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and

**Hitachi High-Tech Europe GmbH
Techspace One, Sci-Tech Daresbury
Keckwick Lane, Daresbury, WA4 4AB
United Kingdom**

**Call-Off terms and conditions for the supply of High Value
Laboratory Equipment**

ORDER FORM REFERENCE: DSTL0000026287

Contents

1	Definitions and Interpretation	4
2	Contract Documents	9
3	Appointment	9
4	No Partnership or Agency	10
5	Non-Exclusivity	10
6	Supply of the Goods, Services and/or Software	10
7	Use of the Software	14
8	Variations to the Contract	15
9	Payment of the Charge(s)	16
10	Set Off	17
11	Personnel	17
12	Premises	18
13	Assignment and Sub-contracting	18
14	Intellectual Property Rights	19
15	Confidentiality and publicity	20
16	Freedom of Information	20
17	Insurance	20
18	Warranties and Undertakings	21
19	Suspension and/or Termination	22
20	Force Majeure	23
21	Communications	23
22	Indemnities	24
23	Limit of liability	24
24	Anti-bribery and Corruption	25
25	Data Protection	25
26	Conflicts of interest	25
27	Dispute Resolution	25
28	Records and Audit Access	26
29	Compliance with Anti-Slavery and Human Trafficking Laws and Policies	27
30	Sustainability	28



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31	Equality, Diversity and Inclusion	28
32	Contracts (Rights of Third Parties) Act 1999	29
33	Severability	29
34	Counterparts	29
35	Waiver	29
36	Amendments to this Contract	29
37	Governing Law and Jurisdiction	29
38	Guarantees and Other Forms of Security	30
	Schedule 1 : Anti-bribery and Corruption	32
	Schedule 2 : Re-tendering, handover and TUPE- Not used	34
	Schedule 3 : Data Protection	35
	Schedule 4 : Key Performance Indicators	40
	Schedule 5 : Supply of Goods	42
	Schedule 6 : Provision of Catering Services- Not Used	54
	Schedule 7 : Provision of Professional Services- Not Used	55
	Schedule 8 : Software Terms	56
	Schedule 9 : Parent Company Guarantee	58

Call-Off Terms and Conditions

Dated: Date of final signature

Between:

- (1) the Customer; and
 - (2) the Supplier,
- (the identities of the Customer and Supplier are set out in the Order Form).

Whereas:

- (A) The Authority acts as the lead organisation on behalf its Member Institutions (as defined below) providing its Member Institutions with pre-tendered arrangements for a variety of goods and services.
- (B) Following a tender process compliant with the requirements of the Public Contracts Regulations 2015, the Authority selected a group of suppliers to be eligible to provide the Goods, Services and/or Software on a call-off basis and entered into individual framework agreements with those suppliers and this included the Authority and the Supplier entering into the Framework Agreement (as defined below).
- (C) Pursuant to the Framework Agreement, the Customer has appointed the Supplier to provide the Goods, Services and/or Software in accordance with the Contract (as defined below).
- (D) These Call-off Terms and Conditions set out the terms and conditions for the provision of the Goods, Services and/or Software and the obligations of the Supplier in the provision of the Goods, Services and/or Software.

Now it is hereby agreed as follows:-

1 Definitions and Interpretation

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

Acceptance means that the Authorised Officer of the Customer has accepted the Goods, Services and/or Software as meeting the requirements of the Contract through the provision of an Acceptance Certificate.

Access Date means the date detailed as such in the Order Form for the provision of on-premises Software;

Authority means NWUPC Ltd, registered with company number 4045190 and whose registered office is at Room 404, 4th Floor, Crescent House, University of Salford, Salford, M5 4WT;

Authorised Officer means the Customer employee authorised, either generally or specifically, to sign the Order Form or such other person notified from time to time (or their designate).

ADR Notice has the meaning given in Clause 27.5;

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

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

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

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

CEDR Model Mediation Procedure means the model mediation procedure of The Centre for Effective Dispute Resolution;

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

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

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

Customer Data means all information and data, including Personal Data, that is submitted to, created using or by and/or stored on the Software;

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

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

Data Protection Legislation means all laws and regulations relating to the Processing of Personal Data as the same may be in force from time to time;

Delivery Address means the address for delivery of the Goods as specified in the Order or as may be otherwise notified to the Supplier by the Customer from time to time.

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

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

Defects Rectification Period shall be for a minimum of 12 months after Acceptance or as otherwise agreed in the Order Form;

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

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

Documentation means any data, information, records or documents in any media and form whatsoever (including paper or electronic form);

Effective Date means the date of these Call-Off Terms and Conditions;

EIR means the Environmental Information Regulations 2004;

FOIA means the Freedom of Information Act 2000;

Force Majeure Event means the occurrence of: (a) extreme abnormal weather conditions; (b) nuclear, chemical or biological contamination; (c) war, civil commotion or terrorist attack; (d) interruption or failure of a utility service including electric power, gas or water; or (e) acts of God, floods or earthquakes; or (f) any other matter outside of the control of the party, but excluding in each case: (i) strikes or other forms of industrial action by the employees, agents or subcontractors of that party; or (ii) any other failure in Supplier's supply chain (other than that caused by (a) to (e)); or (iii) only to the extent the party could not mitigate the event by means of prudent contingency planning or any other prudent business means or precautions which ought reasonably to have been taken by that party. For the avoidance of doubt, where the Contract includes the provision of off-premises Software, the following events, circumstances or causes shall not constitute a Force Majeure Event: system failures, cyber-attacks (including denial-of-service attacks) and power outages affecting the Supplier's, or its sub-contractors', systems or equipment;

Framework Agreement means the framework agreement for the supply of the Goods, Services and/or Software made between: (i) the Authority; and (ii) the Supplier, dated 1st August 2023;

Framework Agreement KPIs means the key performance indicators set out in Schedule 6 to the Framework Agreement;

Framework Levy has the meaning given in the Framework Agreement;

FTS means the Find a Tender service, being the UK's e-notification service on which notices for new procurements are published;

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

Goods means the goods identified as such in the Order Form and any associated goods and/or support services identified in Schedule 5 (Supply of Goods);

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

Installation shall mean the Installation of the Goods in the designated location and into the operating environment at the Premises as detailed in the Order Form; 'Install' should be interpreted accordingly;

Installation Date means the date detailed as such in the Order Form for the provision of on-premises Software;

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

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

Losses means all liabilities, costs, expenses, damages and losses including but not limited to any direct loss, and all interest, penalties and legal costs;

Member Institution has the meaning given in the Framework Agreement;

Mini Tender has the meaning given in the Framework Agreement;

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

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

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

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

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

Prohibited Act means the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts relating to this Contract or any other contract with the Customer; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or (iv) of defrauding attempting to defraud or conspiring to defraud the Customer (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); and (d) activity, practice or conduct which would constitute one of the offences listed under (c) if such activity, practice or conduct had been carried out in the UK;

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

PCR means the Public Contracts Regulations 2015;

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

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

Services means the services identified as such in the Order Form

Software means the software identified as such in the Order Form and any associated support services and documentation identified in Schedule 8 (Software Terms);

Software Specification means the specification set out in the Order Form;

Software Warranty Period means the period detailed as such in the Order Form for the provision of on-premise software or, if no such period is specified, 180 days after the Installation Date;

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

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

Supply Rates means the rates set out in Schedule 1 of the Framework Agreement as may be amended pursuant to the procedures set out in that Schedule 1;

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

- (a) the Contract End Date; or
- (b) the date the Contract is terminated in accordance with Clause 19;

Third Party Agreements has the meaning given in Clause 6.11;

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

Variation has the meaning given in Clause 8.

- 1.2 In these Call-Off Terms and Conditions unless the context otherwise requires:
 - 1.2.1 clause headings are inserted for convenience only and shall not affect the construction and interpretation of this Contract and all references to Clauses, sub-Clauses, or Schedules are to Clauses and sub-Clauses of, and Schedules to, these Call-Off Terms and Conditions; and
 - 1.2.2 words denoting the singular number include the plural and vice versa; and
 - 1.2.3 words denoting the masculine include the feminine and vice versa; and

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

2 Contract Documents

- 2.1 The Contract consists of the following documents:
 - 2.1.1 these Call-Off Terms and Conditions;
 - 2.1.2 the Schedule(s) to these Call-Off Terms and Conditions;
 - 2.1.3 the Order Form (and any appendices thereto); and
 - 2.1.4 the Brief (annexed to the Order Form).
- 2.2 The Contract is made pursuant to the Framework Agreement.
- 2.3 In the event of any inconsistency or conflict between:
 - 2.3.1 the Framework Agreement and the Contract, the Framework Agreement shall prevail; or
 - 2.3.2 the Contract documents in Clause 2.1 above, the order of precedence shall be the order in which those documents appear.
- 2.4 Save in respect of the Framework Agreement, the Contract supersedes all other oral and/or written communications, representations, agreements or undertakings between the parties.

3 Appointment

- 3.1 The Customer appoints the Supplier as the supplier of the Goods, Services and/or Software set out in the Order Form.
- 3.2 The Contract shall take effect on and from the date of the Contract and shall expire automatically at the end of the Term.
- 3.3 The Customer may, by giving written notice to the Supplier not less than 3 (three) month(s) before the Contract End Date, extend the Contract End Date for any further period or periods specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.
- 3.4 Any omission on the part of the Customer to inspect, review or disapprove shall not diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.
- 3.5 The Supplier shall be responsible for the accuracy of all drawings, documents and information supplied to the Customer by the Supplier in connection with the supply of the Goods and Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein. Notwithstanding the aforementioned, where such discrepancies, errors or omissions arise out of or in connection with drawings, documentation and information based on / prepared by reference to drawings, documents and information provided to the Supplier by the Customer, the Supplier shall have no such responsibility or obligation to pay.

4 No Partnership or Agency

- 4.1 Nothing in this Contract is intended to, or shall be deemed to:
 - 4.1.1 establish any partnership or joint venture between any of the parties;
 - 4.1.2 constitute any party as the agent of another party; or
 - 4.1.3 authorise any party to make or enter into any commitments for or on behalf of any other party.
- 4.2 The Supplier confirms it is acting on its own behalf and not for the benefit of any other person.

5 Non-Exclusivity

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

6 Supply of the Goods, Services and/or Software

- 6.1 The Supplier warrants and undertakes to the Customer that:
 - 6.1.1 it shall supply the relevant Goods, Services and/or Software diligently and in accordance with the Contract and in compliance with all applicable Laws, and Good Industry Practice;
 - 6.1.2 it shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture (as relevant) and supply the Goods in accordance with the terms of this Contract; and
 - 6.1.3 it has exercised and shall continue to exercise in the performance of all its duties under the Contract all the skill, care and diligence reasonably to be expected of a properly qualified and competent supplier experienced in the supply of goods, services and/or software of a similar nature to the Goods, Services and/or Software;
 - 6.1.4 it shall supply the relevant Goods, Services and/or Software in such a manner and at such times so that no act, omission or default of the Supplier shall cause or contribute to any breach of Law;
 - 6.1.5 it shall supply the relevant Goods, Services and/or Software in compliance with all reasonable instructions given in writing under or in connection with the Contract
 - (a) (where the Goods includes choice of components and design) accepts responsibility for and warrants the suitability of the choice of components and design including everything supplied by or obtained from third parties;
 - 6.1.6 it shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture (as relevant), packing, packaging, marking, storage, handling, and delivery of the Goods.

