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TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES TO LEEDS TRINITY UNIVERSITY

THIS AGREEMENT dated _____ is made BETWEEN:

- (1) **LEEDS TRINITY UNIVERSITY**, whose address is Brownberrie Lane, Horsforth, Leeds LS18 5HD (the “University”); and
- (2) **[INSERT NAME]** whose address is **[INSERT ADDRESS]** (the “Supplier”).

The aforesaid organisations are hereinafter referred to individually as “Party” and collectively as “the Parties”

WHEREAS

- A. The Supplier has been selected by the University to provide Services as detailed in the Tender Document and/or the Purchase Order (the “Services”), in accordance with the terms and conditions outlined herein.
- B. The Supplier has agreed to supply to the University, and the University shall receive and pay for, the Services subject to the terms and conditions as set out herein.
- C. The parties now wish to define their rights and obligations with respect to the Suppliers’ performance for the Services.

1. **INTERPRETATION**

1.1. In this Agreement the following expressions shall have the following meanings:

“Agreement Price”	means the price/payments, which shall be considered as exclusive of any applicable VAT, that shall be payable to the Supplier by the University under the Agreement for the full and proper performance by the Supplier of its obligations under the Agreement;
“Agreement”	means these terms and conditions, all tender documentation including any schedules and the Purchase Order;
“Background Intellectual Property”	means any Intellectual Property Rights owned or controlled by either party to this Agreement prior to the Commencement Date or developed by a party outside of this Contract at any time;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or another statutory bank holiday in England and Wales;
“Commencement Date”	means the date specified in the Agreement;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Agreement including any procurement process which is: a) Personal Data or Sensitive Personal Data; and/or b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored);

“Data Protection Legislation”	means the Data Protection Act 2018 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;
“Dispute Resolution Procedure”	means the process for resolving disputes as set out in Clause 16.3;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010;
“FOIA”	means the Freedom of Information Act 2000;
“Force Majeure Event”	means any event beyond the reasonable control of the Party in question to include, without limitation: a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Agreement; b) acts of terrorism; c) flood, storm or other natural disasters; d) fire; e) pandemic; f) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; g) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; h) compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen; i) industrial action which affects the ability of the Supplier to supply the to provide the Services.
“Foreground Intellectual Property”	means any Intellectual Property that arises or is obtained or developed by, or by a Sub-contractor on behalf of, either Party in respect of provision of the Services;
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier and/or service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Agreement; including in accordance with any codes of practice published by relevant trade associations;

“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
“Key Performance Indicators (KPIs)”	means those indicators of performance detailed in the Service Level Agreement;
“Losses”	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, Agreement or at common law;
“Party”	means the University or the Supplier as appropriate and Parties means both the University and the Supplier;
“Personal Data”	means personal data as defined in the Data Protection Legislation;
“Policies”	means the policies, rules and procedures of the University as notified to the Supplier from time to time;
“Pricing Schedule”	means the method mutually agreed by the Supplier and the University for calculating the Agreement price;
“Process”	has the meaning given to it under the Data Protection Legislation and, for the purposes of this Agreement, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly;
“Purchase Order”	means the purchase order raised using the University’s finance system and issued to the Supplier in accordance with this Agreement;
“Service Level Agreement”	means the document set out in the tender document or the Tender Response Document (where applicable) as amended and/or updated in accordance with this Agreement;
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Agreement and/or Purchase Order. If no date is specified in the Purchase Order this date shall be the Commencement Date;
“Services”	means the services purchased by the University hereunder, as set out in the tender documentation and/or the Purchase Order;
“Specification”	means the document titled Part 6. Specification (where applicable) of the tender document;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Agreement including any subcontractors and person employed or engaged by such subcontractors;
“Supplier”	means the supplier of Services to the University, as detailed in the Agreement;
“Tender Response Document”	means the document submitted by the Supplier in response to the tender, as amended and/or updated in accordance with this Agreement;

“Term”	means the period over which the University requires supply of the Services as detailed in the Agreement;
“University”	means Leeds Trinity University, Brownberrie Lane, Horsforth, Leeds, LS18 5HD;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any statute or order shall include any statutory extension, modification or reenactment, and any order, regulation, bylaw or other subordinate legislation.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Agreement to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Agreement.
- 1.5 References in this Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 The Supplier shall bear the cost of complying with its obligations under this Agreement.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the Contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the University’s requirements and any other part of this Agreement, such other part of this Agreement shall prevail.
- 1.11 Where a document is required under this Agreement, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the University to procure any course of action from any third party, this shall mean that the University shall use its reasonable endeavours to procure such course of action from that third party.

