

DDaT22587



Call Off Contract

Framework for Servers, Storage and Solutions National Agreement (SSSNA) Ref 2016/2

Contract Between:

UK Research and Innovation

And

Dell Corporation Limited

DDaT22587 - VMware hypervisor upgrade

THIS AGREEMENT is dated **Wednesday 21st December 2022.**

PARTIES

- (1) **UK Research and Innovation** is a company registered in England, Scotland and Wales, whose registered office is at Polaris House, North Star Avenue, Swindon SN2 1FL (**"Member Institution"**) (which includes any successors)
- and
- (2) **Dell Corporation Limited** (Company Number 2081369) whose registered office is at Dell House, The Boulevard, Cain Road, Bracknell, Berkshire RG12 1LF (**"the Supplier"**)

1. Interpretation

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

'Acceptance'	means that Member Institution Authorised Officer has accepted that the Goods and / or Services as meeting the requirements of the Contract.
'Acceptance Date'	means the date on which the Authorised Officer has Accepted the Goods and / or Services.
'Contract Manager'	shall have the meaning as set out in clause 3.
'Articles'	means all tools, materials, drawings, specifications and other equipment and data provided or loaned to the Supplier by the Member Institution.
'Authorised'	means signed by one of the Member Institution's Authorised Officers.
'Authorised Officer'	means the Member Institution's employee authorised either generally or specifically by Member Institution to enter into the Contract and act on behalf of the Member Institution in relation to the Contract.
"Business Day":	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
"Conditions":	means the terms and conditions as set out in this document (the Contract) and (pursuant to the provisions of the Framework Agreement);
"Contract":	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) made between a Member Institution and the Supplier for the supply of Goods and/or Services in accordance with clause 2.
"Data Breach"	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.;
'Data Controller'	has the meaning set out in the Data Protection Act up to and including 24 May 2018 and has the meaning of "Controller" set out in the GDPR from 25 May 2018

'Data Protection Particulars'	means, in relation to any Processing under this Agreement: (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.;
'Data Subject'	has the meaning set out in the DPA up to and including 24 May 2018 and from 25 May 2018 has the meaning set out in the GDPR.;
"Deliverables":	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data specification and reports.
"Delivery":	as set out in clause 5.
'Delivery Date'	means the date specified in the Contract.
'Delivery Instructions'	means the instructions set out in the Contract for the provision of the Goods and/or Services, including any other information the Member Institution considers appropriate to the provision of the Goods and/ or Services.
DPA"	means the Data Protection Act 1998 and the rules and regulations made or having effect under it.
"Effective Date"	the date on which this Contract is signed by both parties
"GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016.;
"Goods":	the goods (or any part of them) set out in the Order.
'Good Industry Practice'	means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the supply of goods and services similar to the Goods and Services under the same or similar circumstances as those applicable to the Contract.
"Goods Specification":	any specification for the Goods, including any related plans and drawings that are set out by the Member Institution to the Supplier.
'Installation'	means the installation of the Goods in the designated location and into the operating environment specified by Member Institution at the site and 'Install' shall be interpreted accordingly.
'Intellectual Property Rights'	means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other

	intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.
'Key Personnel'	means those individuals nominated by the Member Institution as being of importance to the completion or delivery of the Services.
'Law'	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body; including (but not limited to) the Modern Slavery Act 2015
"Order":	in the Member Institution's purchase order form or overleaf, as the case may be.
'Order Amendment'	means an issued and Authorised order amendment from the Member Institution or series of Order Amendments
'Package'	means any type of package including bags, cases, carboys, cylinders, drums, pallets, tanks, wagons and other containers.
'Personal Data'	has the meaning set out in the DPA up to and including 24 May 2018 and from 25 May 2018 has the meaning set out in the GDPR. For the purposes of this Agreement.;
"Privacy Laws"	means any data protection and privacy laws to which a party to this Contract is subject and which are applicable to the subject matter of this Contract, including where applicable, GDPR
"Processing"	has the meaning set out in the DPA up to and including 24 May 2018 and has the meaning set out in the GDPR from 25 May 2018, and "Process" and "Processed" shall be construed accordingly.
"Processor"	has the meaning of "Data Processor" as set out in the DPA up to and including 24 May 2018 and has the meaning set out in the GDPR from 25 May 2018.;
'Premises'	means the location(s) where the Goods and Services are to be delivered or performed
'Regulation'	means the Public Contracts Regulations 2015 and "Regulation" will be interpreted accordingly
'Request'	has the meaning set out in the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR)
"Services":	the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
'Service Levels'	means those levels of performance set out in the Service Specification.
"Service Specification":	the description or specification for Services that is set out by the Member Institution to the Supplier.
"Specification":	any Goods Specification together with any Services Specification

