



TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

BETWEEN:-

- (1) **FORTH VALLEY COLLEGE OF FURTHER AND HIGHER EDUCATION** whose registered office is at Grangemouth Road, Falkirk FK2 9AD (the "**Purchaser**"); and
- (2) **The person, firm, company or other body** supplying the Goods and Services identified in the Purchase Order (the "**Contractor**").

BACKGROUND

- (A) The Contractor is engaged in the business of supplying the Goods and Services.
- (B) The Purchaser has selected the Contractor to provide these Goods and Services and the Contractor is willing and able to provide the Goods and Services in accordance with the Contractor's Tender, the Purchase Order and these Standard Terms and Conditions.
- (C) These Standard Terms and Conditions are intended to make clear the manner in which the Parties have agreed to implement and fulfil the Contract between them.

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

Definitions

In these Conditions:

"Account Manager" means the representative of the Contractor appointed pursuant to Clause 15.1;

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| "Assigned Employees" | means the employees of the Contractor or any Sub-contractor who are from time to time part of an organised grouping of employees which has as its principal purpose the performance of the Services; |
| "Bidding Misrepresentation" | means any discovery by the Purchaser that the non-collusive tendering certificate submitted by the Contractor to the Purchaser or any other communication, document or other information in whatever form provided by the Contractor to the Purchaser is erroneous, false, misleading or untrue in any material respect; |
| "Change" | means any proposed amendment or variation to the Contract; |
| "Charges" | means the amounts payable for the Goods and/or Services to be provided by the Contractor; |
| "Commencement Date" | means the date detailed in the Contract for the commencement of the performance of the Services or the delivery of Goods; |
| "Conditions" | means these terms and conditions; |
| "Confidential Information" | has the meaning given to it in Clause 25; |
| "Construction Operations" | has the meaning given to it in section 105 of the Housing Grants, Construction and Regeneration Act 1996; |
| "Contract" | means a legally binding agreement for the provision of Goods and/or Services made between an Institution and the Contractor comprising an Order Form, the Specification and the Conditions; |
| "Contract Award Letter" | means the letter issued by the Purchaser to the Contractor notifying the Contractor of its award of the Contract and listing the documentation which, together with these conditions, form part of and constitutes the Contract; |

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| “Contract Period” | means the period of the Contract as detailed in the Contract; |
| “Contract Year” | means the period of 12 months from the Commencement Date, and each subsequent period of 12 months; |
| “Contractor Party” | means the Contractor and any Sub-Contractor; |
| “Contract Worker” | means an officer, servant, employee or agent of a Contractor Party, and any person on or at the Premises in connection with the Contract at the express or implied invitation of the Contractor or any other Contract Worker; |
| “Data Protection Legislation” | “Data Protection Legislation” means the Data Protection Act 1998, the General Data Protection Regulation (EU 2016/679) (GDPR), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; |
| “Default” | means non-compliance with or default against any obligation under the Contract by the Contractor; |
| “Deliverable” | means any advice and tasks and outputs deriving from the provision of Professional Services pursuant to the Contract including all report(s), financial model(s) and workshops outputs, other than any communication or document stated to be draft, subject to further work, incomplete or not in final form; |

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| “Disclosure Certificate” | means a basic disclosure certificate from the Scottish Criminal Record Office (or any successor organisation) or such certificate as may replace the basic disclosure certificate; |
| “Discrimination Legislation” | means the Equality Act 2010 and all applicable European Directives and legislation relation to discrimination; |
| “Dispute” | means any dispute or difference between the Purchaser or the Contractor arising from or in connection with the Contract; |
| “Dispute Resolution Procedure” | means the procedure set out in Clause 39; |
| “Employees” | means the employees (if any) of the Purchaser and/or any preceding Contractor who, immediately before the Commencement Date, are part of an organised grouping of employees which has as its principal purpose the carrying out of services which are materially similar to the Services; |
| “Employee Charges” | means all liabilities, costs, expenses and outgoings in relation to each Employee including, but not limited to salaries, wages, bonus (even if not due and payable at that time), accrued holiday pay, National Insurance Contributions, pension contributions, PAYE remittances and payments in respect of any other emoluments; |
| “Employee Liabilities” | means any costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the Employees including negligence claims, unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to pension entitlement, unlawful deduction of wages and equal pay; |
| “Force Majeure” | means any event or circumstance materially and adversely affecting the performance by a party of its obligations arising beyond its reasonable control including without limitation fires, floods, acts of war, acts of terrorism and natural |

disasters but excluding default of suppliers or third parties (unless caused by events which would constitute Force Majeure applying the definitions and exclusions in the Contract), events or circumstances attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees or any inability to pay sums of money, or which is attributable to the adoption of a new currency in the United Kingdom or Scotland;

“Good Industry Practice”

means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;

“Goods”

means the goods to be supplied by the Contractor to the Purchaser as set out in the Specification, and includes any materials, goods or equipment to be provided by the Contractor in the delivery of Services;

“Illegal Term”

shall have the meaning given in Clause 34;

“Information Legislation”

means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;

“Institution”

means the Purchaser and each of the universities and colleges (and affiliated bodies) detailed in the Specification;

“Intellectual Property Rights”

means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country (including the United Kingdom);

“Issued Property”

means anything issued or otherwise made available to the Contractor for any purpose by or

on behalf of the Purchaser including working papers and other written materials;

“Key Personnel”

shall have the meaning given in Clause 15.2;

“Law”

means all applicable laws, consents and approvals, including legislative provisions, subordinate legislation, legally binding codes of practice and the common law;

“Milestone”

means the completion of any event or task of a material nature by a particular date, such as the delivery of a Deliverable or completion of certain Services, identified as a milestone in the applicable Specification and/ or Order Form;

“New Contractor”

means any successor to the Contractor in the provision of services similar to the Services (or part thereof) to the Purchaser;

“Order Form”

means a document issued under, and making reference to, this agreement including setting out the Purchaser’s requirements for Goods and Services to be called off;

“Parent Company”

means, if the Contractor is a “company”, any “company” which is a “holding company” of the Contractor, as such terms are defined in section 1159 of the Companies Act 2006;

“Personal Data”

means personal data in terms of the Data Protection Legislation;

“Preceding Contractor”

means any person who provides to the Purchaser services which are materially similar to the Services, immediately prior to the Commencement Date;

“Premises”

means any premises of the Purchaser being a location where Goods are to be delivered or Services are to be provided;

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| "Processing" | means the processing of personal data for the purposes of the Data Protection Legislation; |
| "Procurement Officer" | means any member of staff who is formally authorised to procure goods, services and works. |
| "Professional Services" | means consultancy services and any services relating to the provision of legal, financial or other specialist advice; |
| "Purchaser" | means the Institution submitting the Order Form to the Contractor; |
| "Records" | means any files, documents or other records which relate to delivery of the Contract or the management, administration, organisation or planning of them whether in writing or on magnetic or other media; |
| "Re-transfer Date" | means the date or dates on which the contracts of employment of the Re-transferring Employees transfer from the Contractor or any Sub-Contractor to the Purchaser or a New Contractor pursuant to the TUPE Regulations upon the cessation or partial cessation of provision of the Services by the Contractor or any Sub-Contractor; |
| "Re-transferring Charges" | Employee means all liabilities, costs, expenses and outgoings in relation to each Re-transferring Employee including, but not limited to salaries, wages, bonus (even if not due and payable at that time), accrued holiday pay, National Insurance Contributions, pension contributions, PAYE remittances and payments in respect of any other emoluments; |
| "Re-transferring Liabilities" | Employee means any costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the Re-transferring Employees including negligence claims, unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to pension entitlement, unlawful deduction of wages and equal pay; |

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| “Re-transferring Employees” | means those employees of the Contractor or any Sub-contractor who are part of an organised grouping of employees which has as its principal purpose the carrying out of the Services (or part thereof) immediately prior to the relevant Re-transfer Date; |
| “Service Credits” | means the service credits payable by the Contractor to the Purchaser in the event the Service Levels are not met as set out in the Specification; |
| “Service Levels” | means the service levels identified as such in the Specification; |
| “Services” | means the services to be provided by the Contractor to the Purchaser as set out in the Specification (including any Professional Services so specified); |
| “Specification” | means the specification agreed between the parties to reflect the specific Goods and Services required by the Purchaser; |
| “Sub-Contract” | means any contract or proposed contract between the Contractor and any third party in respect of the performance of the Contract (or any part thereof). The terms “Sub-Contractor” and “Sub-Contracting” shall be similarly construed; |
| “Transfer Assistance Period” | means the period (or periods) commencing on the earlier of (i) the date falling nine months before expiry of the Contract or (ii) the date when the Contractor becomes aware that it is to cease providing the Services (in whole or in part) and ending, in either case, on the relevant Re-transfer Date; |
| “TUPE Regulations” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time; and |

"Warranty Period" has the meaning given in Clause 5.1.

- 1.2 In these Conditions a reference to a "notice" is to a letter or other document sent by one party to the other which has a specific effect with reference to the Contract. Examples include notices which are given when there are changes to the Contract, or breaches of the Contract. Notices must be sent in accordance with Clause 33.
- 1.3 In these Conditions, unless the context otherwise requires:
 - 1.3.1 a reference to the parties is to the Purchaser and the Contractor;
 - 1.3.2 a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;
 - 1.3.3 a reference to one gender includes references to all other genders;
 - 1.3.4 the singular includes the plural and vice versa;
 - 1.3.5 any reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted by any subsequent statute, enactment, order, regulation or instrument;
 - 1.3.6 any reference to a document shall include any variation, amendment, or supplement to such document;
 - 1.3.7 headings are included for ease of reference only and shall not affect the interpretation or construction of these Conditions;
 - 1.3.8 references to numbered Clauses and Schedules are, unless otherwise provided, references to Clauses and Schedules of these Conditions;
 - 1.3.9 references to Sections are to the sections into which these Conditions are sub-divided;
 - 1.3.10 the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
 - 1.3.11 an obligation to do something includes an obligation to procure it to be done;
 - 1.3.12 an obligation not to do something includes an obligation not to wilfully allow it to be done;
 - 1.3.13 the word "including" means "including without limitation";
 - 1.3.14 a reference to "approval" or "consent" shall mean consent in writing; and
 - 1.3.15 If more than one person is detailed in the Contract as the Contractor, references in this Contract to the "Contractor" shall be interpreted and construed as each such person on a joint and several basis.

2. GOODS

- 2.1 To the extent that any Goods are to be supplied in accordance with the Contract:
 - 2.1.1 the Goods must be to the reasonable satisfaction of the Purchaser;

- 2.1.2 the Goods must conform in all respects with the requirements of the Contract, and shall be of sound materials, workmanship and design;
 - 2.1.3 the Goods shall conform in all respects with all relevant Laws; and
 - 2.1.4 the Goods shall be fit for the purpose for which such goods are ordinarily used, and shall be fit for any particular purpose made known to the Contractor.
- 2.2 The Contractor shall comply with all relevant Laws in relation to the packaging of the Goods.
- 2.3 The Contractor shall:
- 2.3.1 use only the minimum adequate amount of packaging material to prevent contamination of or damage to the Goods;
 - 2.3.2 ensure packaging material used is designed and produced in such a way as to facilitate its re-use or recycling; and
 - 2.3.3 avoid or minimise the use of any hazardous substance in the packaging material.
- 2.4 Unless expressly provided to the contrary in the Contract, all pallets, containers, cases and other transit or packaging materials which are not removed by the Contractor immediately after delivery of the Goods will be considered non-returnable to the Contractor.
- 2.5 Without prejudice to Clause 2.4, within 5 days of a demand by the Purchaser, the Contractor will uplift all pallets, containers, cases and other transit or packaging materials used in relation to the Goods. If the contractor fails to so uplift such materials then, without prejudice to the Purchaser's other rights and remedies, the Purchaser may destroy, re-cycle, dispose of or re-use them.
- 2.6 Where samples have been submitted or equipment has been demonstrated (whether before or after the award of the Contract) the Goods shall conform with and be of the exact kind, model, type or variety as the samples or demonstration equipment.
- 2.7 All containers of hazardous goods shall bear internationally recognised danger symbols and in addition, in English:
- 2.7.1 prominent and adequate warnings;
 - 2.7.2 a full description of the Goods;
 - 2.7.3 a full description of the hazardous nature of the Goods;
 - 2.7.4 procedures to be followed in the event of an emergency.
- 2.8 Where samples have been submitted or equipment has been demonstrated (whether before or after the award of the Contract) the Goods shall conform with and be of the exact kind, model, type or variety as the samples or demonstration equipment.

3. DELIVERY

- 3.1 Delivery shall be made at such times and to such locations as the Contract specifies.
- 3.2 The time and date of delivery is of the essence.

- 3.3 If the Contractor does not deliver the Goods at the time specified in the Contract the Purchaser may, without prejudice to the Purchaser's other rights and remedies:
- 3.3.1 refuse any delivery and shall not be under any obligation to accept nor to pay for the Goods; or
 - 3.3.2 terminate the Contract either in whole or as regards those Goods only.
- 3.4 If for any reason the Purchaser is unable to take delivery of the Goods at the time specified in the Contract, the Contractor shall store the Goods safely and securely on behalf of the Purchaser until instructed to make delivery. The Purchaser shall reimburse the Contractor for any reasonable and proper storage costs actually incurred by the Contractor.
- 3.5 Unless the Contract provides expressly to the contrary, delivery shall be free of charge to the Purchaser.
- 3.6 With each delivery of Goods, the Contractor will provide a delivery note providing particulars of the quantities, weights (on a package by package basis), batch codes and descriptions of the Goods delivered, and such other information reasonably specified by the Purchaser in advance of delivery.
- 3.7 The signature or acceptance of a delivery note will not constitute evidence of acceptance of the Goods.
- 3.8 All Goods of a kind that customarily or in accordance with Good Industry Practice bear any mark, tab, brand, label or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, or other device intact.
- 3.9 The batch codes disclosed on delivery notes must tally with information recorded by the Contractor about its manufacturing, purchasing or Sub-Contracting processes to allow rapid checks to be made by the Purchaser on its stocks of Goods in the event of a series of complaints about the Goods or a product recall.
- 3.10 The Contractor must not issue, deliver, or supply in any manner any Goods to the Purchaser on an unsolicited basis or otherwise than in accordance with the Contract.

4. INSPECTION AND REJECTION

- 4.1 The Purchaser may, by written notice to the Contractor at any time within 30 days of delivery, reject all or any of the Goods which fail to meet the requirements of the Contract, or Goods in a consignment which is deficient in weight, quantity or measure.
- 4.2 If the Purchaser rejects any of the Goods pursuant to Clause 4.1, the Purchaser shall be entitled, at its option:
- 4.2.1 to have the rejected Goods repaired by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the rejection notice, so as to meet in all respects the requirements of the Contract; or
 - 4.2.2 to have the rejected Goods replaced by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the rejection notice, with Goods which comply in all respects with the requirements of the Contract; or

- 4.2.3 to obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.
- 4.3 The rights of the Purchaser in Clause 4.2 shall apply:
 - 4.3.1 without prejudice to its other rights and remedies; and
 - 4.3.2 to Goods as originally delivered, and to Goods repaired or replaced pursuant to that Clause.
- 4.4 Unless the Purchaser elects for rejected Goods to be repaired, and agrees to that repair taking place at the Premises, any rejected Goods shall be removed by (and at the expense of) the Contractor within 7 days of the rejection notice. If the Contractor fails to remove rejected Goods within such period, the Purchaser may return the rejected Goods or any of them at the Contractor's risk, and the Contractor will indemnify the Purchaser in respect of the cost of carriage and any other costs incurred in relation to such return.
- 4.5 The Purchaser's rights and remedies as regards Goods which fail to meet the requirements of the Contract or Goods in a consignment which is deficient in weight, quantity or measure shall be unaffected if the loss or damage occurred in the transit of the Goods.

5. WARRANTIES AND REPRESENTATIONS

- 5.1 The Goods shall be guaranteed by the Contractor for the period of 12 months from the putting into service of the Goods, or 18 months from the delivery of the Goods, whichever shall be shorter (the "Warranty Period").
- 5.2 If at any time before the date falling 60 days after the end of the Warranty Period the Purchaser gives notice in writing to the Contractor of any defect in any of the Goods arising during the Warranty Period under proper and normal use of the Goods, the Contractor shall, without delay, remedy such defects without cost to the Purchaser. The Purchaser may elect whether the defect should be remedied by repair or replacement.
- 5.3 The rights of the Purchaser under Clause 5.2 shall be without prejudice to any other rights and remedies of the Purchaser.
- 5.4 For the purposes of Clause 4.1, Goods repaired or replaced pursuant to Clause 4.2 shall be deemed to be delivered and put into service on the date of repair or replacement, and accordingly shall be guaranteed for a further Warranty Period.
- 5.5 The Contractor warrants and represents that:
 - 5.5.1 the Contractor has full capacity and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform the Contract;
 - 5.5.2 to the best of its knowledge there is no inhibition, restriction or prohibition which in any way affects the capacity of the Contractor to enter into and perform the Contract;
 - 5.5.3 the Contractor shall discharge its obligations under the Contract in accordance with Good Industry Practice;
 - 5.5.4 as at the Commencement Date, all information, statements and representations contained in the Tender Response are true accurate and not

misleading and it will promptly advise the Purchaser of any fact, matter or circumstance of which it may become aware during the Contract that would render any such information, statement or representation to be false or misleading;

- 5.5.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under the Contract; and
- 5.5.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.
- 5.6 To the extent that any Services are to be provided in accordance with the Contract they shall be provided by the Contractor in accordance with the Contract with all reasonable skill, care and diligence.
- 5.7 The Contractor shall comply with all Laws which are relevant to the Contract.

6. PROPERTY AND RISK

- 6.1 Property to and risk in the Goods shall pass to the Purchaser when the Goods have been delivered to the Purchaser in accordance with Clause 3.
- 6.2 The transfer of property to and risk in the Goods shall be without prejudice to any rights of the Purchaser in relation to the Goods, including its right to reject Goods pursuant to this Contract.

7. SCHEDULING

- 7.1 Where the Contract provides for the Services to:
 - 7.1.1 commence on a certain date;
 - 7.1.2 be completed by a certain date; or
 - 7.1.3 be provided for a certain period,the Contractor will comply with such requirements.
- 7.2 If Services are to be provided in distinct elements, the Contractor will comply with any reasonable request of the Purchaser as to the order in which the Services will be provided.
- 7.3 The Contractor will provide, at the reasonable request of and in such form as the Purchaser may require, reports showing the progress of the provision of the Services, the costs to the Purchaser of the Services provided during the period covered by the report, and a review of any factors likely to affect the satisfactory completion of the Services in accordance with the Contract.
- 7.4 The Contractor agrees to immediately notify the Purchaser if it believes that it may be unable to achieve any particular Milestone. If the Contractor fails to achieve any Milestone on or by the relevant date other than due to a delay caused by the Purchaser that has been notified in writing by the Contractor to the Purchaser as

soon as reasonably practicable, a Force Majeure event or where an extension of time is agreed by the parties, then the Purchaser will have the right (without prejudice to all other rights and remedies available to it under these conditions or otherwise), at its discretion, to deduct by way of liquidated damages (and as a genuine pre-estimate and not by way of penalty) from any amounts payable to the Contractor, the amount set out in the particular Order Form (which shall be calculated in accordance with the anticipated cost to the Purchaser of such failure) for each week or part of a week that the achievement of the Milestone is overdue.

8. CONFLICT OF INTEREST

8.1 If no Professional Services are to be supplied in accordance with the Contract, the following provisions of this Clause 8 will not apply.

8.2 Where the Contract is one for the provision of Professional Services, the Contractor shall ensure that it has no conflict of interest such as may be likely to prejudice its independence and objectivity in performing the Contract, and:

8.2.1 where the Contractor becomes aware of any conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) it shall immediately notify the Purchaser in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Purchaser may reasonably require;

8.2.2 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 8.2 is not capable of being avoided or removed the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor.

8.2.3 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 8.2 is capable of being avoided or removed the Purchaser may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

8.2.3.1 if the Contractor fails to comply the Purchaser's requirements in this respect, or

8.2.3.2 if, in the opinion of the Purchaser, compliance does not avoid or remove the conflict,

the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor; and

8.2.4 if the Contract is terminated pursuant to Clause 8.2 and in the Purchaser's reasonable opinion the relevant conflict of interest existed at the time of the award of the Contract and could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed in the Tender Document, then notwithstanding Clause 22 (Consequences of Termination), no payment shall be due for any Services provided by the Contractor.

9. SUPPLY OF SERVICES, SERVICE LEVELS AND SERVICE CREDITS

9.1 The Contractor shall perform the Services and provide any Deliverables to meet or exceed the Service Levels set out in the Contract.

- 9.2 Without prejudice to the Purchaser's other rights and remedies (including the right to claim contractual damages, or to terminate the Contract under Clause 21) if at any time the Contractor fails to meet the Service Levels then:
- 9.2.1 Service Credits will be applied in accordance with the mechanism set out in the Order Form and shall automatically be deducted by the Contractor from the Charges owing by the Purchaser to the Contractor, and clearly indicated on any invoice submitted by the Contractor in accordance with Clause 10; and
- 9.2.2 the Contractor shall undertake a comprehensive analysis of the reason for such failure to perform the Services (or any element thereof) to meet or exceed the Service Levels and shall arrange all such additional resources as are reasonably necessary depending on the criticality of the failure to ensure that such failure does not recur and shall provide a detailed report to the Purchaser describing the results of such analysis and the action it has taken at no additional charge to the Purchaser; and
- 9.2.3 the Contractor shall re-perform or complete any non-conforming element of the Services at no additional charge to the Purchaser as soon as reasonably practicable.
- 9.3 To the extent any Professional Services are to be supplied in accordance with the Contract:
- 9.3.1 the Purchaser shall be entitled to rely upon the Deliverables;
- 9.3.2 the Contractor may issue Deliverables in draft form, but if requested to do so the Contractor may not unreasonably refuse to issue a draft Deliverable in final form, nor unreasonably delay that issue; and
- 9.3.3 the Contractor acknowledges that it shall have no right to be identified as the author of any Deliverable, and hereby waives any such rights conferred by law.

10. PAYMENT

- 10.1 The Purchaser shall pay to the Contractor the Charges in consideration of the performance of the Contractor's obligations under the Contract.
- 10.2 The Purchaser shall pay the Contractor within 30 days of the date of receipt of a valid invoice from the Contractor.
- 10.3 All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable, the Contractor will show this separately on its invoice.
- 10.4 All Charges are stated in pounds sterling, and all invoices must be presented and demanded in pounds Sterling.
- 10.5 The Charges represent the entire amount payable by the Purchaser to the Contractor in respect of the performance of the Contractor's obligations under the Contract, and except as otherwise expressly stated to the contrary in the Contract, the Purchaser shall not be liable to the Contractor for any of its costs, expenses or liabilities.
- 10.6 The Contractor will comply with all reasonable requests of the Purchaser in respect of invoicing, including the formatting of invoices and the consolidation or splitting of

invoices to reflect different parts of the performance of the obligations of the Contract (including delivery to different locations and/or performance for the ultimate benefit of different persons).

