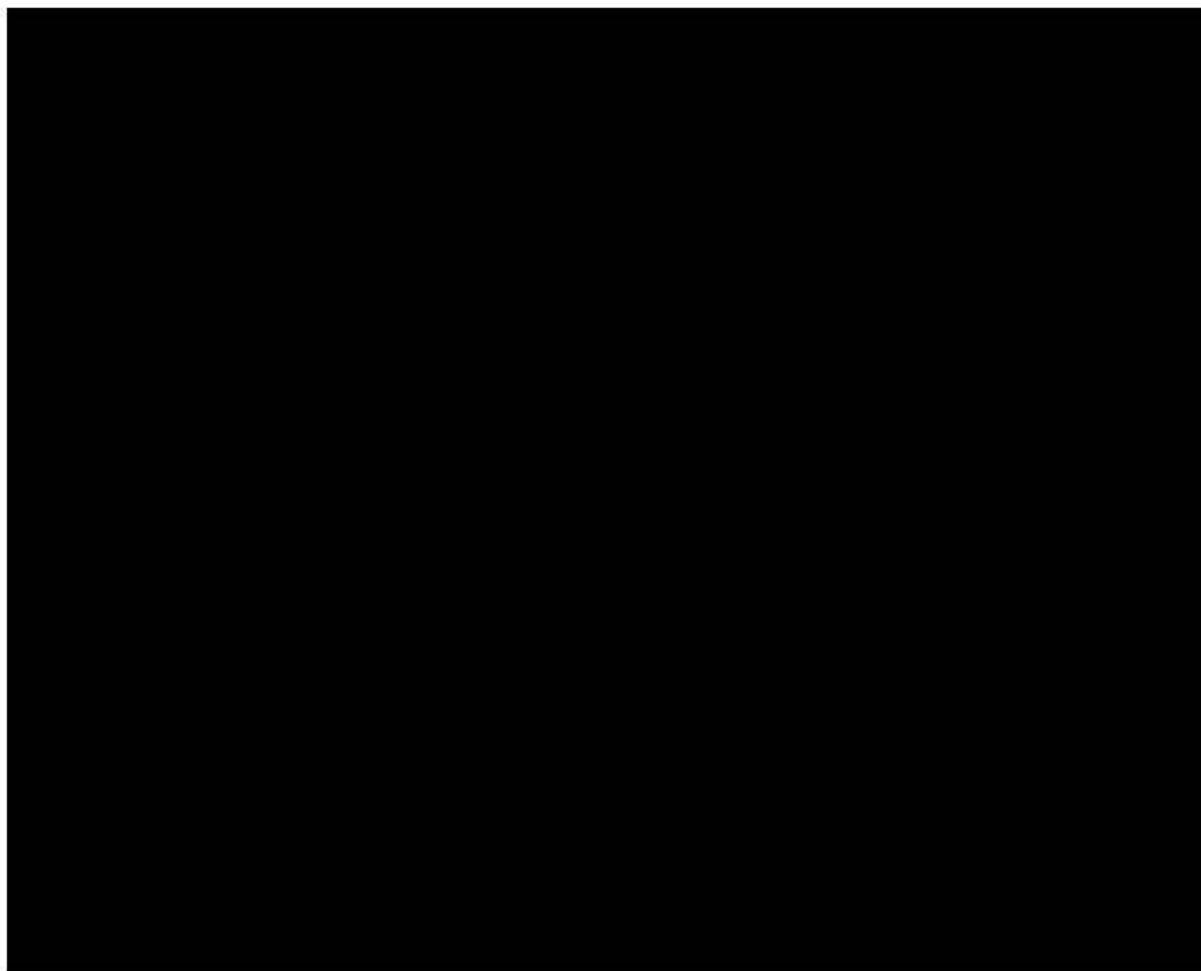
The laptops shall be delivered by no later than Thursday 31st March 2022.