2. THE PROVISION OF THE SERVICES

- 2.1 The Supplier shall provide the Services under this Agreement:
 - 2.1.1 promptly and in any event within any time limits as may be set out in this Agreement;
 - 2.1.2 in accordance with all other provisions of this Agreement;
 - 2.1.3 using reasonable skill and care;
 - 2.1.4 in accordance with any quality assurance Standards as may be set out in the Specification, the Service Level Agreement including the KPIs and/or elsewhere in this Agreement;
 - 2.1.5 in accordance with all applicable laws;
 - 2.1.6 in accordance with good industry practice;
 - 2.1.7 in accordance with all University policies of which the Supplier is notified; and
 - 2.1.8 in a professional and courteous manner.
- 2.2 The Supplier shall promptly commence delivery of the Services on the Services Commencement Date.
- 2.3 The Supplier shall fully comply with its obligations set out in the Specification and Tender Response Document.
- 2.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Services Commencement Date and are maintained throughout the Term.
- 2.5 If there are any incidents that in any way relate to or involve the use of the outputs from the Services by the University, the Supplier shall cooperate fully with the University in relation to the University's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the University may have in this context in relation to the outputs from the Services.
- 2.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Services, the Supplier shall promptly provide the University with a copy of any such reports, notices, alerts or other communications.
- 2.7 Upon receipt of any such reports, notices, alerts or other communications issued pursuant to, the University shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 2.8 Subject to the Supplier providing the Services in accordance with this Agreement, the University will pay the Supplier for the Services in accordance with Clause 4.

- 2.9 The University shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 2.10 Each Party shall appoint and retain an agreement manager, who shall be the primary point of contact for the other Party in relation to matters arising from this Agreement. Should the agreement manager be replaced following commencement of this Agreement, the Party replacing the agreement manager shall promptly inform the other Party in writing of the name and contact details for the new agreement manager.

3 OPERATION OF THE SERVICES

- 3.1 The Services shall be provided at such University premises and at such other locations, as may be set out in the Specification and Tender Response Document, the Service Level Agreement including associated KPIs, the Purchase Order or as otherwise agreed by the Parties in writing.
- 3.2 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the University forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 3.3 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the University's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the University to help the University deal with any incident or accident relevant to the Services.
- 3.4 The Supplier shall, as reasonably required by the University, cooperate with any other service providers to the University and/or any other third parties as may be relevant in the provision of the Services.

4 PRICE AND PAYMENT

- 4.1 The Agreement Price shall be as stated in or calculated in accordance with the Pricing Schedule and shall be payable in any instalments specified therein. The Supplier shall submit to the University invoices as set out in the Pricing Schedule.
- 4.2 Unless otherwise stated in the Pricing Schedule the Agreement Price:
- 4.2.1 shall remain fixed during the Term; and
 - 4.2.2 is the entire price payable by the University to the Supplier in respect of the provision of the Services and includes, without limitation:
 - 4.2.2.1 any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Agreement, and any licence rights granted to the University; and

4.2.2.2 is the entire price payable by the University to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of staff.

- 4.3 No increase shall be made by the Supplier to the Agreement Price for any reason without the prior written consent of the University.
- 4.4 The Agreement Price shall be considered exclusive of VAT, which, if properly chargeable, the University shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 4.5 The University shall pay each undisputed invoice received within thirty (30) days of receipt of such invoice provided:
- 4.5.1 The invoice is served by email to: invoices@leedstrinity.ac.uk
- 4.5.2 The invoice quotes a current and full University purchase order number.
- 4.6 The University shall not be held liable for delays in payment should the Supplier's invoice be disputed or invalid by the Supplier's error or failure to comply with the University's invoicing instructions.
- 4.7 The University reserves the right to deduct any monies due to the Supplier from the University from any monies due to the University from the Supplier under this Agreement.

