

## **Drafting and University's user notes - TEMPLATE AGREEMENT FOR THE SUPPLY OF SOFTWARE AND SUPPORT SERVICES**

1. This template agreement is for use with off-the-shelf on-premises Software and related Support Services. This is not a Software Development Agreement, SaaS or Cloud Services Agreement, or Managed IT or Hosting Services Agreement (all of which would need to be contracted under different terms).
2. This template agreement is for the one-off procurement of software solutions, rather than a framework agreement. These software solutions will typically be 'off-the-shelf' non-business critical software solutions requiring minimal customisation that are relatively low value (sub £25k - £100k per annum).
3. This template agreement should not be used for the procurement of complex or high value business critical software solutions which would be subject to procurement rules and procured under a public framework agreement, in relation to which we recommend UoB seek further legal advice.
4. This template agreement does not cover provision of any hardware. If the supplier will also be supplying hardware or other goods, this should be procured under the University's template contract for procuring goods.
5. This template agreement is drafted on the basis that the Licence will be a non-exclusive licence for a fixed term e.g. annual, and not a perpetual licence. The specification for the Software and any obligations on the Supplier to install and acceptance test the Software on delivery should be inserted in Appendix 1 along with the Licence Fee.
6. Whilst the provision of Support Services is optional, it is anticipated that the majority of procurements will include Support Services. Any Support Services should be set out in Appendix 2 (e.g. training, helpdesk support, remote diagnosis and correction of faults, obligations to provide Maintenance Releases and New Versions, and any service levels). If Support Services are not being provided then you will need to consider whether the scope of the Licence is sufficient to ensure that the University can support and maintain the Software itself or using a third party supplier (see Clause 3 of Appendix 6).
7. Any other commercial details, including pricing structures, and key requirements should be added into Appendix 1, Appendix 2 or the special terms in Appendix 5 as appropriate (e.g. authorised users, additional user restrictions or licence terms, additional cybersecurity requirements and / or changes to the standard legal terms in Appendix 6).
8. The template agreement does not provide for any escrow arrangements in respect of the Software. This will need to be agreed in the special terms in Appendix 5 if required.
9. The template agreement assumes that no Supplier Personnel will be working wholly or mainly on the Agreement and that TUPE is not relevant.
10. We recommend seeking specific advice from legal before making substantive amendments to this template.



Delta ref:	
Date of Invitation to Tender	
Supplier's Tender	
Purchase Order Number	

## AGREEMENT FOR THE SUPPLY OF SOFTWARE AND SUPPORT SERVICES

**PLEASE NOTE:** Invoices must be submitted to: Finance Services, National Composites Centre and must include the NCC's Purchase Order Number. Invoices can be emailed to [supplierinvoices@nccuk.com](mailto:supplierinvoices@nccuk.com) or send to Finance Services, National Composites Centre, Bristol and Bath Science Park, Feynman Way Central, Emersons Green, Bristol, BS16 7FS. Failure to include the Purchase Order Number on the invoice or to send the invoice to the correct person may result in your invoice being rejected in accordance with Clause 16 (Payment Terms).

### SUMMARY

<b>Parties</b>	a) University of Bristol; and  b) [Name of the Supplier]
<b>Commencement Date</b>	[DATE]

<input type="checkbox"/>	<b>Software</b>	<b>Complete Appendix 1</b> (see Appendix 6, Section B)
<input type="checkbox"/>	<b>Support Services</b>	<b>Complete Appendix 2</b> (see Appendix 6, Section C)

<b>Have any Special Terms been agreed?</b> Complete Appendix 5	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Will the Supplier process any Personal Data on behalf of the University as "Processor"? If "yes" complete Appendix 4, Part 2 / Part 3 (see Clause 29 and Appendix 6, Section E).</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>If the answer above is "yes", does the Supplier propose to process data outside the EEA/UK? (see Appendix 6, Section E).</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<b>Short description of the Software and Support Services</b>		
<b>Any “Dependencies” applicable? If “yes” complete Appendix 3 (see Clause 18)</b>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
<b>Licence Term and Licence Fee for Software (see Appendix 1)</b>		
<b>Duration/performance dates for Support Services and Support Fees (see Appendix 2)</b>		
<b>Total contract value (excluding VAT)</b>	£[AMOUNT]	

**PLEASE NOTE:** The above checkboxes under the “Summary” are provided for signposting purposes only and shall not be binding between the parties.

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THIS AGREEMENT IS DATED: [ DATE]

## THE PARTIES

<b>University</b>	<b>NCC OPERATIONS LIMITED</b> (company number 07304890) whose registered office is at National Composites Centre Bristol & Bath Science Park, Feynman Way, Emersons Green, Bristol, BS16 7FS, England a company organised and existing under the laws of England and Wales
<b>Supplier</b>	<b>[SUPPLIER NAME]</b> [a [company/limited liability partnership] incorporated and registered in [country of incorporation] under [company/LLP/local] number [NUMBER]] having its [administrative/registered] office at [full geographical address]
Each a “party” and together “the parties”	

## AUTHORISED REPRESENTATIVES' DETAILS

	For the University	For the Supplier
<b>Name</b>		
<b>Job title</b>		
<b>Address</b>		
<b>Phone number</b>		
<b>Email address</b>		

## EXECUTION OF THIS AGREEMENT

This Agreement has been entered into on the date stated at the beginning of it:

Signed for and on behalf of the University		Signed for and on behalf of the Supplier	
Signature		Signature	
<b>Print name:</b>		<b>Print name:</b>	
<b>Job title:</b>		<b>Job title:</b>	
<b>Date:</b>		<b>Date:</b>	

## APPENDIX 1 – THE SOFTWARE

### Part 1 – Supply of the “Software”

The Software to be supplied by the Supplier to the University is as follows:

Item #	Description	Qty	Licence Fee	Licence Term	Notes

*[specify when the Licence Fee is due and payable. The Licence automatically ends at the end of the Licence Term, any rights to renew or extend the Licence Term should be set out above]*

### Part 2 – Delivery, Installation, Acceptance and Warranty Period

The Software shall be [made available for download from *[insert website address]*] **OR** [delivered] *[delete as appropriate]* and installed at the following University Premises: *[insert address]* *[specify day/time for delivery under “Notes” above]*.