- 6.1.7 it has satisfied itself of all details relating to the nature of the Goods and Services and has raised all relevant due diligence questions with the Customer. The Supplier shall not be entitled to any additional payment nor be excused from any liability under the Contract if it has misinterpreted any matter or fact relating to the Goods, Services or the Customer's specification.
- 6.1.8 it shall at all times observe and provide the Goods, Services and/or Software in accordance with the KPIs;
- 6.1.9 it has the right to enter into the Contract and to provide the Software on the basis described herein and grant to the Customer a licence or, where the provision of the Software is not subject to separate licence arrangements, a perpetual right to use the Software as contemplated by the Contract.
- 6.1.10 All relevant Goods, Services and/or Software supplied by the Supplier shall:
- (a) conform to the Order;
 - (b) be fit for the purpose specified in the Brief;
 - (c) where on-premises Software is being provided, comply with the Software Specification for the duration of the Software Warranty Period and be free from errors, bugs and defects;
 - (d) where off-premises Software is being provided, be free from errors, bugs and defects and will comply with the Software Specification for the duration that the Supplier is obliged to provide the Software under the terms of the Contract (for the avoidance of doubt the Customer acknowledges that if it chooses to run test versions of software, other than those provided by the Supplier for the purpose of carrying out the Tests, these may contain technical bugs);
 - (e) be new (unless otherwise specified in the Order Form), undamaged and free from defects in design, material and workmanship and remain so for twelve (12) months after Acceptance;
 - (f) 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 Customer;
 - (g) be properly packaged to survive transit and storage without damage, clearly labelled and addressed; and
 - (h) otherwise comply with all applicable statutory and regulatory requirements.
- 6.2 Upon delivery of the Goods, and/or Software, the Supplier shall provide the Customer with a delivery note.
- 6.3 Notwithstanding the provisions of Clause 6.8, the Customer shall be entitled to reject the Goods and/or Software by notice to the Supplier within a reasonable time if they do not comply with the terms of the Contract. The Customer shall be obliged to give the Supplier reasonable opportunity to replace any rejected Goods and/or Services with Goods and/or Services which conform to the Contract, but shall thereafter, without prejudice to any other right which the Customer may have against the Supplier, have the right to purchase such Goods and/or Services of the same or substantially equal quality elsewhere. Any additional costs which may be incurred by the

Customer in purchasing such Goods and/or Services shall be for the Supplier's account. When Goods are rejected they will be stored at the Premises, and subsequently returned, at the Supplier's sole risk and expense. A Customer's right to reject under this Clause 6.3 shall apply equally to any Goods and/or Software replaced hereunder.

- 6.4 No failure by a Customer to reject the relevant Goods, and/or Software under Clause 6.3 shall constitute acceptance or acknowledgment by the Customer of the relevant Goods, and/or Software or the condition in which they were delivered, or in any way diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.
- 6.5 Where off-premises Software is being provided, the Supplier shall ensure that the Software has been set-up and configured to the Customer's specific requirements (as set out in Schedule 8 (Software Terms)) and is made available to the Customer in that form on a software-as-a-service basis for access and use in accordance with the Contract on and from the Access Date and for the Term. As part of such arrangements, the Supplier shall store the Customer Data and make the Customer Data available to the Customer through the Software.
- 6.6 Where on-premises Software is being provided, the Supplier will deliver the Software in accordance with the Delivery Date(s) and will install and set-up the Software on the Installation Date. The Supplier shall carry out such Installation and set-up in accordance with any specific requirements agreed between the parties and set out in Schedule 8.
- 6.7 Notwithstanding Clause 6.8, during the Term and the applicable Defects Rectification Period, the Supplier shall make good any Defect(s) discovered in the Goods (by replacement or otherwise) at its own cost and expense within an appropriate and reasonable lead time (to be agreed between the Supplier and the Customer, each acting reasonably) of receiving notice from the Customer regarding the Defect, provided always that such Defect did not arise as a result of the Customer using the Goods other than in accordance with their proper usage. The Supplier shall respond to a request for Services under this Clause 6.7 within a maximum of 5 working hours or such other period as specified in the Contract. If the Supplier fails to comply with its obligations under this Clause 6.7, the Customer shall be entitled to engage another supplier to make good any Defect(s) discovered in the relevant Goods and the Customer shall be entitled to recover the cost of doing so from the Supplier as a debt. Should the Customer exercise their rights under this Clause 6.7, the utilisation of third party services shall not affect or invalidate the Defects provisions, or relieve the Supplier of their obligations to provide the defects rectification services for the remainder of the Defects Rectification Period, nor the Customer's ability to enter into a maintenance agreement with the Supplier, and the Supplier shall be responsible for meeting their obligations thereafter. Should the Customer exercise their rights under this Clause 6.7, this shall be without prejudice to any other rights which the Customer may have against the Supplier in respect of the Supplier failing to remedy such defect or damage.
- 6.7.1 The provisions of this Clause 6.7 shall not apply to any defect or damage which arises or develops as a result of any alteration, addition or attachment to the Goods where:

- (a) The Supplier has published by means of publication in the Supplier's or the Manufacturer's specifications, a notification stating that the alteration, addition or attachment will degrade the standard of performance of the Goods and/or invalidate the warranty under the Defects Rectification Period;
 - (b) The Supplier has otherwise notified the Customer in writing that a specific alteration, addition or attachment will adversely affect the standards of performance of the Goods and/or the warranty under the Defects Rectification Period;
 - (c) the warranty under the Defects Rectification Period is invalidated by the Customer's negligent act or omission, provided always that it shall be for the Supplier to prove that any defect or damage has been caused by the alteration, addition or attachment. Save as set out above, the Customer shall have the right to make any alteration and/or addition and/or attachment to the Goods, whether such alteration, addition and/or attachment is made by the Customer's employees, by the Supplier and/or by an appropriately qualified third party source, without reference to the Supplier and the Supplier shall not be relieved of any of the Supplier's obligations to provide Defects Rectification services in accordance with this Clause 6.7.
- 6.7.2 All services under this Clause 6.7 shall be carried out on the Premises where reasonably practicable. Goods shall not be removed from the Premises for the provision of these services without the Customer's permission. In circumstances where Goods are authorised to be removed from the Premises, the Goods shall at all times remain the property of the Customer, but the risk inherent in the Goods shall pass to the Supplier from the time the Goods are removed from their normal operating environment until they are returned and, where appropriate, reinstalled into the same operating environment, or any other operating environment designated by the Customer, appropriate acceptance tests have been concluded where necessary, and acceptance documentation has been signed by the Customer.
- 6.7.3 This Clause 6.7 is not intended to limit any statutory rights which may accrue to the Customer and this Clause 6.7 is in addition to any standard warranty offered by the Supplier or the Manufacturer. In the event of any conflict between the terms of any standard warranty offered or provided by the Supplier and the provisions set out in this this Clause 6.7, the provisions of this Clause 6.7 shall take precedence.
- 6.8 Title to the Goods (or part thereof) shall vest in the Customer in proportion to the percentage of the Charges paid to the Supplier (ownership to be held jointly as tenants in common). Title shall vest fully in the Customer when the final payment of the Charges is paid.
- 6.9 If title to the Goods (or part thereof) passes to the Customer prior to Acceptance, the Supplier shall insure the Goods, mark them as the property of the Customer and hold them in a separate bonded area suitable for such storage purposes.
- 6.10 Risk of loss or damage to the Goods delivered to the Customer shall pass to the Customer on Acceptance.

- 6.11 The Supplier shall, so far as practically possible reasonably practicable, have regard to all obligations on the part of the Customer in any third party agreements or in any other documentation relating to the Contract to which the Customer is a party to and of which copies (subject to the deletion of any confidential information therein) have been provided by or on behalf of the Customer (**Third Party Agreements**). The Supplier warrants and undertakes to the Customer that the Supplier will supply the relevant Goods, Services and/or Software and will use reasonable endeavours to perform its obligations under the Contract in such a manner and at such times that no act, omission or default of the Supplier shall cause or contribute to any breach by the Customer of any of its obligations under the Third Party Agreements or other documentation mentioned in this Clause 6.11.
- 6.12 If the Supplier becomes aware of any matter that may impact on its ability to deliver the relevant Goods, Services and/or Software in accordance with the Contract, it must immediately notify the Customer and shall propose and, if accepted by the Customer, implement any measures which may be practical to overcome or reduce any adverse impact on the Customer. The Supplier shall bear the cost of implementing such measures save where the relevant matter is a direct result of any wilful act, negligence or breach by the Customer of its obligations under the Contract.
- 6.13 The Supplier shall comply with the provisions of Schedule 4 (KPIs).
- 6.14 The Supplier shall comply with the provisions of Schedule 5 (Supply of Goods) and Schedule 8 (Software Terms).

7 Use of the Software

- 7.1 In consideration of the Customer's obligation to pay the Charges, where the provision of the Software is not subject to separate licence arrangements:
- 7.1.1 the Supplier hereby grants to the Customer a perpetual right to use the Software on the Goods or in conjunction with the Services as the case may be for the duration of the Term.
- 7.1.2 if specified in the Contract, the Supplier will provide the Software in both object code and/or source code;
- 7.1.3 where the Customer requires the right to modify or add to the Software, the Supplier and the Customer shall seek to agree in writing a fair and reasonable royalty-free licence to enable the Customer to do so;
- 7.1.4 the Supplier's Intellectual Property Rights in the Software shall remain vested in the Supplier;
- 7.1.5 the Customer shall own the Intellectual Property Rights in any modifications or additions made to the Software, but shall in no case acquire the Intellectual Property Rights in the Software itself;
- 7.1.6 the Customer shall not assign or sub-licence to any third party any right to use the Software or any translation, compilation, adaptation, enhancement or any other version of the Software, without the prior written consent of the Supplier, but the Customer shall have the right to transfer the Software to a third party without reference to, or prior written consent of the Supplier, in the event that the Customer sells and/or transfers ownership of the Goods or any part of the Goods to a third party;

- 7.1.7 the Customer shall only make so many copies of the Software as are reasonably necessary for operational security and use.
- 7.2 Where the Supplier provides third party software in accordance with the Contract or otherwise in order to enable the Supplier to meet their obligations under the Contract, the Supplier shall either:
 - 7.2.1 procure for the Customer a non-exclusive, perpetual and irrevocable licence to use the software under a separate licence agreement, or
 - 7.2.2 grant to the Customer a sub-licence to use the third party software under a separate licence agreement.
- 7.3 The Supplier hereby warrants that they have the right to grant to the Customer the rights in, and the rights to use the Software and any third party software as set out in the Contract.
- 7.4 Should the owner of any third party software purport to remove, restrict or otherwise interfere with the Customer's use of the Software, the Supplier shall ensure that functionally equivalent software is provided forthwith at no cost to the Customer so that the Customer's continued use of the Goods in accordance with the Contract is unaffected and unimpeded.

8 Variations to the Contract

- 8.1 The parties acknowledge that the Customer may, at any time:
 - 8.1.1 instruct the Supplier to add or omit any Goods, Services and/or Software to or from that which is being supplied under the Contract; or
 - 8.1.2 instruct a change to the Brief annexed to the Order Form,
(a **Variation**)
provided always that such Variation shall not amount to a substantial variation for the purposes of regulation 72 of PCR (which the Customer shall determine in its sole discretion).
- 8.2 If any Variation instructed by the Customer shall:
 - 8.2.1 in respect of the Goods, Services and/or Software being supplied under the Contract, increase or decrease the relevant Charge(s); and/or
 - 8.2.2 in respect only of the Goods, and/or Software being supplied under the Contract, affect the Supplier's ability to supply the Goods, and/or Software by the relevant Delivery Date(s),
 - 8.2.3 in respect only of the Software, provided on an off-premise basis, being supplied under the Contract, affect the Supplier's ability to allow the Customer to access and use the Software on and from the relevant Access Date in accordance with Clause 6.5, the Supplier shall submit a quotation to the Customer within 5 (five) days of the Variation instruction setting out the proposed increase or decrease to the relevant Charge(s) (calculated on the basis of the Supply Rates) and, where Clause 8.2.3 applies, the proposed extension(s) to the relevant Access Date.
 - 8.2.4 in respect only of the Software, provided on an on-premises basis, being supplied under the Contract, affect the Supplier's ability to allow the Customer to access and use the Software on and from the relevant Delivery Date in

accordance with Clause 6.6, the Supplier shall submit a quotation to the Customer within 5 (five) days of the Variation instruction setting out the proposed increase or decrease to the relevant Charge(s) (calculated on the basis of the Supply Rates) and, where Clause 8.2.2 applies, the proposed extension(s) to the relevant Delivery Date(s).