5 SUPPLIER STAFF

- 5.1 Subject to the requirements of this Agreement and any applicable Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Agreement.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Agreement. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.4 The University may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the University is acting reasonably in making such a request. Prior to making any such request the University shall raise with the Supplier the University's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The University shall be under no obligation to have such prior discussion should the University have concerns regarding safety.

6 SUPPLIER WARRANTIES

- 6.1 The Supplier hereby warrants and undertakes to the University that:
- 6.1.1 it shall ensure that all facilities used in the provision of the Services are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Agreement;
 - 6.1.2 where there is any instruction information, that accompany the Services, it shall provide a sufficient number of copies to the University and provide updated copies should the instruction information change at any time during the Term;
 - 6.1.3 it shall not make any significant changes to the Services without the prior written consent of the University, such consent not to be unreasonably withheld or delayed;
 - 6.1.4 any equipment it uses in the delivery of the Services shall comply with all relevant Law, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
 - 6.1.5 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Agreement;
 - 6.1.6 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
 - 6.1.7 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Agreement and/or under law and shall at all times comply with such quality controls and processes including any detailed in the Service Level Agreement and/or any associated KPIs;
 - 6.1.8 it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying the University in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
 - 6.1.9 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any law, the Supplier shall comply fully with such notification and/or approval requirements;
 - 6.1.10 on delivery of the Services by or on behalf of the University and use of the deliverables or of any other item or information supplied or made available to the University will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
 - 6.1.11 it will comply with all Law, Guidance and Policies in so far as is relevant to the provision of the Services;
 - 6.1.12 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Agreement using appropriately skilled, trained and experienced staff;

- 6.1.13 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 6.1.14 it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the University and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the premises and locations in accordance with this Agreement;
- 6.1.15 without prejudice to any specific notification requirements set out in this Agreement, it will promptly notify the University of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 6.1.16 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 6.1.17 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the University's information and communications technology systems;
- 6.1.18 it will promptly respond to all requests for information regarding this Agreement and the provision of the Services at the frequency and in the format that the University may reasonably require;
- 6.1.19 all information included within the Supplier's responses in the Tender Response Document and all accompanying materials is accurate;
- 6.1.20 it has the right and authority to enter into this Agreement and that it has the capability and capacity to fulfil its obligations under this Agreement;
- 6.1.21 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Agreement and the documents referred to in this Agreement;
- 6.1.22 all necessary actions to authorise the execution of and performance of its obligations under this Agreement have been taken before such execution;
- 6.1.23 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations or either the Supplier of the University;

- 6.1.24 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Agreement;
- 6.1.25 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Agreement;
- 6.1.26 it has satisfied itself as to the nature and extent of the risks assumed by it under this Agreement and has gathered all information necessary to perform its obligations under this Agreement and all other obligations assumed by it.
- 6.2 Where the Supplier is found or in the reasonable opinion of the University is considered to be in breach of any provision of Clause 6.1 above, then, without prejudice to any other right or remedy of the University, the University shall be entitled to reject the Services and the Supplier shall, indemnify and keep the University indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the University as a result of such breach.
- 6.3 The Supplier warrants that all information, data and other records and documents required by the University as set out in the Specification and Tender Response Document shall be submitted to the University in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 6.4 The Supplier further warrants and undertakes to the University that it will inform the University in writing immediately upon becoming aware that any of the warranties set out in this Clause 6 have been breached or it be could reasonably be considered likely that there is a risk that any warranty given herein may be breached.
- 6.5 Any warranties provided by the Supplier under this Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the University.