1.2 Specification

This contract is for the supply and delivery [REDACTED] laptop hardware equipment with the associated software and auxiliary services as per breakdown below:



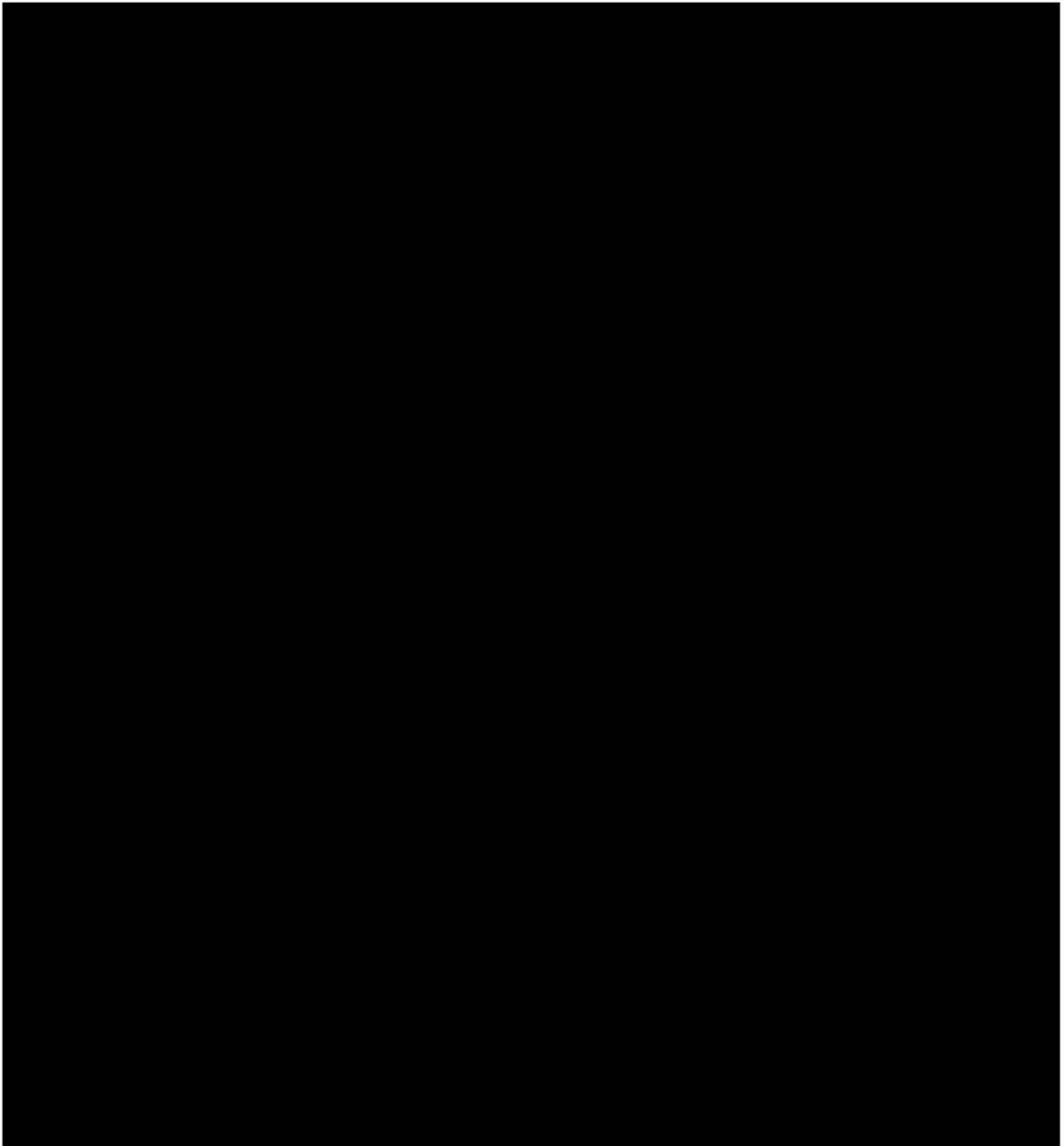
Call off contract reference: DDaT22051