"Supplier":	the person or firm from whom the Member Institution purchases the Goods and/or Services.
"Supplier Personnel"	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and sub- contractors (and all persons employed by any sub-contractor together with the sub-contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this agreement or any call-off Agreements.
'Term'	means the term of this Contract
'TUPE'	means the Transfer of Undertakings (Protection of Employment) Regulations 2006

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

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

IT IS AGREED AS FOLLOWS:

The Supplier agrees to supply the Member Institution with the Goods and/or Services as detailed in the Specification(s) in accordance with these Conditions under this Contract.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Member Institution to purchase the Goods and/or Services in accordance with the Contract.
- 2.2 The Contract shall comprise any Order Amendments, any Order, these Conditions and the Specification(s). In the event of any conflict between the provisions they shall be read in the following order of precedence:
 - (a) Any Order Amendments (each Order Amendments having precedence over any earlier Order Amendments)
 - (b) The Order
 - (c) The Specification(s)

(d) The Conditions

2.3 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing a written acceptance of the Order; or
- (b) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. Contract Management

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

4. Supply of Goods

4.1 The Supplier shall ensure that the Goods shall:

- (a) be new and free from defects in design, material and workmanship, correspond with their description and any applicable Goods Specification and shall remain so for 3 years after Acceptance; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Member Institution expressly or by implication, and in this respect the Member Institution relies on the Supplier's skill and judgement; and
- (c) comply with all applicable Laws and relevant standards.

4.2 Supplier warrants to the Member Institution that that the Goods will be provided:

- (a) in a proper, skilful and workmanlike manner.
- (b) where relevant, install the Goods in accordance with the Specification(s)
- (c) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice
- (d) in accordance with the Contract and Specification(s)
- (e) to the reasonable satisfaction of the Authorised Officer.

- 4.3 The Supplier warrants that to the extent that associated Services are performed, they shall be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.
- 4.4 The Supplier will make good at its expense any defect in the Goods that the Member Institution discovers under proper usage during the first three years of actual use by the Member Institution. Such defects may arise due to faulty design or instruction as to the use of the Goods or inadequate or faulty materials or poor workmanship or any other breach of the Supplier's obligations whether in the Contract or at law.
- 4.5 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract or in the Delivery or the Goods.
- 4.6 Repairs or replacements will themselves be covered by this Contract but for a period of 12 months from Acceptance by the Member Institution.
- 4.7 The Supplier shall ensure all hardware is provided with a manufacturers standard three-year on-site warranty.
- 4.8 The Supplier shall ensure that any warranty returned items will be destroyed in a secure manner or wiped of any data to U.S. DOD 5220.22-M standards or equivalent.
- 4.9 The Supplier shall ensure that any warranty works which affect uptime of any Member Institution devices or services will be laid out in a scheme of works to be provided to the Member Institution 5 working days prior to any works commencement, so as to seek to prevent any downtime of Member Institutions services

5. **Delivery of the Goods**

- 5.1 The Supplier shall ensure that:
 - (a) the Goods will be properly packaged to survive transit and storage without damage, clearly and legibly labelled and addressed. The Member Institution will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs and must be collected by the Supplier at a mutually convenient time and at the Suppliers cost; and
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Member Institution's Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (c) if the Supplier requires the Member Institution to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost and risk of the Supplier.
 - (d) delivery is free of charge

- (e) orders from multiple manufacturers shall be collated and delivered to Member Institutions in one delivery unless instructed by the Member Institution at no additional cost.

5.2 The Supplier shall deliver the Goods:

- (a) within 30 days of the date of the Order, or as specifically and mutually agreed with the Member Institution, or on the date specified in the Order;
- (b) to the point of delivery stated in the Order, or as instructed by the Member Institution prior to delivery ("Delivery Location"); and
- (c) during the Member Institution's normal business hours, or as instructed by the Member Institution.
- (d) to locations which may include non-ground floor locations without access to a lift at no additional cost; and
- (e) to multiple sites if required at the Member Institution request at no additional cost.

5.3 Time of Delivery shall not be of the essence of the Contract.

5.4 Where the Goods are delivered by the Supplier, delivery shall occur when the Goods are removed from the transporting vehicle and delivered in accordance with the Delivery Instructions. Where the Goods are collected by the Member Institution, delivery shall occur when they are loaded onto the Member Institution's vehicle.