7 INTELLECTUAL PROPERTY

- 7.1 All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background Intellectual Property has been derived) as of the Commencement Date. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any Background Intellectual Property of the other party except under the terms of this Agreement and each party acknowledges that nothing contained in this Agreement shall give it any such right, title or interest. The University grants to the Supplier a limited, non-exclusive, royalty free licence, without the right to sublicense, to use its Background Intellectual Property only as is strictly necessary for the Supplier to deliver the Services to the University and only for the Term of this Agreement.
- 7.2 Unless otherwise specified, all Foreground Intellectual Property arising from delivery of the Services, whether or not solely produced by the Supplier shall belong absolutely to the University, as shall the right to apply for and obtain relevant intellectual property rights and protection in relation thereto. The University hereby grants to the Supplier a non-exclusive, royalty-free, fully paid-up, perpetual right and licence to use the Foreground Intellectual Property only for the purposes of delivery of the Services.

8 CONFIDENTIALITY

8.1 In the event that during the Term of this Agreement either Party ("Discloser"), discloses any Confidential Information to the other Party ("Recipient"), whether directly or indirectly each Party undertakes to keep such Confidential Information secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

8.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

8.1.2 the provisions of this Clause 8.1 shall not apply to any Confidential Information:

8.1.2.1 which is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;

8.1.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

8.1.2.3 which is authorised for disclosure by the prior written consent of the Discloser;

8.1.2.4 which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or

8.1.2.5 which the Recipient is required to disclose purely to the extent to comply with the requirements of any judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000.

9 DATA PROTECTION

9.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.

9.2 Where the Supplier is Processing Personal Data under or in connection with this Agreement, the Supplier must, in particular, but without limitation:

9.2.1 only Process such Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instructions given by the University under this Agreement;

9.2.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;

- 9.2.3 take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in this Clause 9; and
- 9.2.4 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the University.
- 9.3 The Supplier and the University shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards applicable to the University under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 9.4 Where any Personal Data is processed by any subcontractor of the Supplier in connection with this Agreement, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in this Clause 9, as if such subcontractor were the Supplier.
- 9.5 The Supplier shall indemnify and keep the University indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Agreement.

10 FREEDOM OF INFORMATION ACT 2000

- 10.1 The Supplier acknowledge the duties of the University under the FOIA, Codes of Practice and Environmental Regulations and shall give the University all reasonable assistance as appropriate or necessary to enable the University's compliance with those duties.
- 10.2 The Supplier shall assist and cooperate with the University to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
 - 10.2.1 that this Agreement and any recorded information held by the Supplier on the University's behalf for the purposes of this Agreement are subject to the obligations and commitments of the University under the FOIA, Codes of Practice and Environmental Regulations;
 - 10.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the University;
 - 10.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the University as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the University; and

- 10.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the University) and will promptly (and in any event within two (2) Business Days) transfer the request to the University.
- 10.3 Where any information is held by any subcontractor of the Supplier in connection with this Agreement, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in this Clause 10, as if such subcontractor were the Supplier

11 INDEMNITY

11.1 In addition to any other indemnities provided by the Supplier to the University elsewhere in this Agreement, the Supplier shall be liable to the University for, and shall indemnify and keep the University indemnified in full against, any and all liabilities, losses (whether direct or indirect and including loss of profit), damages, costs, expenses (including legal expenses), actions, costs claims, demands awarded against or incurred or paid by the University, its servants or agents as a result of or in connection with:

- 11.1.1 any injury or allegation of injury to any person, including injury resulting in death;
- 11.1.2 any loss of or damage to property;
- 11.1.3 any breach of the terms of this Agreement including any warranty given by the Supplier under this Agreement;
- 11.1.4 any claim that any Foreground Intellectual Property arising from the Services infringe, or their incorporation, use or resale infringes the Intellectual Property Rights of any other person;
- 11.1.5 any claim made against the University in respect of any breach or alleged breach by the University of any statutory provision, regulation or bye-law or other rule of law arising from the acts or omissions of the Supplier or its employees, agents or subcontractors;
- 11.1.6 any act or omission of the Supplier or its employees, agents or sub-Suppliers in performing the Services, including any injury, loss or damage to persons or to University property caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the University);

that arise or result from the Supplier's acts or omissions or breach of Agreement in connection with the performance of this Agreement including the provision of the Services.