- 10.7 The Contractor shall include a provision in each Sub-Contract requiring the Contractor to pay the relevant Sub-Contractor not more than 30 days after the receipt of a valid and payable invoice.
- 10.8 If the Contractor assigns the right to receive payment of the Charges or any part thereof (whether pursuant to Clause 32.2 or otherwise) to any other person (a "**Payment Assignee**"):
 - 10.8.1 the Purchaser will comply with any reasonable request of the Contractor in relation to the payment of the Charges or the handling of invoices, notified to the Purchaser at least 30 days in advance of the date for the relevant payment or the receipt of the relevant invoice;
 - 10.8.2 any payment by the Purchaser to a Payment Assignee will discharge the obligation of the Purchaser to make that payment, as if it had been paid to the Contractor; and
 - 10.8.3 the Contractor will procure that the Payment Assignee complies with the reasonable requests of the Purchaser made pursuant to Clause 10.6.
- 10.9 The parties will pay interest on any amount payable under the Contract not paid on the due date, for the period from that date to the date of payment at a rate equal to 3% above the base rate set from time to time by the Bank of England.

11. READINESS FOR CHANGE

- 11.1 Each party shall notify the other without delay if it considers that any changes to its technology or business processes may impact on the other party in relation to the Contract.
- 11.2 The Contractor shall notify the Purchaser without delay if it considers that any of the technology used in the Goods or in the provision of the Services is in danger of becoming obsolete as a result of market changes or technology advantages or obsolescence.
- 11.3 The Contractor shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services.

12. ACCESS TO PREMISES

- 12.1 If the Contract requires the Contractor to take access to or occupation of any Premises in connection with the Contract, such access or occupation shall be made available to the Contractor free of charge.
- 12.2 The Contractor will not deliver any Goods, materials, plant or equipment, and will not commence any work at the Premises, until it has obtained the Purchaser's prior consent to the date and time of access, and, where appropriate, as to the proposed method of working or delivery (to the extent that such access details are not included within the Contract).
- 12.3 The Premises shall be used by the Contractor solely for the purpose of performing the Contract.

- 12.4 The Contractor shall have access to or occupation of the Premises as non-exclusive licensee only and shall vacate the Premises when no longer required for the purpose of performing the Contract and upon the termination or expiry of the Contract.
- 12.5 All tools, equipment and materials of the Contractor required in the performance of the Contractor's obligations under the Contract shall be and remain at the sole risk of the Contractor, whether or not they are situated at any Premises.
- 12.6 If requested the Contractor shall provide a list of the names and addresses of all Contract Workers who may require admission to the Premises in connection with the performance of the Contract, containing such other particulars as the Purchaser may reasonably require.
- 12.7 The Purchaser may refuse to admit to the Premises any Contract Worker whose admission would be, in the opinion of the Purchaser, undesirable.
- 12.8 The Contractor shall comply with (and procure that all Contract Workers comply with) all reasonable instructions given by the Purchaser in relation to the access to and use of the Premises including security and health and safety requirements and occupation and cooperation with other users of the Premises.
- 12.9 If the Purchaser so directs, the Contractor will submit a basic Disclosure Certificate obtained from Disclosure Scotland in respect of any Contract Workers who requires access to any Premises, prior to such access being taken.

13. ISSUED PROPERTY

- 13.1 All Issued Property shall remain the property of the Purchaser and shall be used by the Contractor only for the purposes of the Contract.
- 13.2 The Contractor shall notify the Purchaser without delay if any Issued Property is not in good condition when received by or on behalf of the Contractor.
- 13.3 The Contractor undertakes to keep safe custody of Issued Property and to return all Issued Property to the Contractor, with the exception of any Issued Property consumed or incorporated for the purposes of the Contract.
- 13.4 The Contractor shall indemnify the Purchaser in respect of all losses of or damage to Issued Property (including waste of Issued Property) arising from bad workmanship or negligence of the Contractor) save for any losses or damage resulting from the normal and proper use of Issued Property for the purposes of the Contract.
- 13.5 The Contractor will return all Issued Property on demand, at any time, and within 7 days of the termination or expiry of the Contract. To the extent that Issued Property includes working papers or other written materials, at the same time as the Contractor returns such Issued Property it shall also return copies it has made of such Issued Property and any other materials of whatsoever nature prepared by the Contractor using the information in such Issued Property.
- 13.6 Neither the Contractor nor any other party shall have a lien on any Issued Property and the Contractor shall take all reasonable steps to ensure that the title of the Purchaser to and the exclusion of any such lien in respect of Issued Property are brought to the notice of all persons dealing with any Issued Property.

14. CONTRACT WORKERS

- 14.1 The Contractor shall engage, employ, and train suitably experienced and qualified staff for carrying out the Contractor's duties and obligations under the Contract.
- 14.2 If the Purchaser requests, the Contractor will provide the Purchaser with the names of all people whom the Contractor proposes will have a role in the performance of the Contract together with a description of the part each person will play in performing the Contract, and details of their qualifications, experience and previous employment.
- 14.3 The Purchaser may require the Contractor to produce documentary or other evidence to establish that the Contract Workers are suitably qualified and experienced to perform their respective duties under the Contract.
- 14.4 If the Purchaser gives the Contractor notice that any Contract Worker intended for or concerned with the performance of the Contract is not to become or remain involved in the performance of the Contract, the Contractor will take all reasonable steps to comply with such notice without delay, at the cost of the Contractor.
- 14.5 Nothing in the Contract shall have the effect of making any Contract Worker an employee of the Purchaser.

15. KEY PERSONNEL

- 15.1 The Contractor shall appoint an Account Manager to be the representative of the Contractor for all purposes connected with the delivery of the Contract, and who shall be authorised by the Contractor to fulfil that role.
- 15.2 The Purchaser may at any time by notice to the Contractor designate any person concerned with the performance of the Contract as "Key Personnel". Any person referred to in the Contract or the Contractor's response to the Invitation to Tender as to be concerned with the delivery of the Contract and the Account Manager will be deemed so designated.
- 15.3 The Contractor will ensure that the Key Personnel are made available in performance of the Contract, unless the Purchaser agrees otherwise. The Purchaser will act reasonably in considering requests for replacements to the Key Personnel where the need for the replacement has arisen due to circumstances beyond the control of the Contractor. If the Contractor proposes a replacement for any person designated as Key Personnel, the Purchaser reserves the right to interview any such person before considering agreeing to the replacement.
- 15.4 If the Purchaser refuses its consent for any replacement Key Personnel the Contractor will propose an alternative, without undue delay.

16. LIABILITY AND INDEMNITY

- 16.1 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with anything done or omitted to be done in connection with the Contract by the negligence or other wrongful act or omission of any Contractor Party.
- 16.2 Subject always to Clause 16.3, the liability of each party to the other under the Contract shall be subject to the following cumulative limits, each to the extent permitted by law:

- 16.2.1 the aggregate liability of a party in respect of loss or damage caused by its negligence to any tangible property of the other party shall not exceed £10,000,000; and
 - 16.2.2 the aggregate liability of a party in respect of any claim made by the other party under the Contract flowing from any one event or a series of connected events (other than in respect of claims for loss or damage caused by the party's negligence to any tangible property of the other party) shall not exceed; or (b) the sum of £10,000,000 however that liability arises including breach of contract, delict, misrepresentation (except fraudulent misrepresentation) or breach of statutory duty; and
 - 16.2.3 neither party shall be liable to the other for loss of profits, business, revenue, goodwill or anticipated savings or other indirect or consequential loss or damage (but such limitation shall not limit the Contractor's liability to the Purchaser for any additional operational and administrative costs and expenses and/or any expenditure or charges rendered necessary as a result of any Default by the Contractor).
- 16.3 The limitations in Clause 16.2 will not apply to:
- 16.3.1 the liability of a party resulting from any fraudulent act by it, or any liability for personal injury or death; or
 - 16.3.2 the indemnity given at clause 26.6 (Data Protection).

17. INSURANCE

- 17.1 The Contractor shall maintain in force with reputable insurers employer's liability insurance and public liability insurance in the sum of not less than £5,000,000 (but limit to be agreed with the College) in respect of any one incident and unlimited as to numbers of claims, and adequate insurances covering all the Contractor's other liabilities in terms of the Contract.
- 17.2 Where the Contract relates to Professional Services, the Contractor shall maintain in force with reputable insurers professional liability insurance in the sum of not less than £2,000,000 in respect of any one incident and unlimited as to numbers of claims.
- 17.3 On the request of the Purchaser, the Contractor shall exhibit satisfactory evidence of the insurance policies referred to in this Clause 17, together with satisfactory evidence of payment of the premium.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 The Contractor must not infringe any Intellectual Property Right of any third party in the performance of the Contract.
- 18.2 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with any breach by the Contractor of Clause 18.1.

- 18.3 All rights (including ownership and Intellectual Property Rights) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing, or on magnetic or other media or distributed electronically:
- 18.3.1 forming Issued Property or otherwise made available to the Contractor by the Purchaser shall remain vested in the Purchaser; or
 - 18.3.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in the Purchaser.

19. CORPORATE SOCIAL RESPONSIBILITY ISSUES

19.1 Health & Safety

- 19.1.1 The Contractor shall be responsible for the observance by itself and all Contract Workers of all safety precautions necessary for the protection of all Contract Workers including all precautions relating to manual handling and all precautions required to be taken by or under Laws relating to health and safety.
- 19.1.2 The Contractor shall promptly notify the Purchaser of any health and safety hazards which may arise in connection with the performance of the Contract.
- 19.1.3 The Purchaser shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor or any Contract Worker. The Contractor shall draw these hazards to the attention of all Contract Workers and shall instruct such persons in connection with any necessary associated safety measures.

19.2 Non-Discrimination

- 19.2.1 The contractor shall comply with the Discrimination Legislation and shall not unlawfully discriminate within the meaning and scope of the Discrimination Legislation.
- 19.2.2 The Contractor shall notify the Purchaser immediately of any investigation of or proceedings against the Contractor under the Discrimination Legislation and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 19.2.3 The Contractor must at all times comply with any relevant codes of practice relating to the subject matter of the Discrimination Legislation.

19.3 Environmental Considerations

- 19.3.1 The Contractor will ensure that:
 - 19.3.1.1 no Goods or Services are supplied which will endanger the health and safety of the end users of the Goods or Services (in each case assuming that such persons act reasonably);
 - 19.3.1.2 no Goods are supplied which will cause significant damage to the environment during manufacture, use, or disposal, which consume a disproportionate amount of energy during

manufacture, use, or disposal, which cause unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contain materials derived from threatened species or threatened environments.

19.3.2 The Contractor will comply in all material respects with applicable Laws relating to environmental matters which are relevant to the Contract. Where the provisions of any such Laws are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such voluntary agreements or codes of practice.

20. DEFAULT

20.1 If the Contractor is in Default then without prejudice to any of its other rights and remedies the Purchaser may require the Contractor within 14 days (or such other period as the Purchaser may specify, acting reasonably) to produce a draft remedial plan to remedy the Default for the approval of the Purchaser, such approval not to be unreasonably withheld or delayed.

20.2 The Contractor will implement the remedial plan approved by the Purchaser pursuant to Clause 20.1.

20.3 At any time while the Contractor is in Default the Purchaser may without prejudice to any of its other rights and remedies seek to remedy the effects of the Default by carrying out the activities necessary to perform the Services, obtain goods similar to the Goods or otherwise meet the objectives of the Contract, or contract with a third party to do any of the same, and:

20.3.1 the Contractor will use all reasonable endeavours to co-operate with the Purchaser and any third party to mitigate the effects of the Default; and

20.3.2 the Contractor will indemnify the Purchaser in respect of the reasonable costs and expenses incurred by the Purchaser in remedying or seeking to remedy the effects of the Default.

20.4 If the Contractor is in Default the Purchaser may withhold a proportion of any sum which is payable by the Purchaser to the Contractor until the Default has been remedied, such proportion to be reasonable and commensurate with regard to:

20.4.1 the extent to which the Default has caused or will cause a diminution in the extent or quality, including delay, of the Contractor's performance of the Contract; and

20.4.2 the amount of any loss or any additional costs which the Purchaser has incurred or may incur in consequence of the Default.

20.5 If any sum of money shall be due from the Contractor to the Purchaser, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other contract or Contract with the Purchaser.

21. TERMINATION

- 21.1 The Purchaser may at any time by notice in writing terminate the Contract with immediate effect where:
- 21.1.1 a Bidding Misrepresentation has occurred;
 - 21.1.2 any of the following events occur in relation to the Contractor:
 - 21.1.2.1 the Contractor or any Parent Company passes a resolution for winding-up or the court makes a winding-up order, other than for the purpose of a genuine and good faith reconstruction or amalgamation which the Purchaser has consented to in advance;
 - 21.1.2.2 the Contractor or any Parent Company passes a resolution for administration or an administrator, administrative receiver, receiver or manager is appointed to the Contractor or any Parent Company by a creditor or by the court, or possession is taken of any of the Contractor's or any Parent Company's property under the terms of a floating charge;
 - 21.1.2.3 the Contractor or any Parent Company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as if the reference in section 123(1)(a) to £750 was to £10,000);
 - 21.1.2.4 where the Contractor is an individual, a petition is presented for the Contractor's bankruptcy or the sequestration of the Contractor's estate;
 - 21.1.2.5 where the Contractor is an individual, a criminal bankruptcy order is made against the Contractor;
 - 21.1.2.6 where the Contractor is an individual, the Contractor makes any composition or arrangement with or for the benefit of the Contractor's creditors, or makes any conveyance or assignment for the benefit of the Contractor's creditors, or an administrator is appointed to the Contractor's affairs;
 - 21.1.2.7 where the Contractor is an individual, the Contractor becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
 - 21.1.2.8 where the Contractor is a partnership or firm, an event listed in Clauses 21.1.2.1 to 21.1.2.4 occurs in respect of any partner in the partnership or firm or any of those persons;
 - 21.1.2.9 if applicable, a petition is presented for the Contractor to be wound up as an unregistered company; or
 - 21.1.2.10 any similar event to those listed above occurs under the law of any other jurisdiction.
 - 21.1.3 the Contractor has failed to achieve the Service Levels to a degree that the Purchaser has been entitled to Service Credits amounting to 25% or more of the applicable monthly Charges for two calendar months in any period of six months;
 - 21.1.4 a Default has occurred which is incapable of remedy; or

- 21.1.5 a Default has occurred which is capable of remedy and the Contractor has failed to remedy such Default within 30 days of receipt of a written notice from the Purchaser specifying the Default and requiring its remedy (unless a remedial plan produced in respect of that Default and approved by the Purchaser pursuant to Clause 20.1 is being implemented by the Contractor to the reasonable satisfaction of the Purchaser).
- 21.2 The Purchaser shall be entitled to terminate the Contract by giving not less than 30 days' notice to the Contractor. In the event of any such termination, the Contractor shall be entitled to payment in respect of all Goods and Services supplied up to the effective date of termination.
- 21.3 The Contract shall expire and terminate automatically at the end of the Contract Period.
- 21.4 The Contractor shall be entitled to terminate the Contract where any Charges which have been properly invoiced under the Contract and which are not the subject of any bona fide query or dispute remain outstanding for a period of more than 30 days following the last due date for payment, provided that the Contractor has given at least seven days' prior written notice of the overdue amount and its intention to terminate the Contract in the event payment is not made on or by expiry of such 30-day period.

22. CONSEQUENCES OF TERMINATION

- 22.1 The termination or expiry of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 22.2 Termination of the Contract will not affect the continued operation of those Clauses which are stated to apply after its termination or any other of the provisions of the Contract which, having regard to their terms, are intended to apply on or to survive termination or expiry.
- 22.3 If on the termination or expiry of the Contract any Intellectual Property Rights in connection with the Contract owned by a Contractor Party are required by the Purchaser for the efficient conduct of its business or the orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Contract to the Purchaser or a third party, the Purchaser may acquire from the Contractor at the then fair market rate a non-exclusive licence to use any such Intellectual Property Rights which licence shall:
 - 22.3.1 be subject to a single, one-off payment;
 - 22.3.2 be perpetual and irrevocable;
 - 22.3.3 afford the Purchaser the right to make such modifications, adaptations and enhancements as it sees fit to products in relation to which the Intellectual Property Rights arise;
 - 22.3.4 permit the Purchaser to engage a third party to use, modify, adapt or enhance any such products, provided that such third party shall have entered into a confidentiality agreement with the Purchaser in a form to the reasonable satisfaction of the Contractor; and
 - 22.3.5 carry the right to grant sub-licences,

- 22.4 and the Contractor will procure that such a licence is granted by any Contractor Party.
- 22.5 If fair market value cannot be agreed pursuant to Clause 39.2, the matter will be referred to the Dispute Resolution Procedure.
- 22.6 On the termination of the Contract pursuant to Clause 21.1, Clause 4.3.2 (rejection of Goods), Clause 8.2 (conflict of interest) or 28.2 (corruption), the Contractor will indemnify the Purchaser in respect of:-
- 22.6.1 any additional operational and administrative costs and expenses suffered or incurred by the Purchaser as a result of such termination;
- 22.6.2 the costs and expenses suffered or incurred by the Purchaser in providing (or procuring that another party provides) goods or services similar to the Goods or Services on a temporary basis until the completion of a tendering or reappointment process carried out by the Purchaser to find a successor to the Contractor, but only to the extent that such costs and expenses exceed the Charges that would have been payable (or a reasonable estimate of such charges, to the extent uncertain) had the Contract not been terminated; and
- 22.6.3 the costs and expenses suffered or incurred by the Purchaser in carrying out the tendering or reappointment process referred to in Clause 22.6.2.
- 22.7 The costs and expenses of the Purchaser referred to in Clause 22.6.2 shall include reasonable charges to reflect the application of the Purchaser's internal resources, evidenced by records of time spent and other resources applied.
- 22.8 Upon the expiry or termination of the Contract, for any reason whatsoever, the Contractor shall cooperate with the Purchaser to such extent as the Purchaser may require for the period required by the Purchaser (of up to a maximum of 6 months after the date of such expiry or termination) to ensure an orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Contract to the Purchaser or a third party.
- 22.9 The Purchaser shall reimburse to the Contractor all reasonable costs and expenses incurred by the Contractor in satisfying the provisions of Clause 22.8.
- 22.10 The cooperation referred to in Clause 22.8 may include, if the Purchaser requires:
- 22.10.1 the making available of any Issued Property, the making available of relevant instruction and operating manuals and the provision of instruction in the use of any equipment or machinery forming part of the Issued Property; and/or
- 22.10.2 the continued provision of the Services, or part of them, or the continued performance of the Contractor's obligations under Contract.

23. VARIATIONS TO THE CONTRACT

- 23.1 The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of each of the parties, each having completed the following change control procedure:

- 23.1.1 Should either party wish to propose a Change, it shall submit to the other 2 copies of a change control notice (CCN) completed in so far as that party is able;
- 23.1.2 Each CCN shall contain:
 - 23.1.2.1 the title of the Change;
 - 23.1.2.2 the originator and date of the proposal of the Change;
 - 23.1.2.3 the reason for the Change;
 - 23.1.2.4 full details of the Change including any specifications;
 - 23.1.2.5 the price, if any, of the Change;
 - 23.1.2.6 a timetable for implementation of the Change; and
 - 23.1.2.7 details of the likely impact, if any, of the Change on other aspects of the Contract.
- 23.1.3 The CCN will be completed by the other party and both parties will seek to agree the content of the CCN.
- 23.1.4 In the case of a Change proposed by the Purchaser, the parties will act reasonably in agreeing the content of the CCN and will execute a variation or amendment to the Contract to implement the agreed CCN, without delay.
- 23.1.5 In the case of a Change proposed by the Contractor, the Purchaser will act reasonably in considering the content of the CCN but the agreement or otherwise to the content of a CCN shall be at the Purchaser's sole discretion.
- 23.2 The Contract shall not be varied or amended by the use, notification, issue or receipt by a party of any document containing or incorporating any standard terms and conditions of either party.
- 23.3 The Contract constitutes the entire agreement between the parties at its date of execution in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract.

24. NON-SOLICITATION OF EMPLOYEES

- 24.1 Without in any way restricting the right of any person freely to accept employment and change employment, neither the Purchaser nor the Contractor shall, during the term of the Contract and for the period of 6 months thereafter, without the other party's written consent:
 - 24.1.1 subject to Clause 24.2, employ any of the employees of the other party who have at any time been engaged in the performance of the Contract to perform similar duties to those involved in the performance of the Contract; or
 - 24.1.2 solicit to employment any such employees of the other party.
- 24.2 A party shall not be in breach of Clause 24.1 if a person (without having been previously approached directly or indirectly) responds to a general recruitment advertisement placed by or on behalf of the prospective new employer.

- 24.3 If a party breaches Clause 24.1 it shall indemnify the other party in respect of that party's costs and expenses in replacing the employee employed by the other party including advertising and other recruitment costs and initial training (but not the cost of ongoing emoluments).

25. CONFIDENTIALITY

- 25.1 Subject to Clause 25.3, all information of a confidential nature obtained by the Contractor under or in connection with the Contract from the Purchaser ("Confidential Information") will be treated by the Contractor in confidence, and will not:
- 25.1.1 be used by the Contractor other than for the purposes of the Contract; or
 - 25.1.2 be disclosed by the Contractor, other than to those Contract Workers who need to have access to that information for the purposes of the Contract and in accordance with Clause 25.5 without the prior written consent of the Purchaser.
- 25.2 Information will not be treated as "Confidential Information" for the purposes of Clause 25.1 if it was generally available to the public when it was received by the Contractor from the Purchaser and information will cease to be "Confidential Information" for the purposes of Clause 25.1 if it subsequently becomes generally available to the public other than as a result of a breach by the Contractor of this Clause.
- 25.3 Clause 25.1 does not prohibit the disclosure by the Contractor of any Confidential Information which:
- 25.3.1 was known to the Contractor prior to its disclosure to the Contractor by the Purchaser or which subsequently comes into the Contractor's possession from a third party which does not owe a duty of confidence to the Purchaser in respect of that information;
 - 25.3.2 the Contractor is obliged by law to disclose; or
 - 25.3.3 the Contractor requires to provide to its insurers or professional advisers to allow the Contractor to properly conduct its business.
- 25.4 The Contractor will take all technical and organisational measures and other precautions necessary to ensure that the Confidential Information is not used or disclosed other than as permitted by Clauses 25.1 and 25.3.
- 25.5 Without affecting the generality of Clause 25.4, the Contractor will put in place a written agreement with any Contract Worker to whom it wishes to disclose any of the Confidential Information pursuant to Clause 25.1.2, in terms of which such Contract Worker is bound by confidentiality obligations in respect of that Confidential Information at least as onerous as those set out in this Clause 25.
- 25.6 Upon the expiry or termination of the Contract, the Contractor will promptly, and in any event within 14 days of such expiry or termination, return to the Purchaser or destroy (at the absolute discretion of the Purchaser) any Confidential Information in its possession, and provide the Purchaser with a certificate, signed by a duly authorised officer, certifying that the Contractor has complied with its obligations under this Clause 25.6. The obligation to destroy any Confidential Information

pursuant to this Clause 25.6 includes an obligation to permanently delete from any information technology systems owned and/or used by the Contractor, any copies of that Confidential Information held in electronic form.

