

UK Biobank Limited

Key Contractual Principles (Legal) in respect of the Bulk Storage Replacement ("Project")

Overview / notes

1. This document forms part of the procurement documents for the Project ("**Procurement Documents**").
2. The table below describes the key legal requirements ("**Required Terms**") that will apply to the contract between UK Biobank Limited (referred to in this document as the "**Customer**") and its preferred supplier (referred to in this document as the "**Supplier**") for the Project.
3. Save to the extent set out in this document, the Customer accepts that its contract with the Supplier will be on the Supplier's standard terms and conditions that are generally available to its customers for systems, deliverables and services similar to those that are the subject of the Project.
4. All tenders for the Project (each a "**Tender**") must include terms and conditions which adequately include and do not materially depart from all the Required Terms.
5. The Supplier must submit proposed terms and conditions with its Tender and the submitted terms and conditions will be evaluated on a Pass/Fail basis as follows:
 - 5.1 "Pass" = a tender which adequately includes the Required Terms as part of the submitted terms and conditions and/or does not materially depart from the Required Terms as part of the submitted terms and conditions (in each case in the opinion of the Customer).
 - 5.2 "Fail" = a tender which does not adequately include the Required Terms as part of the submitted terms and conditions and/or materially departs from the Required Terms as part of the submitted terms and conditions (in each case in the opinion of the Customer).
6. The decision as to whether the submitted terms and conditions adequately include and/or do not materially depart from the Required Terms will be at the Customer's sole discretion.
7. In considering whether the Required Terms are adequately included and/or materially departed from, the Customer will have regard to the nature and effect of the submitted terms and conditions and whether they (individually or cumulatively) introduce significant risk or cost to the Customer.
8. The Customer may, at its sole discretion, decide that the terms and conditions adequately include and/or do not materially depart from the Required Terms where the terms and conditions deviate from the Required Terms in a minimal way such that it does not (in the Customer's sole opinion) materially impact on the Customer's contractual rights.

CONFIDENTIAL AND SUBJECT TO CONTRACT

9. The Customer reserves the right to clarify the wording of the submitted terms and conditions where there is ambiguity. The Customer shall not however be under any obligation to do so.

Table of Required Terms

Legal Issue	Customer Requirement
Contract	The contract for the Solution (the " Contract ") will come into force on the date it is signed and will continue for a period of five years or the point at which there are no Service Support Contracts in place (whichever is the latter) (the " Term ").
Service Support Contract	A service support contract (" Service Support Contract ") for each System will come into force on the date on which the Customer accepts that System in accordance with the Statement of Works and will continue in force for a period of five (5) years (" Service Support Initial Term ").
Service Support Extensions	The Customer will have the right to extend each Service Support Contract beyond the end of the Service Support Initial Term for a period or periods (as the Customer may determine in its discretion) of up to a total of two years (each period of extension being an " Extension Period "). The Customer must give the Supplier at least two months' notice in writing prior to the end of the Service Support Initial Term or relevant previous Extension Period of that Service Support Contract in order to exercise this extension right, such notice specifying the duration of the Extension Period. There will be additional costs payable for each Extension Period which will be agreed in advance.
Delivery and Installation of Bulk Storage Solution	The Supplier will deliver and install, commission and test a Bulk Storage system (" System ") at the sites specified in the Procurement Documents (" Sites ") (the purchased Systems together being the " Solution ") in accordance with the process, plan and time scales agreed by the Customer and documented in a Statement of Works agreed between the parties (" Statement of Works ").
	All costs relating to delivery and installation, commissioning and testing, and performance of the activities in the Statement of Works must be included in the Supplier's Tender.
	The Solution shall be ready for live use by the Customer, having been successfully delivered, installed, commissioned and tested by the Supplier and accepted by the Customer on the date set out in the Statement of Works which shall be no later than 30 November 2023 (" Planned Go-Live Date "). Readiness for live use will be evidenced by testing and acceptance procedures in accordance with good industry practices and as documented in the Statement of Works.
	If the Solution is not ready for live use on the Planned Go-Live Date:

CONFIDENTIAL AND SUBJECT TO CONTRACT

Legal Issue	Customer Requirement
	<ul style="list-style-type: none"> the Supplier will prepare a rectification plan, for approval by the Customer, setting out the steps the Supplier will take to rectify the failure and reasonable timescales for achieving readiness for live use, and will implement the rectification plan once agreed; the Supplier will use reasonable endeavours to eliminate or mitigate the consequences of the delay; and the Customer shall have a right to terminate the Contract if the Solution is not ready for live use within 5 working days of the Planned Go-Live Date.
UK Biobank Requirements	The Solution as delivered and installed will meet the requirements set out in volume 1 of the Invitation to Tender that forms part of the Procurement Documents (" Specification "), which will form part of the Contract.
Bulk Storage System	<p>The Supplier will ensure that the Solution has the functionality set out in the Specification and any specification published by the Supplier or the applicable OEM.</p> <p>The Solution will interface and interoperate effectively and efficiently with the Customer's existing technology systems and those of its other suppliers as set out in the Specification.</p>
Service levels and service credits	<p>There will be a contractual service level regime set out in the Service Support Contract. This will include the following minimum requirements, as further detailed in the Specification:</p> <ul style="list-style-type: none"> service support must be by telephone or email and available on a twenty four (24) hour, seven (7) days per week, basis; incident response time no more than four (4) hours; next business day delivery of parts and/or on-site engineer attendance; and a compensation model for failure to achieve stated service levels. <p>For these purposes an "incident" shall be "any failure of the Solution to meet or operate in accordance with the Specification or any specification published by the Supplier or the applicable OEM". These service levels will be reported against on a monthly basis.</p>
Charges	<p>All charges for the Solution, related services and required upgrade options (as set out in the Specification) will be included in the Supplier's Tender.</p> <p>The charges will be payable as follows:</p> <ul style="list-style-type: none"> 50% of the total cost for each System (including service support) to be invoiced by the Supplier following delivery of all component parts of that System to the relevant Site;

CONFIDENTIAL AND SUBJECT TO CONTRACT

Legal Issue	Customer Requirement
	<ul style="list-style-type: none"> 50% of the total cost for each System (including service support) to be invoiced by the Supplier following acceptance of that System by the Customer (after successful installation, commissioning, testing and handover of the System by the Supplier in accordance with the Statement of Works).
	The charges will be exclusive of VAT. The Customer will pay VAT in addition upon receipt of a valid VAT invoice.
	Payment terms will be pounds sterling and on thirty (30) days from the receipt by the Customer of the Supplier's invoice.
Intellectual Property Rights – Usage Rights	<p>The Supplier will grant the Customer (and the Customer's other suppliers and contractors to the extent needed) a non-exclusive and royalty-free licence to use all Intellectual Property Rights ("IPR") provided by the Supplier ("Supplier IPR") during the Term and required for the use of the Solution and the receipt of the services (subject to the requirements for the Solution software licence referred to below).</p> <p>If the Contract should terminate early the Supplier will provide to the Customer (or will procure the provision of) this license for a period equal to the remainder of the Contract should the Contract not have terminated early.</p>
Licensing of the Bulk Storage Solution	<p>The Supplier will grant to the Customer (or procure the grant of) a licence to use any software forming part of the Solution for a term equivalent to the Term, subject to the payment of the relevant charges specified in the Supplier's Tender. Any one-off, subscription or other ongoing costs of this licence must be identified in the Supplier's Tender and included in the total cost.</p> <p>The licence to use the Solution software will be on terms no less favourable than those on which such software is usually made commercially available by the Supplier or the relevant third party licensor, provided that, except where otherwise agreed by the Customer, the licence will:</p> <ul style="list-style-type: none"> grant to the Customer and (either as authorised users or sub-licensees of the Customer) its employees, agents, contractors and consultants ("Authorised Users") a right to access and use the Solution during the Term for any purposes relating to the exercise of the Customer's business or function; and be governed by the laws of England and Wales and subject, in respect of the settlement of disputes and claims (whether contractual or non-contractual), to the jurisdiction of the courts of England and Wales. <p>If the Contract should terminate early the Supplier will provide to the Customer (or will procure the provision of) this license for a period equal to the remainder of the Contract should the Contract not have terminated early.</p>
IPR indemnity	The Supplier will indemnify the Customer and its Authorised Users from and against any and all third party IPR infringement claims and/or third party claims that arise out of the use by the Customer or Authorised Users of the Supplier IPR and/or any other IPR supplied by the Supplier under the Contract (including without limitation the Solution) or a Service Support Contract.