- 8.3 Within 10 (ten) days of receipt of a Supplier's quotation pursuant to Clause 8.2, the Customer shall either accept the quotation, in which case the relevant Charge(s) and/or Delivery Date(s) shall be adjusted accordingly, or withdraw the Variation instruction.
- 8.4 Until the Supplier's quotation is accepted in accordance with Clause 8.3, the Supplier shall continue to perform its obligations under the Contract as if the Variation had not been instructed and the Supplier agrees that the preparation of a quotation to be provided under Clause 8.2 will not cause any delay to the supply of the relevant Goods, Services and/or Software.
- 8.5 The Supplier shall have no entitlement to any increase in the relevant Charge or any extension(s) to the relevant Delivery Date(s) where it complies with a Variation instruction prior to its quotation being accepted in accordance with Clause 8.3.
- 8.6 The Customer shall be entitled to refuse any Variation which does or could amount to a substantial variation for the purposes of regulation 72 of PCR.
- 8.7 The Supplier may request, in writing, a variation to the Charge(s) in the event there is a change in Law which was not reasonably foreseeable prior to the date of the Contract which impacts on the Charge under the Contract. If the Supplier so requests a variation, the parties shall meet within 10 (ten) days of the date of such written request and shall agree any changes to the Charge in writing.
- 8.8 The Supplier and Customer acknowledge that in the event that the Supply Rates are amended in accordance with the procedures set out in Schedule 1 of the Framework Agreement, such amendments shall not apply to the Charges under this Contract unless agreed otherwise in writing between the parties and the Authority (in accordance with paragraph 8 of Schedule 1 of the Framework Agreement).

9 Payment of the Charge(s)

Payment of the Charge(s)

- 9.1 The Customer shall pay the Supplier the Charge(s) as stated in the Order Form as full remuneration for the supply of the Goods, Services and/or Software in accordance with the Contract.
- 9.2 Each Charge is fully inclusive of all costs and expenses of every kind incurred by the Supplier in connection with the supply of the Goods, Services and/or Software including but not limited to the provision, delivery, installation and testing of the Goods and Services, including carriage to the Delivery Address, insurance, packaging, duties, imports or other levies, bank charges and training.
- 9.3 For the avoidance of doubt, each Charge shall be exclusive of Value Added Tax. The Customer shall account for and pay the total amount of Value Added Tax properly due thereon.

- 9.4 The Charge(s) shall be paid to the Supplier in accordance with any stages set out in the Order Form and within 30 (thirty) days of receipt of properly rendered invoice(s) in accordance with Clause 9.5.
- 9.5 The Supplier shall submit invoices to the Customer in respect of any of the Charge(s) properly due to the Supplier under the Contract and all invoices submitted by the Supplier shall show amounts due, amounts invoiced to date and will provide any additional supporting documentation as the Customer may request (acting reasonably).
- 9.6 The Supplier acknowledges and agrees that the Authority, or any other Participating Consortia or any Member Institution has no liability to the Supplier for the payment of any Charges due to the Supplier pursuant to the Contract, unless the Authority or such Participating Consortia or Member Institution is the Customer under the Contract.

10 Set Off

- 10.1 The parties acknowledge that the Customer may at any time, without notice to the Supplier, set-off any liability owed by the Supplier to the Customer against any liability owed by the Customer to the Supplier, whether either liability is present, liquidated or unliquidated and whether or not liability arises under the Contract. Any such exercise of set-off by the Customer shall not limit or affect any of the Customer's rights or remedies available under this Contract.
- 10.2 For the avoidance of doubt, all amounts due from the Supplier to the Customer under this Contract shall be paid in full without any set-off, counterclaim, deduction or withholding by the Supplier.

11 Personnel

- 11.1 The Supplier warrants to the Customer that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to perform their duties as required under the Contract.
- 11.2 The Supplier warrants to the Customer that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to meet the standards offered by the Supplier under the Contract.
- 11.3 The Supplier shall provide such details of its Personnel that may require access to the Premises to perform their duties as required under the Contract as are reasonably requested in writing by the Customer. The Supplier shall provide such details at least 10 Working Days before the Personnel require access to the Customer's Premises or those of any third party. This requirement should not restrict access by staff where suitability has previously been determined.
- 11.4 The Supplier shall ensure that when on the Premises, its Personnel at all times comply with all Laws and other requirements that may be in force from time to time in relation to the Premises.
- 11.5 The Customer may request in writing the removal of any Supplier's Personnel, where in the Customer's reasonable opinion such Personnel's performance or conduct is or has been unsatisfactory. The Supplier shall promptly remove and replace such Personnel at the Supplier's own cost and expense.

12 Premises

- 12.1 The Customer grants the Supplier a non-exclusive licence to access the Premises, as may be reasonably required for the sole purpose of performing its obligations under the Contract.
- 12.2 Where access is required to any Premises (whether the Customer's or those of a third party), the Supplier shall agree access arrangements with the Authorised Officer. The Supplier shall co-operate with all other suppliers or personnel who may also have access to the Premises and not interfere with the safety or convenience of staff or the public.
- 12.3 At the end of the Term, the Supplier shall:
 - 12.3.1 remove from the Premises all the Supplier's equipment and unused materials;
 - 12.3.2 clear away all rubbish arising out of or in connection with the supply of the relevant Goods, Services and/or Software; and
 - 12.3.3 leave the Premises in a clean and tidy condition to the Customer's reasonable satisfaction.
- 12.4 If the Supplier fails to comply with Clause 12.3, the Customer may remove and dispose of the Supplier's equipment and unused materials and clear away and clean the Premises as required by Clauses 12.3.2 and 12.3.3 and the Customer shall be entitled to recover the cost of doing so from the Supplier as a debt.
- 12.5 Where the Supplier leaves any equipment or materials on the Premises during the Term, it does so at its own risk and the Customer shall have no liability to the Supplier in relation to such equipment or materials.

13 Assignment and Sub-contracting

- 13.1 Subject to Clause 13.2, the Supplier shall not assign, charge or transfer any right or obligation under this Contract or in any way deal or part with its interest in this Contract or any part of it to any person, without the Customer's prior written consent, which shall not be unreasonably withheld (provided always that the Customer shall be entitled to refuse to consent to any assignment, charge or transfer which could or does breach any regulation(s) of the PCR).
- 13.2 Save where permitted pursuant to Clause 13.3, the Supplier shall not sub-contract to any person the performance of any of its obligations under this Contract:
 - 13.2.1 except with the Customer's prior written consent, such consent not to be unreasonably withheld;
 - 13.2.2 if any such sub-contracting would be inconsistent with the Supplier's tender in the Original Tender Process and/or the Mini Tender; and
 - 13.2.3 if any such sub-contracting could or would in the sole opinion of the Customer breach any regulation(s) of the PCR.
- 13.3 Notwithstanding Clause 13.2 above, the Customer hereby grants the Supplier consent to sub-contract its delivery obligations under this Contract.

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

14 Intellectual Property Rights

- 14.1 Any Customer's IP shall remain vested in the Customer and the Customer shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use such IP for the purpose of performing its obligations under this Contract.
- 14.2 The Project IP shall immediately vest in the Customer upon its creation or discovery and the Customer shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use the Project IP for the purpose of performing its obligations under this Contract.
- 14.3 The Supplier's Background IP shall remain vested in the Supplier and the Supplier shall grant the Customer an irrevocable, transferable non-exclusive, royalty free licence to use the Supplier's Background IP for any purpose related to this Contract and the Goods and/or Services supplied hereunder.
- 14.4 The licences granted under this Clause 14 include a right to sub-license.
- 14.5 All royalties or other sums payable in respect of the supply and use of any patented article, processes or inventions required for and in relation to the performance of the Supplier's obligations under this Contract shall be paid by the Supplier.
- 14.6 The Supplier shall not be liable for any use of the Supplier's Background IP or Project IP other than that for which they were prepared.
- 14.7 The Customer shall not be liable for any use of the Customer's IP other than that for which they were prepared.
- 14.8 Nothing in the Contract shall prevent or delay a student of the Customer submitting any thesis to the Customer for assessment or examination.

15 Confidentiality and publicity

- 15.1 Subject to Clauses 16 and 25, each party will keep confidential all financial information, supplier lists, manuals, software (including its source code), trade secrets, business forecasts, specifications, correspondence, books, records, documents, agreements, photographs, quotations, invoices, files, plans, drawings, any other similar material or information relating in any way to this Contract, and/or the business of the other party. Neither party will disclose details of these to any person, other than to its professional advisers, insurers and personnel, without the consent of the other party, and then only insofar as such disclosure is necessary for the effective performance of the Supplier's obligations under this Contract. The provisions of this Clause will continue to apply notwithstanding any novation and/or termination of this Contract for any reason and notwithstanding the completion of the performance of either party's obligations under this Contract.
- 15.2 Neither party shall be liable for the disclosure of any confidential material which is referred to in Clause 15.1 which:
- 15.2.1 is or becomes available to the public, other than by means of a breach of this Contract; or
- 15.2.2 is required by Law to be disclosed.
- 15.3 Neither party shall, without the other party's prior written consent, use the other party's corporate name or any other unnamed trademark associated with the other party for any purpose, including but not limited to by illustration, advertising, publicising, marketing or selling services and/or products, except as may otherwise be required by Law. In that event, that party shall provide the other party with written notice of such request as soon as reasonably practicable, sufficient to allow the other party an opportunity to object prior to such disclosure.
- 15.4 Notwithstanding the provisions in this Clause 15 and Schedule 3 (Data Protection), the parties shall comply with the Data Protection Legislation.

16 Freedom of Information

- 16.1 The Supplier acknowledges that the Customer may be subject to the FOIA and the EIR and the Supplier shall, at its cost, use all reasonable endeavours and take all necessary steps to assist the Customer in complying with the FOIA and/or the EIR.
- 16.2 If the Supplier receives a 'request' from any third party (as that term is defined in the FOIA and the EIR, as applicable), it shall immediately provide the Customer with a written copy of that request.
- 16.3 The Supplier shall use reasonable endeavours to ensure, to the extent it is able to do so, that the provisions of this Clause 16 are included in any subcontract it enters into in respect of this Contract.

17 Insurance

- 17.1 The Supplier warrants that it currently maintains and shall continue to maintain:
- 17.1.1 professional indemnity insurance;

- 17.1.2 product liability insurance;
- 17.1.3 public liability insurance; and
- 17.1.4 employer's liability insurance,

for the periods set out in Clause 13.1 of the Framework Agreement, all with a well-established and reputable insurance office or underwriter of repute carrying on business in the United Kingdom and the European Union with a limit and basis of indemnity as set out in Article 3 of the Memorandum of Agreement in the Framework Agreement for each and every claim provided always that such insurance is generally available in the United Kingdom and the European Union to the business of the Supplier at commercially reasonable rates and terms. The Supplier shall immediately inform the Customer if such insurance ceases to be generally available at commercially reasonable rates and terms and for the avoidance of doubt it is hereby agreed and declared that any increased or additional premium required by insurers by reason of the Supplier's own claims record or other acts, omissions, matter or things particular to the Supplier shall be deemed to be within commercially reasonable rates.