- 25.7 Nothing in this Clause 25 will prevent the Contractor from using in the normal course of its business any techniques, ideas or know-how gained during the performance of the Contract to the extent that such use does not result in any unauthorised disclosure of any Confidential Information or an infringement of the Purchaser's (or anyone else's) Intellectual Property Rights.
- 25.8 The Contractor acknowledges that the Purchaser is subject to the requirements of the Information Legislation. The Contractor will provide such assistance and co-operation as the Purchaser may reasonably require to enable it to comply with its information disclosure obligations under the Information Legislation including (although not only) by providing the Purchaser with a copy of any information which it is holding on behalf of the Purchaser in the form that the Purchaser specifies within 7 days of a request from the Purchaser to that effect.
- 25.9 The Purchaser will be entitled to determine at its absolute discretion whether to disclose upon request or otherwise publish any information under the Information Legislation, including (although not only) any information provided to it by the Contractor or which relates in any way to the Contractor or the Contract. In particular the Purchaser will be entitled to determine at its absolute discretion whether it is required to disclose upon request or otherwise publish any information under the Information Legislation, or whether, even if it is not required to disclose upon request or otherwise publish that information under the Information Legislation, it would nevertheless be in the public interest to do so.
- 25.10 Without affecting Clause 25.9, the Purchaser will use reasonable endeavours to consult with the Contractor in accordance with the Scottish Ministers' code of practice on the discharge of functions by public bodies under any of the Information Legislation (and/or any subsequent guidance issued by the Scottish Ministers which amends or replaces that code of practice), before disclosing or otherwise publishing under the Information Legislation any information provided to it by the Contractor or which relates in any way to the Contractor or the Contract.

26. DATA PROTECTION

26.1 Personal Data

26.2 Compliance with the Data Protection Legislation

Each Party shall comply with its respective obligations under the provisions of the Data Protection Legislation. In particular, each party shall comply with its respective provisions set out in the GDPR. Without prejudice to the meaning afforded to each party under the GDPR, the intention of the parties is that in respect of the Purchaser Data and any personal data processed on behalf of the Purchaser by the Contractor, the Purchaser shall be the data controller and the Contractor shall be a data processor. As used in this Clause the terms "process", "processing", "personal data" and "data subjects" shall have the meanings ascribed to them in the Data Protection Legislation.

26.3 Data Processor Obligations

The Contractor shall (and shall ensure that its Contract Workers and agents shall):

- a) implement and maintain appropriate technical and organisational measures and safeguards for protection of personal data, to ensure the rights of data subjects are protected and to ensure that processing will meet the requirements of the General Data Protection Regulation;
- b) ensure that all employees and subcontractors authorised to process personal data are subject to binding confidentiality obligations in respect of that personal data;
- c) assist the Purchaser, using appropriate technical and organisational measures, to respond to requests from data subjects including requests for information, requests for deletion and amendments of information and requests for the transfer of data;
- d) assist the Purchaser in ensuring compliance with its security, data breach notification, impact assessment and consultation obligations under Data Protection Legislation, taking into account the nature of processing and information available to the data processor;
- e) at the Purchaser's election, delete or return all personal data and existing copies to the Purchaser (unless Data Protection Legislation requires the data processor to store that personal data);
- f) make available to the Purchaser all information necessary, and allow for and contribute to audits and inspections conducted by the Purchaser or the Purchaser's mandated auditor, to demonstrate the data processor's compliance with its obligations under this agreement;
- g) immediately inform the Purchaser if, in the data processor's opinion, any instruction given by the Purchaser to the data processor infringes Data Protection Legislation;
- h) maintain a written record of all processing activities under its responsibility and of all categories of processing activities carried out on behalf of the Purchaser, that satisfies the requirements of the Data Protection Legislation;
- i) cooperate on request with any relevant European Union or member state supervisory authority;
- j) notify the Purchaser without undue delay after becoming aware of a breach of personal data and notify the Purchaser immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state;
- k) take any further action and execute any further documents and amendments to this Contract as may, in the Purchaser's reasonable opinion, be required to comply with Data Protection Legislation;
- l) only process personal data in accordance with the Purchaser's documented instructions consistent with and in the scope of this Contract (unless required to do so by applicable law, in which case the data processor shall inform the Purchaser of that legal requirement unless prohibited by law on important grounds of public interest);

- m) only engage another processor to carry out specific processing activities with prior specific or general written authorisation of the Purchaser, and only where that other processor is subject to a written contract imposing on that other processor the same data protection obligations as are imposed on the data processor in this Contract;
 - n) not process or transfer personal data outside the European Economic Area except with the express prior written consent of the Purchaser; and
 - o) nothing within this Contract relieves the processor of its own direct responsibilities and liabilities under the GDPR.
- 26.4 The Contractor agrees that the technical and organisational measures referred to in Clause 26.3(a) above shall ensure a level of security appropriate to the risk, taking into account :-
- a) the state of the art, the costs of implementation;
 - b) the nature, scope, context and purposes of processing and risks of varying likelihood; and
 - c) severity for the rights and freedoms of individuals.
- 26.5 The Contractor agrees that the technical and organisational measures to be implemented by them and as referred to in Clause 26.3(a) above shall include, as appropriate:-
- a) pseudonymisation and encryption of personal data;
 - b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
 - d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 26.6 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Purchaser as a result of (1) any failure by the Contractor to comply with its obligations under the Data Protection Legislation, or (ii) any breach by the Contractor of this Clause 26.
- 26.7 The Contractor shall complete Schedule 8 to include details of the data to be processed in accordance with Article 28(3) of the GDPR including at a minimum the subject-matter, duration, nature and purpose of the processing and categories of data subject and submit the Schedule 8 to the Purchaser for approval. The Contractor shall only process data within the scope of Schedule 8.

27. PUBLICITY

The Contractor shall not make any public statement identifying the Purchaser as a client or customer of the Contractor or using the Purchaser's name and/or brand in any promotion or marketing without the prior written consent of the Purchaser.

28. ANTI-CORRUPTION

- 28.1 The Contractor shall not (and shall procure that no Contract Worker nor any other person acting on its behalf shall) offer or give or agree to offer or give any person any gift or consideration of any kind as an inducement or reward for:
- 28.1.1 showing or forbearing to show favour or disfavour to any person in relation to the Contract; or
 - 28.1.2 doing or forbearing to do (or having done or forborne to do) any act in relation to the obtaining or performance of the Contract or any other agreement.
- 28.2 In the event of any breach of this Clause 28 or the commission of any offence by the Contractor or Contract Worker or person acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916, the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor.
- 28.3 In exercising its rights or remedies under this Clause 28, the Purchaser shall:
- 28.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - 28.3.2 give due consideration, where appropriate, to action other than termination of the Contract, including:
 - 28.3.2.1 requiring the Contractor to procure the termination of a Sub-Contract where the prohibited act is that of a Sub-Contractor; or
 - 28.3.2.2 requiring the Contractor to procure the dismissal of an employee of any Contractor Party where the prohibited act is that of such employee.

29. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

- 29.1 In performing its obligations under the Contract, the Contractor shall:
- 29.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of the the Purchaser from time to time in force including the Modern Slavery Act 2015 and
 - 29.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - 29.1.3 include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause.
- 29.2 The Contractor represents and warrants that at the date of the Contract:
- 29.2.1 neither the Contractor nor any of its officers, employees or other persons associated with it:
 - 29.2.1.1 has been convicted of any offence involving slavery and human trafficking; and

- 29.2.1.2 having made reasonable enquiries, so far as it is aware has been or is the subject of any 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 human trafficking.
- 29.3 The Contractor shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 29.4 The Contractor shall notify the Purchaser as soon as it becomes aware of actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- 29.5 The Contractor shall:
 - 29.5.1 maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Purchaser in connection with this Contract; and
 - 29.5.2 permit the Purchaser and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause, to have access to and take copies of the Contractor's records and any other information and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this clause.
- 29.6 The Contractor shall indemnify the Purchaser against any losses, liabilities, damages, costs (including [but not limited to] legal fees) and expenses incurred by or awarded against, the Purchaser as a result of any breach of Anti-slavery laws.
- 29.7 The Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery laws.
- 29.8 The Purchaser may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of the provisions of this clause (Compliance with Anti-Slavery and Human Trafficking Laws).

30. ANTI-FACILITATION OF TAX EVASION

- 30.1 The Contractor shall:
 - 30.1.1 not engage in any activity, practice or conduct which would constitute either:
 - 30.1.1.1 a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
 - 30.1.1.2 a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
 - 30.1.2 have and shall maintain in place throughout the term of the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Contractor) and to ensure compliance with this clause;

- 30.1.3 promptly report to the Purchaser any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract.
- 30.2 The Contractor shall ensure that any person associated with the Contractor who is performing services and/ or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this clause.
- 30.3 Breach of this clause shall be deemed a material breach of contract and shall allow the Purchaser to terminate by written notice with immediate effect.

31. FORCE MAJEURE

- 31.1 Subject to Clause 31.3, a party affected by Force Majeure shall not be liable to the other for any loss of any kind which is directly or indirectly caused by reason of any failure or delay in the performance of its obligations under this Contract which is due to Force Majeure.
- 31.2 Notwithstanding Clause 31.2, a party affected by Force Majeure shall:
 - 31.2.1 notify the other party in writing within 5 days of the occurrence of the event constituting Force Majeure;
 - 31.2.2 use its reasonable endeavours to continue to perform, or resume performance of, its obligations under this Contract hereunder for the duration of the event constituting Force Majeure; and
 - 31.2.3 shall not be relieved from any obligation to pay any sum of money to the other party.
- 31.3 If either party becomes aware of circumstances of Force Majeure which are likely to give rise to a failure or delay on its part it shall forthwith notify the other as to the circumstances and the period for which it is estimated that such failure or delay is likely to continue.
- 31.4 If either party is prevented from performance of its obligations under the Contract for a continuous period in excess of 3 months by reason of Force Majeure, the other party may terminate the Contract immediately on service of written notice upon the party so prevented.
- 31.5 The only events which shall afford relief from liabilities under the Contract for failure or delay shall be any event constituting Force Majeure.

32. ASSIGNATION AND SUB-CONTRACTING

- 32.1 The Contractor shall not assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof without the previous consent in writing of the Purchaser.
- 32.2 The Purchaser hereby consents to the assignation by the Contractor of the right to receive payment of the Charges (or any part thereof) which are due and payable pursuant to the Contract, and the payment of any interest in respect of those Charges, subject to all the rights and remedies of the Purchaser in connection with

the payment of the charges including the right to withhold sums pursuant to Clause 34.

- 32.3 The Contractor shall remain fully liable for the actions and defaults of all of its Sub-contractors. Sub-contracting will not relieve the Contractor of the obligations or duties attributable to the Contractor under the Contract. The Contractor will procure that its Sub-Contractors comply with all the relevant obligations of the Contract in the same way as the Contractor is bound to comply.
- 32.4 The Purchaser shall be entitled to assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof:
- 32.4.1 to any person (including but not limited to any body in the private sector) which substantially performs any of the functions that previously had been performed by the Purchaser; or
- 32.4.2 with the previous consent in writing of the Purchaser (which will not be unreasonably withheld or delayed).

33. NOTICES

- 33.1 Each party shall from time to time notify the other of the communications protocols to be followed in connection with the Contract but subject to any such protocol, any notice or other communication shall be validly served if sent by letter to the address of the relevant party as detailed in the Contract (or, where the party is a company, that company's registered office).
- 33.2 A notice delivered or sent or transmitted to the correct address of a party shall be deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.

34. SEVERABILITY

- 34.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction (an "**Illegal Term**"), such provision shall be severed and subject to Clause 32.2, the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the relevant provision eliminated.
- 34.2 If an Illegal Term is so fundamental that its severance prevents the accomplishment of the purpose of the Contract, the parties shall immediately commence good faith negotiations to remedy such invalidity, but if the parties have not implemented that remedy within 2 weeks of the declaration of the provision as an Illegal Term, either party may terminate this agreement forthwith by notice in writing to the other.

35. WAIVER

- 35.1 The failure of either party to insist upon the performance or the strict performance of any provision of the Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver of that provision, right or remedy and shall not cause a diminution of the obligations established by the Contract.

- 35.2 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and notified in writing to the other party.

36. REMEDIES

- 36.1 Except as otherwise expressly provided in the Contract:
- 36.1.1 all remedies available to a party under the Contract are cumulative and may be exercised concurrently or separately; and
 - 36.1.2 the exercise of any one remedy shall not exclude the exercise of any other remedy.

37. AUDIT ACCESS

- 37.1 The Contractor shall grant to the Purchaser, any auditors of the Purchaser (including internal auditors and Audit Scotland and any other organisation or body which may from time to time have cause to audit the accounts of the Purchaser) and any other person authorised by the Purchaser (together the "Auditors") access to all of the Records and shall provide reasonable assistance at all times to the Purchaser or the Auditors (including the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records, all for the purposes of enabling the Purchaser or the Auditors:
- 37.1.1 to carry out an audit of the Contractor's compliance with the Contract;
 - 37.1.2 to carry out an audit of all activities carried out and security precautions taken in connection with the performance of the Contract;
 - 37.1.3 to prepare, audit, examine and certify the accounts of the Purchaser; or
 - 37.1.4 to conduct any audit or investigation by Audit Scotland or any other auditor.
- 37.2 The Contractor shall be repaid any reasonable expenses properly and necessarily incurred in giving such reasonable assistance.
- 37.3 Without prejudice to Clause 37.1, in the event of an investigation into suspected fraudulent activity or other impropriety by any Contractor Party or Contract Worker:
- 37.3.1 the Purchaser and/or the Auditors may without notice enter any premises of any Contractor Party and take access to the Records, which shall be made available to them (whether they are held at such premises or otherwise) by the Contractor or Contractor Party;
 - 37.3.2 the Contractor shall render all necessary assistance to the conduct of such investigation (including the provision of office accommodation and the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records or any other subject of investigation or enquiry by the Purchaser or the Auditors); and
 - 37.3.3 the Contractor shall be paid any reasonable expenses properly and necessarily incurred in giving such necessary assistance in the event that the result of such investigation is that no fraudulent activity or other impropriety by a Contractor Party or a Contract Worker is found (but not otherwise).

37.4 The Purchaser shall ensure that any representative of the Purchaser given access to any premises or Records by the Contractor in accordance with Clause 37.3.1 causes the minimum amount of disruption to the business of the Contractor.

38. RELATIONSHIP

38.1 The Contract shall not have the effect of making any Contractor Party the agent of the Purchaser, and the Contractor will procure that no Contractor Party and no Contract Worker, by act or omission, purports to act as agent of the Purchaser, or leads any party to believe that such a relationship of agency exists.

39. DISPUTE RESOLUTION PROCEDURE

39.1 In the first instance the parties will seek to resolve any Dispute by its escalation to various levels within the organisational structures of the parties.

39.2 There shall be two levels of escalation, and at each level each party will make available for the purposes of the Dispute Resolution Procedure an appropriate representative most closely matching the description given below.

| <u>Level</u> | <u>Representative</u> |
|---------------------|--|
| First Level | person with day to day responsibility for the Contract. |
| Second Level | person with managerial responsibility for overseeing the Contract. |

An individual representing a party at one level may not be made available by a party to represent it at a higher level.

39.3 If a Dispute is resolved at any level, the resolution shall be reduced to writing, without delay, and signed by both parties. Once signed by both parties, the resolution shall be binding on the parties.

39.4 Unless the resolution of a Dispute is reduced to writing signed by both parties, all discussions and negotiations connected with the Dispute shall be conducted without prejudice to the rights of the parties in any future legal or other proceedings, and no such discussions and negotiations may be produced or relied upon in evidence in any such proceedings.

39.5 A meeting of the representatives at the first level shall take place as soon as possible after any Dispute arises.

39.6 If a Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the first level, the Dispute shall be referred to the next level, and the representatives at that next level shall meet within 3 days of the reference to that level.

39.7 If a Dispute is referred to the second level, and that Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the second level, either party may refer the dispute to a court of competent jurisdiction for a final, binding and enforceable resolution.

40. LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the law of Scotland and the Scottish Courts shall have exclusive jurisdiction to settle any disputes.

41. ANTI-BRIBERY

41.1 The Contractor shall:

41.1.1 Comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ('Relevant Requirements');

41.1.2 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;

41.1.3 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 will enforce them;

41.1.4 immediately notify the Purchaser if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);

41.1.5 ensure that all persons associated with the Contractor or other persons who are performing services in connection with this agreement comply with this Clause 41; and

41.1.6 within 2 months of the date of this agreement, and annually thereafter, certify to the Purchaser in writing signed by an officer of the Contractor, compliance with this Clause 41 for whom the Contractor is responsible under Clause 41.1.6. The Contractor shall provide such supporting evidence of compliance as the Purchaser may reasonably request.

41.2 For the purpose of this Clause 41, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 56 a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.

41.3 In the event of any breach of this Clause 41 by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor):

41.3.1 the Contractor shall immediately give the Purchaser full details of any such breach and shall co operate fully with the Purchaser in disclosing information and documents which the Purchaser may request; and/or

41.3.2 The Purchaser shall (without prejudice to any of its rights or remedies under this agreement or otherwise) be entitled by notice in writing to terminate this agreement immediately; and

41.3.3 the Contractor shall be liable for and shall indemnify and keep the Purchaser indemnified in respect of any and all loss resulting from such termination.

41.4 In any dispute, difference or question arising in respect of:

41.4.1 the interpretation of this Clause 41; or

41.4.2 the right of the Purchaser to terminate this agreement; or

41.4.3 the amount or value of any gift, consideration or commission the decision of the Purchaser shall be final and conclusive.

42. TRANSFER OF EMPLOYEES

42.1 The Contractor, and any New Contractor, shall use reasonable endeavours to organise its workforce so that there is not an organised grouping of employees whose principal purpose is to carry out the services on behalf of the Purchaser.

42.2 In the event the TUPE Regulations apply to this Contract:

42.2.1 the Purchaser and the Contractor agree that the TUPE Regulations will apply so that:

42.2.1.1 the contracts of employment between the Purchaser (or the Preceding Contractor) and the Employees and any collective agreement between the Purchaser (or the Preceding Contractor) and any trade union recognised by the Purchaser (or the Preceding Contractor) in respect of any Employee shall have effect on and after the Commencement Date as if originally made between the Contractor or any Sub-Contractor and the Employees, or between the Contractor or such Sub-Contractor and the relevant trade union (as the case may be);

42.2.1.2 all Employee Charges shall be apportioned on a time basis so that the part of the Employee Charges accruing in the period up to close of business on the day before the Commencement Date shall be borne and discharged by the Purchaser and the part of the Employee Charges accruing in the period commencing on the Commencement Date shall be borne and discharged by the Contractor; and

42.2.1.3 the remainder of this Clause 41 will apply.

42.2.2 Subject to Clauses 41.2.5 and 41.2.6, the Purchaser will indemnify and keep indemnified the Contractor on demand from and against any Employee Liabilities suffered or incurred by the Contractor in relation to any Employee which relate to or arise out of any act or omission by the Purchaser or any other event or occurrence in each case before the Commencement Date for which the Contractor is or becomes liable by reason of the operation of the TUPE Regulations and/or any judicial

decision interpreting the same. The indemnity in this Clause 40.2.2 will not apply:

42.2.2.1 to any Employee Liabilities in respect of any Employee who immediately prior to the Commencement Date was not an employee of the Purchaser;

42.2.2.2 in respect of the Contractor's obligation in terms of the TUPE Regulations to employ the Employees on the terms and conditions of employment on which they were employed immediately before the Commencement Date and to recognise the Employees' periods of continuous employment as at the Commencement Date.

42.2.3 The Purchaser will indemnify and keep indemnified the Contractor on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Contractor as a result of any failure by the Purchaser to comply with its obligations under Regulation 13(2) of the TUPE Regulations, except to the extent that such failure arises as a result of any failure on the part of the Contractor (or a Sub-contractor) to comply with its obligations under Regulation 13(4) of the TUPE Regulations.

42.2.4 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any Employee Liabilities suffered or incurred by the Purchaser in relation to any Employee or any representative of any Employee which relate to or arise out of any act or omission by the Contractor or any other event or occurrence in each case on or after the Commencement Date.

42.2.5 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any Employee Liabilities suffered or incurred by the Purchaser in relation to any claim by any individual whose contract of employment would have had effect on and after the Commencement Date as if originally made between the Contractor or a Sub-contractor and who resigns or treats their employment as having been terminated in terms of Regulation 4(9) or 4(11) of the TUPE Regulations or makes an objection under Regulation 4(7) of the TUPE Regulations by reason of any act or omission or anticipatory act or omission by the Contractor at any time before the Commencement Date.

42.2.6 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Purchaser as a result of any failure by the Contractor or a Sub-contractor to comply with its obligations under Regulation 13(4) of the TUPE Regulations.