The Software shall be installed and any acceptance testing successfully completed by the Supplier by: *[insert date]* *[delete if Supplier is not undertaking installation or acceptance testing - see Clause 4 in Appendix 6 for provisions relating to installation and acceptance.]*

*[insert any specific remedies for delay caused by the Supplier (if required)]*

The warranty period for the Software during which it shall be free from defects is: *[insert period]* from completion of the *[installation]* **OR** *[acceptance]* of the Software. *[insert warranty period as applicable]*

### Part 3 – Software Specification

*[include software specifications and quality standards etc.. or cross reference to Supplier's standard specification]*

### Part 4 – Authorised Users

*[insert any limitations or restrictions on Authorised Users - see definition in Appendix 6]* **OR** *[INTENTIONALLY BLANK]*

## APPENDIX 2 – SUPPORT SERVICES

### Part 1 – Supply of the “Support Services”

The Support Services to be provided by the Supplier to the University are as follows:

Description	Performance Date(s)/Duration	Support Fees	Notes

*[specify when the Support Fees are due and payable or if the fees are included in the Licence Fee. The duration of the Support Services should be set out above and should align with the Licence Term for the Software in Appendix 1]*

### Part 2 - Deliverables

*[insert any deliverables] OR [INTENTIONALLY BLANK]*

### Part 3 - Support Services Specification

*[include services specification including whether its onsite support or remote access, minor customisations, provision of updates and new releases, and any training or helpdesk support services - see Clause 8 in Appendix 6 for provisions relating to Support]*

### Part 4 - Service Level Agreement

*[insert any service levels/service credit mechanism or cross reference to Supplier's standard service level agreement - see Clause 10 in Appendix 6 for provisions relating to service levels] OR [INTENTIONALLY BLANK]*

### Part 5 – Additional support services

The Supplier shall on request provide the following additional support services which shall be provided at the following rates: *[insert description of additional out of scope / optional support services and applicable rates] OR [INTENTIONALLY BLANK]*



### APPENDIX 3 – DEPENDENCIES

The Supplier has identified the following Dependencies in accordance with Clause 18 (Dependencies):

#### Part 1 - Software

*[insert any dependencies in relation to the use of the Software]* **OR** *[INTENTIONALLY BLANK]*

#### Part 2 – Support Services

*[insert any dependencies in relation to the receipt of the Support Services]* **OR** *[INTENTIONALLY BLANK]*

## APPENDIX 4 – DATA PROTECTION

### Part 1 – Data Processing Officers

- a) The contact details of the University's Data Protection Officer are:

Ms Sharon Lock,  
Information Governance Manager,  
National Composites Centre, Bristol and Bath Science Park, Feynman Way Central,  
Emersons Green  
Bristol  
BS16 7FS  
Email: [Data.Protection@nccuk.com](mailto:Data.Protection@nccuk.com)  
Telephone: +44 (0) 117 370 7600

- b) The contact details of the Supplier's Data Protection Officer are:

*[Insert details of the Supplier's Data Protection Officer]*

### Part 2 – Summary of Processing Activities

*Subject to Clause 29.1, where the Supplier is the Processor and the University is the Controller over Personal Data, this Appendix 4, Part 2 and Part 3 is applicable as completed by the University.*

#### 1. Particulars of processing

The Supplier shall process Personal Data on behalf of the University in accordance with the following provisions:

a. **Scope and nature of the processing**

*[Description of the scope and nature of the processing activities, which may be summarised in list format]*

b. **Purpose of the processing**

*[Description of the purpose of the processing activities, which may be summarised in list format]*

c. **Duration of the processing**

*[Description of the duration of the processing, which may be defined by reference to the duration of the agreement but should also take into account any post-termination retention of personal data in accordance with the terms of the agreement or as may be required by applicable law]*

d. **Types of personal data**

The types of personal data being processed by the Supplier in the course of providing the Software and Support Services are as follows:

*[Description of the types of personal data to be processed, which may be summarised in list format]*

e. **Categories of data subject**

The categories of data subject in respect of which the Supplier shall process personal data are as follows:

*[Description of the categories of data subject, which may be summarised in list format]*

f. **Locations**

Locations where Personal Data may be processed by the Supplier and/or any sub-processor.

*[Names of locations where data may be processed, including the geographic region]*

### Part 3 – Approved Sub-processors

The University authorises the following Sub processor(s) to process University Data in accordance with the provisions of **Section E (Data Protection)** of Appendix 6 and this Appendix 4.

Name/contact details of Sub-processor	Location of the Sub-processor (Country/territory)	Processing activities	Processing activities/ Contact details of DPO

## APPENDIX 5 – SPECIAL TERMS

The parties agree that the following Special Terms shall apply and take precedence over other conflicting terms of this Agreement in accordance with Clause 2.5 of Appendix 6, Section A.