12 LIMITATION OF LIABILITY

12.1 Nothing in this Agreement shall exclude or restrict the liability of either Party:

- 12.1.1 for death or personal injury resulting from its negligence;
- 12.1.2 for fraud or fraudulent misrepresentation; or
- 12.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

12.2 Notwithstanding Clause 12.3 and subject to Clause 12.1, the total liability of the either Party to the other under or in connection with this Agreement whether arising in Agreement, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to 125% of the Agreement Price paid or payable by the University to the Supplier for the Services under this Agreement.

- 12.3 Subject to Clause 12.1, the total liability of the Supplier to the University under or in connection with this Agreement, relating to breaches of Data Protection Legislation whether arising in Agreement, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to £1,000,000 (one million GBP).
- 12.4 Under no circumstance shall either Party be liable to the other for any losses, damages and/or other costs and expenses under or in connection with this Agreement, whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.
- 12.5 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the other Party is entitled to bring a claim against the other pursuant to this Agreement.

13 TERMINATION

- 13.1 Without prejudice to the rights of the University to pursue any other remedies available to it in the event of a breach of the terms of this Agreement by the Supplier, the University may at its sole discretion choose to terminate the Contract and/or any part thereof by written notice to the Supplier, where:
- 13.1.1 the Supplier fails to deliver any Services to the University in accordance with the terms of this Agreement;
 - 13.1.2 the Supplier is in material breach of any of its obligations under this Agreement and that breach is not capable of remedy;
 - 13.1.3 the Supplier is in material breach of any of its obligations under this Agreement and that breach can be remedied but the Supplier has failed to do so within thirty (30) days of being given notice of such breach;
 - 13.1.4 the Supplier commits more than one breach of any of its obligations under this Agreement and the cumulative effect of such breaches is such that the University believes that the Supplier will continue to deliver a sub-standard performance over the one (1) month period immediately after such breach;
 - 13.1.5 the Supplier fails to make progress with delivery of any Services ordered so as to jeopardise the purpose of the Services;
 - 13.1.6 the Supplier being given a reasonable period to rectify a breach of the Agreement, fails to do so to the reasonable satisfaction of the University or fails to provide adequate replacement Services when required to do so under the provisions of this Agreement;
 - 13.1.7 the Supplier becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors or, being a corporation, commences to be wound up or is put into administration or if the Supplier attempts to carry on its business under a receiver for the benefit of any of its creditors;
 - 13.1.8 the Supplier is the subject of a takeover by or merger with another entity;

- 13.1.9 the Supplier is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession;
 - 13.1.10 the Supplier commits or is found to have committed an act of gross misconduct in the course of its business or profession;
 - 13.1.11 the Supplier is found to have made any serious misrepresentations in the tendering process for this Agreement;
 - 13.1.12 the Supplier fails to obtain any necessary licences or to obtain or maintain membership of any relevant body necessary to perform the Services; or
 - 13.1.13 the Supplier fails to comply with any of the University's policies and/or codes of practice including but not limited to access, health and safety, equality and diversity, environment or financial regulation.
- 13.2 In the event that the University terminates the Agreement in accordance with the provisions of this Clause 13 the University shall not be liable for any losses suffered by the Supplier as a result of such termination.
- 13.3 The Supplier may terminate the Agreement immediately by written notice to the University in the event that the University commits a material breach of the Agreement. The notice shall include a detailed statement describing the nature of the breach. If the breach is capable of being remedied by the University and is remedied within the thirty (30) day notice period, then the termination shall not take effect. If the breach is of a nature such that it can be fully remedied by the University but not within the thirty (30) day notice period, then termination shall also not be effected if the University begins to remedy the breach within that period and then continues diligently to remedy the breach until it is remedied fully. If the breach is incapable of remedy, then the termination shall take effect at the end of the thirty (30) day notice period in any event.
- 13.4 Termination of the Agreement shall be without prejudice to any rights of each Party against the other which may have accrued up to the date of such termination.