42.3 In the event the TUPE Regulations will apply at the point that Services or part thereof (or services fundamentally the same as the Services or part thereof) will begin to be carried out by the Purchaser or by a New Contractor, following the cessation or partial cessation of the provision of the Services or part thereof by the Contractor the Purchaser and the Contractor agree that:

- 42.3.1 the contracts of employment between the Contractor or any relevant Sub-contractor and the Re-transferring Employees; and
 - 42.3.2 any collective agreement between the Contractor or such any Sub-contractor and any trade union recognised by the Contractor or such Sub-contractor in respect of the Re-transferring Employees shall, pursuant to the TUPE Regulations, have effect after the Re-transfer Date as if originally made between the Purchaser or any New Contractor and such Re-transferring Employees or between the Purchaser or any New Contractor and the relevant trade union as the case may be.
- 42.4 In the event that (a) the TUPE Regulations apply; or (b) if the Purchaser considers that the TUPE Regulations may apply where it is anticipated that the Services or part thereof (or services similar to the Services or part thereof) will begin to be carried out by the Purchaser or by a New Contractor, following the cessation or partial cessation of the provision of the Services or part thereof by the Contractor, the Purchaser and the Contractor agree that the following Clause 42.5– 42.18 will apply.
- 42.5 In the event that (a) the TUPE Regulations apply or (b) during the Transfer Assistance Period, the Contractor shall, at its own expense, provide the Purchaser in writing with such information as the Purchaser (acting reasonably) may request relating to the Assigned Employees at the time of such request, within such reasonable period as may be specified by the Purchaser, including (but not restricted to):
- 42.5.1 the number of such Assigned Employees;
 - 42.5.2 the salary or wages and other remuneration paid to each such Assigned Employee;
 - 42.5.3 whether any such Assigned Employee was ever at any time employed by the Purchaser in the provision services analogous or materially similar to the Service or any part thereof;
 - 42.5.4 the general terms and conditions of employment of each such Assigned Employee, whether contractual or otherwise (including all particulars of employment that an employer is obliged to give to an employee in terms of section 1 of the Employment Rights Act 1996);
 - 42.5.5 the whole terms and conditions of any occupational pension scheme of which any such Assigned Employee is a member, together with the number of such Assigned Employees who are members of the scheme;
 - 42.5.6 information relating to any legally enforceable obligations on the Contractor or any Sub-contractor, to increase or otherwise vary the remuneration, benefits and other rewards to which such Assigned Employees may be entitled;
 - 42.5.7 information on any current or pending negotiations concerning terms and conditions of the employment of such Assigned Employees at the time of such request (including rates of remuneration);
 - 42.5.8 the job title, role, length of service and age of such Assigned Employees;
 - 42.5.9 details of any disciplinary procedure taken against any such Assigned Employee, or grievance procedure taken by any such Assigned

- Employee, within the two years before a request for such details, in circumstances where the Employment Act 2002 (Dispute Resolution) Regulations 2004 apply;
- 42.5.10 details of any court or tribunal case, claim or action which:
 - 42.5.11 is outstanding between the Contractor or any Sub-contractor and any such Assigned Employee;
 - 42.5.11.1 has been brought against the Contractor or any Sub-contractor by any employee who was at the time an Assigned Employee, within the two years before a request for such information; and
 - 42.5.11.2 the Contractor or any Sub-contractor has reasonable grounds to believe that any such Assigned Employee may bring, arising out of such Assigned Employee's employment with the Contractor or any Sub-contractor; and
 - 42.5.11.3 such other information as may reasonably be required by the Purchaser which is in the possession of the Contractor or any Sub-contractor at the time of the request or which can reasonably be obtained by the Contractor from any other third party.
 - 42.6 The Contractor consents to the Purchaser using the information obtained under Clause 42.5 for its own costing purposes and disclosing it to prospective bidders for the provision to the Purchaser of services the same as or materially similar to the Services or any part thereof.
 - 42.7 The Contractor shall ensure that the contracts of employment of Assigned Employees contain terms consenting to the disclosure of the information at Clause 42.5 to the Purchaser and to any prospective bidders for the provision to the Purchaser of services the same or materially similar to the Services or as any part thereof.
 - 42.8 The information provided under Clause 42.5 will be anonymised or coded by the Contractor or the relevant Sub-Contractor in such a way so as to prevent the disclosure of "personal data" (as defined in the Data Protection Legislation). If the disclosure of personal data is unavoidable, the Purchaser undertakes that:-
 - 42.8.1 it will only use the personal data for the purposes set out in Clause 42.6;
 - 42.8.2 it will keep the personal data secure in accordance with the Data Protection Legislation;
 - 42.8.3 it will seek to obtain from prospective bidders, to whom the personal data may be disclosed, undertakings:-
 - 42.8.3.1 not to disclose such personal data;
 - 42.8.3.2 that the personal data may only be used for the purposes of preparing a bid;
 - 42.8.3.3 that the personal data must be kept secure;
 - 42.8.3.4 To return or destroy the information constituting the personal data once a bid has been submitted or the

Purchaser makes a decision not to proceed with a bid by the bidder granting the undertaking.

- 42.9 The Contractor will not and will ensure that no Sub-contractor will in the Transfer Assistance Period, without the prior written consent of the Purchaser:
- 42.9.1 materially vary the terms and conditions of any of the Assigned Employees (including rates of remuneration, benefits and other rewards) other than variations made in the normal course of business of the Contractor (or the relevant Sub-contractor) or except as required by law; or
 - 42.9.2 materially increase or decrease the numbers of Assigned Employees; or
 - 42.9.3 replace any of the Assigned Employees, save where the Contractor or the relevant Sub-contractor replaces any such individuals with individuals of equivalent or greater levels of skills and experience.
 - 42.9.4 enter into any new recognition agreement or collective agreement with a trade union in relation to the Assigned Employees or do any act which might be construed as recognition.
- 42.10 At any time during the Transfer Assistance Period, the Contractor will allow, and will ensure that any relevant Sub-contractor will allow, the Purchaser or any New Contractor to meet the Assigned Employees and/or their appropriate representatives at their place of work within seven days of receiving a request by the Purchaser or any New Contractor.
- 42.11 Not later than 28 days, before the Re-transfer Date, the Contractor will supply in writing to the Purchaser or, on request by the Purchaser, a New Contractor:
- 42.11.1 the names of the individuals whom the Contractor expects at that time to be the Re-transferring Employees;
 - 42.11.2 the information set out in Clause 42.5, in respect of the Re-transferring Employees instead of the Assigned Employees, updated as near as practicable to the Re-transfer Date.
- Such information will not be anonymised or coded by the Contractor or any Sub-contractor unless that is required to ensure compliance with the Data Protection Legislation.
- 42.12 On or before the Re-transfer Date, the Contractor will deliver to the Purchaser or, on request by the Purchaser, a New Contractor:
- 42.12.1 any updates to the information provided under Clause 42.11 to reflect any subsequent changes to the Re-transferring Employees; and
 - 42.12.2 complete personnel records relating to the Re-transferring Employees.
- 42.13 The Contractor undertakes to ensure that the information provided under Clauses 42.5, 42.11 and 42.12 is complete and accurate in all material respects.
- 42.14 All Re-transferring Employee Charges shall be apportioned on a time basis so that the part of the Charges accruing in the period up to close of business on the day before the Re-transfer Date shall be borne and discharged by the Contractor and the part of the Charges accruing in the period commencing on the Re-transfer Date shall be borne and discharged by the Purchaser or the relevant New Contractor.

- 42.15 The Contractor will indemnify and keep indemnified the Purchaser (and/or on demand by the Purchaser, any New Contractor) on demand from and against any Re-transferring Employee Liabilities suffered or incurred by the Purchaser or any New Contractor in relation to any Re-transferring Employee which relate to or arise out of any act or omission by the Contractor or any other event or occurrence in each case before the Re-transfer Date for which the Purchaser and/or any New Contractor is or becomes liable by reason of the operation of the TUPE Regulations and/or any judicial decision interpreting the same. The indemnity in this Clause 40.15 will not apply in respect of the obligation of the Purchaser or a New Contractor in terms of the TUPE Regulations to employ the Re-transferring Employees on the terms and conditions of employment on which they were employed immediately before the Re-transfer Date (other than in relation to benefits for old age, invalidity or survivors provided under an occupational pension scheme) and to recognise Re-transferring Employees' periods of continuous employment as at the Re-transfer Date.
- 42.16 The Contractor will indemnify and keep indemnified the Purchaser (and/or on demand by the Purchaser any New Contractor) on demand from and against any costs, claims, liabilities and expenses (including legal expenses) suffered or incurred by the Purchaser or any New Contractor as a result of any failure by the Contractor or any Sub-contractor to comply with its obligations under Regulation 13(2) of the TUPE Regulations, except to the extent that such failure arises as a result of any failure on the part of the Purchaser to comply with its obligations under Regulation 13(4) of the TUPE Regulations.
- 42.17 The Purchaser will indemnify and keep indemnified the Contractor on demand from and against any Re-transferring Employee Liabilities suffered or incurred by the Contractor in relation to any Re-transferring Employee or any representative of any Re-transferring Employee which relate to or arise out of any act or omission by the Purchaser or any other event or occurrence in each case on or after the Re-transfer Date.
- 42.18 The Purchaser will indemnify and keep indemnified the Contractor on demand from and against any costs, claims, liabilities and expenses (including legal expenses) suffered or incurred by the Contractor as a result of any failure by the Purchaser to comply with its obligations under Regulations 13(4) of the TUPE Regulations.
- 42.19 The Contractor acknowledges and agrees that:
- 42.19.1 the Purchaser may grant an indemnity in favour of each and any New Contractor to the same extent that the Contractor is undertaking to indemnify the Purchaser in terms of this Clause 42 and;
 - 42.19.2 that in the event of a claim on any indemnity in terms of this Clause 42 for loss incurred by the Purchaser, that loss shall include the amount, if any, which the Purchaser has paid or is required to pay to any New Contractor by virtue of any indemnity granted by the Purchaser in its favour in accordance with the provisions of this Clause 42.19.

43. TRANSITION AND ACCEPTANCE

- 43.1 In this Clause:

"Transition Period" means any period between the award of the Contract and the Commencement Date as set out in the Contract; and

"Transition Plan" means the Contractor's plan for the Lead-in Period forming part of the Contract.

- 43.2 During the Transition Period the Contractor will:
 - 43.2.1 ensure that all Contract Workers have received the training necessary to allow the Contractor to perform the Contract from the Commencement Date;
 - 43.2.2 prepare draft procedural instructions to be issued to all Contract Workers in connection with the Contract, and submit the draft to the Purchaser for approval (which will not be unreasonably withheld);
 - 43.2.3 issue procedural instructions as approved by the Purchaser to all Contract Workers in advance of the Commencement Date; and
 - 43.2.4 comply with its obligations pursuant to the Transition Plan.
- 43.3 During the Transition Period the Purchaser will use its reasonable endeavours to comply with its obligations pursuant to the Transition Plan.
- 43.4 The Conditions will apply to the Transition Period from the commencement of that period, notwithstanding that this is prior to the Commencement Date.

44. SYSTEM TRIALS DURING LEAD-IN PERIOD

- 44.1 During the Transition Period (as defined in Clause 44.1.1), the Contractor shall, at its own expense, conduct system trials and testing in relation to the Goods and/or Services required for the performance of its obligations pursuant to the Contract in accordance with any reasonable instructions which the Purchaser may give including as to the time and location of the trials and tests. The Purchaser may attend and monitor the system trials and testing.
- 44.2 Within 7 days of each event of system trials and testing, the Contractor shall report to the Purchaser as to the results, in such form and containing such information as the Purchaser may reasonably require.
- 44.3 If the system trials and testing are not completed to the reasonable satisfaction of the Purchaser:
 - 44.3.1 before the Commencement Date, the Contractor may carry out the system trials and testing on any number of occasions prior to the Commencement Date in accordance with the provisions of this Clause 44.3; and
 - 44.3.2 by the Commencement Date, the Purchaser may (without prejudice to any other right or remedy which it may have):
 - 44.3.2.1 notify the Contractor of a revised Commencement Date to allow the Contractor additional time to complete the system trials and testing to the reasonable satisfaction of the Purchaser; or
 - 44.3.2.2 terminate the Contract with immediate effect by giving written notice of termination to the Contractor in which case the Purchaser shall have no liability in respect of any costs or expenses incurred by the Contractor arising out of or in connection with the Contract including the

performance of the system trials or testing (and the termination will be deemed for the purposes of Clause 22.5 of this agreement to have been effected pursuant to Clause 21.1 of this agreement.

- 44.4 The Purchaser will notify the Contractor when the completion of the system trials and testing has been carried out to the reasonable satisfaction of the Purchaser, but such completion will not constitute evidence that any Goods have been accepted by the Purchaser nor that they are fit for purpose or otherwise in accordance with the requirements of the Contract.
- 44.5 After the completion of the system trials and testing to the reasonable satisfaction of the Purchaser, the Contractor may not use alternative Goods in the delivery of the Services (or provide alternative Goods) in performance of the Contract without the prior written consent of the Purchaser. In considering a request for consent, the Purchaser may ask for all reasonable information concerning the reason for the request and as regards the proposed alternatives, and may require system trials and testing to be carried out in respect of the proposed alternatives, prior to making its decision as to whether to grant or withhold its consent.

45. ACCEPTANCE TESTS

- 45.1 This Clause applies when the Goods which are the subject matter of the Contract require formal acceptance testing.
- 45.1.1 In this Clause, "Acceptance Tests" means:
- 45.1.1.1 the procedures for acceptance testing the Goods as set out in the Contract; or
 - 45.1.1.2 where no specific procedures for acceptance testing are set out in the Contract, those procedures published by the manufacturer of the relevant Goods; or
 - 45.1.1.3 where no specific procedures for acceptance testing are set out in the Contract or published by the manufacturer of the relevant Goods, the procedures established by Good Industry Practice as required for the Purchaser to satisfy itself that the Goods have been delivered and/or installed such that they are in accordance with the requirements of the Contract, and includes Acceptance Tests carried out at any Re-Test.
- 45.2 In this Clause a "Re-Test" means the carrying out of Acceptance Tests on the second and any subsequent occasion.
- 45.3 The Contractor shall carry out the first Acceptance Tests on the date and at the time set out in the Contract. If no dates and times are set out in the Contract the Contractor shall carry out the first Acceptance Tests as soon as possible after delivery of the relevant Goods, on a date and at a time agreed between the Purchaser and the Contractor, each acting reasonably.
- 45.4 The Purchaser will not be entitled to give notice to the Contractor pursuant to Clause 4.1 that the Goods fail to meet the requirements of the Contract (unless the reason for the rejection is that the Goods were in a consignment which is deficient in weight, quantity or measure).

- 45.5 Unless otherwise specified in the Contract, it shall be for the Contractor to provide at its cost the equipment, labour and other requirements necessary to carry out all Acceptance Tests.
- 45.6 The Purchaser shall be entitled to be present at all Acceptance Tests.
- 45.7 If the Contractor fails to carry out any Acceptance Tests on the agreed date and at the agreed time, the Purchaser shall be entitled, at its option:
- 45.7.1 to itself carry out those Acceptance Tests, and the Contractor shall reimburse the Purchaser for the reasonable costs associated with such tests; or
 - 45.7.2 to reject the Goods by notice in writing to the Seller and obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.
- 45.8 If the Goods pass the Acceptance Tests:
- 45.8.1 the Purchaser shall issue a notice in writing to the Contractor to that effect; and
 - 45.8.2 for the purposes of Clause 5 (Warranties and Representations) of the Conditions the Warranty Period for the Goods shall be the period of 12 months from the putting into service of the Goods, or 18 months from the date the Goods pass the Acceptance Tests, whichever shall be the shorter.
- 45.9 If the Goods or any part of them fail to pass the first Acceptance Tests, or if the Purchaser has elected in accordance with Clause 45.11.1 that there should be any further Re-Test:
- 45.9.1 the Contractor shall within 7 days of the failure take such steps at its own cost as are required to ensure that the Goods will pass the Acceptance Tests (including repair, adjustment and/or replacement as the case may be); and
 - 45.9.2 by not later than the end of the 7 day period shall Re-Test on a date and at a time agreed between the Purchaser and the Contractor, each acting reasonably.
- 45.10 If on any Re-Test the Goods pass the Acceptance Tests, Clause 3 will apply.
- 45.11 If on any Re-Test the Goods or any part of them fail to pass the Acceptance Tests, the Purchaser shall be entitled, at its option:
- 45.11.1 to elect that there should be a further Re-test in which case the Contractor shall comply with Clause 43.10; or
 - 45.11.2 to reject the Goods by notice in writing to the Seller and obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.
- 45.12 Any Goods rejected pursuant to Clause 45.7.2 or 45.11.2 shall be removed by (and at the expense of) the Contractor within 7 days of the rejection notice. If the Contractor fails to remove rejected Goods within such period, the Purchaser may return the rejected Goods or any of them at the Contractor's risk, and the Contractor will indemnify the Purchaser in respect of the cost of carriage and any other costs incurred in relation to such return.

45.13 The rights of the Purchaser in this Section shall apply:

45.13.1 without prejudice to its other rights and remedies; and

45.13.2 to Goods as originally delivered, and to Goods repaired, adjusted or replaced pursuant to this Section.

SCHEDULE 5 – ICT SPECIFIC PROVISIONS

OPTIONAL SUPPLEMENTAL TERMS FOR ICT GOODS AND SERVICES

1. Application

This Section applies when the Contract is wholly or mainly for the provision of information and communication technology goods and services.

2. Additional Definitions

"Acceptance Date" means in relation to the System (or a component of the System) the date it is deemed to be accepted in terms of Clause 7.1 (Acceptance Testing).

"Additional Services" the provision of Person Days and/or Person Hours by the Contractor to the Purchaser under the provisions of Clause 14 (Additional Options).

"Additional Services Request" a written request from Purchaser for the provision of Additional Services under Clause 14 (Additional Options) setting out: (i) the task(s) to be achieved by the Contractor; (ii) the number of Person Days or Person Hours to be devoted to such task(s); and (iii) the relevant Daily Rates.

"Adjusted Specification" means the technical specification as specified in the Contract.

"Available" means that the System (and each part of the System) and the functions to be provided by the System are in Good Working Order, free of Faults, and performing in accordance with the terms of this Contract.

"Business Day" means each of Monday to Friday in any week, excluding any day that is a public holiday in Scotland.

"Candidate for Acceptance" means either an iteration of the Foreground Design Documentation, or an iteration of a Testing Protocol, the System, and (if specified in the Implementation Plan or the Testing Protocols agreed under Clause 7.1.1) a specific component of the System.

"Contract" means a legally binding agreement for the provision of Goods and/or Services made between an Institution and the Contractor comprising an Order Form, the Specification and the Conditions;

"Contractor's Software" means: (i) the software listed or identified in the Contract; and (ii) any other software that is supplied to the Purchaser by the Contractor under or in connection with this Contract or installed by the Contractor as part of the Hosting Services (as applicable) and where the IPRs comprised in or protecting such software are owned by the Contractor.

"Daily Rate(s)" means the sums set out in, or calculated in accordance with, the Contract.

"Date Compliant" means that in the use and/or operation of an item (i) no value for a date will cause any interruption of the item; (ii) all manipulations of time related data by that item will produce the desired results for all valid date values within the

application domain; (iii) date elements in interfaces and data storage will permit specifying the century using four digits to eliminate date ambiguity; and (iv) where any date element is represented without a century, the correct century shall be unambiguous for all manipulations involving that element.

"Design Documentation" means all design documentation (whether in paper form or data file form or any other form) created by the Contractor in preparing its Tender and/or performing its obligations under this Contract, including any scripts, configurations or protocols created by the Contractor, from time to time, for commissioning, profiling or configuring the System, any item of Hardware, Software or other media used in connection with the System,

"Documentation" means: (i) the documentation expressly specified in the Contract; and (ii) any other documentation supplied to the Purchaser by or on behalf of the Contractor under or in connection with this Contract or that the Contractor makes available for download by the Purchaser (including the documentation referred to in Clause 6.9, to the extent that it does not form part of the Foreground Design Documentation).

"Embedded Code" means code internal to, and stored on solid state devices within, the Hardware and which is supplied to the Purchaser hereunder as an integral part of the Hardware.

"Fault" means any occurrence in respect of the System or any component of the System which: (i) results in all or part of the System being rendered unusable or inoperative; or (ii) causes all or part of the System not to perform in accordance with its published specification; or (iii) causes all or part of the System not to perform in accordance with the Adjusted Specification.

"Fault Free for Thirty Days Date" the date on which the System has been free of any Fault for thirty (30) consecutive days.

"Fault Free Running Period" means the period between the final Acceptance Date and the Fault Free for Thirty Days Date.

"Firmware" means machine readable software which is capable of being archived and which is supplied to the Purchaser hereunder as an integral part of an item of Hardware.

"Foreground Design Documentation" means any Design Document but excluding any pre-existing design documentation.

"Good Working Order" means that the relevant equipment or component operates fully in accordance with its published specification.

"Hardware" means the equipment listed in the Contract.

"Hosted Service" means any part of the Services that is provided using Software hosted by or on behalf of the Supplier, as described in the Contract.

"Hosted Software" means the Software hosted by the or on behalf of the Supplier to provide any Hosted Service, as identified in the Contract.

"Hourly Rate(s)" means the sums set out in, or calculated in accordance with, the Contract.

"Implementation Charges" means the charges set out in, or calculated in accordance with, the Contract.

"Implementation Plan" means the plan set out in the Contract as amended from time to time in accordance with the terms of the Contract.

"Implementation Services" the services set out in the Contract.

"Interim Payment" means any payment of the Implementation Charges made by the Purchaser to the Contractor other than the final payment scheduled under the Contract.

"New Contractor" means a contractor (who is not the Contractor) appointed by the Purchaser, or by any other authority, company or body corporate, to supply the Services (or similar services) or part thereof in succession to the Contractor on expiry of this Contract or the earlier cessation of the Services or part thereof.

"Person Day" means the provision of Services by an individual Contract Worker for a minimum of 7.5 hours (excluding travelling time to/from the relevant place of performance) between 08.30 and 18.30 on any day.

"Person Hour" means the provision of Services by an individual Contract Worker for one hour (excluding travelling time to/from the relevant place of performance) between 08.30 and 18.30 on any day.

"Planned Acceptance Date" means in relation to the System (or part of the System), the relevant date set out in the Implementation Plan (as amended in accordance with Clause 4.3 (Variation to Implementation Plan)).

"Purchaser" means the Institution submitting the Order Form to the Contractor;

"Purchaser Data" means all information, text, drawings, diagrams, images or sounds that are embodied in any electronic or tangible medium, and which: (i) are supplied by the Purchaser to the Contractor under or in contemplation of this Contract; (ii) are held by the Purchaser but are accessed by the Contractor under this Contract; (iii) the Contractor is obliged to generate or process under this Contract; or (iv) is otherwise stored in, generated, processed or created by any part of the System or the Services;

"Purchaser Owned Development" means any Specially Written Software, the IPRs in which are to be owned Purchaser, as specified in the Contract.

"Purchaser Property" means anything issued or otherwise furnished to the Contractor under or in connection with the Contract by or on behalf of the Purchaser, other than any heritable property.

"Purchaser Purposes" means (i) Purchaser's statutory functions; (ii) any function identified in the Tender Documents; or (iii) any function carried out by the Purchaser

or an entity that is owned by, controlled by, funded by, and/or administered by the Purchaser (in each case whether in whole or in part).

"Purchaser Responsibilities" means the responsibilities of the Purchaser as expressly set out and identified as "Purchaser Responsibilities" in the Contract.

"Service Reporting Period" means a consecutive four (4) week period.

"Service Credits" means the amounts payable to the Purchaser if the Service Levels are not met as calculated in accordance with the provisions of the Contract.

"Service Levels" means the service levels set out in the Contract.

"Software" means the Contractor's Software, the Third Party Software, the Specially Written Software, any Embedded Code, any Firmware, and any Hosted Software.

"Source Code" means software in eye-readable form (as opposed to binary or assembly code form or byte code form) and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software.

"Specially Written Software" means: i) the software identified as Specially Written Software in the Contract; and ii) any software specifically written by or on behalf of the Contractor in order to comply with its obligations under this Contract.

"Supported Software" has the meaning set out in Clause 10.3.

"System" means the system specified in the Contract, which system may comprise the provision of Hardware and/or Software and/or access to any Hosted Service.

"Target Environment" means the environment described in the Contract.

"Testing Protocol" means the acceptance testing protocols for the User Acceptance Tests, including any acceptance criteria notified by the Purchaser to the Contractor.

"Third Party" means any party other than the Purchaser or the Contractor.

"Third Party Software" means: i) the software expressly specified as such in the Contract; and ii) any software provided to the Purchaser by the Contractor under or in relation to this Contract where the IPRs comprised in or protecting such software are owned by a Third Party.