*[INTENTIONALLY BLANK]*

***[Guidance/drafting note: This Appendix can be used for any additional or special terms (including University cybersecurity requirements) or to document any changes to the standard legal terms in Appendix 6 (rather than amending Appendix 6). University to take care when including special conditions here - specifically not to unintentionally cut across the main terms in Appendix 6 below as these Special Terms will take precedence]***

## APPENDIX 6 – STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SOFTWARE AND SUPPORT SERVICES

### SECTION A: DEFINITIONS & INTERPRETATION

#### 1. DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

<b>“Affiliates”</b>	in relation to the University, means each and any business entity or undertaking within the University’s Control or under the University’s direction or any other entities or undertakings as may be specified in the Special Terms.
<b>“Agreement”</b>	means the agreement between the University and the Supplier for the supply of Software and/or Support Services and which is construed in accordance with Clause 2.5, as varied from time to time in accordance with Clause 39.
<b>"Applicable Laws"</b>	means all laws, regulations, codes of practice and guidelines, that are compulsory in the United Kingdom, including those set by the government or regulator concerning Data Protection Legislation, subsidy control, bribery and corruption, facilitation of tax evasion, money laundering, terrorist financing or otherwise.
<b>“Authorised Representatives”</b>	means the individuals named at the beginning of this Agreement or such individuals as may be nominated by each party from time to time by giving notice to the other.
<b>“Authorised Users”</b>	means those employees, agents and independent contractors of the University and its Affiliates, and/or other persons nominated by the University, who are authorised to use the Software under this Agreement.
<b>“Business Day”</b>	means a day other than a Saturday, Sunday or public holiday in England (when banks in the City of London are generally open for business), and a University Closure Day.
<b>“Business Hours”</b>	means 8.00 am to 6.00 pm local UK time, each Business Day.
<b>“Confidential Information”</b>	means any information of a confidential nature concerning the business, assets, affairs, customers, clients or suppliers of the other party or of its Affiliates, including information relating to a party's operations, processes, plans, product information, research projects, know-how, designs, trade secrets, software, market opportunities and customers; and/or any information market “confidential”.
<b>“Control”</b>	means a business entity shall be deemed to “control” another business entity if it owns, directly or indirectly, in excess of fifty per cent (50%) of the voting shares, securities or stock of such business entity or any other comparable equity or ownership

	interest with respect to a business entity other than a corporation and <b>“change of Control”</b> shall be interpreted accordingly.
<b>“Data”</b>	means all data (including but not limited to Personal Data) and information of whatever form relating to the University and its business and business functions that is supplied by the University or processed by the Supplier on the University’s behalf, or inputted, stored in or generated by the Software.
<b>“Controller / Processor”</b>	has the meaning given to them in Section E.
<b>“Cybersecurity Requirements”</b>	means all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, applicable to either party, relating to security of network and information systems and security breach and incident reporting requirements, including data protection legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.
<b>“Data Protection Legislation”</b>	has the meaning given to it in Section E.
<b>“Dependencies”</b>	means the assumptions and/or dependencies (if any) which must be met in order for the Software to be supplied and/or the Support Services to be provided under this Agreement, as set out under Clause 18 and Appendix 3.
<b>“Disaster Recovery Plan”</b>	means the plans and preparations maintained by the Supplier (if any) containing the actions to be taken, the resources to be used and the procedures to be followed to support recovery and business continuity in the event of a disaster or FM Event affecting the Support Services.
<b>“EIR”</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner’s Office in relation to such legislation from time to time.
<b>“FM Event”</b>	has the meaning given to it in Clause 38.1.
<b>“FOIA”</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner’s Office in relation to such legislation from time to time.
<b>“Good Industry Practice”</b>	means that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or organisation seeking to comply with its contractual obligations and all Applicable Laws and engaged in the same type of activity and under the same or similar circumstances, terms and conditions as the Supplier.
<b>“Incident”</b>	means any Vulnerability, Virus or security incident which:

	<p>(a) may affect the Software; or</p> <p>(b) may affect the Supplier's network and information systems such that it could potentially affect the Software or the University's Operating Environment; or</p> <p>(c) is reported to the Supplier by the University.</p>
<b>"Intellectual Property Rights"</b>	means all intellectual and industrial property rights of any nature anywhere in the world, including patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
<b>"Invitation to Tender"</b>	means the University's invitation for suppliers to submit tenders for the supply of the Software and Support Services (if applicable) on the date specified at the beginning of this Agreement.
<b>"Licence"</b>	means the licence granted under Clause 3.2.
<b>"Licence Fee"</b>	means the licence fee payable by the University to the Supplier in respect of the Licence and supply of the Software (including any installation and testing activities to be carried out by the Supplier) as set out in Appendix 1.
<b>"Licence Term"</b>	means the term of the Licence as specified in Part 1 of Appendix 1.
<b>"Maintenance Release"</b>	means a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.
<b>"New Version"</b>	means any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.
<b>"Personal Data"</b>	has the meaning given to it in Section E.
<b>"Personnel"</b>	in relation to a party means those of its agents, directors, employees, consultants, contractors, officers, representatives, subcontractors and workers as may be engaged in the performance of that party's obligations under this Agreement.
<b>"Premises"</b>	means the University's premises set out in <b>Error! Reference source not found.</b>