CONFIDENTIAL AND SUBJECT TO CONTRACT

Legal Issue	Customer Requirement
Warranties	<p>The Contract and each Service Support Contract will include appropriate warranties, undertakings and representations from the Supplier in respect of its obligations under the Contract and each Service Support Contract, including (as applicable), without limitation the following, that:</p> <ul style="list-style-type: none">• the Solution as delivered, installed and commissioned will meet the requirements and provide the functionality set out in the Specification;• it will perform all services:<ul style="list-style-type: none">○ in accordance with the agreed service levels and timescales/milestones;○ in accordance with good industry practice;○ in compliance with all applicable laws and consents (including without limitation the giving of notices and the obtaining of any such consents) and so as not to prejudice the renewal of any such consents; and○ in accordance with all agreed specifications including manuals as to how to support equipment and any agreed operating procedures;○ in accordance with its Tender;• all deliverables will:<ul style="list-style-type: none">○ be of satisfactory quality;○ conform to any specifications and be free from material defects, viruses, malware, unauthorised code or similar defects or features;• the Supplier will have all the licenses, consents and permits required to perform its obligations under the Contract and each Service Support Contract, including but not limited to all relevant visas for personnel;• to the extent that any third party hardware, equipment, software and documentation and/or services is provided as part of the Services, appropriate warranties will be provided by Supplier to the Customer in respect of such hardware, equipment, software and documentation and/or services consistent with the foregoing warranties; and• all statements made by the Supplier in any written submissions made by the Supplier as part of the procurement process, including without limitation its Tender, are true and accurate.
Personnel	<p>The Supplier will ensure that all employees, agents, consultants, sub-contractors and contractors are adequately skilled, trained and supervised and that any working on the Sites will comply with such on site policies as the Customer may specify. The Customer shall be entitled to exclude or remove from the Sites any Supplier personnel who do not so comply or upon any other reasonable grounds.</p>

CONFIDENTIAL AND SUBJECT TO CONTRACT

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Confidentiality	<p>The Contract will include appropriate mutual obligations of confidentiality in relation to confidential information disclosed by or on behalf of each party during the course of performing the Contract (including a Service Support Contract).</p> <p>The scope of permitted disclosure of the Customer's confidential information will be tightly defined to protect the Customer and will be subject at all times to compliance with applicable data protection laws. The Customer may require that any sub-contractors of the Supplier will sign confidentiality agreements with terms that are no less protective of the Customer's confidential information than those set out in the Contract.</p>
Data protection and cyber-security	<p>The Supplier will ensure the Solution, the services and any deliverables and its performance of its obligations under the Contract and any Service Support Contract will comply with applicable data protection legislation and all cyber-security regulations applicable to the Solution, the services, the deliverables, the Customer and/or the Supplier, including without limitation as set out in the Specification.</p>
	<p>Personal Data</p> <p>If the Supplier processes personal data for which the Customer is the data controller (as defined under the Data Protection Act 2018):</p> <ul style="list-style-type: none">• the Supplier will only process such personal data on the Customer's instructions and will not cause the Customer to breach its obligations under applicable data protection or cyber-security legislation; and• where requested by the Customer, the Supplier will enter into a data processing agreement with the Customer on terms reasonably necessary to comply with the Customer's obligations under applicable data protection legislation.
	<p>Security Policies and Security requirements</p> <p>The Supplier will have in place and keep up to date security and privacy policies in accordance with good industry practice, and will comply with such policies throughout the term.</p> <p>As a minimum, the Supplier will comply with the data, information and other security requirements set out in the Specification.</p>
	<p>Data retention</p> <p>To the extent that Customer data is held or processed by the Supplier, the Supplier shall:</p> <ul style="list-style-type: none">• not store, copy, disclose or use the Customer data except as necessary for the performance by the Supplier of its obligations under the Contract or a Service Support Contract;• preserve the integrity of Customer data and prevent the corruption or loss of Customer data at all times that the relevant Customer data is in its control or the control of any sub-contractor; and