5.5 The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with the Contract, the Contract shall prevail.

5.6 If the Supplier:

- (a) delivers less than 95% of the quantity of Goods ordered, the Member Institution may reject the Goods; or
- (b) delivers more than 105% of the quantity of Goods ordered, the Member Institution may at its discretion reject the Goods or the excess Goods; or
- (c) delivers any or all of the Goods ordered in an incomplete state, the Member Institution may at its discretion reject the Goods; and
- (d) any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Member Institution accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

5.7 The Supplier shall not deliver the Goods in instalments without the Member Institution's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Member Institution to the remedies set out in clause 21.

- 5.8 Except where otherwise provided in the Contract, Delivery shall include the uploading or stacking of the Goods by the Supplier at such places as the Members Institution may direct.
- 5.9 The issue by Member Institution of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Member Institution shall not be deemed to have accepted any Goods other than in accordance with clause 6.
- 5.10 If the Supplier at any time becomes aware of any act or omission, or proposed act or omission by the Member Institution which prevents or hinders, or may prevent or hinder the Supplier from supplying the Goods and Services in accordance with the Contract, the Supplier shall inform, in writing, the Member Institution.

6. Acceptance

- 6.1 The Member Institution shall have the right to reject the Goods and Services in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance if they do not conform to the requirements of the Contract and meet the Specification(s).

7. Consumables

- 7.1 The Member Institution reserves the right to procure consumables to be used on or with the Goods from the Supplier or such other source as the Member Institution deems appropriate. Such procurement of consumables from a source other than Supplier shall not invalidate the Member Institution's rights under the Contract and in no way affect the provisions in respect of warranties given under the Contract or otherwise provided that the consumables utilised meet the minimum standards as published by Supplier or the manufacturer of the Goods, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on or with the Goods concerned.
- 7.2 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 Supplier of meeting its obligations to provide repair or maintain the Goods 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. If the Supplier shall prove that the consumables do not meet the requisite minimum standards the Member Institution shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

8. Maintenance

- 8.1 If required by the Member Institution the Supplier shall enter into a separate contract for the maintenance of the Goods on substantially the same terms as those set out in the Contract.
- 8.2 The Supplier accepts the following as a minimum within this separate contract for the maintenance of the Goods:

- (a) The Supplier shall create and maintain a rolling schedule of planned maintenance to the Goods which shall be agreed with the Member Institution
 - (b) The Supplier shall undertake such planned maintenance in accordance with the schedule agreed with the Member Institution
 - (c) The Supplier shall give as much notice as is reasonably practicable to the Member Institution prior to carrying out any emergency maintenance
-
- (a) The Supplier shall carry out any necessary maintenance where it reasonably suspects that the Goods may have developed a fault. Any such maintenance shall be carried out in a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Member Institution

9. Spares

- 9.1 The Supplier shall make available to the Member Institution, or any nominated third party maintenance provider, on request, with reasonable dispatch and at reasonable prices, all spares and replacement parts for the Goods as the Member Institution shall require.
- 9.2 To allow for the servicing and repair of any Goods purchased under this Agreement, the Supplier shall maintain a supply of such spares or replacement parts for such Goods for a minimum period of seven (7) years from the date of discontinuance of such Goods.
- 9.3 Such spares or replacement parts shall be fully compatible with and maintain as a minimum the same levels of performance as the Goods originally supplied, but need not be identical to those items.

10. Operating manuals

- 10.1 The Supplier shall supply to the Member Institution all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation so required. If after the Acceptance Date the operating manuals and documentation need updating or replacing the Supplier shall be responsible for notifying the Member Institution of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of written instructions. The Supplier shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.

11. Attachment to the Goods

- 11.1 The Member Institution shall have the right to attach to, or install into or onto the Goods any other items or goods (including but not limited to software) which the Member Institution considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Member Institution. If the Member Institution attaches or installs such items or goods

then this shall not have the effect of degrading the performance of the Goods and shall not relieve the Supplier from meeting its obligations under the Contract provided that:-

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

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

12 Training

- 12.1 Except where expressly stated by the Supplier, the Price shall include the cost of reasonable training and instruction of the Member Institution's personnel in the use or operation of the Goods and such instructions shall be in accordance with the requirements of the Contract.