<b>"Pre-Existing IPR"</b>	has the meaning given to it in Clause 23.1.
<b>"Purchase Order Number"</b>	means a purchase order number provided by the University to the Supplier (unless agreed otherwise, by email sent from an email address ending "@bristol.ac.uk" or "@bris.ac.uk") in respect the Software and/or Support Services which are the subject of this Agreement.
<b>"Service Level Agreement"</b>	means any service level agreement set out in Part 4 of Appendix 2.
<b>"Software"</b>	means the software as described in Appendix 1 and any Maintenance Release or New Version which is made available by the Supplier in accordance with this Agreement.
<b>"Special Terms"</b>	means the special terms and conditions (if any) set out in Appendix 5.
<b>"Specification"</b>	means the specification for the Software and/or Support Services as referred to or set out in Part 3 of Appendix 1 (in respect of the Software) or Part 3 of Appendix 2 (in respect of the Support Services) and/or annexed to this Agreement.
<b>"Sub-Contract"</b>	means any contract between the Supplier and any third party (or between two or more suppliers at any stage of remoteness from the University in a sub-contracting chain) made for the purpose of performing (or contributing to the performance of) the Supplier's obligations under this Agreement.
<b>"Subsidy"</b>	has the meaning set out in section 2 of the Subsidy Control Act 2022
<b>"Subsidy Control Regulations"</b>	means: (a) the Subsidy Control Act 2022 and any subordinate legislation made under the same from time to time, together with any guidance issued by the relevant Government department or the Competition and Markets Authority in relation to such legislation; and (b) any requirements under Applicable Laws insofar as they relate to subsidy control; and (c) where the good or services are supplied from Northern Ireland, the provisions set out in Annex 5 of the Northern Ireland Protocol, as amended and/or replaced from time to time.
<b>"Supplier's Response to PQ"</b>	means the Supplier's response to any pre-qualification questionnaire (PQQ), preliminary questionnaire (or equivalent).
<b>"Support Fees"</b>	means the fees payable by the University to the Supplier in respect of the provision of the Support Services as set out in Appendix 2 (if any).
<b>"Support Services"</b>	means the support and maintenance services (or any part of them) including the provision of any Deliverables as described in Appendix 2 (if any).



<b>"Tender"</b>	means the tender submitted by the Supplier to the University in response to the Invitation to Tender on the date specified at the beginning of this Agreement.
<b>"University Closure Day"</b>	means a day when the University is closed, the dates of which can be found on the University's website at <a href="http://www.bristol.ac.uk/dates">www.bristol.ac.uk/dates</a>
<b>"University Materials"</b>	means all materials, media, equipment and tools, drawings, specifications, data, plans, documents, reports, research, recommendations, evaluations, results, ideas, records, works of authorship, deliverables, routines, algorithms, tools, processes, systems, methods, methodologies, spreadsheets, techniques, flowcharts, manuals, databases, catalogues, descriptions, output, products, notes, concepts, discoveries, know-how, information, theories, format of presentations, lists, processes, inventions, creations, photographs, images, videos, audio-visual material, diagrams, designs, models, drawings and specifications, and all applications or manifestations or expressions of any of the foregoing (in whatever form and on whatever media) supplied by the University to the Supplier.
<b>"University's Operating Environment"</b>	means the University's computing environment consisting of hardware, software (including University software) and telecommunications networks, that is to be used by the University in connection with its access to and use of the Software and receipt of the Support Services.
<b>"Virus"</b>	means any thing or device (including any software, code, file or programme) which may: <ul style="list-style-type: none"> <li>(a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; or</li> <li>(b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or</li> <li>(c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.</li> </ul>
<b>"Vulnerability"</b>	means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability.
<b>"Warranty Period"</b>	means the warranty period in respect of the Software as set out in Appendix 1.

## 2. INTERPRETATION

- 2.1. Headings shall not affect the interpretation of this Agreement.
- 2.2. A reference to **party** or **parties** is a reference to a party or the parties to this Agreement.
- 2.3. References to Appendices or Schedules refer to Appendices and Schedules of this Agreement. Any references to Clauses or Sections refer to Clauses or Sections of this Appendix 6 (unless otherwise stipulated). Any references to Paragraphs refer to paragraphs of the referred Schedules.
- 2.4. Where any policy, procedure or other document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant policy, procedure or document, the Supplier shall notify the University and the parties shall update this Agreement with a reference to the replacement hyperlink.
- 2.5. This Agreement is formed by the provisions referred to under Clauses 2.5.1 to 2.5.7. If there is any conflict or inconsistency within the provisions of this Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- 2.5.1. the Special Terms set out in Appendix 5 (if any); then
  - 2.5.2. the provisions of Appendixes 1 to 4 and any documents referred to under the Specification; then
  - 2.5.3. the provisions of Appendix 6 (Standard Terms and Conditions); then
  - 2.5.4. the Invitation to Tender; then
  - 2.5.5. the Tender; then
  - 2.5.6. the Supplier's Response to PQ; and then
  - 2.5.7. any other agreement or document referred to under this Agreement as forming part of it.
- 2.6. In this Agreement, any capitalised words contained within its Schedules or Appendices shall have the meaning given to them under Section A, Appendix 6 (Standard Terms and Conditions), unless otherwise stipulated in this Agreement.
- 2.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.8. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.9. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 2.10. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 2.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.12. A reference to **writing** or **written** includes e-mail unless expressly stated otherwise.