"Training Services" the Services identified as such in the Contract.

"Use" means load, execute, store, transmit, display, copy or otherwise to use in each case for purposes of conducting Purchaser's business and/or Purchaser Purposes.

"User Acceptance Tests" means, in respect of the System or a component of the System, the tests to be performed to test whether it is Fault free and/or whether it is performing in accordance with the Adjusted Specification and the Design Documentation.

3. The System and the Services

3.1 Principal obligation

In consideration of the payment of the Charges. the Contractor shall:

- 3.1.1 supply and deliver (and/or, where applicable, host and allow Purchaser to use the Hosted Software) the System;
- 3.1.2 supply and deliver the Hardware; and
- 3.1.3 supply the Services.

3.2 In performing its obligations under this Contract the Contractor shall at all times comply with the reasonable directions of the Purchaser.

3.3 During the term of this Contract, the Contractor shall cooperate with, and provide reasonable assistance to, the Purchaser, and any contractor or supplier engaged by or on behalf of the Purchaser, in connection with the construction, commissioning, testing and operation of the System.

4 Implementation Plan

4.1 Compliance with Implementation Plan

The Contractor shall perform its obligations under this Contract on or before the relevant dates set out in the Implementation Plan, and otherwise in compliance with the Implementation Plan.

4.2 Additional resource

If the Contractor fails to fulfil an obligation incumbent upon it under this Contract by the relevant date specified in the then current Implementation Plan, then the Contractor shall arrange all such additional resources as are necessary to fulfil the said obligation as soon as practicable thereafter at no additional charge to the Purchaser.

4.3 Variation to Implementation Plan

The Implementation Plan may be varied in accordance with the provisions of Clauses 4.3.1, 4.3.2 and 4.3.3 below:

4.3.1 The Implementation Plan may be varied by the written agreement of the parties.

4.3.2 If:

4.3.2.1 the Contractor is prevented or delayed from carrying out its obligations under this Contract in accordance with the Implementation Plan as a direct consequence of a failure by the Purchaser (or a third party supplier to the Purchaser) to perform a Purchaser Responsibility on or before the relevant date set out in the Implementation Plan (other than to the extent caused by a preceding breach of this Contract by the Contractor) (in this Clause 4.3 each a "**Purchaser Delay Event**"); and

4.3.2.2 the Contractor has promptly served a written notice on Purchaser setting out details of that Purchaser Delay Event and referring to this Clause 4.3, then:

4.3.2.2.1 the Parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay; and

4.3.2.2.2 the Parties shall agree (such agreement not to be unreasonably withheld or delayed by either Party) a reasonable extension of any subsequent dates set out in the Implementation Plan that are directly impacted by the Purchaser Delay Event, such extension having regard to the delay caused by the Purchaser Delay Event, the related dependencies set out in the Implementation Plan, and the consequences of any delay upon Purchaser.

4.3.3 If the Contractor is prevented or delayed from carrying out its obligations under the Contract in accordance with the Implementation Plan by reason of any event of Force Majeure then provided the Contractor has complied with the provisions of Clause 29 (Force Majeure) of the Conditions:

4.3.3.1 the Parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay; and

4.3.3.2 the Parties shall agree (such agreement not to be unreasonably withheld or delayed by either Party) a reasonable extension of any subsequent dates set out in the Implementation Plan that are directly impacted by the event of Force Majeure, such extension having regard to the delay caused by the Force Majeure Event, the related dependencies set out in the Implementation Plan and the consequences of any delay upon Purchaser.

In the event that the Parties cannot agree an amendment to the Implementation Plan pursuant to Clauses 4.3.2 or 4.3.3 then the provisions of Clause 39 (Dispute Resolution Procedure) of the Conditions shall apply.

5 Implementation Environment

5.1 Target environment

Each party shall (as applicable) provide the Target Environment as set out in the Contract.

5.2 Performance of Implementation Service

In performing the Services at the Premises or in relation to any Purchaser Property the Contractor shall at all times:

5.2.1 comply with all Law;

5.2.2 leave any Premises and Purchaser Property clean and in a safe and workmanlike condition to the Purchaser's reasonable satisfaction.

5.3 Making good

If the Services include the installation or commissioning of all or part of the System at a Premises or upon any Purchaser Property then, following such installation or commissioning, the Contractor shall reinstate the Premises or Purchaser Property to the condition prevailing at the date on which such installation commenced, subject to any changes undertaken by the Contractor and agreed by the Purchaser for the installation or commissioning of the System (including those changes that the Contractor is obliged to implement under this Contract).

6 Software and IPRs

6.1 Foreground design documentation and Purchaser Data

The Parties agree that each IPR comprised in or protecting the Foreground Design Documentation, and any Purchaser Owned Developments, and/or Purchaser Data

(in this Clause 6, together "**Purchaser IPRs**") shall be owned by the Purchaser. To this end:

6.1.1 the Contractor hereby assigns (partially by way of a future assignation of IPRs on creation) its entire right title and interest in each Purchaser IPR to the Purchaser; and

6.1.2 the Contractor hereby undertakes, at the request and expense of the Purchaser, to do all acts and to execute all documents, forms and authorisations required to transfer full title to each Purchaser IPR to the Purchaser; and

6.1.3 the Contractor hereby undertakes, at the request and expense of the Purchaser, to deliver to the Purchaser a copy of any manifestation of an Purchaser IPR then in its possession or control.

The Purchaser hereby grants the Contractor a licence during the term of this Contract to use Purchaser IPRs solely for the purpose of performing the Contractor's obligations under this Contract.

6.2 **Contractor Software Licence**

The Contractor hereby grants to the Purchaser:

6.2.1 upon delivery of an item of Contractor's Software and/or Specially Written Software (other than any Purchaser Owned Developments), a perpetual non-exclusive licence to Use that Software; and

6.2.2 a non-exclusive licence to use each item of the Hosted Software;

6.2.3 a perpetual, transferable non-exclusive licence to reproduce any Documentation relating to the Contractor's Software and/or the Specially Written Software for the purposes of the Use of the Contractor's Software and/or the Specially Written Software (in each case) as licensed under Clause 6.2.1.

With the exception of the licence set out in Clause 6.2.2, which licence shall terminate upon the expiry or termination of this Contract, the licences granted under this Clause 6.2 shall survive termination or expiry of this Contract. The licences set out in this Clause are limited to use in relation to the Purchaser Purposes.

6.3 **Third party Software Licence**

The Contractor shall ensure that each relevant Third Party grants to the Purchaser a licence to use the Third Party Software on the terms set out in the Contract. Notwithstanding the terms of any such licence agreement, the Contractor shall pay all licence fees and/or other costs in connection with the grant of such a licence to the Purchaser.

6.4 **Firmware Licence**

The Contractor hereby grants to the Purchaser, or shall ensure that prior to delivery of the relevant item of Hardware that each relevant Third Party grants to the Purchaser: (i) a non-exclusive licence to Use the Embedded Code and the Firmware with the relevant Hardware supplied hereunder; and (ii) a non-exclusive licence to reproduce any Documentation relating to the same for the purposes of the Use of the Software licensed hereunder.

6.5 **Third Party operation**

Purchaser shall be entitled to engage a Third Party to host and/or Use the Software and/or the Services, subject to and in the accordance with this Contract on behalf of the Purchaser in relation to the Purchaser Purposes.

6.6 **Backup**

Purchaser shall be entitled to copy Software in order to create an archival copy and a back-up copy of the same. When copying Software Purchaser shall include in that copy any original copyright notices.

6.7 **Escrow**

Within 30 Business Days' of the Purchaser's request to do so following the final Acceptance Date, the Contractor will deliver to the Purchaser an escrow agreement in a suitable form (single licensee, multi-licensee, software escrow, website and software escrow, and/or software as a service (as applicable)) of NCC Escrow International Limited, Manchester, England (or such other escrow agent as the parties may agree) (the "**Escrow Contract**") completed as set out in sub-Clauses 6.7.1 to 6.7.4 (inclusive) below and properly executed for and on behalf of the Contractor. In relation to such Escrow Contract:

6.7.1 the "Owner" shall be the Contractor;

6.7.2 the "Licensee" shall be Purchaser;

6.7.3 the "Material" shall as a minimum include the Source Code of the Contractor Software and the Source Code of the Specially Written Software; and

6.7.4 Purchaser shall be responsible for payment of the Annual Fee and the Release Fee (as defined in such Escrow Contract) and the Contractor shall be liable for the Initial Fee and Update Fees and the Storage Fees (as defined in such Escrow Contract) if any

with the parties agreeing that if the particular Escrow Contract chosen by the parties does not contain the exact terms described above in Clauses 6.7.1 to 6.7.4 (inclusive), then the terms used shall be those deemed to be most nearly approximate to the terms above.

6.8 **Source Code Licence**

6.8.1 The Contractor hereby grants to the Purchaser a perpetual, non-transferable and non-exclusive licence to Use, reproduce, modify, adapt, enhance, translate (and to licence a Third Party to do all such acts on its behalf) the Source Code and object code versions of the Contractor Software and the Specially Written Software.

6.8.2 The foregoing licence shall only become effective if Purchaser becomes entitled to obtain access to the Source Code version of the Contractor Software and the Specially Written Software pursuant to the source code escrow agreement referred to in Clause 6.7 (Escrow) and the licence shall be subject to any obligations of confidentiality contained herein in respect of the object code version of the Contractor Software.

6.9 **Provision of documentation**

The Contractor shall deliver to the Purchaser a copy of all Foreground Design Documentation promptly upon creation of each item of Foreground Design Documentation (or, where that item of Foreground Design Documentation is subject

to acceptance testing in accordance with Clause 7, promptly following the date on which that item is Accepted (as defined in Clause 7) by the Purchaser).

6.10 **Interfacing**

The Contractor shall provide to the Purchaser, promptly upon request and at no additional cost, all reasonable assistance, information and copies of all APIs, configurations, keys, protocols, profiles, scripts and other documentation in each case:

6.10.1 in the possession or control of the Contractor; and

6.10.2 necessary in order to allow Purchaser (or any third party acting with the permission or authority of the Purchaser) to interface to the System and/or to share data with the System.

6.11 **Copy of virtual server**

6.11.1 Once a week during the term of this Contract, the Contractor shall deliver to the Purchaser up to date virtualised copies of the servers used by the Contractor to provide any Hosted Services (the "**Virtual Server Back-ups**"). The Virtual Server Back-ups shall be in an industry-standard format as approved by the Purchaser.

6.11.2 The Contractor hereby grants to the Purchaser a perpetual, non-transferable and non-exclusive licence to Use, reproduce, modify, adapt, enhance, translate (and to licence a Third Party to do all such acts on its behalf) the Virtual Server Back-ups, including the right to install the Virtual Server Back-ups in a suitable host environment under the control of the Purchaser (or a Third Party supplier of hosting to the Purchaser).

6.11.3 The licence set out in Clause 6.11.2 shall only become effective if an Insolvency Event occurs in respect of the Contractor.

6.11.4 For the purpose of Clause 6.11.3 above, where the Contractor is a Company "Insolvency Event" means:

6.11.4.1 the contractor or any parent company passes a resolution for winding-up or the court makes a winding-up order, other than for the purpose of a genuine and good faith reconstruction or amalgamation which the purchaser has consented to in advance;

6.11.4.2 the contractor or any parent company passes a resolution for administration;

6.11.4.3 an administrator, administrative receiver, receiver or manager is appointed to the contractor or any parent company by a creditor or by the court, or possession is taken of any of the contractor's or any parent company's property under the terms of a floating charge;

6.11.4.4 the contractor or any parent company is unable to pay its debts within the meaning of section 123 of the insolvency act 1986 (as if the reference in section 123(1)(a) to £750 was to £10,000); or

6.11.4.5 any similar event occurs under the law of any other jurisdiction.

6.11.5 For the purposes of clause 6.11.3 above, where the Contractor is an individual, "Insolvency Event" means that:

- 6.11.5.1 A petition is presented for the contractor's bankruptcy or the sequestration of the contractor's estate;
 - 6.11.5.2 A criminal bankruptcy order is made against the contractor;
 - 6.11.5.3 The contractor makes any composition or arrangement with or for the benefit of the contractor's creditors, or makes any conveyance or assignation for the benefit of the contractor's creditors, or an administrator is appointed to the contractor's affairs;
 - 6.11.5.4 The contractor becomes apparently insolvent within the meaning of the bankruptcy (Scotland) act 1985; or
 - 6.11.5.5 Any similar event occurs under the law of any other jurisdiction.
- 6.11.6 For the purposes of clause 6.11.3 above, where the Contractor is a partnership or firm, or a number of persons acting together in any capacity, "Insolvency Event" means that:
- 6.11.6.1 An event listed in clauses 6.11.5.1 to 6.11.5.5 of this section occurs in respect of any partner in the partnership or firm or any of those persons;
 - 6.11.6.2 A petition is presented for the contractor to be wound up as an unregistered company; or
 - 6.11.6.3 Any similar event occurs under the law of any other jurisdiction.

7 Acceptance

7.1 Acceptance Testing

Each component of the System, each iteration of the Foreground Design Documentation, and the Testing Protocols shall be subject to acceptance testing in accordance with the Implementation Plan and this Clause 7.

7.1.1 Acceptance of Design Documentation and Testing Protocols

- 7.1.1.1 The Contractor shall submit each iteration of the Foreground Design Documentation and the Testing Protocols to the Purchaser for review and acceptance in accordance with the Implementation Plan and/or any previously agreed accepted Testing Protocol.
- 7.1.1.2 Within twenty (20) Business Days (or such other period as the parties may agree) of the date of receipt of a submission (or re-submission, as the case may be) of a Foreground Design Document or Testing Protocol Candidate for Acceptance to the Purchaser, the Purchaser shall, subject to Clause 7.3 (Further Information), return to the Contractor one copy of that Candidate for Acceptance endorsed "Level A – no objection", "Level B – proceed subject to comments" or "Level C – resubmit". For the purposes of Clause 7.2 (Non Acceptance Termination Right), a Candidate for Acceptance endorsed with "Level C – resubmit" shall be a **"Failure Report"**.
- 7.1.1.3 If Purchaser makes an objection to any Candidate for Acceptance, the Purchaser shall state the ground upon which such objection is based and the evidence or other information necessary to substantiate that ground.
- 7.1.1.4 If the Candidate for Acceptance is returned by the Purchaser endorsed "Level A – no objection", or if no response is received by the Contractor

- during the period mentioned in Clause 7.1.1.2, then the Candidate for Acceptance shall be **"Accepted"** by the Purchaser and the Contractor shall comply with and implement that Candidate for Acceptance.
- 7.1.1.5 If Purchaser returns the Candidate for Acceptance endorsed other than "Level A – no objection", then the Contractor shall:
- 7.1.1.5.1 where Purchaser has endorsed the Candidate for Acceptance "Level B – proceed subject to comments", proceed with the performance of the relevant part of the Services, but acknowledge and take into account Purchaser's comments;
- 7.1.1.5.2 where Purchaser has endorsed the Candidate for Acceptance "Level C – resubmit", not act upon the Candidate for Acceptance, but instead amend the Candidate for Acceptance to respond to the Purchaser's objections and requirements and re-submit the same to the Purchaser in accordance with Clause 7.1.1.6, unless the Contractor disputes any such objection or proposed requirement is on grounds permitted by this Contract, in which case the Contractor or Purchaser may refer the matter for determination in accordance with Clause 39 (Dispute Resolution Procedure) of the Conditions.
- 7.1.1.6 Where the Candidate for Acceptance has been endorsed "Level C – resubmit", the Contractor shall within ten (10) Business Days of receiving the returned Candidate for Acceptance, resubmit the Candidate for Acceptance as amended to the Contractor and the provisions of this Clause 7 (Acceptance) shall apply to such re-submission (which shall be deemed to be a Candidate for Acceptance).
- 7.1.1.7 The return of any Candidate for Acceptance endorsed "Level A – no objection" or otherwise endorsed in accordance with Clause 7.1.1.5.1 ("Level B – proceed subject to comments") shall mean that the Candidate for Acceptance may be used or implemented (subject to any comments made in accordance with Clause 7.1.1.5.1) for the purposes for which it is intended. However, the return of any Candidate for Acceptance howsoever endorsed shall not relieve the Contractor of its obligations under this Contract.
- 7.1.1.8 If, having received comments from Purchaser under this Clause 7.1.1, the Contractor considers that compliance with those comments is not in accordance with the scope of the Adjusted Specification and would amount to a change to this Contract by the Purchaser, then the Contractor shall within five (5) Business Days of those comments being received and in any event before complying with the comments, notify Purchaser of the same and, if it is agreed by the Parties, then Purchaser may proceed with the matter in accordance with Clause 18 (Variations to the Contract) of the Conditions.
- 7.1.2 **Acceptance of the System (and components of the System, including Hardware)**
- 7.1.2.1 The System (and where identified in the Implementation Plan or the Testing Protocols agreed under Clause 7.1.1 a component of the System) shall be subject to User Acceptance Tests. The User Acceptance Tests shall be carried out in accordance with the relevant Testing Protocols accepted by the Purchaser in accordance with Clause 7.1.1 (Acceptance of Design Documentation and Testing Protocols).

- 7.1.2.2 The Contractor may submit a Candidate for Acceptance for User Acceptance Tests by serving a written notice on Purchaser (each a **"Ready for User Acceptance Tests Notice"**).
- 7.1.2.3 Following receipt by the Purchaser of a Ready for User Acceptance Tests Notice, the Parties shall agree the date on which the User Acceptance Tests will be performed (such agreement not to be unreasonably withheld or delayed), upon which date the Contractor shall, in the presence of the Purchaser, conduct the User Acceptance Tests. The Contractor shall comply with the reasonable direction of the Purchaser in relation to the carrying out of the User Acceptance Tests.
- 7.1.2.4 The Contractor will provide Purchaser with a written report of the User Acceptance Tests within two (2) Business Days of the completion of the User Acceptance Tests. Within ten (10) Business Days of receipt of the report, the Purchaser shall, subject to Clause 7.3, by notice in writing to the Contractor either:
 - 7.1.2.4.1 certify that the relevant Candidate for Acceptance has been **"Accepted"** by the Purchaser (such acceptance not to be unreasonably withheld or delayed); or
 - 7.1.2.4.2 reject the Candidate for Acceptance (a **"Failure Report"**), in which case the Contractor shall, at its own cost and expense, promptly rectify the Fault and re-submit the Candidate for Acceptance for User Acceptance Tests in accordance with this Clause 7.1.2.

If no such notice is received in such period then the relevant Candidate for Acceptance will be deemed to have been Accepted.

7.1.3 **Purchaser assistance**

In respect of the User Acceptance Tests, the Purchaser shall:

- 7.1.3.1 provide the Contractor with reasonable cooperation and assistance; and
- 7.1.3.2 comply with the relevant Testing Protocol.

7.2 **Non Acceptance Termination Right**

If:

- 7.2.1 Purchaser has issued more than two (2) Failure Reports in relation to the same Candidate for Acceptance under Clause 7.1 (Acceptance Testing); or
- 7.2.2 a Candidate for Acceptance has not been Accepted in terms of Clause 7.1 (Acceptance Testing) by the date twenty (20) Business Days after the relevant Planned Acceptance Date; or
- 7.2.3 the Fault Free for Thirty Days Date has not occurred by a date ninety (90) days after the final Acceptance;

the Purchaser shall have the right to terminate this Contract by way of a written notice served on the Contractor referencing this Clause 7.2 (termination being effective from the date of service of such notice).

7.3 **Further information**

The Contractor shall submit any further information or other information, drawings, data and documents (including calculations) that Purchaser reasonably requires, in order to evaluate a Candidate for Acceptance in accordance with this Clause 7 (Acceptance). If the Contractor does not submit any such information, data and

documents, the Purchaser shall be entitled to reject the relevant Candidate for Acceptance:

7.3.1 on the basis of the information, data and documents which have been provided; or

7.3.2 on the grounds that insufficient information, data and documents have been provided to enable Purchaser to act in accordance with this Clause 7 (Acceptance).

8 Liquidated damages

8.1 System – Late Acceptance

If the final Acceptance Date is after the final Planned Acceptance Date then the Contractor shall pay to the Purchaser a sum equal to **1%** of the total Implementation Charges for each week (or part thereof) elapsing from the final Planned Acceptance Date until the actual final Acceptance Date, provided that the amount payable by the Contractor under this Clause 8 shall not exceed a sum equal to **12%** of the total Implementation Charges.

8.2 Payment Of Deductions

All sums payable under this Clause 8 that have not previously withheld in accordance with Clause 20.4 (Default) of the Conditions (in this Clause 8.2 the "**Unrecouped Deductions**") shall be set off against and shown as a deduction of the amount payable (before calculation of Value Added Tax) in the next invoice raised by the Contractor under this Contract (provided that the amount due under that invoice as a result of the deduction of Unrecouped Deductions shall not be less than zero). After the date of termination or expiry of this Contract Purchaser may invoice the Contractor for an amount equal to the then current Unrecouped Deductions plus VAT if applicable. The Contractor shall pay such invoice in cleared funds within thirty (30) days after its receipt of the same (such date being the relevant due date for the purpose of Clause 10.9 (Payment) of the Conditions).

9 Title and Risk

9.1 To the extent that this Clause 9 (Title and Risk) conflicts with any terms of the Conditions this Clause 9 (Title and Risk) takes precedence.

9.2 Title Transfer

The Contractor hereby transfers title to:

9.2.1 the Hardware as at the date on which Purchaser accepts, in writing, delivery (or in relation to Hardware and where as part of the Services the Contractor is installing that Hardware the date that installation is complete, and Purchaser has acknowledged, in writing, the completion of installation); and

9.2.2 any other tangible Deliverable on the date that Purchaser accepts delivery. Nothing in this Clause transfers IPRs, or creates an obligation to transfer IPRs.

9.3 Risk

The risk of loss of, or damage to, Hardware or any other tangible Deliverable shall transfer to the Purchaser on the date Purchaser accepts, in writing, delivery (or in relation to Hardware and where as part of the Services the Contractor is installing that Hardware the date that installation is complete, and Purchaser has acknowledged, in writing, the completion of installation).

- 9.4 Purchaser shall not unreasonably withhold or delay in issuing any written acceptance or delivery of Hardware or acknowledgement of installation of Hardware referred to in Clauses 9.2 and 9.3.

10 Replacement Parts and Supported Software

10.1 Replacement Parts

If, during the performance of the Services, replacement parts (which shall be new, or if they are repairable, no older than the parts that they are replacing) are fitted to any Hardware supplied by the Contractor to the Purchaser, then:

10.1.1 such replacement parts shall become part of the Hardware and the property of the Purchaser at no additional cost; and

10.1.2 the parts removed shall become the property of the Contractor. Each Party hereby transfers its title in the relevant parts accordingly as at the date of such replacement.