- 17.2 As and when the Supplier is reasonably requested in writing to do so by the Customer, the Supplier shall produce for inspection sufficient documentary evidence in the form of a standard insurance broker's certificate that the insurance required under Clause 17.1 is being maintained in accordance with the terms of this Contract. If the Supplier fails to supply the relevant evidence, the Customer shall be at liberty to effect such insurance cover as it deems necessary at the Supplier's cost.
- 17.3 The Supplier shall not, once a claim under Clause 17.1 of this Contract has been notified to it, voluntarily do anything which would reduce or tend to reduce the scope of indemnity under its insurance policies or the amount of indemnity monies which will be available thereunder were the claim against it to succeed in full.
- 17.4 The Supplier shall:
 - 17.4.1 do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and
 - 17.4.2 notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 17.5 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 17.1.
- 17.6 If the Supplier fails or is unable to maintain insurance in accordance with Clause 17.1, or fails to provide for inspection the sufficient documentary evidence referred to in Clause 17.2, the Customer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

18 Warranties and Undertakings

- 18.1 Each party warrants and undertakes to the other party on the Effective Date that:

- 18.1.1 it has the power and is duly authorised to enter into, perform and comply with its obligations under this Contract;
- 18.1.2 this Contract is executed by one of its authorised representatives;
- 18.1.3 it has obtained and shall maintain for the duration of this Contract all requisite regulatory and supervisory consents, licences, authorisations and approvals necessary for it to carry out its obligations under this Contract; and
- 18.1.4 its entry into this Contract and its performance of and compliance with its obligations under it do not and will not violate any restriction imposed by:
 - (a) any regulation to which it is subject;
 - (b) its memorandum or articles of association; or
 - (c) any agreement to which it is a party.
- 18.2 The Supplier warrants and undertakes to the Customer on the Effective Date that in entering into this Contract it has not committed any Prohibited Act.

19 Suspension and/or Termination

- 19.1 The Customer or the Supplier may suspend and/or terminate the Supplier's appointment under this Contract upon serving written notice on the other in the event that:
 - 19.1.1 the other is in breach of this Contract in any material respect and the other has failed within 15 (fifteen) days of the service of the other's written notice to remedy such breach or breaches; and/or
 - 19.1.2 distress or execution is levied or threatened upon any of the other's property or any judgement against the other remains unsatisfied for more than 14 (fourteen) days or the other (being an individual) is bankrupt or unable to pay his debts or seeks an arrangement with his creditors, or the other (being a company) has an administrator appointed of it or a receiver or manager or administrative receiver is appointed of it or any of its assets or it enters into liquidation or it proposes or makes any voluntary arrangement with its creditors; any petition is presented or any resolution passed or any steps or proceedings taken which may lead to any of the foregoing occurrences; the other ceases to carry on business; and/or
 - 19.1.3 if any of the termination provisions of regulation 73(1) of PCR apply.
- 19.2 The Customer may terminate this Contract in accordance with:
 - 19.2.1 Schedule 1 (Anti-bribery and Corruption); or
 - 19.2.2 Schedule 4 (KPIs).
- 19.3 Suspension or termination of the Supplier's appointment under this Contract, howsoever arising, shall be without prejudice to the rights and remedies of either of the parties in relation to any negligence, omission or default of the other prior to such termination.
- 19.4 If the Supplier's appointment under this Contract has been terminated by the Supplier pursuant to Clause 19.11 then:
 - 19.4.1 after termination of the Supplier's appointment under this Contract, the Supplier shall immediately provide to the Customer copies of all

Documentation for and in relation to this Contract which has been prepared by it or on its behalf or is in its possession;

- 19.4.2 the Supplier shall be entitled to send an invoice to the Customer for all outstanding Charges earned by the Supplier for the Services properly performed (whether wholly or in part) and Value Added Tax due thereon;
- 19.4.3 the Customer shall not be liable for any Losses howsoever arising out of or in connection with the suspension or termination of this Contract; and
- 19.4.4 pursuant to the terms of this Contract, the Customer shall pay to the Supplier any instalments of any Charge and any other amounts which have accrued due prior to the date of suspension or termination, together with a proportion of the next following instalment of any Charge commensurate with the Services properly performed up to the date of suspension or termination carried out prior to the date of suspension or termination.
- 19.5 If the Supplier's appointment under this Contract has been suspended or terminated by the Customer pursuant to Clause 19.1 or 19.22:
 - 19.5.1 after termination of the Supplier's appointment under this Contract, the Supplier shall immediately provide the Customer with copies of all Documentation for and in relation to this Contract which has been prepared by it or on its behalf or is in its possession; and
 - 19.5.2 the Customer shall not be liable for any Losses howsoever arising out of or in connection with the suspension or termination of this Contract.

20 Force Majeure

- 20.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract (except in relation to payment) if such delay or failure result from a Force Majeure Event.
- 20.2 In such circumstances the relevant party shall use all reasonable endeavours to mitigate any such delays and the time for performance shall be extended by a period equivalent to the period during which the performance of the obligation has been delayed or failed to be performed by the Force Majeure Event or the affected party shall be entitled to a reasonable extension of time for performing such obligations.

21 Communications

- 21.1 Except as otherwise provided for in this Contract, all notices or other communications under or in respect of this Contract to either party must be in writing and shall be deemed to be duly given or made when delivered, in the case of personal delivery or sent by prepaid recorded delivery or registered post, or when posted, deemed to have been received 48 (forty-eight) hours after the same shall have been posted, or when despatched, in the case of e-mail, to the party addressed to him at the address stated in Clause 21.3 or such other address as such party may by notice in writing nominate for the purpose of service.
- 21.2 A written notice includes a notice by e-mail. A notice or other communication received on a non-working day or after normal business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place.

- 21.3 Any written notice provided under Clause 21.1 shall be sent:
- 21.3.1 in the case of the Customer, as set out in the relevant Order Form; and
- 21.3.2 in the case of the Supplier, as set out in the relevant Order Form.
- 21.4 Either party may change its respective notice correspondence information referred to in Clause 21.3 by prior written notice to the other party.

22 Indemnities

- 22.1 The Supplier shall indemnify and keep indemnified in full the Customer from and against all Losses suffered or incurred by the Customer arising out of or in connection with:
- 22.1.1 the Supplier infringing or being held to infringe any Intellectual Property Rights in the performance of the Supplier's obligations under this Contract;
- 22.1.2 the Customer infringing or being held to infringe any Intellectual Property Rights through the use of the Supplier's Background IP, the Project IP or the relevant Goods, Services and/or Software;
- 22.1.3 any wilful act, breach or negligent performance or non-performance of its obligations under this Contract by the Supplier;
- 22.1.4 subject to the provisions of Clause 23.2.1, the death or personal injury of any person or physical damage to any property attributable to the Supplier's performance or non-performance of its obligations under this Contract;
- 22.1.5 any breach by the Supplier of its obligations pursuant to Schedule 3 (Data Protection) of this Contract; and/or
- 22.1.6 any breach by the Supplier which is detailed in the indemnity set out in Schedule 5
- 22.2 The indemnities in Clause 22.1 shall not apply to the extent that the relevant Losses are attributable to the Customer's breach, wilful act or negligent performance or non-performance of this Contract.

23 Limit of liability

- 23.1 Except where expressly stated elsewhere in this Contract:
- 23.1.1 the Supplier's total liability to the Customer for all Losses howsoever arising under, for breach of, or in connection with this Contract is limited to, and shall not exceed the Supplier Liability Cap in the aggregate, save in respect of any indemnities granted by it under Clause 22.1 or any Schedule;
- 23.1.2 the Customer's total liability to the Supplier for all losses howsoever arising under, for breach of, or in connection with this Contract is limited to, and shall not exceed the Customer Liability Cap in the aggregate; and
- 23.1.3 the Customer shall not be liable to the Supplier for any indirect loss or consequential loss, loss of contribution to incidental costs, loss of profit or overheads or loss of reputation, howsoever arising under, for breach of, or in connection with this Contract.
- 23.2 Nothing in this Contract shall limit or exclude:

23.2.1 either party's liability to the other for death or personal injury resulting from that party's negligence; or

23.2.2 any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other.

24 Anti-bribery and Corruption

The parties shall comply with Schedule 1 in relation to anti-bribery and corruption.

25 Data Protection

The parties shall comply with Schedule 3 in relation to data protection.

26 Conflicts of interest

26.1 The Supplier may not, without the Customer's prior written consent, be directly or indirectly engaged, concerned or have any financial interest in any capacity with the Customer.

26.2 The Supplier shall promptly notify the Customer in writing of any actual or potential conflict of interest which arises during the Term and the Customer shall be entitled to require the Supplier to take such reasonable steps to remedy any conflict of interest as are reasonably required by the Customer.

27 Dispute Resolution

27.1 If a Dispute arises in respect of this Contract then the procedure set out in this Clause 27 shall apply.

27.2 In the event of a Dispute, either party shall serve on the other party a Dispute Notice, together with any relevant supporting documentation.

27.3 Following the service of any Dispute Notice pursuant to Clause 27.2, Commercial Officer of the Customer and Representative of the Supplier shall use reasonable endeavours to resolve the Dispute, in good faith.

27.4 If the Commercial Officer of the Customer and Representative of the Supplier are for whatever reason unable to resolve the Dispute within 30 (thirty) days of service of the relevant Dispute Notice, the Dispute shall be referred to Senior Commercial Manager of the Customer and Senior Representative of the Supplier who shall use reasonable endeavours to resolve the Dispute, in good faith.

27.5 If the Senior Commercial Manager of the Customer and Representative of the Supplier are for whatever reason unable to resolve the Dispute within 30 (thirty) days of the Dispute being referred to them pursuant to Clause 27.4, the parties will seek to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. The Mediator shall be nominated by CEDR Solve, unless otherwise agreed (in writing) between the parties. To initiate the mediation, a party must provide a written notice (**ADR Notice**) to the other party to the Dispute, requesting mediation. A copy of any such ADR Notice must be sent to CEDR Solve. The mediation will not start later than 15 (fifteen) after the date of the ADR Notice and the party providing the ADR Notice shall be responsible for all costs associated with the provision of such ADR Notice (subject to any agreement made between the parties in relation to costs associated with such mediation).

- 27.6 In the event that:
- 27.6.1 the Dispute is not resolved within 30 (thirty) days after the service of an ADR Notice; or
 - 27.6.2 either party fails to participate or fails to continue to participate in the mediation before the expiry of such 30 (thirty) days; or
 - 27.6.3 the mediation terminates before the expiry of such 30 (thirty) days,
- the Dispute shall be referred to the Courts of England and Wales in accordance with Clause 37 of this Contract.
- 27.7 No party may commence any court proceedings under Clause 37 of this Contract in relation to the whole or any part of a Dispute until 60 (sixty) days after the service of the ADR notice (provided that the right to issue proceedings is not prejudiced by a delay).

28 Records and Audit Access

- 28.1 The Supplier shall keep and maintain until 6 (six) years after the date of the end of the Term, full and accurate records and accounts of the operation of this Contract including but not limited to the Goods, Services and/or Software provided under it in accordance with good accountancy practice.
- 28.1.1 The Supplier shall determine the involvement of any funding bodies with the purchase of the Goods and Services and will keep and maintain full and accurate records and accounts of the operation in accordance for the duration stipulated by the funding body.
- 28.2 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of 6 (six) years after the date of the end of the Term to the Customer and/or the auditor and/or any statutory body entitled by Law on written request and shall provide the Customer and/or the auditor and/or any statutory body entitled by Law access to such records and accounts as may be required from time to time.
- 28.3 Subject the provisions of Clause 15, the Supplier shall on written request provide the auditor with all reasonable co-operation and assistance in relation to each audit, including:
- 28.3.1 all information requested by the auditor within the scope of the audit;
 - 28.3.2 reasonable access to sites controlled by the Supplier and to equipment and materials used in the provision of the Goods, Services and/or Software; and
 - 28.3.3 access to the Supplier's Personnel.
- 28.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 28 unless the audit reveals a material breach by the Supplier of good accountancy practice and/or this Contract, in which case the Supplier shall reimburse the Customer for the reasonable costs it incurs in relation to the audit.