13 Hazardous Goods and Safety

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

14 Supply of Services

- 14.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Member Institution in accordance with the terms of this Contract and the Specification(s).
- 14.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Member Institution.
- 14.3 In providing the Services, the Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Services in accordance with this Contract
 - (b) co-operate with the Member Institution in all matters relating to the Services, and comply with all instructions of the Member Institution;

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

- (m) provide such Services to the reasonable satisfaction of the Authorised Officer
- (n) co-operate with other suppliers and organisations and provide reasonable information (including any documentation), advice and assistance in connection with the Services to other suppliers and organisations to enable them to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of Services to the Member Institution

15 Progress and Inspection

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

16 Offsite provision of Goods and Services

- 16.1 The Member Institution recognises that some or all of the Goods and Services may be provided from a site or sites (including home working) of the Supplier and for their sub-contractors. In all circumstances where the Goods and Services or part of the Goods and Services are provided from such site or sites the Supplier shall comply with the following requirements:
 - (a) give the Authorised Officer a minimum of one (1) weeks' written notification that off-site working will take place, setting out the reasons for such working, personnel resources (including name, position and role) used and the specific outputs to be delivered by each of the personnel.
 - (b) facilitate the Authorised Officer to contact each of the personnel including but not restricted to, telephone number and/or e-mail addresses for the purpose of ascertaining that the Goods and Services are being provided.
 - (c) ensure that all invoices submitted have signed and authorised daily approval sheets confirming the details as at clause 16.1(a) above
 - (d) give the Authorised Officer or his nominee a right to inspect, test, examine any methods, schedules, calculations, analysis, materials, equipment, reports, working documents used or to be used in connection with the performance of the Services.

- 16.2 The Supplier's failure to comply with the terms of this clause 16 shall give the Member Institution the right not to pay for the Goods and Services provided off-site.
- 16.3 Neither failure of the Member Institution to inspect nor failure to discover or reject any portion of faulty Goods or Service shall be deemed to imply acceptance thereof or in any way relieve Supplier from its responsibilities under the Contract.

17 Work on the Premises

- 17.1 If the Contract involves any Goods and Services which the Supplier Delivers, Installs or performs on the Premises then the following clauses shall apply:
- (a) The Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other persons associated with the Supplier will adhere in every respect to the obligations imposed upon the Supplier by applicable Laws.
 - (b) The Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other person associated with the Supplier will comply with any regulations or policies that the Member Institution may notify to the Supplier in writing.
 - (c) When required, the Supplier and their employees, sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving the Premises. The Member Institution reserves the right to remove from the Premises anyone suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.
- 17.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Member Institution's prior consent.
- 17.3 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Member Institution may reasonably require.
- 17.4 The Member Institution shall have the power at any time during the progress of the Contract to order in writing:
- (a) the removal from the Premises of any materials which in the Member Institution's opinion are either hazardous or not in accordance with the Contract, and/or;
 - (b) the substitution of proper and suitable materials, and/or;
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods and Services which, in respect or material or workmanship, is not in the Member Institution's opinion in accordance with the Contract.
- 17.5 On completion of the Contract the Supplier shall remove their plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Contract and leave the Premises in a neat and tidy condition within the timescales instructed to the Supplier by the Member Institution.

- 17.6 The Supplier shall ensure that their employees, sub-contractors and their employees and any other persons associated with the Supplier shall be dressed appropriately. The Member Institution reserves the right to remove from the Premises anyone who is, in the Member Institution's absolute discretion, not complying with this requirement.
- 17.7 Any land or Premises made available from time to time to the Supplier by the Member Institution in connection with the Contract shall be made available to the Supplier on a non-exclusive basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligation under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 17.8 The Supplier shall limit access to the land or Premises to such personnel as is necessary to enable it to perform its obligations under the Contract.
- 17.9 The Supplier agrees that there is no intention on the Member Institution's part to create a tenancy of any nature whatsoever in favour of the Supplier or its personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Member Institution retains the right at any time to use any Premises owned or occupied by the Member Institution in any manner it sees fit.

18 Variation and Substitution

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

19 Compliance with applicable Laws

- 19.1 The Supplier shall (at no additional cost to the Member Institution) at all times, prepare, manufacture, Deliver, Install, carry out and provide the Goods and Services in compliance with all Laws. The Supplier shall maintain such records as are necessary pursuant to such Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Member Institution (or its authorised representative).
- 19.2 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms of the Contract nor be entitled to an increase in the price as the result of any modifications to the Laws.
- 19.3 Without prejudice to clause 19.2, the Supplier shall monitor and shall keep the Member Institution informed in writing of any changes in the Laws which may impact the Goods and Services and shall provide the Member Institution with

timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.