14 TERMINATION FOR CONVENIENCE

- 14.1 The University may terminate this Agreement forthwith in writing to the Supplier at any time on provision by the University of **one (1)/three (3)/ six (6)** months written notice.

15 CONSEQUENCES OF EARLY TERMINATION OF THIS AGREEMENT

- 15.1 Upon early termination of this Agreement prior to the end of the Term, the University agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Agreement prior to termination of this Agreement.
- 15.2 Immediately following expiry or earlier termination of this Agreement:
- 15.2.1 the Supplier shall comply with its obligations under any agreed exit plan; and

- 15.2.2 all data, including without limitation Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, and all other items provided on loan or otherwise to the Supplier by the University shall be promptly returned by the Supplier to the University (such return not to be unreasonably withheld or delayed).
- 15.3 The Supplier shall cooperate fully with the University or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following termination of this Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this Agreement, as reasonably required by the University to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 15.4 In the event that the University terminates the Agreement in accordance with Clause 13.1, the University shall be entitled to a refund of any sums paid under this Agreement provided the University informs the Supplier in writing of its intention to claim such refund no later than thirty (30) days of the effective date of such termination.
- 15.5 The expiry or earlier termination of this Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

16 DISPUTE RESOLUTION

- 16.1 During any dispute, it is agreed that the Supplier shall continue its performance of the provisions of the Agreement (unless the University specifically requests in writing that the Supplier should not do so).
- 16.2 In the case of a dispute arising out of or in connection with this Agreement the Supplier and the University shall make every reasonable effort to resolve the dispute amicably via the respective Parties' agreement managers. In the event that any disputes cannot be resolved at this level within a reasonable period of time, then the senior executives of the relevant Parties who have authority to settle the same shall use good faith efforts to resolve the same. In the event that either Party considers the dispute unable to be resolved through negotiation at this level, either Party may serve a notice on the other Party to commence formal resolution of the dispute.
- 16.3 The Parties shall agree to seek formal resolution of the dispute ("Dispute Resolution Procedure") via either:
- 16.3.1 mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure (the "Model Procedure"). To initiate mediation a Party must give notice in writing to the other Party to the dispute requesting mediation pursuant to the Model Procedure. A copy of the request shall also be sent to CEDR. The mediation shall be before a single, jointly agreed upon, mediator; or
- 16.3.2 reference to the jurisdiction of the Courts in England. In this event, each of the Parties shall have the right to take proceedings in any other jurisdiction for the purposes of enforcing a judgement or order obtained from the Courts in England.
- 16.4 In the event that the Parties are unable to select a mutually agreeable mediator or cannot agree on the forum in which any dispute is to be held within sixty (60) days of a dispute being notified, then the provisions of Clause 16.3.2 shall apply.

17 FORCE MAJEURE

- 17.1 Where the Supplier is affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Agreement, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 17.2 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Agreement the Supplier shall fulfil all such Contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 17.3 Where the Supplier is prevented or delayed in the performance of its obligations under this Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing to the University specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 17.4 Subject to service of such notice, the Supplier where affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue.
- 17.5 The Supplier shall notify the University in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 17.6 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the University may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Agreement on service of written notice on the Supplier.
- 17.7 In the event that the University is affected by a Force Majeure Event, and as a result, becomes unable to receive delivery of any Services hereunder, the University shall notify the Supplier as soon as reasonably practicable. Under such circumstances, the University reserves the right to cancel any undelivered order of Services hereunder, without liability to the Supplier, provided it notifies the Supplier within seven (7) days of the occurrence of such Force Majeure Event
- 17.8 In the event that the University is affected by a Force Majeure Event both Parties agree to cooperate together wherever possible, to ensure any Goods ordered hereunder can be successfully delivered in accordance with the terms of this Agreement.