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

- 29.1 In performing its obligations under this Contract the Supplier shall comply with all applicable labour, anti-slavery and human trafficking legislation and regulations in force from time to time in the United Kingdom, including but not limited to the Modern Slavery Act 2015 (**Anti-Slavery Laws**).
- 29.2 The Supplier represents and warrants that, as at the date of this Contract, neither the Supplier nor any of its officers, employees or agents have been convicted of any offence involving slavery and/or human trafficking, nor have they been or are the subject of an investigation, inquiry or enforcement proceedings by any governmental, administrative or Regulatory Body regarding any offence or alleged offence of or in connection with slavery and/or human trafficking whether pursuant to the Anti-Slavery Laws or any other relevant legislation in force from time to time.
- 29.3 The Supplier shall, throughout the Term, use all reasonable endeavours to include, in all of its contracts with any of its subcontractors of any tier in the supply chain involved in the production or provision of the Goods, Services and/or Software:
- 29.3.1 a provision obliging the relevant subcontractor to provide the Goods, Services and/or Software specified in the relevant subcontract in accordance with Anti-Slavery Laws; and
- 29.3.2 provisions (to take effect upon a breach by the subcontractor of its obligation to provide the Goods, Services and/or Software under the relevant subcontract in accordance with Anti-Slavery Laws) which provide that:
- (a) if a subcontractor's failure to comply with Anti-Slavery Laws has occurred more than once in any 6 (six) month period, the Supplier must serve a written notice on the subcontractor;
 - (i) specifying that the notice is a formal warning notice;
 - (ii) giving reasonable details of the subcontractor's breach; and
 - (iii) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of the Subcontract;
 - (b) if, following service of a warning notice under Clause 29.3.2 (a), the breach specified has continued beyond 14 (fourteen) days or has recurred more than once within a 6 (six) month period after the date of the notice then the Supplier must serve another written notice on the subcontractor:
 - (i) specifying that it is a final warning notice;
 - (ii) stating that the breach specified has been the subject of a warning notice served within the 12 (twelve) month period prior to the date of service of the final warning notice; and
 - (iii) stating that, if the breach continues or recurs more than once / again within the 6 (six) month period after the date of the final warning notice, the subcontract may be terminated; and

- (c) where a breach continues or recurs pursuant to Clause 29.3.2(b), the Supplier may terminate the subcontract by 7 (seven) days' notice in writing to the subcontractor,

or a clause which grants similar rights to the supplier.

30 Sustainability

- 30.1 In supplying the Goods, Services and/or Software, the Supplier shall, taking into account best available techniques not entailing excessive cost, have appropriate regard, insofar as the Supplier's activities may impact on the environment, of the need to:
- 30.1.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
- 30.1.2 enhance the environment and have regard to the global target of achieving, as far as is practically possible, net-zero carbon emissions by the year 2050; and
- 30.1.3 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

31 Equality, Diversity and Inclusion

- 31.1 In Providing the Goods and Services, the Supplier shall not unlawfully discriminate (directly or indirectly) within the meaning and scope of any law, enactment, order or regulation relating to discrimination in the provision of services to the public or in employment (whether in race, gender, religion, disability, sexual orientation, age or otherwise) or any statutory modification or re-enactment thereof. The Supplier shall to the extent relevant to delivery of the Goods and Services comply with the Customer's equal opportunities policies which are freely available from the Customer or on the Customers' website.
- 31.2 The Supplier shall take all necessary steps to secure the observance of these provisions by all its servants, employees or agents and all sub-contractors employed in the execution of the Contract and promptly provide such information as the Customer may reasonably require.
- 31.3 The Supplier shall notify the Authorised Officer immediately in writing as soon as it becomes aware of any investigation or proceedings brought against the Supplier under the relevant legislation.
- 31.4 The Supplier shall co-operate with any investigation by the Customer or a person or body empowered to carry out such investigations in relation to alleged or suspected discrimination.
- 31.5 If an investigation is commenced against the Supplier or the Customer, the Supplier shall attend and permit its Personnel to attend any meetings as required; allow access to and investigation of any documents or data deemed to be relevant to the investigation; and allow itself and any of its Personnel to appear as witnesses in any proceedings.

32 Contracts (Rights of Third Parties) Act 1999

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

33 Severability

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

34 Counterparts

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

35 Waiver

35.1 A party's failure or delay to exercise a power or right under this Contract does not operate as a waiver of that power or right.

35.2 A waiver of a power or right will only be effective:

35.2.1 if it is in writing and signed by the party who has the benefit of the power or right being waived; and

35.2.2 in respect of the specific instance to which it relates and for the specific purpose for which it is given.

35.3 Communications between the parties made before the date of the Contract which are not expressly contained within the Contract shall not be deemed to be incorporated into the Contract.

35.4 Notwithstanding any other provision of the Contract, the terms approval or comment or consent when used in the context of any approval, comment or consent to be given by the Customer shall have the meaning acceptance of general principles only and no such approval, comment or consent shall diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.

36 Amendments to this Contract

36.1 An amendment or variation to this Contract shall not be effective or binding unless it is in writing and signed by the Supplier and the Customer.

36.2 No amendment or variation to this Contract shall be permitted which could or does amount to a substantial variation for the purposes of regulation 72 of PCR (which the Customer shall determine in its sole discretion).

36.3 For the avoidance of doubt, the Customer shall be entitled to refuse any proposed amendment or variation to this Contract which does or could amount to a substantial variation for the purposes of regulation 72 of PCR.

37 Governing Law and Jurisdiction

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

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

38 Guarantees and Other Forms of Security

- 38.1 The Customer may require the Supplier to provide a banker's guarantee / performance bond / parent company guarantee / letter of credit or other such forms of security in the Customer's favour where advance or progress payments are to be made. Any such banker's guarantee or performance bond shall:
- 38.1.1 be in a form and standard and incorporating wording that is acceptable to the Customer,
- 38.1.2 be provided in the full value of any such advance and/or progress payments made or to be made.
- 38.2 Any costs incurred by the Supplier for the provision of such banker's guarantee or performance bond shall be for the Supplier's account and deemed to be included in the Charges.
- 38.3 A request by the Customer for a validly executed parent company guarantee in favour of the Customer will be in the form set out in Schedule 10 of these Call-off Terms and Conditions unless otherwise agreed; and supported by a certified copy extract of the board minutes of the parent company approving the execution of the guarantee.

This document has been entered into by the parties or their duly authorised representatives on the date set out at the beginning of this document.

Signed for and on behalf of
CUSTOMER

)
)
) [Redacted] under FOIA exemption

[Redacted] under FOIA exemption

Signed for and on behalf of
SUPPLIER

)
)
) [Redacted] under FOIA exemption

[Redacted] under FOIA exemption

Schedule 1: Anti-bribery and Corruption

1. The Supplier:
 - (a) shall not, and shall procure that the Supplier's Personnel shall not, in connection with Contract, commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that any agreement has been reached to that effect, in connection with the execution of this Contract; and
 - (c) warrants that in entering into this Contract it has not committed any Prohibited Act (as declared by the Supplier pursuant to the Original Tender Process in accordance with regulation 57 of the PCR).
2. The Supplier shall:
 - (a) if requested in writing, provide the Customer, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - (b) within 20 (twenty) days of the date of this Contract, and annually thereafter, certify in writing to the Customer compliance with this Schedule 1 by the Supplier and all persons associated with it or any other persons who are supplying the Goods, Services and/or Software in connection with this Contract. The Supplier shall provide any such supporting evidence of compliance with this Schedule 1 as the Customer may reasonably request.
3. The Supplier shall put in place and maintain an anti-bribery policy (a copy of which shall be provided to the Customer within 20 (twenty) days of the date of this Contract) which shall, as a minimum, prevent any Personnel from committing a Prohibited Act and shall enforce it where appropriate.
4. If at any time any breach of paragraph 1 above is suspected or known, the Supplier must notify the Customer immediately with the details of any such breach to follow in writing as soon as reasonably practicable.
5. If the Supplier notifies the Customer that it suspects or knows that there may be a breach of this Schedule 1, the Supplier will respond promptly to all of the Customer's enquiries in relation to any such suspected or actual breach and will co-operate at all times with any investigation, and permit the Customer access to and audit of any books, records and any other relevant documents. The obligation under this paragraph shall continue for 7 (seven) years following the expiry or termination of this Contract.
6. The Customer may terminate this Contract by written notice with immediate effect if the Supplier, its Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches paragraph 1 of this Schedule 1. Any such termination shall be without prejudice to any right or remedy which has already accrued or which subsequently accrues to the Customer.
7. Any notice provided by the Customer pursuant to paragraph 6 must specify:
 - (a) the nature of the Prohibited Act;

- (b) the identity of the party who the Customer believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate in accordance with the applicable provisions of this Schedule 1.
- 8. Notwithstanding Clause 27 (Dispute Resolution) of this Contract, the Customer shall determine any Dispute relating to the interpretation of this Schedule 1 and/or the amount or value of any gift, consideration or commission and any such determination by the Customer shall be final and binding upon the parties.

Schedule 2: Re-tendering, handover and TUPE- Not used

Schedule 3: Data Protection

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

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

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

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

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

Personal Data Breach means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;

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

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

Sensitive Personal Data means Personal Data that reveals such categories of data as are listed in the Data Protection Legislation.

1 Data Protection

1.1 The parties acknowledge and agree that:

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

1.2 Where, under or in connection with the Contract, the Supplier Processes Personal Data on behalf of the Customer and the Customer's Processor, the Supplier shall Process the Personal Data only:

- (a) to the extent, and in such as manner, as is necessary for the performance by the Supplier of its obligations under the Contract and in accordance with the Customer's written instructions; and
- (b) as otherwise required by the Data Protection Legislation to which the Supplier is subject, in which case the Supplier shall inform the Customer of that legal requirement before Processing the Personal

Data (unless that law, on important grounds of public interest, prohibits the Supplier from informing the Customer).

- 1.3 If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Schedule 3, the Supplier shall immediately inform the Customer of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law). The Supplier shall immediately inform the Customer if, in its opinion, Processing the Personal Data in accordance with written instruction received from the Customer or in the performance of its obligations under the Contract infringes Data Protection Legislation to which either the Customer or the Supplier is subject.
- 1.4 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any data protection impact assessment, as defined in the Data Protection Legislation, prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the performance of the Contract;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.5 The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the United Kingdom except with the Customer's prior written consent and where such consent is given, take such actions and enter into such agreements as the Customer may require to ensure that such transfer or disclosure complies with Law.
- 1.6 The Supplier will keep a record of any Processing of Personal Data it carries out under the Contract.
- 1.7 The Supplier shall not disclose Personal Data to any person except under the Contract or with the Customer's written consent.
- 1.8 The Supplier shall ensure that access to Personal Data is limited to:
- (a) those employees who need access to Personal Data to meet the Supplier's obligations under the Contract; and
 - (b) in the case of any access by any employee, such part or parts of Personal Data as is strictly necessary for performance of that employee's duties.
- 1.9 The Supplier shall ensure that employees that require access to Personal Data:
- (a) are informed of the confidential nature of Personal Data;
 - (b) have undertaken training in Law (including Data Protection Legislation) relating to handling Personal Data; and

- (c) are aware both of the Supplier's duties and their personal duties and obligations under Law (including Data Protection Legislation) and the Contract.
- 1.10 Without prejudice to Clause 15 of the Contract, the Supplier shall ensure that all persons authorised to Process Personal Data are under an appropriate contractual or other legal obligation of confidentiality in respect of Personal Data.
- 1.11 The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in the Contract.
- 1.12 The Supplier shall, taking into account the nature of the Processing, implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and to ensure the security of the Personal Data and prevent Personal Data Breaches, having taken account of the:
 - (a) nature of the Personal Data to be protected;
 - (b) harm that might result from a Personal Data Breach;
 - (c) state of technological development; and
 - (d) cost of implementing any measures.
- 1.13 Appropriate technical and organisational measures include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, taking reasonable steps to ensure the reliability of its employees with access to Personal Data and regularly assessing and evaluating the effectiveness of such measures adopted.
- 1.14 The Supplier shall, upon becoming aware, immediately and in any event within 24 hours notify the Customer of any Personal Data Breach and shall work together with the Customer to provide the Customer with full co-operation and assistance, including to investigate the Personal Data Breach (including by (i) assisting with any investigation launched by the Customer; (ii) facilitating interviews with the Supplier's employees and others involved in the matter; and (iii) making available all relevant records reasonably required by the Customer to investigate the Personal Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Personal Data Breach or its investigation).
- 1.15 The Supplier shall not engage another Processor to Process Personal Data on behalf of the Customer except with the Customer's prior specific written authorisation and, where such authorisation is given, enter into a contract with the Processor that imposes the same contractual obligations set out in this Schedule 3 on that Processor, and remain liable for any Processor that it engages in accordance with the terms of this Schedule 3.
- 1.16 The Supplier shall assist and fully co-operate with the Customer to enable it to comply with its obligations as a Controller under and in accordance with Law (including the Data Protection Legislation) including in relation to the security of Processing, data subject right requests, reporting Personal Data

Breaches to the supervisory authority and conducting data privacy impact assessments. The Supplier shall notify the Customer within 24 hours if it receives a request from a Data Subject to exercise its rights under Law or any communication from a Data Subject, the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract.