- 19.4 The Supplier shall consult with the Member Institution (and wherever possible agree with the Member Institution) on the manner, form and timing of changes it proposes to make to meet any changes in Laws where they would impact the Goods or Services. The Supplier shall not implement any change, without the Member Institution's prior written agreement, which would have an adverse effect on the Supplier's ability to provide the Goods and Services in accordance with the Specification.
- 19.5 Without prejudice to the rest of this clause 19, the Supplier shall use all reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this clause 19.

20 Service Improvement and Technology Refresh

- 20.1 The Supplier shall, at its own cost, submit a report to the Member Institution within 30 days of the end of each year of the term of the Contract which shall identify the emergence of new and evolving relevant technologies and processes which could improve the Goods and Services. Such report shall be provided in sufficient detail to enable the Member Institution to evaluate properly the benefits of the new technology or process.
- 20.2 If the Member Institution wishes to incorporate any improvement identified by the Supplier pursuant to clause 20.1, the parties shall discuss the implementation of the associated change. If the Supplier's costs in providing the Goods and Services reduces as a result of any such change implemented by the Member Institution, then an agreed percentage of the cost savings shall be passed on to the Member Institution by way of a consequential and immediate reduction in the price for the Goods and Services.

21 Remedies

- 21.1 If the Supplier fails to deliver the Goods on the Delivery Date and/or perform the Services by the applicable date(s), or if the Goods do not comply with the undertakings set out in clause 4, or the Services do not conform with clause 14, then, without limiting any of its other rights or remedies, the Member Institution shall have the right to any one or more of the following remedies:
- (a) to terminate the Contract with immediate effect;
 - (b) to reject the Goods or Services (in whole or in part) and (in the case of Goods) return them to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to re-perform, repair or replace the rejected Goods or Services, or to provide a full refund of the price of the rejected Goods or Services (if paid);
 - (d) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any costs incurred by the Member Institution in obtaining substitute goods and/or services from a third party; and

- (f) to claim damages for any other costs, loss or expenses incurred by the Member Institution which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
 - 21.2 The Contract shall apply to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
 - 21.3 The Supplier shall keep the Member Institution indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Member Institution as a result of or in connection with:
 - (a) any claim made against the Member Institution for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;
 - (b) any claim made against the Member Institution by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the, negligent act or omission or wilful misconduct, criminal conduct or fraud in the performance of the Contract by the Supplier, its employees, agents or subcontractors; and
 - (c) any claim made against the Member Institution by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or Services, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (d) any damage to the Member Institution's property or Premises (including any materials, tools or patterns sent to Supplier for any purpose).
- This clause 21.3 shall survive termination of the Contract.
- 21.4 The Member Institution's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.
 - 21.5 The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and for a period of 6 years thereafter and in any event shall take out and maintain:
 - (a) Product Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and
 - (b) Professional Indemnity Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and
 - (c) Public Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise.
 - (d) Employer Liability Insurance coverage of not less than ten million pounds sterling (£10,000,000) for any one, or a series of claims that may arise.

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

22 Liability (Member Institution)

- 22.1 This clause sets out the Member Institution's entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the Supplier in respect of any breach by the Member Institution of:
- (a) The Public Contracts Regulations 2015 or
 - (b) The Contract
- and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 22.2 Nothing in the Contract limits or excludes the Member Institution's liability:
- (a) for death or personal injury resulting from the Member Institution's negligence; or
 - (b) for any damage or liability incurred by the Supplier as a result of fraud or fraudulent misrepresentation by the Member Institution
- 22.3 The Member Institution shall not be liable for:
- (a) loss of profits; or
 - (b) loss of business, goodwill or reputation; or
 - (c) loss of contract; or
 - (d) loss due to corruption of data and/or software; or
 - (e) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 22.4 The Member Institution's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract or in respect of any correspondence between the parties (including any competitive process) shall be limited to and shall not exceed £10,000.

22a Liability (Supplier)

- 22a.1 This clause sets out the Suppliers entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and sub- contractors) to the Member Institution in respect of any breach by the Supplier of the Contract and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 22a.2 Nothing in the Contract limits or excludes the Suppliers liability:
- (a) for death or personal injury resulting from the Suppliers negligence; or

- (b) for any damage or liability incurred by the Member Institution as a result of fraud or fraudulent misrepresentation by the Supplier.