10.2 Dispatches for Repair

If the Contractor sends any part of the Hardware away from the Premises or any Purchaser Property for repair or for any other reason, the Contractor shall be responsible for:

10.2.1 the risk of loss or damage to that part;

10.2.2 the packing, carriage and insurance of such part; and

10.2.3 all costs associated with the dispatch, repair, return and reinstallation of that part.

10.3 Supported Software

The software which shall be supported under the Services (the "**Supported Software**") is:

10.3.1 the Software;

10.3.2 any modification which is acquired by the Purchaser (whether under this Contract or any other agreement between the Contractor and the Purchaser) during the course of this Contract and which accordingly becomes part of the software defined as the Software under this Contract; and

10.3.3 any other software which the Contractor and the Purchaser agree should be Supported Software for the purposes of this Contract.

10.4 Updates

10.4.1 If, as part of the Services, the Contractor installs, or issues to the Purchaser, an update of or patch to, an item of Software or Hardware (in this Clause 10.4, each an "Update") then the Contractor shall ensure that the Update is compatible with the rest of the System and in particular with the Specially Written Software. Without prejudice to the foregoing, the Contractor shall ensure that the implementation of an Update by the Purchaser will not cause a loss of functionality, or a material degradation in performance, when compared against the operation of the Software or Hardware prior to implementation of the Update and will not require any alteration to any software or hardware that interfaces to the System.

10.4.2 Any decision by the Purchaser to refuse an Update shall not give rise to any right to terminate this Contract, nor shall it result in any adverse effect on

the System or the performance of the Contractors obligations under this agreement.

10.5 **Assistance**

Where during the Service Term there is a Fault then the Contractor shall provide reasonable assistance, information and advice to the Purchaser in relation to that Fault in accordance with its obligations under the Contract.

11 Service Levels

11.1 **Service Levels**

The Contractor shall ensure that during the Service Term

11.1.1 the Services are provided in accordance with, and

11.1.2 the System operates in accordance with,
the Service Levels.

11.2 **Failure to meet the Service Levels – additional resource**

In the event of a breach of Clause 11.1 the Contractor shall, at the request of the Purchaser and without prejudice to the Purchaser's other rights and remedies, arrange all such additional resources as are reasonably necessary to correct the said failure as early as practicable thereafter.

11.3 **Access to the System**

Purchaser shall permit the Contractor such access to such parts of the System as are hosted at any Premises as is reasonably required for the Contractor to comply with its obligations under Clauses 11.1 (Service Levels) and 11.2 (Failure to meet the Service Levels – additional resource), provided that any access to the System during Purchaser's normal business hours shall be subject to the Purchaser's prior consent.

12 Service Credits

12.1 **Accrual of service credits**

If the Contractor has breached Clause 11.1 then the Contractor shall, without prejudice to any other rights and remedies of the Purchaser pay Purchaser the Service Credits accruing in respect of that breach.

12.2 **Service level and service credit and fault reporting**

No later than ten (10) Business Days after the end of each Service Reporting Period ending during the Service Term the Contractor shall prepare and deliver to the Purchaser a report (in this Clause 12 each a "**Service Level Report**") setting out:

12.2.1 details of compliance with the Service Levels in that Service Reporting Period (including details of the reason for any non-compliance);

12.2.2 a calculation of the Service Credits accruing in that Service Reporting Period;

12.2.3 details of all Faults reported to the Contractor during that Service Reporting Period; and

12.2.4 to be clear such report referred to in Clause 12.2 may be written or may be delivered by email or through a browser portal or similar.

12.3 **Payment of service credits**

Sums payable under this Clause 12 shall become due thirty (30) days after the issue of the relevant Service Level Report under Clause 12.2. All sums falling due under this Clause 12 that have not previously been set-off against an invoice raised by the Contractor under this Contract (in this Clause 12.3 the "**Unrecouped Service Credits**") shall be set off against and shown as a deduction of the amount payable (before calculation of Value Added Tax) in the next invoice raised by the Contractor under this Contract (provided that the amount due under that invoice as a result of the deduction of Unrecouped Service Credits shall not be less than zero). After the date of termination or expiry of this Contract Purchaser may invoice the Contractor for an amount equal to any the then current Unrecouped Service Credits plus VAT (if applicable). The Contractor will pay that invoice in cleared funds no later than thirty (30) days after its receipt of it (such date being the relevant due date for payment for the purpose of Clause 10.9 (Payment) of the Conditions).

13 **Minimising Disruption**

13.1 If it appears likely to the Contractor that any planned works or activities to be carried out by the Contractor under this Contract will necessitate interruption to or restriction of the System and/or require access to any Purchaser Property, then the Contractor shall notify Purchaser not less than fourteen (14) days prior to such planned works or activities.

13.2 In the event of any unplanned works or activities to be carried out by the Contractor as a result of a System Fault or otherwise, then the Contractor shall notify Purchaser as soon as possible of the nature of such works or activities and the likely disruption or restriction of the System.

13.3 The Contractor shall perform the Services:

13.3.1 so as not to prejudice the health or safety of, or unreasonably interfere with the proper performance of the duties of the Purchaser, employees and third parties, or the availability of any Purchaser Property, or otherwise expose Purchaser to liability under the Health and Safety at Work etc. Act 1974 or the Transport and Works Act 1992 or any other legislation relating to health and safety;

13.3.2 so as to maximise the availability and uptime of the System; and

13.3.3 in a safe manner and so that the System is capable of being operated in a safe and efficient manner free from any unreasonable risk to the health and well being of persons using or maintaining it and free from any reasonably avoidable risk of pollution, nuisance, interference or hazard.

13.4 Where it is not practical to correct a Fault immediately, but a temporary workaround repair is possible, then the Contractor will:

13.4.1 propose that temporary workaround / repair to the Purchaser; and

13.4.2 if Purchaser agrees implement that temporary workaround/repair. To be clear implementing such a temporary workaround/repair does not relieve the Contractor of its obligation to permanently rectify Faults.

14 **Additional Options**

14.1 **Additional Services Option Period**

The Parties' rights and obligations under this Clause 14 shall survive until the date one (1) year after the last date of the Service Term.

14.2 **Contractor Input into Services Requests**

At the request of the Purchaser, the Contractor shall provide input into the Purchaser's preparation of Additional Services Requests, including a reasonable estimate of the number of Person Days and/or Person Hours required to complete the task to be set out in the Additional Services Request.

14.3 **Pure T&M Additional Service Requests**

On receipt of an Additional Services Request unilaterally issued by the Purchaser, and in consideration of payments under Clause 15.2 (Additional Option Charges), the Contractor will devote the number of Person Days or Person Hours (as appropriate) set out in the Additional Services Request towards the task(s) set out in the Additional Services Request on dates to be agreed (such agreement not to be unreasonably withheld or delayed).

14.4 **Management of Additional Services**

The Contractor will on request provide Purchaser with reasonable progress reports in relation to the delivery of Person Days under an Additional Services Request. Purchaser may terminate an Additional Services Request by a minimum of five (5) days' written notice. Following such termination the Contractor's obligations under this Clause 14 in relation to the terminated Additional Services shall cease.

14.5 **Additional Hardware option**

Purchaser has the option to purchase additional items of Hardware at the unit prices set out in the Contract, subject to any increases envisaged by and/or permitted by the Contract. In order to exercise that option, the Purchaser must provide the Contractor with written notice setting out the items required (including the quantity) (the "**Additional Hardware**"), the price and the requested delivery date. In that event:

14.5.1 the Contractor shall deliver the Additional Hardware to the Purchaser on that delivery date or as soon as reasonably practicable after that date;

14.5.2 the provision of Clause 15.2 (Additional Option Charges) shall apply in relation to payment for additional Hardware;

14.5.3 title to the Additional Hardware shall transfer on delivery to the Purchaser. The risk of loss of or damage to Additional Hardware shall transfer on Purchaser's written acknowledgement of such delivery to the Purchaser (such acknowledgement not to be unreasonably withheld by the Purchaser); and

14.5.4 the Contractor warrants that as at the date of delivery, each item of Additional Hardware shall operate in accordance with the Adjusted Specification and the Contractor's published technical standards for that item of Additional Hardware, as at the date of this Contract.

14.6 **Additional Software Option**

Where applicable, the Purchaser has the option to purchase additional units/seats/licences of the items of Contractor Software at the unit prices set out in the Contract, subject to any increases envisaged by and/or permitted by the Contract. In order to exercise that option Purchaser must provide the Contractor with written notice setting out the additional units/seats/licences required (the "**Additional Licences**"), and the price. In that event:

- 14.6.1 as from the date of that notice any licence restriction specified in the Contract shall be increased by the number of Additional Licences;
- 14.6.2 the provision of Clause 15.2 (Additional Option Charges) apply in relation to payment for Additional Licences; and
- 14.6.3 each Additional Licence that is delivered to the Purchaser shall be deemed to be an item of "Software" and part of the "System" for the purposes of Clause 6 (Software and IPRs), Clause 10 (Replacement Parts and Supported Software), the warranties in Clauses 16.2.8 to 16.2.12 (inclusive) and for the purposes of Clause 18 (IPR Indemnity).

15 Charges

- 15.1 To the extent that this Clause 15 (Charges) conflicts with Clause 10 of the Conditions, this Clause 15 (Charges) takes precedence.
- 15.2 **Additional Option Charges**
 - 15.2.1 In consideration for the supply of Additional Services the Purchaser will pay to the Contractor:
 - 15.2.1.1 the relevant Daily Rate in respect of each Person Day delivered by the Contractor to the Purchaser in response to an Additional Services Request prior to the date of its termination;
 - 15.2.1.2 the relevant Hourly Rate in respect of each Person Hour delivered by the Contractor to the Purchaser in response to an Additional Services Request (other than to the extent that Person Hour was billed as part of a Person Day) prior to the date of its termination; and
 - 15.2.1.3 an amount equivalent to the reasonable travel and subsistence expenses incurred by the Contractor in providing the Additional Services (subject always to prior written approval by the Purchaser).
 - 15.2.2 The Contractor may invoice Purchaser in respect of Additional Services no earlier than monthly in arrears.

16 Warranties

- 16.1 To the extent that this Clause 16 (Warranties) conflicts with any terms of the Conditions, this Clause 16 (Warranties) takes precedence.
- 16.2 **General Warranties**

The Contractor hereby warrants, represents and undertakes to the Purchaser that:

- 16.2.1 at the final Acceptance Date and during the Service Term the System shall be capable of delivering the functionality set out or described in the Adjusted Specification;
- 16.2.2 at the final Acceptance Date the System shall comply with the relevant regulations and standards specified in the Contract;
- 16.2.3 at the final Acceptance Date, and during the Service Term, the System shall operate in accordance with its respective published technical specifications;
- 16.2.4 the Contractor has the full capacity and authority to enter into this Contract and to grant the licences referred to in Clause 6 (Software and IPRs) and that its performance of its obligations under this Contract will not cause it to breach any other agreement to which it is a party;
- 16.2.5 Use of an item of Software in accordance with the express licence terms to use that item set out in this Contract will not infringe any IPR;

- 16.2.6 the Services shall be supplied and rendered by, and the Contractor's obligations under this Contract carried out:
 - 16.2.6.1 by appropriately experienced, qualified and trained personnel;
 - 16.2.6.2 with all due skill, care and diligence; and
 - 16.2.6.3 in compliance with all Law;
- 16.2.7 the Contractor shall discharge its obligations hereunder in accordance with Good Industry Practice and its own established internal procedures;
- 16.2.8 each item of Hardware supplied will be United Kingdom specification and packaged by its manufacturer for distribution in the United Kingdom;
- 16.2.9 each item of Hardware supplied, and each replacement part fitted to an item of Hardware by or on behalf of the Contractor, will be brand new (or, if repairable, no older than the parts that they are replacing);
- 16.2.10 each item of Hardware will be supported for a minimum period of six (6) years from the date on which title to that item of Hardware passes to the Purchaser in accordance with Clause 9.2 and spare parts will be available for that item from its manufacturer for that six (6) year period;
- 16.2.11 Purchaser shall acquire title to the Hardware, and each replacement part fitted to an item of Hardware by or on behalf of the Contractor, free from all encumbrances;
- 16.2.12 as at the date of delivery to the Purchaser hereunder, each Deliverable will be free from any then documented computer viruses (or other malicious code);
- 16.2.13 all statements made in its Tender Documents, and all statements made by or on behalf of the Contractor to the Purchaser in relation to the subject matter of the Tender Documents between the date of the Tender Documents and the date of execution of this Contract are (in each case) true and accurate in all material respects; and
- 16.2.14 as at the date of delivery to the Purchaser hereunder, each item of Software and Hardware will be Date Compliant.

16.3 IPR Ownership Warranties

The Contractor hereby warrants and undertakes to the Purchaser that:

- 16.3.1 it has not, and will not, transfer or purport to transfer the IPRs comprised in or protecting the Foreground Design Documentation or Purchaser Data to any Third Party; and
- 16.3.2 title to each IPR comprised in or protecting the Foreground Design Documentation will transfer to the Purchaser on the later of the date of this Contract or the date of creation of that IPR.

16.4 Exclusion of Implied Warranties

The Parties hereby exclude from this Contract all implied warranties, implied conditions, implied licences and implied terms to the fullest extent permitted by law.

17 Liability

17.1 To the extent that this Clause 17 (Liability) conflicts with Clause 16 (Limitation of Liability) of the Conditions, this Clause 17 (Liability) takes precedence.

17.2 Exceptions to Limitations

- 17.2.1 Nothing in this Contract excludes or limits the liability of one Party to the other Party for:
 - 17.2.1.1 death or personal injury; or

- 17.2.1.2 any breach of any warranties/conditions of title implied by statute or law; or
- 17.2.1.3 breach of Clause 25 (Confidentiality) of the Conditions; or
- 17.2.1.4 breach of clause 22 (Data Protection); or
- 17.2.1.5 for infringement of the other Party's IPRs; or
- 17.2.1.6 for loss or damage to land or buildings; or
- 17.2.1.7 for a fraudulent misrepresentation.
- 17.2.2 Nothing in this Clause 17 excludes or limits the Contractor's liability under:
 - 17.2.2.1 Clause 18 (IPR Indemnity); or
 - 17.2.2.2 Clause 20.2 (Refund).

17.3 **Financial Caps on Liability**

Subject always to Clause 17.2 (Exceptions to Limitations), the liability of each Party under or in relation to the subject matter of this Contract shall be subject to the following financial limits:

- 17.3.1 the aggregate liability of the Purchaser other than liability to pay the Charges or interest thereon under Clause 15 (Charges) shall in no event exceed **the Charges**; and
- 17.3.2 the aggregate liability of the Contractor to the Purchaser in relation to the System and/or performance of the Implementation Services shall in no event exceed the greater of:
 - (i) **£10,000,000**
- 17.3.3 the aggregate liability of the Contractor to the Purchaser under this Contract or in relation to the subject matter of this Contract shall not exceed the greater of:
 - (i) **£10,000,000**

For the avoidance of doubt, payments under Clause 12.3 (Payment of Service Credits) and/or any retention of payments by the Purchaser in terms of this Contract shall not be deemed to be a payment in respect of liability by the Contractor, and shall not be used in calculating whether the caps on liability above have been reached or exceeded. For the avoidance of doubt, payments under Clause 8 (Liquidated Damages) shall be deemed to be a payment in respect of liability by the Contractor, and shall be used in calculating whether the caps on liability above have been reached or exceeded.

17.4 **Consequential Loss Exclusion**

Subject always to Clause 17.2 (Exceptions to Limitations), in no event shall either Party be liable to the other for:

- 17.4.1 consequential loss or damage; and/or
- 17.4.2 loss of profit, loss of goodwill, or loss of anticipated savings.

17.5 **Consequential Loss Carve-back**

The provisions of Clause 17.4 (Consequential Loss Exclusion) shall not limit or exclude the right of either Party to claim from the other party for additional operational and administrative costs and expenses resulting from the Default of the other Party.

18 IPR Indemnity

18.1 To the extent that this Clause 18 (IPR Indemnity) conflicts with the indemnity granted in Clause 18 (Intellectual property rights) of the Conditions, this Clause 18 (IPR Indemnity) takes precedence.

18.2 General Principle

The Contractor shall ensure that the use and possession of the System in accordance with the terms of this Contract and/or the receipt of the Services by or on behalf of the Purchaser shall not infringe any IPR of any third party.

18.3 Indemnity Grant

The Contractor shall indemnify Purchaser against all loss, liability, costs and/or expenses (including cost and expenses defending any relevant claim) suffered or incurred by the Purchaser, or any Third Party using the Design Documentation or the System or the Documentation on behalf of the Purchaser in accordance with the terms of this Contract, in each case to the extent arising from any claim, demand or action that alleges that: i) use or possession of the Design Documentation by the Purchaser (or such Third Party) infringes an IPR; or ii) use or possession of the System or the Documentation by the Purchaser (or such Third Party) infringes an IPR; or iii) delivery or receipt of the Services infringes an IPR, (in each case) except to the extent that such loss, liability, cost or expense resulted directly from Purchaser's failure to properly observe its obligations under this Clause 18, or to the extent that any such claim or demand or action is in respect of:

18.3.1 any use by or on behalf of the Purchaser of the Design Documentation or the System or the Services or the Documentation in combination with any item not supplied by the Contractor where such use directly gives rise to the claim, demand or action; or

18.3.2 any modification carried out by or on behalf of the Purchaser to any item supplied by the Contractor under this Contract if such modification is not authorised by the Contractor in writing; or

18.3.3 any use by the Purchaser of the System in a manner not reasonably to be inferred from the Tender Documents; or

18.3.4 any use of the Software that is not licensed under this Contract; or

18.3.5 any breach by the Purchaser of this Contract or a licence to use Third Party Software procured by the Contractor for Purchaser hereunder.

18.4 Contractor Obligation to Inform

The Contractor shall promptly notify Purchaser if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any IPRs which may affect the use or possession of either the Design Documentation, the System (or any component of the System) or the Documentation and/or the receipt of the Services by or on behalf of the Purchaser.

18.5 Purchaser Obligation to Inform

Purchaser shall promptly notify the Contractor if any claim or demand is made or action brought against Purchaser to which Clause 18.3 (Indemnity Grant) may apply. The Contractor may at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith. To this end, on the written request of the Contractor, the Purchaser shall grant to the Contractor exclusive control of any such litigation and such negotiations.

18.6 Purchaser to provide Reasonable Assistance

Purchaser shall, at the request of the Contractor, afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Purchaser to which Clause 18.3 (Indemnity Grant) may apply. The Contractor shall reimburse Purchaser for all reasonable costs and reasonable expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred by the Purchaser in so doing.

18.7 No Prejudicial Admissions

Other than as required by law, the Purchaser shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any IPR to which Clause 18.3 (Indemnity Grant) may apply.

18.8 Avoiding Indemnity Claims

If a claim or demand is made or action brought to which Clause 18.3 (Indemnity Grant) may apply, or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may at its own expense and within a reasonable time either:

18.8.1 modify any or all of the Design Documentation and/or the System and/or the Documentation or the Services without reducing the performance and functionality of the same, or substitute an alternative software or services of equivalent performance and functionality for any or all of the Software or the Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply equally to such modified or substituted items or services and such modified or substituted items shall be Acceptable to the Purchaser, such Acceptance not to be unreasonably withheld; or

18.8.2 procure any licence(s) required to avoid such claim demand or action.

18.9 Purchaser Right to Terminate

If a claim or demand is made or action brought to which Clause 18.3 (Indemnity Grant) applies and a modification or substitution in accordance with Clause 18.8.1 above is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with Clause 18.8.2, then:

18.9.1 the Purchaser shall be entitled to terminate the Contract by way of a written notice served on the Contractor referencing this Clause 18.9 (termination being effective from the date of service of such notice); and

18.9.2 the Contractor shall be liable for the value of a replacement for the System and the Services or part thereof together with additional costs incurred in implementing and maintaining such replacements.

19 Term and Termination

19.1 This Clause 19 (Term and Termination) supplements the provisions of Clause 21 (Termination) of the Conditions and where they conflict this Clause 19 (Term and Termination) takes precedence.

19.2 The Purchaser may terminate this Contract as set out in Clause 7.2 (Non Acceptance Termination Right) and/or Clause 18.9 (Purchaser Right to Terminate).

20 Consequences of Termination

20.1 To the extent that this Clause 20 (Consequences of Termination) conflicts with Clause 22 (Consequences of Termination) of the Conditions, this Clause 20 (Consequences of Termination) takes precedence.

20.2 Refund

20.2.1 In the event of any termination of this Agreement by the Purchaser prior to the Fault Free for Thirty Days Date, then the Purchaser shall be entitled, without prejudice to the Parties' other rights and remedies, to return the System or any part thereof and/or any of the Deliverables, and in that event the Contractor shall give the Purchaser a full refund of all Charges paid by the Purchaser to the Contractor in connection with such returned items.

20.2.2 In the event of termination of this Agreement the Contractor shall within thirty (30) Business Days of such termination reimburse to the Purchaser any Charges previously paid by the Purchaser hereunder and which relate to the period following such termination (calculated pro rata on a daily basis), plus any Value Added Tax previously paid by the Purchaser in relation thereto.

20.3 Following the termination or expiry of this Contract the provisions of Clauses 2 (Definitions), 5.3 (Making Good), 6 (Software and IPRs), 8.2 (Payment of Deductions), 9 (Title and Risk), 12.3 (Payment of Service Credits), 14 (Additional Options), 16 (Warranties), 17 (Liability), 18 (IPR Indemnity), 20 (Consequences of Termination), 21.1 (Documentation Supply), 21.2 (Documentation Quality), 22 (Personal Data) shall survive and shall continue to bind the Parties.

20.4 The Contractor shall provide Purchaser with such assistance as Purchaser may reasonably require (including the provision of information) necessary to enable Purchaser to transfer the System (or components of the System) to a New Contractor. The Contractor shall be entitled to charge for the reasonable and demonstrable costs of such assistance as an Additional Service Request in accordance with Clause 14.

21 Documentation

21.1 Documentation Supply

The Contractor shall deliver the Documentation in accordance with the Implementation Plan or (where no date for doing so is set out in the Implementation Plan) no later than the final Acceptance Date.

21.2 Document Quality

The Contractor shall ensure that the Documentation supplied to the Purchaser under this Contract in relation to the System (or part of the System) will comprise a complete set of operating manuals for the System (and each component of the System).

21.3 Technical records

The Contractor shall make, and retain during the Service Term and for a period of two (2) years thereafter, reasonable records in relation to the Implementation Services performed by the Contractor in accordance with Good Industry Practice. The Contractor will maintain reasonable technical records (as opposed to financial records) in relation to its performance of the Services including a detailed record of the rectification of Faults. In each case Purchaser will be allowed to inspect and

audit and/or take copies (at no additional cost) of those records following reasonable notice given to the Contractor.

21.4 Markings

The Contractor shall ensure that each Deliverable is clearly marked with a functional title or code, and its version number, so that it can be readily identified.