## SECTION B: SOFTWARE LICENCE

### 3. SUPPLY AND LICENCE OF SOFTWARE

- 3.1. In consideration of the University's payment of the Licence Fee, the Supplier shall supply and licence the Software to the University subject to and in accordance with the terms and conditions of this Agreement.
- 3.2. The Supplier hereby grants to the University a non-exclusive licence during the Licence Term to:
  - 3.2.1. use the Software solely for the University's (and any Affiliate's) internal business operations;
  - 3.2.2. develop, modify and maintain the Software (either itself or using its appointed contractors) but only where the Supplier is not providing Support Services or has failed to provide such Support Services in accordance with the terms of this Agreement; and
  - 3.2.3. grant its appointed contractors a sub-licence to use, develop, modify and maintain the Software but only as is necessary for the purpose of such appointed contractors supporting and maintaining the Software on the University's behalf pursuant to Clause 3.2.2.
- 3.3. In relation to the permitted scope of Software use:
  - 3.3.1. use of the Software shall be restricted to use of the Software by Authorised Users in object code form (and where Clause 3.2.2 applies, in source code form) for the normal business operations of the University which shall include any act reasonably incidental to such use including the creation of copies of the Software as may be necessary to enable use of the Software and the maintenance of back-up or test copies of the Software;
  - 3.3.2. the University shall not attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute the Software in whole or in part except:
    - 3.3.2.1. as provided in Clause 3; or
    - 3.3.2.2. as permitted by law; or
    - 3.3.2.3. to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the University; and
  - 3.3.3. the University shall not grant sub-licences except as expressly permitted under this Clause 3.
- 3.4. The University shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use.

- 3.5. The rights granted under this Clause 3 are granted to the University and its Affiliates.

#### **4. DELIVERY, INSTALLATION, TESTING AND ACCEPTANCE**

- 4.1. The Supplier shall deliver to the Premises or make available to the University (by way of electronic down-load onto the University's equipment) the Software on such date and at such time(s) or between such hours as set out under Appendix 1 unless the parties agree otherwise in writing.
- 4.2. Where the Software is to be installed and acceptance tested by the Supplier (as specified in Appendix 1), the Supplier shall install the Software onto the University's equipment and carry out the acceptance tests:
- 4.2.1. on such date and at such time(s) or between such hours as set out under Appendix 1;
  - 4.2.2. in a good and workmanlike manner, using reasonable skill, care and diligence in accordance with Good Industry Practice; and
  - 4.2.3. to ensure that the Software complies with its Specification.

If the installed Software passes those acceptance tests the Supplier shall issue a certificate of completion of installation to the University. If the installed Software does not pass those acceptance tests, the Supplier will promptly and at its expense carry out all necessary remedial work and repeat the acceptance testing. If the acceptance tests have not been successfully passed by the agreed date for acceptance (as set out in Appendix 1), or if none is specified within a reasonable time period after delivery of the Software, the University shall be entitled to any specific remedies as may be agreed and set out in Appendix 1, and to terminate this Agreement and discontinue the Licence.

- 4.3. Where the Software is to be installed by the University (as specified in Appendix 1), the University may for a period of ten (10) Business Days commencing on installation of the Software terminate this Agreement and discontinue the Licence if the Software does not comply with its Specification or otherwise perform to the University's satisfaction.
- 4.4. If the University terminates this Agreement in accordance with Clause 4.2 or Clause 4.3, without prejudice to the University's other rights or remedies, the Supplier shall immediately refund all monies paid by the University under this Agreement.

#### **5. MAINTENANCE RELEASES AND NEW VERSIONS**

- 5.1. The Supplier will provide the University with all Maintenance Releases, at no additional cost, no later than when these are generally made available to its other customers or as may otherwise be required as part of the Support Services (if applicable).
- 5.2. The Supplier undertakes and warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software.
- 5.3. The Supplier shall promptly inform the University of any New Versions and shall offer to sell such New Versions to the University on the terms which they are generally made available to the Supplier's customers by the Supplier, unless otherwise required to be provided as part of the Support Services (if applicable).

## **6. SOFTWARE WARRANTIES**

- 6.1. The Supplier warrants that the Software:
  - 6.1.1. will conform to its Specification and any other University requirements, descriptions, standards and specifications provided to the Supplier;
  - 6.1.2. is fit for any purpose that the University expressly or impliedly makes known to the Supplier;
  - 6.1.3. will be free from defects for the Warranty Period;
  - 6.1.4. will comply with the Cybersecurity Requirements; and
  - 6.1.5. will be free from Vulnerabilities and Viruses (including the media on which the Software is delivered).
- 6.2. If, within the Warranty Period, the University notifies the Supplier of any defect or fault in the Software such that it fails to conform to any of the warranties in Clause 6.1, the University shall have the right, at its option and without prejudice to its other rights or remedies, to:
  - 6.2.1. require the Supplier (without further cost to the University) to promptly repair or replace the Software; and / or
  - 6.2.2. terminate this Agreement and discontinue the Licence, and require the Supplier to immediately refund all monies paid by the University under this Agreement.
- 6.3. The warranties in Clause 6.1 shall apply to any Maintenance Release or New Version that is acquired by the University under this Agreement during the Licence Term.

## **7. LICENCE FEE**

- 7.1. The Licence Fee shall represent the full and exclusive remuneration of the Supplier in respect of the Licence and, unless otherwise agreed in Appendix 1, shall be inclusive of all costs and expenses incurred by the Supplier in connection with the supply of the Software (including any installation, testing and acceptance activities to be carried out by the Supplier).
- 7.2. The Licence Fee shall be fixed for the Licence Term unless otherwise agreed in Appendix 1. Where the Supplier contemplates any increase in the Licence Fee for any renewal or extension to the Licence Term, the Supplier shall give the University not less than three (3) months written notice of the same to the University prior to the end of the then current Licence Term, and the Authorised Representatives (acting reasonably and in good faith) shall discuss whether and to what extent the Licence Fee may be increased for such renewal or extension to the Licence Term.
- 7.3. The Supplier shall invoice the University for the Licence Fee in accordance with the payment arrangements set out in Appendix 1.
- 7.4. The provisions of Clause 16 shall apply in respect of the Licence Fee.