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

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

22a.4 The Suppliers total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to 125% of the value of the relevant Contract.

23. Title and risk

- 23.1 Title in the Goods shall pass to the Member Institution on receipt by the Supplier of payment for the Goods.
- 23.2 Risk in the Goods shall pass to the Member Institution on delivery of the Goods but such passing shall not prejudice either the Member Institutions right to reject the Goods for non-conformity with the specification of the Goods or any other rights the Member Institution may have.

24. Price and payment

- 24.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 24.2 The price of the Goods shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Member Institution.
- 24.3 The price of the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Member Institution, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 24.4 The Supplier may invoice the Member Institution after Acceptance. Each invoice shall include such supporting information required by the Member Institution to verify the accuracy of the invoice, including but not limited to the relevant Order number.
- 24.5 The Member Institution shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 24.6 All amounts payable by the Member Institution under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Member Institution, the Member Institution shall on receipt of

a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

24.7 The Member Institution may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

24.8 The Supplier shall ensure that provisions equivalent to clause 24.5 will be effective within any subcontract concluded by the Supplier and any third party; and further, the Supplier shall require such subcontractors to ensure that their subcontracts contain within them an equal and equivalent provision.

25. Confidential information

25.1 A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. Subject to any express provisions of the Contract, the receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

26. Publicity

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

27. Intellectual Property

27.1 All Intellectual Property Rights in any Specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) provided to the Supplier by the Member Institution shall remain the Member Institution's property absolutely;
- (b) prepared by or for the Supplier specifically for the Member Institution in relation to the performance of the Contract shall belong to the Member Institution.
- (c) Pre-existing at the commencement of the Contract and owned or licensed by the Supplier shall be licensed to the Member Institution insofar as it is necessary for the Member Institution to exercise its other rights under the Contract. Such a license shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.

28 Anti-Bribery

28.1 The Supplier shall:

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

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

29 Data Protection

- 29.1 The parties acknowledge that the Member Institution is the Data Controller and the Supplier is the Processor. The only Processing of Personal Data that the Supplier is authorised to do is listed in Schedule 1 (Data Protection Particulars) of this Contract.
- 29.2 The Supplier shall Process Personal Data only to the extent, and in such a manner, as required in connection with this Contract and in accordance with the Member Institution's written instructions from time to time and shall not Process Personal Data for any other purpose. If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Clause, it shall without undue delay inform the Member Institution of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law).
- 29.3 The Supplier shall provide all reasonable assistance, on commercially reasonable terms, to the Member Institution in the preparation of any data protection impact assessment, as defined in the GDPR, prior to commencing any Processing. Such assistance may, at the discretion of the Member Institution, 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 Specification;
 - (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.
- 29.4 The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the EEA except with the Member Institution's prior written consent save that the Supplier:
- (a) is authorised to make worldwide transfers of Personal Data to Supplier Personnel. When making such transfers, the Supplier shall ensure appropriate protection is in place to safeguard the Personal Data transferred; and

- (b) may disclose the Personal Data to Supplier Personnel for the purpose of (a) complying with Member Institution's reasonable and lawful instructions (b) as required in connection with this Contract or (c) as required to comply with Privacy Laws, or an order of any court, tribunal, regulator or government agency with competent jurisdiction to which Supplier is subject.
- 29.5 The Supplier will keep a record of any Processing of Personal Data it carries out under the Contract.
- 29.6 n/a
- 29.7 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 this 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.
- 29.8 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 relating to handling Personal Data; and
 - (c) are aware both of the Supplier's duties and their personal duties and obligations under Law.
- 29.9 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.
- 29.10 The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Member Institution or as provided for in this Contract.
- 29.11 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 having taken account of the:
 - (a) nature of the Personal Data to be protected;
 - (b) harm that might result from a Data Breach;
 - (c) state of technological development; and
 - (d) cost of implementing any measures.

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.
- 29.12 The Supplier shall without undue delay notify the Member Institution of any Data Breach and shall work together with the Member Institution to provide the Member Institution with full co-operation and assistance, including to investigate the Data Breach (including by (i) assisting with any investigation launched by the Member Institution; (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 Member Institution to

investigate the Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Data Breach or its investigation).