22 Personal Data

22.1 Personal Data

22.2 Compliance with the Data Protection Legislation

Each Party shall comply with its respective obligations under the provisions of the Data Protection Legislation. In particular, each party shall comply with its respective provisions set out in the GDPR. Without prejudice to the meaning afforded to each party under the GDPR, the intention of the parties is that in respect of the Purchaser Data and any personal data processed on behalf of the Purchaser by the Contractor, the Purchaser shall be the data controller and the Contractor shall be a data processor. As used in this Clause the terms "process", "processing", "personal data" and "data subjects" shall have the meanings ascribed to them in the Data Protection Legislation.

22.3 Data Processor Obligations

The Contractor shall (and shall ensure that its Contract Workers and agents shall):

- a) implement and maintain appropriate technical and organisational measures and safeguards for protection of personal data, to ensure the rights of data subjects are protected and to ensure that processing will meet the requirements of the General Data Protection Regulation;
- b) ensure that all employees and subcontractors authorised to process personal data are subject to binding confidentiality obligations in respect of that personal data;
- c) assist the Purchaser, using appropriate technical and organisational measures, to respond to requests from data subjects including requests for information, requests for deletion and amendments of information and requests for the transfer of data;
- d) assist the Purchaser in ensuring compliance with its security, data breach notification, impact assessment and consultation obligations under Data Protection Legislation, taking into account the nature of processing and information available to the data processor;
- e) at the Purchaser's election, delete or return all personal data and existing copies to the Purchaser (unless Data Protection Legislation requires the data processor to store that personal data);
- f) make available to the Purchaser all information necessary, and allow for and contribute to audits and inspections conducted by the Purchaser or the Purchaser's mandated auditor, to demonstrate the data processor's compliance with its obligations under this agreement;
- g) immediately inform the Purchaser if, in the data processor's opinion, any instruction given by the Purchaser to the data processor infringes Data Protection Legislation;

- h) maintain a written record of all processing activities under its responsibility and of all categories of processing activities carried out on behalf of the Purchaser, that satisfies the requirements of the Data Protection Legislation;
- i) cooperate on request with any relevant European Union or member state supervisory authority;
- j) notify the Purchaser without undue delay after becoming aware of a breach of personal data and notify the Purchaser immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state;
- k) take any further action and execute any further documents and amendments to this Contract as may, in the Purchaser's reasonable opinion, be required to comply with Data Protection Legislation;
- l) only process personal data in accordance with the Purchaser's documented instructions consistent with and in the scope of this Contract (unless required to do so by applicable law, in which case the data processor shall inform the Purchaser of that legal requirement unless prohibited by law on important grounds of public interest);
- m) only engage another processor to carry out specific processing activities with prior specific or general written authorisation of the Purchaser, and only where that other processor is subject to a written contract imposing on that other processor the same data protection obligations as are imposed on the data processor in this Contract;
- n) not process or transfer personal data outside the European Economic Area except with the express prior written consent of the Purchaser; and
- o) nothing within this Contract relieves the processor of its own direct responsibilities and liabilities under the GDPR.

22.4 The Contractor agrees that the technical and organisational measures referred to in Clause 22.3(a) above shall ensure a level of security appropriate to the risk, taking into account :-

- a) the state of the art, the costs of implementation;
- b) the nature, scope, context and purposes of processing and risks of varying likelihood; and
- c) severity for the rights and freedoms of individuals.

22.5 The Contractor agrees that the technical and organisational measures to be implemented by them and as referred to in Clause 22.3(a) above shall include, as appropriate:-

- a) pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

- c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
 - d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 22.6 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Purchaser as a result of (1) any failure by the Contractor to comply with its obligations under the Data Protection Legislation, or (ii) any breach by the Contractor of this Clause 22.
- 22.7 The Contractor shall complete Schedule 8 to include details of the data to be processed in accordance with Article 28(3) of the GDPR including at a minimum the subject-matter, duration, nature and purpose of the processing and categories of data subject and submit the Schedule 8 to the Purchaser for approval. The Contractor shall only process data within the scope of Schedule 8.

23 Business continuity

- 23.1 The Contractor will put and maintain in place a business continuity plan and related procedures which are compliant with Good Industry Practice and in any event suitable to allow it to prevent or minimise the adverse effect on its performance of this Contract of any circumstances beyond its reasonable control and otherwise to maximise the continuity of the Services (the Contractor's "**Business Continuity Arrangements**").
- 23.2 The Contractor will promptly implement its Business Continuity Arrangements in accordance with their terms, and to this end will ensure that all members of the Contractor's staff are at all times aware of and understand its Business Continuity Arrangements and their role in implementing them.
- 23.3 Upon request by the Purchaser the Contractor will provide Purchaser with a copy of any or all of its then current Business Continuity Arrangements, together with any such additional information as Purchaser requests to assist it in understanding the Supplier's Business Continuity Arrangements and/or assessing their compliance with this Clause.
- 23.4 The Contractor will carry out a full test implementation of its Business Continuity Arrangements at least once every twelve (12) months (each a "**Test Implementation**"). The Contractor will inform Purchaser in writing of the planned date or dates for each Test Implementation and will provide Purchaser with a written report on each Test Implementation within thirty (30) days of the date on which it was completed.

24 Purchaser right to appoint a managing agent

In addition to the rights of the Purchaser under Clause 32 (Assignment and Sub-contracting) of the Conditions, the Purchaser shall be entitled, upon notice in writing to the Contractor, to appoint a third party to act as Purchaser's managing agent (the "Managing Agent") in respect of the receipt and management of, and exercise of the Purchaser's rights in connection with, the Services. Where Purchaser appoints a Managing Agent in accordance with this Clause 24, the following provisions shall apply:

- 24.1.1 subject to Clause 24.1.2, the Contractor shall observe, and shall procure that its employees, contractors and representatives observe, all reasonable instructions of the Managing Agent given in accordance with this Contract; and
- 24.1.2 the Managing Agent shall have no authority to terminate this Contract, make any claim for payment (under indemnity or otherwise), raise any claim, suit or action against the Contractor instruct a change to this Contract under Clause 18 (Variations to the Contract) or amend this Contract, the Conditions

SCHEDULE 6

ICT SPECIFIC PROVISIONS (SAAS)

OPTIONAL SUPPLEMENTAL TERMS FOR MANAGED SERVICES

1. Application

This Section applies when this Contract is wholly or mainly for the provision of "Software-as-a-Service" offerings.

2. Additional Definitions

"Acceptance Date" means in relation to the Managed Service (or a component of the Managed Service) the date it is deemed to be accepted in terms of Clause 7.1 (Acceptance Testing).

"Acceptance Tests" means, in respect of the Managed Service or a component of the Managed Service, the tests to be performed to test whether it is Fault free and/or whether it is performing in accordance with the Adjusted Specification.

"Additional Services" the provision of Person Days and/or Person Hours by the Contractor to the Purchaser pursuant to the provisions of Clause 14 (Additional Options).

"Additional Services Request" a written request from Purchaser for the provision of Additional Services under Clause 14 (Additional Options) setting out: (i) the task(s) to be achieved by the Contractor; (ii) the number of Person Days or Person Hours to be devoted to such task(s); and (iii) the relevant Daily Rates.

"Adjusted Specification" means the technical specification as specified in the Statement of Work.

"Available" means that the Managed Service and the functions to be provided by the Managed Service are in Good Working Order, free of Faults, and performing in accordance with the terms of this Contract and "Availability" shall be construed accordingly.

"Business Day" means each of Monday to Friday in any week, excluding any day that is a public holiday in Scotland.

"Contract" means a legally binding agreement for the provision of Goods and/or Services made between an Institution and the Contractor comprising an Order Form, the Statement of Work and the Conditions;

"Daily Rate(s)" means the sums set out in, or calculated in accordance with, the Contract.

"Data Protection Legislation" the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and any legislation implementing Council Directive (EC) 95/46 (Data Protection Directive) and, to the extent they are applicable to the parties, all laws and regulations relating to the processing of personal data and privacy, including the General Data Protection Regulation from the date on which it applies and, where applicable, the guidance and codes issued by the Information Commissioner.

"Documentation" means: (i) the documentation expressly specified in the Contract; and (ii) any other documentation supplied to the Purchaser by or on behalf of the

Contractor under or in connection with this Contract or that the Contractor makes available for download by the Purchaser.

"Fault" means any occurrence in respect of the Managed Service or any component of the Managed Service which: (i) results in all or part of the Managed Service being rendered unusable or inoperative; or (ii) causes all or part of the Managed Service not to perform in accordance with its published specification; or (iii) causes all or part of the Managed Service not to perform in accordance with the Adjusted Specification.

"Fault Free for Thirty Days Date" the date on which the Managed Service has been free of any Fault for thirty (30) consecutive days.

"Fault Free Running Period" means the period between the final Acceptance Date and the Fault Free for Thirty Days Date.

"General Data Protection Regulation" means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of the natural person with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC."Good Working Order" means that the relevant equipment or component operates fully in accordance with its published specification.

"Managed Service" means any part of the Services that is provided using software hosted by or on behalf of the Contractor or run on hardware controlled by the Contractor, as described in the Statement of Work.

"Hourly Rate(s)" means the sums set out in, or calculated in accordance with, the Contract.

"Implementation Charges" means the charges set out as being applicable to the Implementation Services, as set out in the Statement of Work.

"Implementation Plan" means the plan set out in the Statement of Work as amended from time to time in accordance with the terms of the Contract.

"Implementation Services" the services related to the set-up of the Managed Service as set out in the Statement of Work including any Training Services.

"New Contractor" means a contractor (who is not the Contractor) appointed by the Purchaser, or by any other authority, company or body corporate, to supply the Services (or similar services) or part thereof in succession to the Contractor on expiry of this Contract or the earlier cessation of the Services or part thereof.

"Person Day" means the provision of Services by an individual Contract Worker for a minimum of 7.5 hours (excluding travelling time to/from the relevant place of performance) between 08.30 and 18.30 on any day.

"Person Hour" means the provision of Services by an individual Contract Worker for one hour (excluding travelling time to/from the relevant place of performance) between 08.30 and 18.30 on any day.

"Planned Acceptance Date" means in relation to the Managed Service (or part of the Managed Service), the relevant date set out in the Implementation Plan (as the same may be amended in accordance with the provisions of this Schedule).

"Purchaser" means the Institution submitting the Order Form to the Contractor;

"Purchaser Data" means all information, text, drawings, diagrams, images or sounds that are embodied in any electronic or tangible medium, and which: (i) are supplied by the Purchaser to the Contractor under or in contemplation of this Contract; (ii) are held by the Purchaser but are accessed by the Contractor under this Contract; (iii) the Contractor is obliged to generate or process under this Contract; or (iv) is otherwise stored in, generated, processed or created by any part of the Managed Service or the Services;

"Purchaser Property" means anything issued or otherwise furnished to the Contractor under or in connection with this Contract by or on behalf of the Purchaser, other than any heritable property.

"Purchaser Purposes" means (i) Purchaser's statutory functions; (ii) any function identified in the Tender Documents; or (iii) any function carried out by the Purchaser or an entity that is owned by, controlled by, funded by, and/or administered by the Purchaser (in each case whether in whole or in part).

"Purchaser Responsibilities" means the responsibilities of the Purchaser as expressly set out and identified as "Purchaser Responsibilities" in the Statement of Work.

"Service Reporting Period" means a consecutive four (4) week period.

"Service Credits" means the amounts payable to the Purchaser if the Service Levels are not met as calculated in accordance with the provisions of the Statement of Work.

"Service Levels" means the service levels set out in the Statement of Work.

"Statement of Work" means the statement of work forming part of this Contract.

"Testing Protocol" means the acceptance testing protocols for the Acceptance Tests, including any acceptance criteria notified by the Purchaser to the Contractor.

"Third Party" means any party other than the Purchaser or the Contractor.

"Training Services" the Services identified as such in the Statement of Work.

"Use" means, in relation to any product or service, any use whatsoever of the whole or any part of such product or service in each case for purposes of conducting Purchaser's business and/or Purchaser Purposes.

3. The Services

- 3.1 In consideration of the payment of the Charges, the Contractor shall supply and deliver and/or, where applicable, host and allow Purchaser to use the Managed Service.
- 3.2 In performing its obligations under this Contract the Contractor shall at all times comply with the reasonable directions of the Purchaser.
- 3.3 During the term of this Contract, the Contractor shall cooperate with, and provide reasonable assistance to, the Purchaser, and any contractor or supplier engaged by or on behalf of the Purchaser, in connection with the construction, commissioning, testing and operation of the Managed Service.

4. Service Levels

- 4.1 The Contractor shall ensure that during the Service Term:
 - a) the Services are provided in accordance with the Service Levels; and

b) the Managed Service will be Available as determined in accordance with the Statement of Work.

4.2 In the event of a breach of Clause 4.1, the Contractor shall, at the request of the Purchaser and without prejudice to the Purchaser's other rights and remedies, arrange all such additional resources as are reasonably necessary to correct the said failure as early as practicable thereafter.

4.3 Purchaser shall permit the Contractor such access to such parts of the Managed Service as are hosted at any Premises as is reasonably required for the Contractor to comply with its obligations under Clauses 4.1 and 4.2, provided that any access to the Managed Service during Purchaser's normal business hours shall be subject to the Purchaser's prior consent.

5. Service Credits

5.1 If the Contractor has breached Clause 4.1 then the Contractor shall, without prejudice to any other rights and remedies of the Purchaser pay Purchaser the Service Credits accruing in respect of that breach.

5.2 No later than ten (10) Business Days after the end of each Service Reporting Period ending during the Service Term the Contractor shall prepare and deliver to the Purchaser a report (in this Clause 5 each a "Service Level Report") by email or through a browser portal or other means reasonably acceptable to the Purchaser setting out:

a) details of compliance with the Service Levels in that Service Reporting Period (including details of the reason for any non-compliance);

b) a calculation of the Service Credits accruing in that Service Reporting Period; and

c) details of all Faults reported to the Contractor during that Service Reporting Period.

5.3 Sums payable under this Clause 5 shall become due thirty (30) days after the issue of the relevant Service Level Report under Clause 5.2. All sums falling due under this Clause 5 that have not previously been set-off against an invoice raised by the Contractor under this Contract (in this Clause 5.3 the "Unrecouped Service Credits") shall be set off against and shown as a deduction of the amount payable (before calculation of Value Added Tax) in the next invoice raised by the Contractor under this Contract (provided that the amount due under that invoice as a result of the deduction of Unrecouped Service Credits shall not be less than zero). After the date of termination or expiry of this Contract Purchaser may invoice the Contractor for an amount equal to any the then current Unrecouped Service Credits plus VAT (if applicable). The Contractor will pay that invoice in cleared funds no later than thirty (30) days after its receipt of it (such date being the relevant due date for payment for the purpose of Clause 5.9 (Payment) of the Conditions

6. Implementation Plan

6.1 The Contractor shall perform its obligations under this Contract on or before the relevant dates set out in the Implementation Plan, and otherwise in compliance with the Implementation Plan.

6.2 If the Contractor fails to fulfil an obligation incumbent upon it under this Contract by the relevant date specified in the then current Implementation Plan, then the Contractor shall arrange all such additional resources as are necessary to fulfil the

said obligation as soon as practicable thereafter at no additional charge to the Purchaser.

6.3 If:

- a) in accordance with the Implementation Plan as a direct consequence of a failure by the Purchaser (or a third party supplier to the Purchaser) to perform a Purchaser Responsibility on or before the relevant date set out in the Implementation Plan (other than to the extent caused by a preceding breach of this Contract by the Contractor) (in this Clause 6.3 each a "Purchaser Delay Event"); and
- b) the Contractor has promptly served a written notice on Purchaser setting out details of that Purchaser Delay Event and referring to this Clause 6.3, then:
- c) the Parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay; and
- d) the Parties shall agree (such agreement not to be unreasonably withheld or delayed by either Party) a reasonable extension of any subsequent dates set out in the Implementation Plan that are directly impacted by the Purchaser Delay Event, such extension having regard to the delay caused by the Purchaser Delay Event, the related dependencies set out in the Implementation Plan, and the consequences of any delay upon Purchaser.

6.4 If the Contractor is prevented or delayed from carrying out its obligations under this Contract in accordance with the Implementation Plan by reason of any event of Force Majeure then provided the Contractor has complied with the provisions of Clause 24 (Force Majeure) of the Conditions :

- a) the Parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay; and
- b) the Parties shall agree (such agreement not to be unreasonably withheld or delayed by either Party) a reasonable extension of any subsequent dates set out in the Implementation Plan that are directly impacted by the event of Force Majeure, such extension having regard to the delay caused by the Force Majeure Event, the related dependencies set out in the Implementation Plan and the consequences of any delay upon Purchaser.

6.5 In the event that the Parties cannot agree an amendment to the Implementation Plan pursuant to Clauses 6.3 or 6.4 then the provisions of Clause 32 (Dispute Resolution Procedure) of the Conditions shall apply.

7. Implementation Environment

7.1 In performing the Services at the Premises or in relation to any Purchaser Property the Contractor shall at all times:

- a) comply with all Law;
- b) leave any Premises and Purchaser Property clean and in a safe and workmanlike condition to the Purchaser's reasonable satisfaction.

7.2 If the Services include the installation or commissioning of all or part of the Managed Service at a Premises or upon any Purchaser Property then, following such installation or commissioning, the Contractor shall reinstate the Premises or

Purchaser Property to the condition prevailing at the date on which such installation commenced, subject to any changes undertaken by the Contractor and agreed by the Purchaser for the installation or commissioning of the Managed Service (including those changes that the Contractor is obliged to implement under this Contract).

8. Software and IPRs

- 8.1 The Purchaser acknowledges and agrees that, as between the parties, the Contractor and/or its licensors own all Intellectual Property Rights in all materials connected with the Managed Service and in any material developed or produced in connection with this agreement by the Contractor, its officers, employees, subcontractors or agents.
- 8.2 The Purchaser shall own and retain all rights, title and interest in and to the Purchaser Data. The Contractor shall have no rights to access, use or modify the Purchaser Data unless it has the prior written consent of the Purchaser.
- 8.3 The Purchaser shall own and retain all rights, title and interest in and to all bespoke deliverables and all other reports, documents, materials, techniques, ideas, concepts, trade marks, know-how, algorithms, software, computer code, routines or subroutines, specifications, plans, notes, drawings, designs, pictures, images, text, audiovisual works, inventions, data, information and other items, expressions, works of authorship or work product of any kind that are:
 - a) authored, produced, created, conceived, collected, developed, discovered or made by the Contractor on a bespoke basis for the Purchaser, including any and all Intellectual Property Rights therein (collectively, "Work Product"); and
 - b) provided by any supplier (other than the Contractor), consultant, contractor, advisor or any other third party engaged by the Purchaser in relation to the Services, the Premises Site or its business requirements.
- 8.4 To the extent applicable, the Purchaser shall be deemed to be the "author" of all Work Product. The Contractor hereby waives any and all moral rights (including any rights of attribution) in and to the Work Product. To the extent that any Intellectual Property Rights in the Work Product do not automatically vest in the Purchaser, the Contractor hereby assigns absolutely to the Purchaser all rights, title and interest that the Contractor may have or may hereafter acquire in all Work Product, including all Intellectual Property Rights therein.
- 8.5 At the Purchaser's cost and expense, the Contractor shall execute all documents and take all actions necessary or reasonably requested by the Purchaser to document, obtain, maintain, perfect or assign its rights to the Work Product. The Contractor shall also cause its employees, agents and subcontractors to execute such documents and take such actions as described above. The Contractor will not challenge the validity of Contractor's assignment of rights in the Work Product to Purchaser in accordance with clause 18.4. All such Work Product will be deemed to be the confidential, proprietary and trade secret information of the Purchaser under and subject to the provisions of this clause 8.
- 8.6 The Contractor hereby grants to the Purchaser a perpetual, irrevocable, sub-licensable, non-exclusive, royalty-free, worldwide license to Use all of the Contractor's Intellectual Property Rights as incorporated by the Contractor into the Work Product solely in connection with the Purchaser's use of the Managed Service.

- 8.7 The Purchaser hereby grants to the Contractor a perpetual (during the term of this agreement), revocable, non-transferrable, non-exclusive, royalty-free, limited licence to use, copy, modify, improve, enhance and make derivative works of the Purchaser's Intellectual
- 8.8 Property Rights and the Work Product solely to the extent necessary to provide the Services and otherwise comply with its obligations under this agreement.
- 8.9 The Contractor will not disclose to the Purchaser or use in its work any trade secrets or confidential information of a third party which the Contractor is not lawfully entitled to disclose or use in such manner. The Contractor will not use any equipment, supplies, facilities, computer code, work product, inventions or materials of any other third party (Third-Party Materials) in any Work Product or in the Contractor's performance under this agreement unless:
- a) the Contractor has the full right and authority to do so without violating any rights of any third party;
 - b) the Contractor has obtained all necessary rights to enable it to perform its obligations under this agreement and grant the rights granted herein and to permit the Purchaser to utilise the Third-Party Materials as contemplated under this agreement at no additional cost or expense to the Purchaser;
 - c) the Purchaser's use of such Third-Party Materials will not restrict or impair in any manner its use of the Work Products or subject the Purchaser to any obligation or liability; and
 - d) such Third-Party Materials are specifically identified to the Purchaser in writing in advance of any use and the Purchaser has agreed in writing to such use.
- 8.10 The Contractor hereby grants to the Purchaser a perpetual, irrevocable, sub-licensable, non-exclusive, royalty-free, worldwide license to use, exploit, sell, copy, reproduce, manufacture, distribute, export, publicly display, publicly perform, sub-license, modify, improve, enhance and make derivative works of such Third-Party Materials as are incorporated in the Work Product solely in connection with the Purchaser's use of the Work Products.
- 8.11 The Purchaser reserves all rights not expressly granted herein.

9. Acceptance

- 9.1 The Managed Service shall be subject to acceptance testing in accordance with the Implementation Plan and this Clause 9.
- 9.2 The Contractor shall submit the Managed Service and the Testing Protocols to the Purchaser by serving a written notice on Purchaser (each a "Ready for Acceptance Tests Notice").
- 9.3 Following receipt by the Purchaser of a Ready for Acceptance Tests Notice, the Parties shall agree the date on which the Acceptance Tests will be performed (such agreement not to be unreasonably withheld or delayed), upon which date the Contractor shall, in the presence of the Purchaser, conduct the Acceptance Tests. The Contractor shall comply with the reasonable directions of the Purchaser in relation to the carrying out of the Acceptance Tests.

9.4 The Contractor will provide Purchaser with a written report of the Acceptance Tests within two (2) Business Days of the completion of the Acceptance Tests. Within ten (10) Business Days of receipt of the report, the Purchaser shall, subject to Clause 9.3, by notice in writing to the Contractor either:

- a) *certify that the Managed Service has been "Accepted" by the Purchaser (such acceptance not to be unreasonably withheld or delayed); or*
- b) *reject the Managed Service (a "Failure Report"), in which case the Contractor shall, at its own cost and expense, promptly rectify the Fault and re-submit the Managed Service for Acceptance Tests in accordance with this Clause 9.4, and*

if no such notice is received in such period then the relevant Candidate for Acceptance will be deemed to have been Accepted.