18 CONFLICTS OF INTEREST AND THE BRIBERY ACT 2010

- 18.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the University, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the University under the provisions of this Agreement. The Supplier will disclose to the University full particulars of any such conflict of interest which may arise.
- 18.2 The University reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the University, there is or may be an actual conflict, or a

potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the University under the provisions of this Agreement. The actions of the University pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the University.

18.3 The Supplier warrants and represents that:

18.3.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("Prohibited Acts"):

18.3.1.1 offered, given or agreed to give any officer or employee of the University any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the University or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the University; or

18.3.1.2 in connection with this Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the University; and

18.3.1.3 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

18.4 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the University:

18.4.1 the University shall be entitled:

18.4.1.1 to terminate this Agreement and recover from the Supplier the amount of any loss resulting from the termination;

18.4.1.2 to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and

18.4.1.3 to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010.

18.4.2 any termination under Clause 18.4.1.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the University.

19 EQUALITY

19.1 The Supplier shall:

- 19.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer, or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 19.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the University in light of the University's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the University considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
 - 19.1.3 the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by this Clause 19.
- 19.2 The Supplier shall meet reasonable requests by the University for information evidencing the Supplier's compliance with the provisions of Clause 19.

20 NOTICES

- 20.1 Any notice required to be given by either Party under this Agreement shall be made in writing quoting the date of the Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to:
- 20.1.1 In the case of the Supplier, the Supplier's registered business address, or as the University may otherwise be notified by the Supplier in writing; or
 - 20.1.2 In the case of the University, the Finance Director, Brownberrie Lane, Hosforth, Leeds, LS18 5HD.
- 20.2 A notice shall be treated as having been received:
- 20.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
 - 20.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
 - 20.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

21 ASSIGNMENT AND SUBCONTRACTING

- 21.1 The Supplier shall not, assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Agreement without the prior consent in writing of the University. If the Supplier subcontracts any of its obligations under this Agreement, every act or omission of the subcontractor shall for the purposes of this Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the University as if such act or omission had been committed or omitted by the Supplier itself.
- 21.2 Any authority given by the University for the Supplier to subcontract any of its obligations under this Agreement shall not impose any duty on the University to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Agreement.
- 21.3 Where the Supplier enters into a subcontract in respect of any of its obligations under this Agreement, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the University in writing, which:
- 21.3.1 contain at least equivalent obligations as set out in this Agreement in relation to the performance of the Services to the extent relevant to such subcontracting;
 - 21.3.2 contain at least equivalent obligations as set out in this Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
 - 21.3.3 contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the University (such approval not to be unreasonably withheld or delayed);
 - 21.3.4 contain a right for the University to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of this Agreement; and
 - 21.3.5 require payment to be made of all sums due to the subcontractor from the Supplier within a specified period not exceeding thirty (30) days from receipt by the Supplier of a valid invoice.
- 21.4 The University may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Agreement or any part of this Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal.

22. VARIATION

- 22.1 The Supplier acknowledges to the University that the University's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document and/or Purchase Order, as may be requested by the University from time to time.

22.2 Any change to the Services or other variation to this Agreement shall be binding only once it has been agreed in writing and signed by an authorised representative of both Parties.

23. GENERAL

23.1 For the purposes of this Agreement, each of the Parties is considered to be independent of the other, and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Agreement.

23.2 Failure or delay by either Party to exercise an option or right conferred by this Agreement shall not of itself constitute a waiver of such option or right.

23.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

23.4 Any provision of this Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

23.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Agreement or unless such representation, undertaking or warranty was made fraudulently.

23.6 Unless otherwise expressly stated in this Agreement, a person who is not a party to this Agreement shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Agreement.

23.7 This Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Agreement or any variation to this Agreement, contain the entire understanding between the Supplier and the University relating to the provision of the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Agreement.

23.8 No additional terms which may be referenced in any invoice or other documentation which may be supplied by the Supplier at any time during the course of the Terms shall be considered binding upon the University. In the event that the University issues any Purchase Order under this Agreement, which may make any reference to any other standard terms and conditions of the University, the terms of this Agreement shall at all times take precedence.

- 23.9 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.
- 23.10 The Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.