- 29.13 The Supplier may appoint and use sub-processors to process the Personal Data under this Contract subject to the Supplier entering into a contract with the sub-processor that imposes materially similar contractual obligations to those set out in this Clause on that sub-processor, and remain liable for any sub-processor that it engages in accordance with the terms of this Clause.
- 29.14 In respect of the subject matter of this Contract, the Supplier shall, subject to agreed fees, if above a nominal costs, assist the Member Institution to enable it to comply with its obligations as a Data Controller under and in accordance with Law 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 Member Institution without undue delay 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 this Contract.
- 29.15 The Supplier shall promptly comply with any request from the Member Institution to return or delete Personal Data, including any back-up copies, held on Supplier systems unless it is required by law to retain such Personal Data. The Supplier may defer the deletion to the extent that any Personal Data or copies thereof cannot reasonably and practically be expunged from Supplier systems in which case, such Personal Data shall be deleted as soon as is reasonably practicable. For any such retention period the provisions of this Clause shall continue to apply to the Personal Data.
- 29.16 n/a
- 29.17 n/a
- 29.18 The Supplier shall on reasonable prior written request make available to the Member Institution such information as is necessary to demonstrate Supplier's compliance with its obligations under this Clause and allow for and contribute to audits, including inspections, conducted by the Member Institution or another auditor mandated by the Member Institution.
- 29.19 The Supplier shall promptly inform the Member Institution if, in its opinion, an instruction from the Member Institution infringes Privacy Law.
- 29.20 The Supplier shall, in connection with this Contract, comply in all respects with Law relating to data protection and have established procedures to ensure continued compliance with Law. The Supplier shall comply with its obligations as a Processor under and in accordance with Law.
- 29.21 n/a
- 29.22 The parties may agree to revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 29.23 The parties agree to take account of any guidance issued by the Information Commissioner's Office and may agree to amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 29.24 n/a
- 29.25 n/a

29.26 n/a

30. Term and Termination

- 30.1 This Contract shall come into force on the Effective Date and shall be binding and enforceable from the date of signature, and shall terminate naturally at the end of the contracted period unless otherwise terminated in accordance with this clause 30.
- 30.2 Without limiting its other rights or remedies the Member Institution may terminate the Contract:
- (a) in respect of the supply of Services, by giving the Supplier 2 weeks' written notice; and
 - (b) in respect of the supply of Goods, at any time before Delivery with immediate effect by giving the Supplier written notice, in which case the Member Institution shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 30.3 The Member Institution may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material or persistent breach of the Contract and (if such breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;
 - (b) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (d) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (e) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- (g) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- (h) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 30.2(b) to clause 30.2(i) inclusive;
- (k) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the Supplier's financial position deteriorates to such an extent that in the Member Institution's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

30.4 The Member Institution may immediately terminate this Contract where—

- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9);
- (b) the Supplier has, at the time of Contract award, been in one of the situations referred to in Regulation 57(1), including as a result of the application of Regulation 57(2), and should therefore have been excluded from the procurement procedure; or
- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaty on European Union and the Public Contracts Directive 2014/24 or the Treaty on the Functioning of the European Union that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union

31. Consequences of Termination

31.1 On termination of the Contract for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to the Member Institution all Deliverables, whether or not then complete, and return the Articles. If the Supplier fails to do so, then the Member Institution may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall solely be responsible

for their safe keeping and will not use them for any purpose not connected to this Contract;

- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

32. Force majeure

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

33 Freedom of Information and Environmental Regulations

- 33.1 The Supplier acknowledge that the Member Institution is subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the Member Institution (at the Supplier's expense) as mandated by the Member Institution in relation to these Laws.
- 33.2 Any Requests received by the Supplier shall be forwarded to the Member Institution immediately.
- 33.3 The provisions of clause 33 shall extend to sub-contractors and the Supplier shall ensure compliance with this requirement.
- 33.4 The Supplier acknowledges that the Member Institution may, acting in accordance with the FOIA, or the EIR be obliged to disclose information:-
- (a) without consulting with the Supplier; or
 - (b) following consultation with the Supplier and having taken the Supplier's views into account.

34 Articles on Loan

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

scrap arising from the supply of such Articles must be disposed of at the Member Institution's discretion and all proceeds of sales of such scrap must be promptly paid to the Member Institution.