## SECTION C: SUPPORT SERVICES

### 8. PROVISION OF THE SUPPORT SERVICES

- 8.1. In consideration of the University's payment of the Support Fees, the Supplier shall provide to the University the Support Services, subject to and in accordance with the terms and conditions of this Agreement.
- 8.2. The Support Services shall comprise:
- 8.2.1. a telephone helpdesk to provide first-line technical support to Authorised Users;
  - 8.2.2. remote diagnosis and correction of faults using software management software; and
  - 8.2.3. second-line on-site technical support,
- all as more particularly defined in the Specification for the Support Services.
- 8.3. The Supplier shall perform the Support Services on the performance dates and/or for the duration set out under Appendix 2 (unless otherwise agreed in writing between the parties).
- 8.4. Any additional or optional support services set out in Part 5 of Appendix 2 shall be provided by the Supplier at the rates set out in Part 5 of Appendix 2. The Supplier shall use all reasonable endeavours to provide the requested additional or optional support services promptly and at the times requested by the University.
- 8.5. Where the Supplier provides any Maintenance Release or New Version to the University, the Supplier shall:
- 8.5.1. before issuing the Maintenance Release or New Version, test the same to ensure that it performs in accordance with the Software's Specification; and
  - 8.5.2. at the University's direction and at a time to be agreed between the parties, install and/or integrate the Maintenance Release or New Version and test (or assist the University in testing) any such Maintenance Release or New Version to ensure that it performs in accordance with the Software's Specification.
- 8.6. If any Maintenance Release or New Version fails to pass the tests carried out in accordance with Clause 8.5 or results in any diminution of the performance or functionality of the Software, the University may reject the Maintenance Release or New Version and the Supplier shall:
- 8.6.1. correct the Maintenance Release or New Version and re-issue it, following which the processes set out in Clause 8.5 shall be repeated; or
  - 8.6.2. withdraw the Maintenance Release or New Version and assist the University in decommissioning the Maintenance Release or New Version and returning the Software to its state before such Maintenance Release or New Version was installed or integrated.

- 8.7. If the Supplier withdraws the Maintenance Release or New Version,
- 8.7.1. in the case of a Maintenance Release, the Supplier shall supply, free of charge, such additional services as are required to rectify any defects in the Software which the Maintenance Release was intended to rectify; and
  - 8.7.2. in the case of a New Version, the Supplier shall refund any sums which the University may have paid to the Supplier in respect thereof.
- 8.8. The provision of any Maintenance Releases and/or New Versions shall be included in the Support Fees payable for the Support Services (unless otherwise agreed in Appendix 2).

## **9. STANDARD OF PERFORMANCE OF THE SUPPORT SERVICES**

- 9.1. The Supplier shall perform the Support Services:
- 9.1.1. with all reasonable care, skill and diligence, and in accordance with Good Industry Practice;
  - 9.1.2. in accordance with the Specification for the Support Services, and any other University requirements, descriptions, standards and specifications provided to the Supplier;
  - 9.1.3. in such a way so as not to cause any fault or malfunction in the Software or the University's Operating Environment; and
  - 9.1.4. in such a way so as not to cause any interruption to the business processes of the University (other than any agreed and unavoidable interruption required to perform the Support Services in a proper and efficient manner).
- 9.2. The Supplier shall ensure that the Supplier's Personnel:
- 9.2.1. are suitably trained and experienced in the support and maintenance of the Software;
  - 9.2.2. are familiar with the working of the Software at the Premises and in the University's Operating Environment;
  - 9.2.3. conform to the standards of behaviour and ability to be reasonably expected of such persons; and
  - 9.2.4. while on the Premises, adhere to the University's security procedures and health and safety regulations as from time to time notified to the Supplier or brought to the notice of such Personnel.
- 9.3. The Supplier shall take all reasonable steps to maintain continuity in relation to its Personnel involved in the provision of the Support Services.

## **10. SERVICE LEVEL AGREEMENT**

- 10.1. The Supplier shall perform the Support Services to meet or exceed the service levels set out in any Service Level Agreement agreed in Appendix 2.



- 10.2. The Supplier shall at the end of each month (or such other time period as specified in the Service level Agreement) provide the University with a report setting out the Supplier's performance against such service levels in that preceding month.
- 10.3. If Supplier fails to meet such service levels, the Supplier shall credit the University with such amounts as may be agreed and calculated in accordance with the Service Level Agreement (if applicable). It is agreed that the University's right to any such credits shall be in addition to any other rights arising from the Supplier's failure to provide the Support Services in accordance with the terms of this Agreement, and is proportionate when considering the effect on the University of any delay or deficiency in the maintenance of the Software and the provision of the Support Services.

## **11. REMEDIES IN RELATION TO THE SUPPORT SERVICES**

- 11.1. If the Supplier fails to perform the Support Services (a) by or on the applicable dates set out under Appendix 2 (or as otherwise agreed in writing between the parties), (b) in compliance with the standards of performance set out in Clause 9, or (c) in accordance with the Service Level Agreement (if applicable), then (without prejudice to the University's other rights or remedies) the University shall have the right to any one or more of the following remedies:
- 11.1.1. to refuse to accept any subsequent performance of the Support Services which the Supplier attempts to make;
  - 11.1.2. to purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier;
  - 11.1.3. where the University has paid in advance for Support Services that have not been provided by the Supplier or have been unsatisfactorily performed, to require such sums to be refunded by the Supplier; and / or
  - 11.1.4. to terminate this Agreement in whole (including the Licence) or the Support Services only, and require the Supplier to immediately refund all monies the University has paid in advance under this Agreement for such Licence and/or Support Services (as applicable).
- 11.2. This provisions of this Section C shall extend to any substituted or remedial services provided by the Supplier.