CONFIDENTIAL AND SUBJECT TO CONTRACT

Legal Issue	Customer Requirement
	<ul style="list-style-type: none">• within 14 days of any request by the Customer, provide to the Customer a complete, readable and uncorrupted copy of the Customer data in such format as reasonably required by the Customer. <p>Data Loss</p> <p>If the Supplier suspects that data processed by the Supplier on behalf of the Customer in the provision of the Services and/or any deliverables, has (or may) become lost/corrupted it will immediately notify the Customer and propose remedial action.</p> <p>If any such data is corrupted/lost by the Supplier's negligence/default, the Contract and/or Service Support Contract will give the Customer the option to:</p> <ul style="list-style-type: none">• require the Supplier, at its own expense, to restore or procure restoration; or• itself restore or procure restoration at Supplier's expense.
Compliance with applicable law	The Supplier will comply, and will ensure the Solution and the services comply, with all applicable laws.
Supplier's Liability	<p>Save as set out below, the liability of the Supplier under the Contract will be limited in aggregate per 12 month period (commencing on the date of the Contract and each anniversary thereof) to:</p> <ul style="list-style-type: none">• in relation to data loss or breach of any other Supplier obligations in relation to data protection and cyber-security (including without limitation as described in these Required Terms), no less than £1 million;• in relation to all other losses, an amount equal to 100% of the charges paid or payable to the Supplier.
Customer's liability	The Customer's liability will be limited in aggregate per 12 month period (commencing on the date of the Contract and each anniversary thereof) to 100% of the charges paid or payable to the Supplier.
Other liability provisions	<p>Neither party will be liable for any indirect, consequential or special losses.</p> <p>Each party's liability will be unlimited: (a) for death or personal injury caused by its negligence; (b) for fraud or fraudulent misrepresentation; (c) where it is not permitted in law to limit liability.</p>
Termination	<p>The Contract (and as applicable any Service Support Contract) will allow the Customer to terminate at any time with immediate effect:</p> <ul style="list-style-type: none">• if the Supplier is in material breach which cannot be remedied or is not remedied within 30 days (including without limit a series of persistent breaches which together constitute a material breach);

CONFIDENTIAL AND SUBJECT TO CONTRACT

Legal Issue	Customer Requirement
	<ul style="list-style-type: none">• if the Supplier is insolvent;• if the Solution is not ready for live use within 5 business days of the Planned Go-Live Date.
	Neither party shall be entitled to terminate the Contract or any Service Support Contract for convenience or change in who has control of the other party within the Initial Term or any Extension Period.
Return or destruction of data	<p>Within 14 days of the date of termination or expiry of the Contract or, if later, the end of the exit assistance period, the Supplier will:</p> <ul style="list-style-type: none">• cease to use the Customer data;• provide to the Customer and/or the replacement supplier with a complete, readable and uncorrupted copy of any Customer data in its possession in such format as reasonably required by the Customer; and• securely permanently delete all Customer data and all other Confidential Information of the Customer held by the Supplier on computers, storage devices and storage media (and provide written confirmation/certification to the Customer that this has been done). The exception to this is where such data must be kept for compliance with applicable law.
Sub-contracting	The Supplier will be responsible for all acts and omissions of its sub-contractors. If any sub-contractor processes any data in connection with the Contract or a Service Support Contract as a sub-processor, the Supplier will comply with the relevant data protection and cyber-security provisions governing such sub-processor appointment.
Assignment	Neither party may assign, novate or otherwise transfer its rights or obligations under the Contract or any Service Support Contract without the consent of the other party.
Governing Law and Jurisdiction	<p>The Contract and any Service Support Contract will be governed by English law.</p> <p>If a dispute cannot be resolved using the dispute resolution procedure, or if either party wishes to apply for injunctive or other relief to protect or enforce its intellectual property rights or its confidential information at any time, the courts of England will have exclusive jurisdiction, except that either party may apply to any court worldwide in order to obtain injunctive or other relief to protect or enforce its intellectual property rights or the obligations of confidentiality.</p>