9.5 In respect of the Acceptance Tests, the Purchaser shall provide the Contractor with reasonable cooperation and assistance and comply with the relevant Testing Protocol.

9.6 If:

- a) Purchaser has issued more than two (2) Failure Reports in relation to the Managed Service under Clause 9.4; or
- b) the Managed Service has not been Accepted by the date twenty (20) Business Days after the relevant Planned Acceptance Date; or
- c) the Fault Free for Thirty Days Date has not occurred by a date ninety (90) days after the final Acceptance;

the Purchaser shall have the right to terminate this Contract with immediate effect by way of a written notice served on the Contractor referencing this Clause 9.6.

9.7 The Contractor shall submit any further information or other information, drawings, data and documents (including calculations) that Purchaser reasonably requires, in order to evaluate the Managed Service in accordance with this Clause 9. If the Contractor does not submit any such information, data and documents, the Purchaser shall be entitled to reject the Managed Service.

10. Liquidated damages

10.1 If the final Acceptance Date is after the final Planned Acceptance Date then the Contractor shall pay to the Purchaser a sum equal to 1% of the total Implementation Charges for each week (or part thereof) elapsing from the final Planned Acceptance Date until the actual final Acceptance Date, provided that the amount payable by the Contractor under this Clause 10 shall not exceed a sum equal to 12% of the total Implementation Charges.

10.2 All sums payable under this Clause 10 that have not previously withheld in accordance with Clause 15.4 (Default) of the Conditions (in this Clause 10.2 the "Unrecouped Deductions") shall be set off against and shown as a deduction of the amount payable (before calculation of Value Added Tax) in the next invoice raised by the Contractor under this Contract (provided that the amount due under that invoice as a result of the deduction of Unrecouped Deductions shall not be less than zero). After the date of termination or expiry of this Contract Purchaser may invoice

the Contractor for an amount equal to the then current Unrecouped Deductions plus VAT if applicable. The Contractor shall pay such invoice in cleared funds within thirty (30) days after its receipt of the same (such date being the relevant due date for the purpose of Clause 5.9 (Payment) of the Conditions .

11. Updates

- 11.1 If, as part of the Services, the Contractor installs or deploys an update of or patch to, an item of software or hardware (in this Clause 11.1, each an "Update") used in the delivery of the Managed Service then the Contractor shall ensure that the Update is compatible with the rest of the Managed Service.
- 11.2 Without prejudice to Clause 11.1, the foregoing, the Contractor shall ensure that the implementation of an Update will not cause a loss of functionality, or a material degradation in performance relative to the Service Levels, when compared against the operation of the Managed Service prior to implementation of the Update and will not require any alteration to any software or hardware that interfaces to the Managed Service.
- 11.3 Where during the Service Term there is a Fault then the Contractor shall provide all required assistance, information and advice to the Purchaser in relation to that Fault in accordance with its obligations under this Contract and the Service Levels.

12. Minimising Disruption

- 12.1 If it appears likely to the Contractor that any planned works or activities to be carried out by the Contractor under this Contract will necessitate interruption to or restriction of the Managed Service and/or require access to any Purchaser Property, then the Contractor shall notify Purchaser not less than fourteen (14) days prior to such planned works or activities.
- 12.2 In the event of any unplanned works or activities to be carried out by the Contractor as a result of a Managed Service Fault or otherwise, then the Contractor shall notify Purchaser as soon as possible of the nature of such works or activities and the likely disruption or restriction of the Managed Service.
- 12.3 The Contractor shall perform the Services:
 - a) so as not to prejudice the health or safety of, or unreasonably interfere with the proper performance of the duties of the Purchaser, employees and third parties, or the availability of any Purchaser Property, or otherwise expose Purchaser to liability under the Health and Safety at Work etc. Act 1974 or the Transport and Works Act 1992 or any other legislation relating to health and safety;
 - b) so as to maximise the availability and uptime of the Managed Service; and
 - c) in a safe manner and so that the Managed Service is capable of being operated in a safe and efficient manner free from any unreasonable risk to the health and wellbeing of persons using or maintaining it and free from any reasonably avoidable risk of pollution, nuisance, interference or hazard.
- 12.4 Where it is not practical to correct a Fault immediately, but a temporary workaround repair is possible, then the Contractor will, without prejudice to its obligations to permanently rectify Faults:

- a) propose that temporary workaround / repair to the Purchaser; and
- b) if the Purchaser agrees, implement that temporary workaround/repair.

13. Additional Options

- 13.1 At the request of the Purchaser, the Contractor shall provide input into the Purchaser's preparation of Additional Services Requests, including a reasonable estimate of the number of Person Days and/or Person Hours required to complete the task to be set out in the Additional Services Request.
- 13.2 On receipt of an Additional Services Request unilaterally issued by the Purchaser, and in consideration of payments under Clause 14.2 (Additional Option Charges), the Contractor will devote the number of Person Days or Person Hours (as appropriate) set out in the Additional Services Request towards the task(s) set out in the Additional Services Request on dates to be agreed (such agreement not to be unreasonably withheld or delayed).
- 13.3 The Contractor will on request provide Purchaser with reasonable progress reports in relation to the delivery of Person Days under an Additional Services Request. Purchaser may terminate an Additional Services Request by a minimum of five (5) days' written notice. Following such termination the Contractor's obligations under this Clause 13 in relation to the terminated Additional Services shall cease.

14. Charges For Additional Services

- 14.1 To the extent that this Clause 14 (Charges) conflicts with Clause 5 of the Conditions , this Clause 14 (Charges) takes precedence.
- 14.2 In consideration for the supply of Additional Services the Purchaser will pay to the Contractor:
 - a) the relevant Daily Rate in respect of each Person Day delivered by the Contractor to the Purchaser in response to an Additional Services Request prior to the date of its termination;
 - b) the relevant Hourly Rate in respect of each Person Hour delivered by the Contractor to the Purchaser in response to an Additional Services Request (other than to the extent that Person Hour was billed as part of a Person Day) prior to the date of its termination; and
 - c) an amount equivalent to the reasonable travel and subsistence expenses incurred by the Contractor in providing the Additional Services (subject always to prior written approval by the Purchaser).
- 14.3 The Contractor may invoice Purchaser in respect of Additional Services monthly in arrears.

15. Warranties

- 15.1 To the extent that this Clause 15 conflicts with any terms of the Conditions , this Clause 15 takes precedence.
- 15.2 The Contractor hereby warrants, represents and undertakes to the Purchaser that:
 - a) at the final Acceptance Date and during the Service Term the Managed Service shall operate and function in all respects consistently with the Adjusted Specification, the Contractor's own published specifications and any other requirements set out in the Contract;

- b) the Contractor has the full capacity and authority to enter into this Contract and to grant the licences referred to in Clause 8 and that its performance of its obligations under this Contract will not cause it to breach any other agreement to which it is a party;
- c) the Purchaser's Use of the Managed Service in accordance with this Contract will not infringe any IPR;
- d) the Services shall be supplied and rendered by, and the Contractor's obligations under this Contract carried out:
 - I. by appropriately experienced, qualified and trained personnel;
 - II. with all due skill, care and diligence; and
 - III. in compliance with all Law;
- e) the Training Services shall be provided in accordance with the Implementation Plan and shall be sufficient to enable reasonably skilled and experienced members of the Purchaser's staff to use the Managed Service for the Purchaser Purposes;
- f) the Contractor shall discharge its obligations hereunder in accordance with Good Industry Practice and its own established internal procedures;
- g) as at the date of delivery to the Purchaser hereunder, all outputs of the Managed Service provided to the Purchaser will be free from any then documented computer viruses (or other malicious code);
- h) all statements made in its Tender Documents, and all statements made by or on behalf of the Contractor to the Purchaser in relation to the subject matter of the Tender Documents between the date of the Tender Documents and the date of execution of this Contract are (in each case) true and accurate in all material respects; and
- i) it has not, and will not, transfer or purport to transfer the IPRs comprised in or protecting the Work Product or Purchaser Data to any Third Party; and
- j) title to each IPR comprised in or protecting the Work Product will transfer to the Purchaser on the later of the date of this Contract or the date of creation of that IPR.

15.3 The Parties hereby exclude from this Contract all implied warranties, implied conditions, implied licences and implied terms to the fullest extent permitted by law.

16. Liability

16.1 To the extent that this Clause 16 conflicts with Clause 11 (Limitation of Liability) of the Conditions , this Clause 16 takes precedence.

16.2 Nothing in this Contract excludes or limits the liability of one Party to the other Party for:

- a) death or personal injury; or
- b) any breach of any warranties/conditions of title implied by statute or law; or
- c) breach of Clause 20 (Confidentiality) of the Conditions ; or
- d) infringement of the other Party's IPRs; or

- e) loss or damage to land or buildings; or
 - f) fraudulent misrepresentation.
- 16.3 Nothing in this Clause 16 excludes or limits the Contractor's liability under:
- a) Clause 18 (IPR Indemnity);
 - b) Clause 21 (Data Protection); or
 - c) Clause 20.2 (Refund).
- 16.4 Subject always to Clauses 16.2 and 16.3, the liability of each Party under or in relation to the subject matter of this Contract shall be subject to the following financial limits:
- a) the aggregate liability of the Purchaser other than liability to pay the Charges or interest thereon under Clause 14 (Charges) shall in no event exceed the amount of Charges; and
 - b) the aggregate liability of the Contractor to the Purchaser under this Contract or in relation to the subject matter of this Contract shall not exceed the greater of:
 - I. 3 times the annual Charges; or
 - II. 2 times the sum of the Implementation Charges.
- 16.5 For the avoidance of doubt, payments under Clause 5 (Service Credits) and/or any retention of payments by the Purchaser in terms of this Contract shall not be deemed to be a payment in respect of liability by the Contractor, and shall not be used in calculating whether the caps on liability above have been reached or exceeded. For the avoidance of doubt, payments under Clause 10 (Liquidated Damages) shall be deemed to be a payment in respect of liability by the Contractor, and shall be used in calculating whether the caps on liability above have been reached or exceeded.
- 16.6 Subject always to Clauses 16.2 and 16.3, in no event shall either Party be liable to the other for any indirect or consequential losses, including loss of profit, loss of goodwill, or loss of anticipated savings.
- 16.7 The provisions of Clause 16.6 shall not limit or exclude the right of either Party to claim from the other party for additional operational and administrative costs and expenses resulting from the Default of the other Party.

17. IPR Indemnity

- 17.1 To the extent that this Clause 17 conflicts with the indemnity granted in Clause 13 (Intellectual property rights) of the Conditions , this Clause 17 takes precedence.
- 17.2 The Contractor shall indemnify the Purchaser against all claims, loss, liability, costs and/or expenses (including cost and expenses defending any relevant claim) suffered or incurred by the Purchaser, its agents employees and contractors ("Indemnified Parties"), in each case arising from any claim, demand or action that alleges that:
- a) use or possession of the Work Product and/ or the Managed Service by an Indemnified Party infringes an IPR; and/ or
 - b) delivery or receipt of the Services infringes an IPR.

- 17.3 The foregoing indemnity shall not apply to the extent that such claim, loss, liability, cost or expense resulted directly from:
- a) Purchaser's failure to properly observe its obligations under this Contract in relation to its use of the Managed Service; or
 - b) any modification carried out by or on behalf of the Purchaser to any item supplied by the Contractor under this Contract if such modification is not authorised by the Contractor in writing.
- 17.4 Each Party shall promptly notify the other Party if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any IPRs to which Clause 17.2 may apply.
- 17.5 Provided that it undertakes the defence of the claim with reasonable diligence and complies with its indemnity obligations under this Clause 17, the Contractor shall be entitled exclusively to conduct any litigation arising therefrom and all negotiations in connection therewith.
- 17.6 The Purchaser shall:
- a) at the request and expense of the Contractor, afford to the Contractor all reasonable assistance for the purpose of contesting any such claim; and
 - b) not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any IPR to which Clause 17.2 may apply.
- 17.7 If a claim or demand is made or action brought to which Clause 17.2 may apply, or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may at its own expense and within a reasonable time either:
- a) modify the Managed Service and/or the Documentation or the Services without reducing the performance and functionality of the same or causing any adverse effect to the operations of any Indemnified Party, or substitute an alternative software or services of equivalent performance and functionality for any or all of the Managed Service or the Services, so as to avoid the infringement or the alleged infringement; or
 - b) procure any licence(s) required to avoid such claim demand or action.
- 17.8 If a claim or demand is made or action brought to which Clause 17.2 applies and the measures set out in Clause 17.7 have not been taken by the Purchaser within twenty (20) Business Days of the relevant, claim, then:
- a) the Purchaser shall be entitled to terminate this Contract with immediate effect by way of a written notice served on the Contractor referencing this Clause 17.8; and
 - b) the Contractor shall be liable for the value of a replacement for the Managed Service and the Services or part thereof together with additional costs incurred in implementing and maintaining such replacements.

18. Term and Termination

- 18.1 This Clause 18 supplements the provisions of Clause 16 (Termination) of the Conditions and where they conflict this Clause 18 (Term and Termination) takes precedence.

18.2 The Purchaser may terminate this Contract as set out in Clause 9.6 (Non Acceptance Termination Right) and/or Clause 17.8 (Purchaser Right to Terminate).

19. Consequences of Termination

19.1 To the extent that this Clause conflicts with Clause 17 (Consequences of Termination) of the Conditions , this Clause takes precedence.

19.2 In the event of any termination of this Contract by the Purchaser prior to the Fault Free for Thirty Days Date, then the Purchaser shall be entitled, without prejudice to the Parties' other rights and remedies, to a full refund of all Charges paid by the Purchaser to the Contractor in connection with the Managed Service.

19.3 In the event of termination of this Contract the Contractor shall within thirty (30) Business Days of such termination reimburse to the Purchaser any Charges previously paid by the Purchaser hereunder and which relate to the period following such termination (calculated pro rata on a daily basis), plus any Value Added Tax previously paid by the Purchaser in relation thereto.

19.4 Following the termination or expiry of this Contract the provisions of Clauses 2, 5, 7.2, 8, 10.2 and Clauses 14 to 23 (inclusive) shall survive and shall continue to bind the Parties together with any other provisions which, expressly or by implication, are intended to continue beyond termination of this Contract.

20. Documentation

20.1 The Contractor shall deliver the Documentation in accordance with the Implementation Plan or (where no date for doing so is set out in the Implementation Plan) no later than the final Acceptance Date.

20.2 The Contractor shall ensure that the Documentation supplied to the Purchaser under this Contract in relation to the Managed Service (or part of the Managed Service) will comprise a complete set of operating manuals for the Managed Service (and each component of the Managed Service).

20.3 The Contractor shall make, and retain during the Service Term and for a period of two (2) years thereafter, reasonable records in relation to the Implementation Services performed by the Contractor in accordance with Good Industry Practice. The Contractor will maintain reasonable technical records (as opposed to financial records) in relation to its performance of the Services including a detailed record of the rectification of Faults. In each case Purchaser will be allowed to inspect and audit and/or take copies (at no additional cost) of those records following reasonable notice given to the Contractor.

21. Personal Data

21.1 To the extent that this Clause 21 (Personal Data) conflicts with Clause 21 of the Conditions , this Clause 21 (Personal Data) takes precedence.

21.2 Each Party shall comply with its respective obligations under applicable Data Protection Legislation. In respect of the Purchaser Data, Purchaser shall be the data controller and the Contractor shall be a data processor.

21.3 The Contractor shall (and shall ensure that its Contract Workers and agents shall):

- a) guarantee that it will implement and maintain appropriate technical and organisational measures and safeguards for protection of personal data, to ensure the rights of data subjects are protected and to ensure that

processing will meet the requirements of the General Data Protection Regulation;

- b) ensure that all employees and subcontractors authorised to process personal data are subject to binding confidentiality obligations in respect of that personal data;
- c) assist the Purchaser, using appropriate technical and organisational measures, to respond to requests from data subjects;
- d) assist the Purchaser in ensuring compliance with its security, data breach notification, impact assessment and consultation obligations under Data Protection Legislation, taking into account the nature of processing and information available to the data processor;
- e) at the Purchaser's election, delete or return all personal data and existing copies to the Purchaser upon termination or expiry of this agreement (unless Data Protection Legislation requires the data processor to store that personal data);
- f) make available to the Purchaser all information necessary, and allow for and contribute to audits and inspections conducted by the Purchaser or the Purchaser's mandated auditor, to demonstrate the data processor's compliance with its obligations under this agreement;
- g) immediately inform the Purchaser if, in the data processor's opinion, any instruction given by the Purchaser to the data processor infringes Data Protection Legislation;
- h) maintain a written record of all processing activities under its responsibility and of all categories of processing activities carried out on behalf of the Purchaser, that satisfies the requirements of the Data Protection Legislation;
- i) cooperate on request with any relevant European Union or member state supervisory authority;
- j) notify the Purchaser without undue delay after becoming aware of a breach of personal data;
- k) take any further action and execute any further documents and amendments to this agreement as may, in the Purchaser's reasonable opinion, be required to comply with Data Protection Legislation;
- l) only process personal data in accordance with the Purchaser's documented instructions consistent with and in the scope of the Agreement (unless required to do so by applicable law, in which case the data processor shall inform the Purchaser of that legal requirement unless prohibited by law on important grounds of public interest); and
- m) only engage another processor to carry out specific processing activities with prior specific or general written authorisation of the Purchaser, and only where that other processor is subject to a written contract imposing on that other processor the same data protection obligations as are imposed on the data processor in this Contract.

21.4 The technical and organisational measures referred to in Clause 21.3(a) above shall ensure a level of security appropriate to the risk, taking into account:

- a) the state of the art, the costs of implementation;
 - b) the nature, scope, context and purposes of processing and risks of varying likelihood; and
 - c) severity for the rights and freedoms of individuals.
- 21.5 The technical and organisational measures referred to in Clause 21.3(a) above shall include, as appropriate:
- a) pseudonymisation and encryption of personal data;
 - b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
 - d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 21.6 The Contractor shall complete Schedule 7 to include details of the data to be processed in accordance with Article 28(3) of the GDPR including at a minimum the subject-matter, duration, nature and purpose of the processing and categories of data subject.

22. Business continuity

- 22.1 The Contractor will put and maintain in place a business continuity plan and related procedures which are compliant with Good Industry Practice and in any event suitable to allow it to prevent or minimise the adverse effect on its performance of this Contract of any circumstances beyond its reasonable control and otherwise to maximise the continuity of the Services (the Contractor's "Business Continuity Arrangements").
- 22.2 The Contractor will promptly implement its Business Continuity Arrangements in accordance with their terms, and to this end will ensure that all members of the Contractor's staff are at all times aware of and understand its Business Continuity Arrangements and their role in implementing them.
- 22.3 Upon request by the Purchaser the Contractor will provide Purchaser with a copy of any or all of its then current Business Continuity Arrangements, together with any such additional information as Purchaser requests to assist it in understanding the Contractor's Business Continuity Arrangements and/or assessing their compliance with this Clause.
- 22.4 The Contractor will carry out a full test implementation of its Business Continuity Arrangements at least once every twelve (12) months (each a "Test Implementation"). The Contractor will inform Purchaser in writing of the planned date or dates for each Test Implementation and will provide Purchaser with a written report on each Test Implementation within thirty (30) days of the date on which it was completed.

23. Purchaser right to appoint a Vendor Manager

- 23.1 In addition to the rights of the Purchaser under Clause 25 (Assignment and Sub-contracting) of the Conditions , the Purchaser shall be entitled, upon notice in writing to the Contractor, to appoint a third party to act as Purchaser's Vendor

Manager (the "Vendor Manager") in respect of the receipt and management of, and exercise of the Purchaser's rights in connection with, the Services.

- 23.2 Where Purchaser appoints a Vendor Manager, the following provisions shall apply:
- a) subject to Clause 23.2(b), the Contractor shall observe, and shall procure that its employees, contractors and representatives observe, all reasonable instructions of the Vendor Manager given in accordance with this Contract; and
 - b) the Vendor Manager shall have no authority to terminate this Contract, make any claim for payment (under indemnity or otherwise), raise any claim, suit or action against the Contractor, instruct a change to this Contract under Clause 18 (Variations to the Contract) of the Conditions, amend this Contract, nor to relieve the Contractor or any of its obligations under this Contract.

24. Exit Assistance

- 24.1 The Parties shall use all reasonable endeavours to agree a draft exit plan for the activities necessary to facilitate the orderly transfer of the Managed Service to the Purchaser or a New Contractor. Unless and until the parties agree a final version, the remaining provisions of this Clause 24 will serve as the exit plan. On the serving of any notice of termination of this Contract or, if earlier, on its termination, the Supplier shall comply with the exit plan for the period of up to 12 months as nominated by the Purchaser.
- 24.2 The objectives of the exit services to be provided by the Contractor are:
- a) to maintain continuity of supply and minimise any disruption to the Purchaser's operations; and
 - b) to enable a smooth transfer of responsibility for the ongoing provision of the Managed Service from the Contractor to the Purchaser or to a New Contractor.
 - c) The Contractor must perform all exit services in a manner that is consistent with and calculated to achieve these objectives.
- 24.3 The Contractor must provide the Purchaser and the New Contractor with all information reasonably required to assume responsibility for the ongoing provision of the Managed Service, including:
- a) details of all tools, equipment, software and other materials used by the Contractor to provide the Managed Service;
 - b) up-to-date and complete records of all Services provided by the Contractor;
 - c) full details of all outstanding, incomplete or ongoing Services; and
 - d) a copy of all Purchaser Data in the Contractor's possession or control.
- 24.4 All information to be provided by the Contractor as part of the exit services will be supplied in a format and at a time specified by the Purchaser. If the Purchaser does not specify a format, the information must be supplied in a common non-proprietary format.
- 24.5 The Contractor will make available appropriate personnel to:

- a) attend handover meetings with the Purchaser and/or the New Contractor (as applicable);
 - b) answer all reasonable questions from the Purchaser and/or the New Contractor about the provision of the Managed Service; and
 - c) explain any documentation and other materials provided by the Contractor in connection with the exit process.
- 24.6 Notwithstanding the foregoing, the Contractor shall not be required, as part of any exit plan, to provide any Confidential information or make available any of its Intellectual Property Rights to any New Contractor which is a direct competitor of the Contractor.
- 24.7 The Contractor will provide all reasonable assistance requested by the Purchaser for the purposes of migrating the Purchaser Data from the Contractor's systems onto the systems of the Purchaser or the New Contractor (as applicable). Any migration may be carried out in stages in accordance with a project plan and timetable specified by the Purchaser.
- 24.8 The Contractor shall be entitled to charge for the reasonable and demonstrable costs of any assistance provided pursuant to this Clause 24 which cannot be fulfilled within the resources allocated to the Managed Service as an Additional Service Request in accordance with Clause 14.

SCHEDULE 8
DATA PROTECTION

Data Processing provision as required by Article 28(3) GDPR.

This includes certain details of the Processing of Personal Data in connection with the Services.

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are [set out in the Contract]

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Authority

[The obligations and rights of the Authority as the Data Controller are set out in the Contract]