## **12. SUPPORT FEES**

- 12.1. The Support Fees shall represent the full and exclusive remuneration of the Supplier in respect of the Support Services and, unless otherwise agreed in Appendix 1, shall be inclusive of all costs and expenses incurred by the Supplier in connection with the supply of the Support Services. If no Support Fees are specified then the fees for such Support Services shall be deemed to be included in the Licence Fee.
- 12.2. The Supplier shall keep and maintain complete and accurate records of the time spent and materials used (if any) by the Supplier in providing the Support Services, and shall (without prejudice to Clause 27.1 (Audit and record-keeping)) allow the University to inspect such records at all reasonable times upon written request.

- 12.3. Where the Supplier contemplates any increase in the Support Fees due to any request made by the University in respect of any extension or renewal of the Support Services (to the extent not already covered under Appendix 2) or any changes to the Specification for the Support Services, the Supplier shall give reasonable notice of the same to the University prior to such extension, renewal or change to the Support Services, and the Authorised Representatives, acting reasonably and in good faith, shall discuss whether and to what extent the Support Fees may be increased.
- 12.4. The Supplier shall invoice the University for the Support Fees in accordance with the payment arrangements set out in Appendix 2.
- 12.5. The provisions of Clause 16 shall apply in respect of the Support Fees.

## **SECTION D: GENERAL TERMS & CONDITIONS**

### **13. UNIVERSITY'S OBLIGATIONS**

- 13.1. The University shall:
- 13.1.1. provide such information and University Materials to the Supplier as it may reasonably request and which the University considers reasonably necessary for the purpose of supplying the Software and providing the Support Services (if applicable); and
  - 13.1.2. subject to the Supplier's compliance with the University's security requirements, provide the Supplier and its Personnel with such access to the Premises and the University's Operating Environment as may reasonably be required for the purpose of supplying the Software and providing the Support Services.
- 13.2. The University shall own all right, title and interest in and to all Data and shall be responsible for the legality, reliability and accuracy of any such Data it provides to the Supplier or inputs into the Software.

### **14. SUPPLIER'S OBLIGATIONS**

- 14.1. The Supplier shall:
- 14.1.1. cooperate fully with the University in all matters relating to the Software and the Support Services (if applicable), and comply with the University's reasonable instructions;
  - 14.1.2. maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement;
  - 14.1.3. use Personnel who are suitably qualified and experienced to perform the tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
  - 14.1.4. notify the University in writing immediately upon the occurrence of a change of Control of the Supplier;
  - 14.1.5. to the extent necessary for the performance of its obligations under this Agreement, hold University Materials in secure custody at its own risk, maintain the University Materials in good condition and order, and readily identifiable as University Materials until returned to the University (or destroyed/deleted as the case may be at the University's direction), and shall not dispose or use the University Materials other than for the purposes of this Agreement and in accordance with the University's written instructions or authorisation;
  - 14.1.6. comply with all Applicable Laws applicable to the supply of the Software and provision of the Support Services (if applicable), as well as with all the Cybersecurity Requirements and University policies related to this Agreement; and

- 14.1.7. not do anything which may cause the University to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its activities or affairs (and in this respect, the University relies on the Supplier's skill and judgement).

## **15. SUPPLIER'S PERSONNEL**

- 15.1. To the extent applicable, the Supplier shall comply with, and shall procure that each of the sub-contractors and its other representatives complies with, the University's procedures for vetting personnel in respect of all of Supplier's Personnel employed or engaged in the supply of the Software or provision of the Support Services (if applicable).
- 15.2. To the extent any of the Supplier's Personnel are required to attend the Premises for the purpose of supplying the Software or providing any Services, if the University reasonably believes that any of the Supplier's Personnel are unsuitable to undertake work pursuant to this Agreement, the University may, by giving written notice to the Supplier:
- 15.2.1. refuse admission to the relevant person to the Premises; and
- 15.2.2. require the Supplier to replace the relevant person with another suitably qualified and experienced person and procure that any security pass issued by the University to that person removed is surrendered,
- and the Supplier shall comply with any such notice without delay.
- 15.3. The Supplier shall be responsible for all costs relating to the Supplier's Personnel involved in the supply of the Software and/or provision of the Support Services (if applicable) including all emoluments relating to their employment or engagement and any costs, claims, demands or other expenses incurred (including legal and other professional expenses) in relation to, or termination liabilities arising in respect of, any such Supplier Personnel ("**Employment Liabilities**"). The Supplier shall indemnify the University against all such Employment Liabilities including arising from the transfer of employment to or the employment of any of the Supplier's Personnel by the University or any successor supplier pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended).

## **16. PAYMENT TERMS**

- 16.1. Each invoice raised by the Supplier shall be made in GBP Sterling, reflect the agreed Licence Fee and/or Support Fees (as applicable) and contain all appropriate references and quote any relevant Purchase Order Number. The University reserves the right to withhold payment against any invoice which is not submitted in accordance with this Clause 16.1 and shall promptly notify the Supplier in writing of any reason for withholding payment (though the giving of such notice shall not be a condition for withholding payment in respect of such invoices).
- 16.2. The University shall consider and verify each invoice in a timely manner with a view to ascertaining whether each invoice is valid and undisputed.
- 16.3. The University shall pay each invoice in full and in cleared funds within thirty (30) days from the date on which the University determines each invoice to be valid and undisputed to the bank account nominated in writing by the Supplier.