- 1.17 The Supplier shall promptly comply with any request from the Customer requiring the Supplier to amend, transfer or delete Personal Data. At the Customer's request, the Supplier shall provide to the Customer a copy of all Personal Data held by it in the format and on the media reasonably specified by the Customer.
- 1.18 The Supplier shall at any time on the request of the Customer, return all Confidential Information and/or data (including any Personal Data that the Supplier Processes for and on behalf of the Customer) to that Customer and/or permanently delete the same from its systems, including any back-up copies.
- 1.19 The Supplier shall at the Customer's option, delete or return to the Customer all Personal Data on termination of the Contract and delete any existing copies of Personal Data except to the extent that the Customer is required to retain Personal Data by Law (including the Data Protection Legislation).
- 1.20 The Supplier shall make available to the Customer all information necessary to demonstrate the Customer's compliance with the obligations under this Schedule 3 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
- 1.21 The Supplier shall immediately inform the Customer if, in its opinion, an instruction from the Customer infringes Law (including the Data Protection Legislation).
- 1.22 The Supplier shall, in connection with the Contract, comply in all respects with Law relating to data protection (including the Data Protection Legislation) and have established procedures to ensure continued compliance with Law (including the Data Protection Legislation). The Supplier shall comply with its obligations as a Processor under and in accordance with Law (including the Data Protection Legislation).
- 1.23 The Supplier shall only collect any Personal Data in a form which is fully compliant with Law which will contain a data protection notice informing the data subject of the identity of the Controller, the identity of any data protection representative it may have appointed, the purposes or purpose for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair and compliant under Law.
- 1.24 The Customer may, at any time on not less than 30 working days' notice, revise this Schedule 3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 1.25 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 working days'

notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 1.26 The Supplier shall Process Personal Data the performance of the Contract as notified by the Customer only for as long as required and for no longer than the term of this Contract.
- 1.27 The Supplier warrants that it shall:
 - (a) Process the Personal Data in compliance with Law (including the Data Protection Legislation); and
 - (b) take appropriate technical and organisational measures against Personal Data Breaches occurring.
- 1.28 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Customer against all costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Schedule 3.

Schedule 4: Key Performance Indicators

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

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

Any such Final KPI Warning Notice shall state on it that is a Final KPI Warning Notice.
8. Without prejudice to any other rights under this Contract if the Supplier (in the Customer's reasonable opinion) fails to adequately address the matter or matters set out in the Final KPI Warning Notice by the date contained in such Final KPI Warning Notice, the Customer may terminate this Contract by giving not less than 7 (seven) days written notice to the Supplier.

9. In the event that the Framework Agreement is terminated in accordance with Schedule 6 of the Framework Agreement, the Supplier acknowledges that the Customer may terminate this Contract.

Schedule 5: Supply of Goods

1 Definitions

1.1 Defined terms used but not defined in this Schedule shall have the meanings ascribed to them in the Call-Off Terms and Conditions.

1.2 The following definitions shall apply for the purposes of this Schedule:

Acceptance Certificate means notification by the Customer under Clause 5.9 that the Goods have passed all the Tests.

Claim has the meaning given in paragraph 7.2.

Consistent Failure to Fix Goods shall have the meaning as set out in the Order Form

Critical Error is an incident materially affecting the usability of the Goods to the point where the Customer cannot conduct critical functions within its normal course of business.

Delivery means completion of delivery of Goods specified in an Order in accordance with paragraph 4.1.

Delivery Address means the address for delivery of the Goods as specified in the Order or as may be otherwise notified to the Supplier by the Customer from time to time.

Delivery Date means the date for delivery of the Goods as specified in the Order or as may be otherwise notified to the Supplier by the Customer from time to time.

Fix Times means the Supplier's fix times and escalation procedures as set out in the Order Form

Guaranteed Maintenance Period is as provided in the Order Form.

Programme of Delivery shall mean the timetable (if any) for Delivery and Installation of the Goods and/or the provision of the Services as set out in the Order.

Persistent Failure unless otherwise agreed by the parties in the Order Form, is where the Goods require a minimum of 4 (four) visits to provide service repairs, or a minimum of 4 (four) return visits to provide the Services to satisfactory standards, during the Defects Rectification Period. Service visits which the Supplier can prove as having been made necessary due to any of the Customer's negligent act or omission, or which are defined as return calls to replace parts shall be excluded from the total number of visits.

Recommended Hardware means the hardware and other components recommended by the Supplier to support the Goods whether or not listed in the Order Form.

Tests means the Tests including the opportunities for rectification and re-testing set out in the Test Plan or as agreed in accordance with paragraph 5.5.

Test Plan is as provided in the Order Form.

Working Day means Monday to Friday 9am to 5.30pm excluding UK bank holidays.

2 Orders

- 2.1 The Supplier shall use all reasonable endeavours to supply the Goods in accordance with the Order.
- 2.2 The Customer may, at any time within a reasonable period prior to dispatch of the Goods, amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of any reasonable costs which have been reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that the Customer shall have no liability to the Supplier where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this Contract. The total of all payments made or due to the Supplier under this Contract, including any termination payment, shall not exceed the price. The Customer shall not be liable for any loss to the Supplier, including consequential loss, which arises as a result of the Customer's cancellation pursuant to this Condition.
- 2.3 The Supplier shall report to the Customer when requested on progress including against the Programme of Delivery and allow or arrange inspection whether on its premises, those of a third party (provided the Customer meets any cost of inspection on third party premises which is set out in the Order Form) or the Customer's to enable the Customer to monitor progress in the provision of the Goods and the Services.

3 Site Visit

- 3.1 Unless otherwise agreed in writing, the Supplier shall be required to undertake a visit to the Premises and shall:
 - 3.1.1 issue a report detailing work to be carried out to prepare the Premises for the Delivery and/or Installation of the Goods in the designated place; or
 - 3.1.2 issue a certificate, stating that the Premises are suitable and acceptable for the Delivery and/or Installation or use of the Goods in the designated place to commence and proceed with the Delivery and Installation; and
 - 3.1.3 include in the report and/or certificate confirmation:
 - (a) that the site conditions, layout and design and/or other provisions related to the Premises are suitable and such that the Supplier can Deliver, set down and Install the Goods in the designated place (and the Customer will be able to use the Goods in the designated place); or
 - (b) notification to the Customer of any work or requirements that need to be completed in order for the Supplier to gain access to and undertake Delivery and Installation of the Goods to, and at, the Premises and enable the Customer to put the Goods to use at the Premises.
 - 3.1.4 If the Supplier does not notify the Customer of any such work or requirements, the Supplier shall be deemed to have accepted that the Premises is suitable and shall proceed with the Delivery and Installation.
- 3.2 The report issued by the Supplier in accordance with paragraph 3.1.1 above must supply adequate information in sufficient time to enable the Customer

to prepare the Premises for the Installation, and enable the Customer to provide:

- 3.2.1 a suitable supply of electric current and such other mains services as may be required;
 - 3.2.2 all other required electrical and mechanical items and fittings, as specified by the Supplier at the time of awarding the Contract and agreed by the Customer (other than the Goods);
 - 3.2.3 such facilities and environmental conditions as set out in the Contract; and
 - 3.2.4 access to, and egress from, the Premises and/or the designated place for the Delivery and Installation of the Goods to enable the Delivery, off-loading and placing in position of the Goods (including appropriate access and egress that enables the Supplier to deliver and remove any equipment, tooling or other facilities required for the purposes of undertaking and completing the Delivery and Installation of the Goods) which complies with any specific requirements set out in the report.
- 3.3 In circumstances where the Supplier issues a report in accordance with paragraph 3.1.1, the Supplier shall re-examine the Premises upon the notification by the Customer that any work specified in the report has been completed and issue a certificate in accordance with paragraph 3.1.2, or apply the provisions of paragraph 3.1.1 as appropriate.
- 3.4 The Customer shall, at their own expense, ensure that such preparations and provisions made known in writing to them by the Supplier are made such that the Supplier is able to Deliver the Goods and/or Services on the date specified for Delivery and Installation. In the event that such preparation and provision are unsuitable for the purpose of the Installation as the result of an act or default of one party, then any costs which the other party can demonstrate as being reasonably and necessarily incurred as a direct result of that act or default shall be recoverable from the defaulting party.

4 Delivery

- 4.1 The Supplier shall deliver the Goods to the Customer at the Delivery Address in accordance with the Programme of Delivery, or in the absence of a Programme of Delivery on the Delivery Date. The Supplier shall be responsible for the delivery of the Goods and shall provide all labour, materials and plant required for Delivery, off-loading and Installation at its own expense.
- 4.1.1 no Deliveries shall be made to the premises without the prior permission of the Customer, which must be obtained at least 5 (five) Working Days before dispatch.
- 4.2 Delivery of the Order shall be complete on the completion of the unloading and Installation of the Goods at the Delivery Address.
- 4.3 The Supplier will collect and dispose of all packaging used in delivery of the Goods in accordance and compliance with all legislation and statutory obligations relevant and applicable to the collection and disposal of such packaging at no cost to the Customer.
- 4.4 If an Order is not delivered in accordance with the Programme of Delivery, or in the absence of a Programme of Delivery, on the specified Delivery Date

(or such revised dates as may be agreed in accordance with Clause 8 of the Call-Off Terms and Conditions), then, without limiting any other right or remedy the Customer may have, the Customer may:

- 4.4.1 terminate the Contract or any part thereof whereupon the Customer's rights shall be as described in Clause 19 of the Call-Off Terms and Conditions, or proceed with the fulfilment of the Contract ; and
- 4.4.2 subject to Clause 23 of the Call-Off Terms and Conditions, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this Contract.
- 4.5 The amount so deducted under paragraph 4.4.2 shall not exceed the maximum percentage of the total price stated in the Contract.
- 4.6 Each delivery of Goods shall be accompanied by a delivery note from the Supplier showing the purchase order number, the date of the Order, the type and quantity of Goods included in the Order, including the code numbers of the Goods if applicable.

5 Tests, Acceptance and Defects Liability

- 5.1 Once Installation is complete, the Supplier shall demonstrate the Goods if so required by the Customer.
- 5.2 If any Goods delivered to the Customer are not in conformity with the terms of this Contract, whether by reason of not being of the required quality, or fit for the purpose stipulated in the Contract, and whether the Goods and/or Services have been subjected to Tests or otherwise, the Customer shall, without limiting any other right or remedy that the Customer may have, have the right to reject those Goods within a reasonable time. The Customer shall be obliged to give the Supplier reasonable opportunity to replace any rejected Goods and/or provide Services with Goods and/or Services which conform to the Contract, but shall thereafter, without prejudice to any other right which the Customer may have against the Supplier, have the right to purchase such Goods and/or Services of the same or substantially equal quality elsewhere. Any additional costs which may be incurred by the Customer in purchasing such Goods and/or Services shall be for the Supplier's account. When Goods are rejected they will be stored at the Premises, and subsequently returned, at the Supplier's sole risk and expense.
- 5.3 Neither Delivery nor Installation nor putting into use constitutes Acceptance of the Goods or Services by the Customer.
- 5.4 The making of any payment due under the Contract shall not constitute Acceptance and shall not prejudice the Customer's rights of rejection.
- 5.5 Unless otherwise specified in the Order Form the Supplier will undertake Tests appropriate to the Goods, as detailed in the Test Plan. Where the details of the Tests to be implemented in accordance with this Contract are not specified, the Supplier and Customer shall seek to agree the Tests at the earliest opportunity. In the absence of such agreement, the Tests to be administered shall be defined (in the case of Goods) as those procedures published by the Manufacturer, or, where no such procedures are published and in the case of Services, the Tests shall be those which are generally

accepted as enabling the Customer to satisfy themselves that the Goods and/or Services or specific part thereof have been Delivered and/or Installed such that they are in accordance with the Contract.