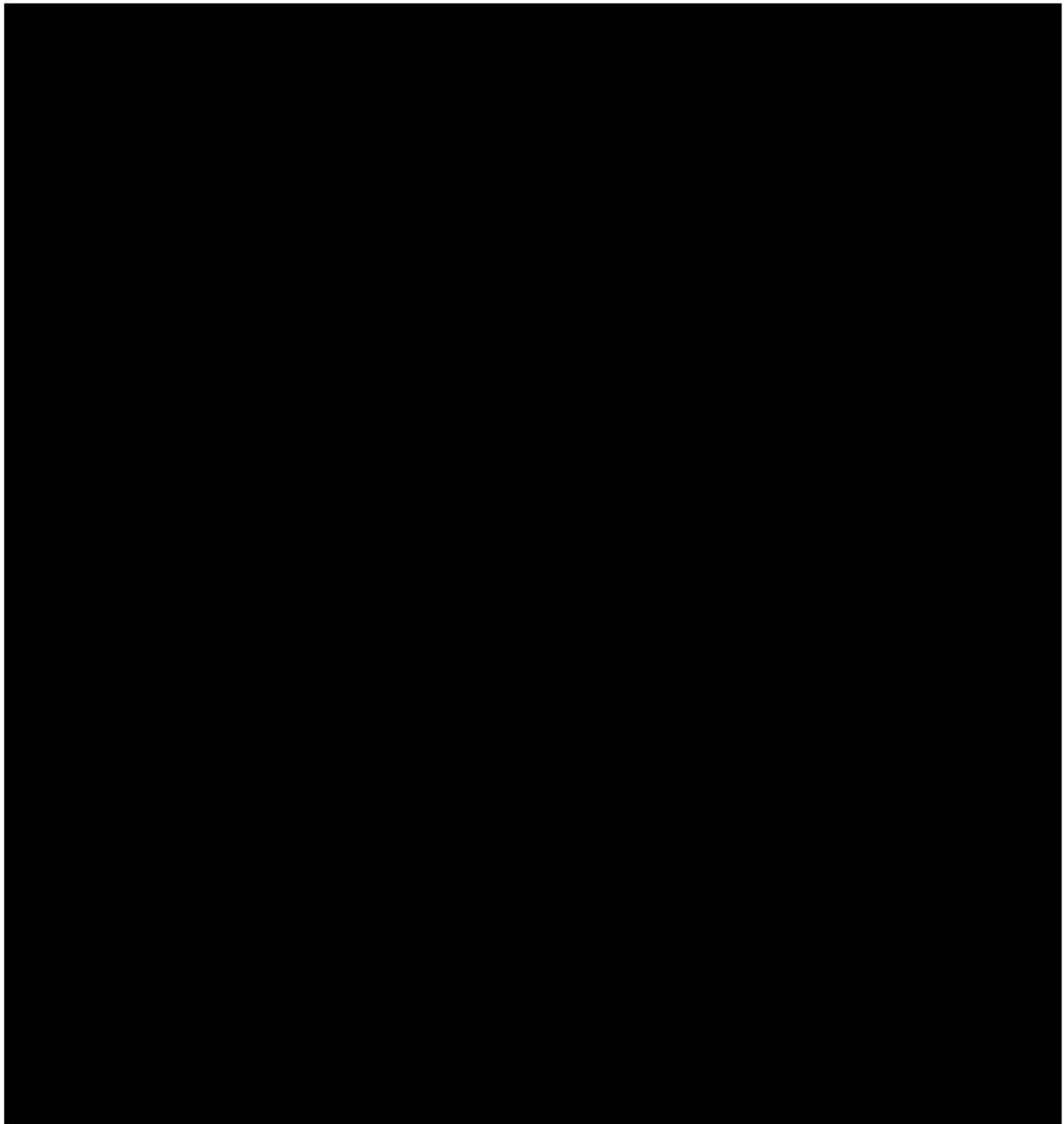
Call off contract reference: DDaT22051

1.3 Commercial

The total value of the contract shall not exceed £141,879.00 excluding VAT as per breakdown below:



Call off contract reference: DDaT22051



Call off contract reference: DDaT22051