35 Supplier Employees

- 35.1 When directed by the Member Institution, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Member Institution may reasonably require.
- 35.2 The Supplier's employees and those (if any) of the Supplier's sub-contractors or agents engaged within the boundaries of any of the Member Institution Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment, and when outside that establishment.
- 35.3 The Member Institution's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the Member Institution shall be final and conclusive.
- 35.4 The Supplier shall replace any of its employees who, the Member Institution shall have reasonably decided, have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's employees for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.
- 35.5 The Supplier shall bear the cost of or costs arising from any notice, instructions or decision of the Member Institution under this clause 35.
- 35.6 The Supplier shall take all reasonable steps to ensure that any employees, servants or agents of the Supplier and any sub-contractors, their employees, servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming any benefit payable to persons registered as unemployed.
- 35.7 Where the appointed Agreement Manager leaves the employment of the company, the lead institution must be informed immediately of interim arrangements made.

36 Re-tendering and Handover

- 36.1 Within twenty-one (21) days of being so requested by the Member Institution, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Member Institution to issue invitations to tender for the future provision of the Goods and Services.
- 36.2 Where, in the opinion of the Member Institution, TUPE is likely to apply to the Contract on its termination or expiration, the information to be provided by the Supplier under clause 36.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to): -

- (a) the number of employees who would be transferred, but with no obligation on the Supplier to specify their names; and
- (b) in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment; and
- (c) the general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.

36.3 The Supplier shall indemnify the Member Institution against any claim made against the Member Institution at any time by any person in respect of the liability incurred by the Member Institution arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under clause 36.1.

36.4 The Supplier shall co-operate fully with the Member Institution during the handover arising from the completion or earlier termination of the agreement. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition.

37. TUPE

37.1 The Supplier shall indemnify and keep indemnified the Member Institution against any loss incurred by the Member Institution connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the Member Institution in respect of any or all of the Supplier's staff or employees or any other employee of the Supplier or its sub-contractors and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.

37.2 The Supplier shall indemnify and keep indemnified the Member Institution against any loss incurred by the Member Institution connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any of the Supplier's staff or any other person at any time employed by (or engaged as a consultant by) the Supplier or its sub-contractors made against the Member Institution at any time for breach of such contract, policy or redundancy, pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Supplier and which results from any act, fault or omission of the Supplier or such other person was employed by the Supplier, save to the extent that the liability arises from any wrongful act by the Member Institution or its employees.

- 37.3 The Supplier shall indemnify and keep indemnified the Member Institution against any loss incurred from any change or proposed change to the terms and conditions of employment of any or all of the Supplier's staff or any other employee of the Supplier or its sub-contractors where such change is or is proposed to be effected following the transfer of any such person pursuant to the agreement and in respect of any loss incurred by the Member Institution arising from the employment or proposed employment of any such person otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.
- 37.4 Except with the proper written consent of the Member Institution, the Supplier shall not vary any terms and conditions of employment of any employee or any policy collective agreement applicable to any employee then assigned by the Supplier or its sub-contractors to the discharge of the Contract (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience) after the Member Institution has served notice of the termination of the Contract or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this agreement, any Contract or the provision by it of the Goods and Services.

38. General

38.1 Assignment and subcontracting

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

38.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 38.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

38.3 Severance

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

38.4 Waiver

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

38.5 Third party rights

A person who is not a party to the Contract shall not have any rights under or in connection with it.

38.6 Variation

Except as set out in the Contract, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Member Institution.

38.7 Conflict

Any employee of the Supplier shall not be directly or indirectly engaged, concerned or have any financial interest in any capacity with a Member Institution or any of their employees, unless prior written approval is obtained from the Member Institution concerned.

38.8 Governing law and jurisdiction

This Contract and proceedings relating to any dispute or claim, arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be brought in the courts whereby the Member Institution and/or Supplier is domiciled. Each party agrees that the specified courts shall have exclusive jurisdiction over such disputes or claims save that any counterclaim may be brought in any proceedings already commenced.

- 38.9 The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between senior executives of the parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will

attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators.

If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

If the Supplier is not based within the United Kingdom then all disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

39. Export

Member Institution acknowledges that the Supplies sold under this Framework Agreement and any Call-Off Contract are subject to the customs and export control laws and regulations of the United States and the European Union and may also be subject to the customs and export laws and regulations of the country in which the Supplies are rendered and/or received. Member Institution agrees to abide by those laws and regulations.

Schedule 1: Data Protection Particulars

N/A

Schedule 2: Services

Contract Value

The value of this contract shall not exceed £76,794.00 excluding VAT

Contract Duration

[REDACTED]

Delivery date of goods

[REDACTED]

Delivery Location and FAO

[REDACTED]

Payment Profile

[REDACTED]

Scope of Goods

[REDACTED]



