- 5.6 If Goods are to be utilised with and/or installed on or with goods supplied by sources other than the Supplier, including computer application software to be utilised on or with computer hardware and operating system software to be provided by the Supplier in accordance with the Contract, the Customer shall have the right to require that Tests are undertaken in respect of the Goods used in that way or Installed on or with those other goods.
- 5.7 The Supplier shall give the Customer at least 5 (five) Working Days' notice of when the Goods will be ready for testing and shall co-operate with the Customer in and provide the necessary equipment, labour and things of all kinds for the carrying out of the Tests.
- 5.8 If the Supplier fails to make such Tests within the time stipulated, the Customer reserves the right to undertake the Tests specified. All Tests undertaken by the Customer shall be at the Supplier's risk and expense, unless the Supplier establishes to the Customer's satisfaction that the Tests were not being delayed, in which case such Tests so made shall be at the Customer's risk and expense.
- 5.9 As soon as the Goods pass the Tests, the Customer will give the Supplier a signed Acceptance Certificate provided that successful completion of an individual test does not constitute Acceptance of the Goods. The Acceptance Certificate shall be signed by the Authorised Officer upon satisfactory completion of all the Tests and shall state the Acceptance Date. For the avoidance of doubt it is acknowledged that:
 - 5.9.1 the Test Plan will include scope for rectification between Tests, so that if Goods fail to pass the Tests, the Supplier will have an opportunity to repair any defects in the Goods;
 - 5.9.2 where practical, repair will be carried out at the Customer's premises;
 - 5.9.3 defects will be rectified immediately and without delay and, in any case, by the specific date set out in the Test Plan or, in the absence of a Test Plan, as agreed in writing by the parties;
 - 5.9.4 defective parts will be replaced as deemed necessary by the Supplier; and
 - 5.9.5 provided the Goods then pass the Tests, as contemplated in the Test Plan, the Charges shall not be subject to adjustment.
- 5.10 If the Goods fail to pass the Tests the Customer shall have the right to:
 - 5.10.1 accept the whole or any part of the Goods as it shall decide, subject to such abatement of the Charges as may be reasonable in the circumstances. In the event of a dispute as to the reasonableness of the sum, the matter shall follow the dispute resolution procedure set out in Clause 27 of the Call-Off Terms and Conditions.
 - 5.10.2 contract with a third party to enable the Goods and/or Services to pass the Tests. In such circumstances any costs incurred shall be for the Supplier's account, and shall be deducted from any sums due under the Contract, or shall otherwise be recoverable from the Supplier;

- 5.10.3 reject the Goods and/or Services, where they are not in accordance with the Contract.
- 5.11 The Supplier shall at its own expense and without delay make good, by repair or if necessary by the provision of replacement or additional items, any error or defect in the Goods or the Services which:
 - 5.11.1 is identified in any notice given by the Customer to the Supplier prior to Acceptance or;
 - 5.11.2 develops or is identified and is notified to the Supplier by the Customer during the Defects Rectification Period.
- 5.12 In the event of the Persistent Failure of the Goods, during the Defects Rectification Period to achieve and maintain the standards of performance either:
 - 5.12.1 as specified in the Order Form;
 - 5.12.2 as demonstrated in the Acceptance Tests and/or accepted in writing by the Customer;
 - 5.12.3 any combination of the above, and provided that the Goods and/or the Installation and/or any physical output of the Services are being used by the Customer in accordance with the Installation and/or operating instructions:
 - (a) issued by the Supplier;
 - (b) issued and/or published by the Manufacturer and/or the service provider;
 - (c) where no instructions are provided, in accordance with generally accepted good practice appropriate to the Goods and/or Services;
 - (d) any combination of the above

The Supplier hereby warrants for the Defects Rectification Period that the Goods and/or Services, or specific portion(s) thereof affected by such circumstances shall be replaced with goods and/or services of equal or nearest equivalent higher specification forthwith and free of all charges. This warranty and any services provided in fulfilment of it are not intended to remove any rights which the Customer may have under Clause 6.7 of the Call-Off Terms and Conditions.

- 5.13 The Customer's rights and remedies under this paragraph **Error! Reference source not found.** are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Contract by the Sale of Goods Act 1979.
- 5.14 The terms of this Contract shall apply to any repaired or replacement Goods supplied by the Supplier. The Goods and/or Services shall be for the Defects Rectification Period (except that the period will commence on the date that the replacement Goods and/or Services are accepted by the Customer). The Customer's rights to require the Supplier to replace Goods and/or Services in accordance with this paragraph **Error! Reference source not found.** shall apply to any replacement Goods and/or Services as if they were the Goods and/or Services originally supplied.

- 5.15 If the parties dispute whether any Goods comply with paragraph **Error! Reference source not found.**, either party shall follow the dispute resolution procedure set out in Clause 27 of the Call-Off Terms and Conditions.

6 Title and risk

- 6.1 The risk in Goods delivered to the Customer shall pass to the Customer on Acceptance.
- 6.2 Title to Goods shall vest in the Customer in proportion to the percentage of the Charges paid to the Supplier (ownership to be held jointly as tenants in common). Title shall vest fully in the Customer when the final payment of the Charges is paid. Where the Supplier retains the whole or part of the Goods at its premises after title has begun to vest in the Customer, the Supplier shall insure the Goods, mark them as the property of the Customer and hold them in a separate bonded area suitable for such storage purposes.
- 6.3 If the Supplier becomes insolvent before Acceptance, the Customer may elect by serving notice in writing on the Supplier at any time prior to winding up or appointment of a liquidator, vest the whole or any part of the Goods in itself including to use the whole or any part of any Software. If the Customer so elects title in the Goods shall be deemed to vest in the Customer and the Supplier shall be deemed to grant an irrevocable licence to the Customer to use the whole or any part of any Software, any work in progress and documentation then in existence in the terms set out in Schedule 8 of the Call-Off Terms and Conditions and also to modify such software as it sees fit.
- 6.3.1 the Customer shall pay the Supplier such sum as may be reasonable in all the circumstances for the exercise of its rights under this condition to the extent that the Supplier has not already been remunerated during the Contract, including giving credit to the Customer for all payments already made to the Supplier, and on the basis that payment for partly completed work shall follow the principles for payment set out in the Contract. In the event of a dispute as to the reasonableness of the sum, the matter shall follow the dispute resolution procedure set out in Clause 27 of the Call-Off Terms and Conditions.
- 6.3.2 such election shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Customer.

7 Insurance and liability

- 7.1 The Supplier shall, in accordance with the provisions of this Contract, maintain in force during the period stipulated in the Contract adequate insurance cover with reputable insurers acceptable to the Customer.
- 7.2 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct losses, and all interest, penalties and legal costs (calculated on a full indemnity basis) and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- 7.2.1 any full or partial loss or destruction of, or damage to, any work produced by or on behalf of the Customer arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the loss, destruction or damage to the work;

- 7.2.2 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods;
- 7.2.3 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier, its employees, agents or subcontractors; and
- 7.2.4 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 7.3 If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (a Claim), the Customer shall:
- 7.3.1 as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- 7.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Customer may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Supplier, but without obtaining the Supplier's consent) if the Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
- 7.3.3 give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- 7.3.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 7.4 If a payment due from the Supplier under this paragraph is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.
- 7.5 Nothing in this paragraph shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

8 Operating Manuals

- 8.1 The Supplier shall provide the Customer with all operating manuals, user guides, technical maintenance handbooks, other documentation necessary

for the satisfactory operation of the Goods and in any event all documentation specified in the Contract. Such documents must highlight potential hazards to enable the Customer to complete a H&S risk assessment of the Goods.

- 8.2 If, after Acceptance, the operating manuals and documentation need updating or replacing, the Supplier shall be responsible for notifying the Customer of the availability of such updates or replacements, and shall supply them at reasonable prices upon receipt of appropriate Purchase Order documentation. The operating manuals and other documentation shall be supplied in the media format the Customer specifies at the appropriate time.

9 Consumables

- 9.1 The Customer reserves the right to procure consumable supplies to be used on or with the Goods, and suitable for the Goods from the Supplier or such other source as the Customer may deem appropriate. Such procurement of consumables from a source other than the Supplier shall not invalidate the Customer's rights under these Terms, and shall in no way affect the provisions in respect of claims made in accordance with Clause 6.7 of the of Call-off Terms and Conditions provided that the consumables utilised meet the minimum standards as published by the Supplier or the Manufacturer, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on or with the Goods concerned.

- 9.2 In the event that the Supplier shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to the Supplier of meeting their obligations to provide services in accordance with Clause 6.7 of the Call-off Terms and Conditions and/or replacement goods in accordance with Clause 6.7 of the Call-off Terms and Conditions, it shall be for the Supplier to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Supplier's costs as set out above. If the Supplier proves that the consumables do not meet the requisite minimum standards the Customer shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

10 Spares

- 10.1 The Customer may procure spares from the Supplier or elsewhere, provided they meet the minimum published manufacturer standards. If the Customer so requests, the Supplier shall make spares for the Goods available for purchase by the Customer or a nominated third party maintenance source, with reasonable despatch and reasonable prices, for a period of 10 years from Acceptance.
- 10.2 Such spares or replacement parts shall be required to be fully compatible with, and maintain as a minimum the same levels of performance as, the Goods originally supplied, but need not be identical to those items. The warranty in Clause 6.7 of the Call-off Terms and Conditions shall apply to the spares or replacement parts as if they were part of the original Goods.

11 Maintenance

- 11.1 Unless otherwise agreed, the Supplier shall Maintain the Goods from Acceptance for the Charges set out in the Order Form for the Guaranteed Maintenance Period in accordance with the terms set out in this paragraph

11. The maintenance Charges during the Defects Rectification Period shall reflect the Supplier's obligations under Clause 6.7 of the Call-Off Terms and Conditions.
- 11.2 Prior to the expiry of the Guaranteed Maintenance Period, the Customer may give 30 days written notice that the contract shall be extended in accordance with any extension period stated in the contract. Where an extension period is stated in the contract and a 30 (thirty) day notice period is not communicated, the contract shall renew automatically for the duration of the stated extension period on the same terms.
- 11.3 Where an extension period is not stated, or there are no extension periods remaining, the Supplier shall serve written notice on the Customer, no later than 90 (ninety) days before the last day of the Guaranteed Maintenance Period, that the services will expire on the last day of the Guaranteed Maintenance Period. Where the notice is not communicated by the Supplier in accordance with the period stated in this paragraph 11.3 and the Customer has an ongoing requirement for the services, the contract shall renew for a period of 6 (six) months on the same terms.
- 11.4 Notwithstanding paragraph 11.3, if maintenance services are required by the Customer following the expiry of the Guarantee Maintenance Period and any agreed extensions, the Supplier shall enter into a separate contract with the Customer for the maintenance of the Goods. It is at the discretion of the Customer as to whether this separate contract will be under the Framework Agreement.
- 11.5 The Customer may exercise its termination rights for hardware or Software Maintenance or in respect of both.
- 11.6 Without prejudice to agreed fix times and escalation procedures, if a Critical Error occurs the Supplier undertakes:
- 11.6.1 to resolve the incident as quickly as possible including by giving on site assistance where necessary;
- 11.6.2 to escalate the matter to the next level of management within 4 (four) hours of notification of the occurrence and in the event that the incident is not resolved within 2 (two) Working Days of notification, the Customer shall have the right to escalate the incident to the Supplier's manager in charge of its maintenance services for assistance in resolving such incident and such person will assume responsibility for reporting back to the Customer in a timely manner with an update of progress being made in resolving the incident by the Supplier; and
- (a) in the event that the incident is not resolved within 3 (three) Working Days, the Customer may require the relevant Supplier director to attend a management meeting at the Customer to review the incident and technical or project staff nominated by the Customer will be entitled to attend at the premises of the Supplier to oversee the work being carried out to resolve the incident.
- 11.7 The Customer may also terminate Maintenance in whole or in part if any of the following events occur:
- 11.7.1 there is a Consistent Failure to Fix Goods within the agreed fix time as set out in the Order Form or otherwise agreed between the parties upon

identification of the error. Consistently here shall be as stated in the Order Form.

- 11.7.2 a Critical Error has existed in the operation of the Goods for 1 (one) week or more and a solution and/or reasonable fix time has not been established.
- 11.7.3 a Significant Error has existed in the operation of the Goods (and is causing additional expense) for 2 (two) months or more.
- 11.8 The Customer shall also be entitled to service credits provided in the Order Form on the occurrence of any of the events set out in 11.7.
- 11.9 Any person (other than Customer) who, under the terms of the Contract, is licensed to use the Software may ask the Supplier for Maintenance under separate arrangements from the Customer. In such event the Supplier shall contract with such person or persons at such price as may be reasonable in all the circumstances, having regard to the share of the support charge relevant to their use of the Goods prior to the commencement of such separate contractual arrangements. In such event the fee to the Customer shall be reduced proportionately.
- 11.10 The Supplier shall only access the Goods whether by remote diagnostics or otherwise with the prior consent and in accordance with procedures laid down by the Customer.
- 11.11 The Customer shall have the right to test work done in maintaining the Goods.
- 11.12 The Supplier shall take the lead in managing and resolving any maintenance requests even where equipment of third parties may be contributing to the problem. The Supplier shall co-operate fully with any such party to ensure prompt resolution. In the event of any difference between the Supplier and any such party, the Customer shall determine where responsibility lies and the Supplier shall comply with any reasonable instruction given by the Customer to secure effective resolution.
- 11.13 The Supplier shall from time to time make such modifications to the Goods to ensure that the Goods fulfil any change of legislation or new legal requirements which affect the Goods or any function or facility contained within it.
- 11.14 The Goods may not be removed in whole or in part from the Premises for maintenance except with the Authorised Officer's prior written consent (removed items shall be at the risk of the Supplier) and provided:
 - 11.14.1 removed items are marked as property of the Customer;
 - 11.14.2 loan items of the same or nearest equivalent specification are installed to keep the Goods satisfactorily operational; and
 - 11.14.3 where any part of the Goods is beyond economic repair, all data must be erased before disposal.
- 11.15 The Supplier during the period of any maintenance agreement shall ensure that:
 - 11.15.1 Goods components identified in the Order Form (and any Recommended Hardware) are fully compatible and will remain so whenever any component or Recommended Hardware is enhanced or updated by the Contractor or a manufacturer; and

- 11.15.2 the Goods are fully compatible with any equipment, hardware, software or communications links identified in the Order as needing to be compatible.

12 Attachments to the Goods

- 12.1 The Customer shall have the right to attach to, or install into or onto the Goods any goods (including but not limited to software) which the Customer considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Customer. If the Customer attaches or installs goods then this shall not have the effect of degrading the performance of the Goods, and shall not relieve the Supplier from meeting their obligations to provide services in accordance with Clause 6.7 of the Call-Off Terms and Conditions or replacement goods in accordance with paragraph 5 of this Schedule provided that:
- 12.1.1 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 Customer's rights under Clause 6.7 of the Call-Off Terms and Conditions and paragraph 5 of this Schedule as aforesaid;
- 12.1.2 the Supplier has not otherwise notified the Customer in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate the Customer's rights under Clause 6.7 of the Call-Off Terms and Conditions and paragraph 5 of this Schedule as aforesaid; and
- 12.1.3 the goods have been attached or installed in accordance with the published instructions of the supplier of the goods concerned.
- 12.2 In the event that the attachments and/or installation is made by the Customer, and the Supplier can prove that such attachment or installation is adversely affecting the standard of performance of the Goods or otherwise increasing the frequency of the provision of Defects Rectification services, then the Supplier shall be entitled to be reimbursed any associated costs which they can demonstrate as being reasonably and necessarily incurred in providing Defects Rectification services or returning the Goods to the normal standards of performance in accordance with the Contract as a direct result of the attachment or installation being made by the Customer (other than where such attachment or installation has been made with the Supplier's approval).

Schedule 6: Provision of Catering Services- Not Used

Schedule 7: Provision of Professional Services- Not Used

Schedule 8: Software Terms

1 Definitions

Defined terms used but not defined in this Schedule shall have the meanings ascribed to them in the Call-Off Terms and Conditions.

2 Installation

2.1 The Supplier shall carry out the following installation tasks:

2.1.1 the provision on-site installation at the Premises on the Installation Date; and

2.1.2 complete installation testing and any follow-up support requested by the Customer once installation is complete.

3 Configuration

3.1 The Supplier shall carry out the following tasks:

3.1.1 Configuration of the Software to ensure that it meets the Customer's requirements as set out in the Brief; and

3.1.2 Complete configuration testing and any follow-up support requested by the Customer once configuration is complete.

4 Software Support

4.1 The following software support shall be provided to the Customer by the Supplier:

4.1.1 the provision of a technical helpdesk, available during the Customer's normal business hours, to provide remote assistance; and

4.1.2 upon request, the provision of on-site assistance by appropriately qualified technical staff during the Customer's normal business hours.

5 New Versions and Maintenance Releases

5.1 The Supplier shall promptly inform the Customer of any new versions of the Software and shall offer to sell such new versions to the Customer on the terms on which they are generally made available to the Supplier's other customers.

5.2 The Supplier will provide the Customer with all maintenance releases by no later than the end of each calendar year and in any event no later than when these are generally made available to its other customers.

5.3 The Supplier shall ensure that any new versions of the Software and maintenance releases shall not adversely affect the performance or existing functionality of the Software or the use of the Software by the Customer.

6 Data Storage

6.1 Any Customer Data will be stored on-site and only be accessible by the Customer or to the supplier, with customer permission.

7 Supplier Terms and Policies

7.1 Except to the extent that there is any conflict with the terms of the Contract, the following Supplier terms and policies shall apply to the Customer's use of the Software:

7.1.1 the Supplier's fair use policy, as annexed to the Order Form;

7.1.2 the Supplier's end user licence agreement, as annexed to the Order Form; and

7.1.3 insert any additional terms/policies that may be applicable.

8 Software Documentation

8.1 The following accompanying documentation has been provided by the Supplier:

8.2 A user manual is to be provided by the Supplier to the Customer.

Schedule 9: Parent Company Guarantee

Pro Forma Parent Company Guarantee

We Hitachi High-Tech Corporation, a company incorporated under the Companies Acts Company number 0104-01-021648 and having our Registered Office at Toranomon Hills Business Tower, 1-17-1, Toranomon, Minato-ku, Tokyo, 105-6409, Japan refer to this [Framework Agreement] concluded between [NWUPC Ltd, registered with company number 4045190 and whose registered office is at Room 404, 4th Floor, Crescent House, University of Salford, Salford, M5 4WT (**Authority**) OR **[DSTL]** (the "**Customer**") and Hitachi High-Tech Europe GmbH, a company incorporated under the Companies Acts Company number FC027851, Branch Number BR009600 and having its Registered Office at Techspace One, Sci-Tech Daresbury Keckwick Lane, Daresbury, Cheshire, WA4 4AB, UK ("**the Supplier**") of which we are the ultimate holding company ("**this Framework Agreement**" OR "**this Contract**") and in security of the Supplier's obligations thereunder guarantee the same in the following manner:-

1. We guarantee that the Supplier shall perform all its obligations contained in this Framework Agreement.
2. If the Supplier shall in any respect fail to perform its obligations under this Framework Agreement or shall commit any breach thereof, we undertake, on demand by the Authority/Customer, to perform or to take whatever steps may be necessary to achieve performance of said obligations under this Framework Agreement and shall indemnify and keep indemnified the Authority/Customer against any loss, damages, claims, costs and expenses which may be incurred by them by reason of any such failure or breach on the part of the Supplier.
3. Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and without prejudice to the foregoing generality we shall not be released or discharged from our liability hereunder by:
 - 3.1 any waiver or forbearance by the Customer of or in respect of any of the Supplier's obligations under this Framework Agreement whether as to payment, time, performance or otherwise howsoever, or by any failure by the Customer to enforce this Framework Agreement or this instrument, or
 - 3.2 any alteration to, addition to or deletion from this Framework Agreement or the scope of the obligations to be performed under this Framework Agreement, or
 - 3.3 any change in the relationship between ourselves and the Supplier; or
 - 3.4 the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Supplier, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,

and our guarantee and undertakings shall continue in force until all the Supplier's obligations under this Framework Agreement and all our obligations hereunder have been duly performed.

4. This Guarantee shall be construed and take effect in accordance with English law.
5. Our obligations under this Guarantee may be enforced by the Purchaser at their discretion without first having taken any steps or proceedings against the Company or any other person.
6. We shall, on demand by the Customer, execute such documents or take such action as the Customer may require, for protecting the Customer rights under this Guarantee.
7. If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this Guarantee shall not be affected or impaired.
8. No single or partial exercise by the Customer of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
9. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
10. Notices in connection with the Framework Agreement or Guarantee shall be:
 - 10.1 served in writing;
 - 10.2 served in English;
 - 10.3 sent to the Party receiving it for the attention of the contact and at the address specified at Clause 11 of this Schedule (or to such other address as that receiving Party may notify from time to time);
 - 10.4 shall be sent by a method listed in Clause 12 of this Schedule; and
 - 10.5 shall, if sent in accordance with this Clause 12 of this Schedule be deemed received as set out in Clause 13 of this Schedule.
11. The address and contacts for the service of notices in connection with the Framework Agreement or Guarantee are:

DSTL Porton Down

Address: Salisbury, Wiltshire, SP4 0JQ, UK

For the attention of: [Redacted] under FOIA exemption

Tel: [Redacted] under FOIA exemption

E-mail: [Redacted] under FOIA exemption

Hitachi High-Tech Corporation

Address: Toranomon Hills Business Tower, 1-17-1, Toranomon, Minato-ku, Tokyo, 105-6409, Japan

For the attention of: [Redacted] under FOIA exemption

Tel: [Redacted] under FOIA exemption

E-mail: [Redacted] under FOIA exemption

12. All notices and other communications required or permitted to be given in terms of this Framework Agreement or Guarantee, or any proceedings relating to it, shall be serve by hand, by fax, by prepaid recorded or special delivery post, or by email.
13. Any such notice or communication shall be deemed to have been served,
 - 13.1 if delivered by hand, on the date of delivery;
 - 13.2 if sent by fax, 4 working hours after the time at which the fax was sent;
 - 13.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or
 - 13.3.1 if sent by electronic mail, 4 working hours after the time at which the email was sent,

provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

IN WITNESS WHEREOF these presents typewritten on this and the 2 preceding pages are executed as follows:

SIGNED for and on behalf of **Hitachi High-Tech Corporation**

At: Hitachi High-Tech Corporation Head office

On: 09/01/2024

Full name: [Redacted] under FOIA exemption

Position: [Redacted] under FOIA exemption

Address: [Redacted] under FOIA exemption

In the presence of

Full name: [Redacted] under FOIA exemption

Address: [Redacted] under FOIA exemption