- 16.4. To the extent that any invoice (or any part of an invoice) is disputed by the University:
- 16.4.1. the University shall pay any undisputed portion in accordance with Clause 16.3;
  - 16.4.2. the Authorised Representatives (acting in good faith) shall attempt to resolve such dispute; and
  - 16.4.3. failing resolution by the Authorised Representatives, the matter shall be referred to senior representatives of the parties with authority to settle such dispute (which, in the case of the University, shall be the University's Deputy Finance Director (or his nominee)).
- 16.5. The Licence Fee and Support Fees are exclusive of amounts payable in respect of value added tax ("VAT") if applicable. The University shall, upon receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the Licence Fee and Support Fees.
- 16.6. If the University fails to make any payment due to the Supplier under this Agreement by the due date for payment, then the University shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The University shall pay the interest together with the overdue amount.

## **17. E-INVOICING**

- 17.1. The Supplier agrees to implement at least one of the following payment/ordering methods when reasonably requested by the University. This includes:
- 17.1.1. sending invoices in electronic format, either PDF, CSV or XML files to the designated email address: [purchasing-invoices@bristol.ac.uk](mailto:purchasing-invoices@bristol.ac.uk); or
  - 17.1.2. acceptance of bank-based purchasing cards; or
  - 17.1.3. direct integration with the University's IT systems; or
  - 17.1.4. consolidated invoicing.

## **18. DEPENDENCIES**

- 18.1. The Supplier acknowledges that the University relies on the Supplier's skill and judgment in identifying any Dependencies, which must be set out in Appendix 3.
- 18.2. The University shall not be liable to pay the Supplier for any Licence Fee, Support Fees or other costs or expenses arising out of or in connection with the Supplier's failure to:
- 18.2.1. properly identify or meet any Dependencies; or
  - 18.2.2. give notice to the University in accordance with Clause 18.3; and
- the Supplier shall not be released from performing any of its obligations under this Agreement notwithstanding any failure.

- 18.3. Each party shall ensure that any Dependencies are met in order to enable the Supplier to comply with its obligations under this Agreement. If either party becomes aware that any of the Dependencies have not been or will not be met, it shall promptly notify the other party. In the event that further support is required by either party to ensure that any Dependencies are met, the parties shall, acting reasonably and in good faith, agree how best to proceed.

## **19. SECURITY**

- 19.1. The Supplier shall ensure at all times that appropriate safety and security systems, policies and procedures are maintained and enforced in respect of its network and information systems (including Incident management processes) to prevent and mitigate against Incidents and any unauthorised access or damage to the Software, the University's Operating Environment and Data, in accordance with Good Industry Practice. The Supplier shall provide copies of such policies promptly on request by the University.
- 19.2. The Supplier shall ensure that the Software is designed, maintained and upgraded at all times so as to mitigate against Incidents. The parties agree that if Incidents are detected or discovered, each of them shall communicate and co-operate with the other to mitigate the Incident and in the scenario where the University could take action to assist with such mitigation the Supplier shall promptly notify the University of such action together with reasonable supporting details.
- 19.3. The Supplier shall:
- 19.3.1. notify the University immediately it becomes aware of any Incident and respond without delay to all queries and requests for information from the University about any Incident, whether discovered by the Supplier or the University, in particular bearing in mind the extent of any reporting obligations the University may have under applicable Data Protection Legislation or Cybersecurity Requirements, and that the University may be required to comply with statutory or other regulatory timescales; and
  - 19.3.2. promptly cooperate with any request for information made in respect of:
    - 19.3.2.1. any Incident; or
    - 19.3.2.2. any requests for information, or inspection, made by a regulator with competent jurisdiction over the University (including in connection with any applicable Data Protection Legislation or Cybersecurity Requirements).
- 19.4. The Supplier shall take all reasonable precautions to preserve the integrity of any Data which it processes and to prevent any corruption or loss of such data, and shall promptly notify the University in writing of any actual or suspected loss or damage to such Data. In the event of any loss or damage to such Data, the Supplier shall restore such lost or damaged Data from the latest backup of such Data to be maintained by the Supplier.

## **20. TERMINATION**

- 20.1. This Agreement shall automatically terminate on expiry of the Licence Term.

- 20.2. The University may terminate this Agreement with immediate effect by giving written notice to the Supplier, if the Supplier:
- 20.2.1. has acted in any manner which in the University's reasonable opinion has brought or is likely to bring the University into material disrepute or is materially adverse to the University's interests or reputation; or
  - 20.2.2. has given any warranty or made any representation in this Agreement or in the Supplier's Response to PQ or Tender which is found to be untrue or misleading in any material respect or any such warranty is breached; or
  - 20.2.3. has committed a breach of the Subsidy Control Regulations in accordance with Clause 31.2.
- 20.3. Either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 20.3.1. the other party commits a material breach of any term of this Agreement which cannot be remedied or if such breach is remediable fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so; or
  - 20.3.2. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
  - 20.3.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 20.3.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
  - 20.3.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
  - 20.3.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company); or
  - 20.3.7. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
  - 20.3.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- 20.3.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- 20.3.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 20.3.3 to 20.3.9 (inclusive);
- 20.3.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 20.3.12. there is a change of Control of the other party.

## **21. INEFFECTIVENESS**

Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies the University may at any time terminate this Agreement with immediate effect by giving written notice to the Supplier if the parties are required by a Court to terminate this Agreement and set aside the contract. The compensation paid to the Supplier will be limited to full and final settlement of any unpaid, valid invoice(s) submitted in accordance with Clause 16.

## **22. CONSEQUENCES OF TERMINATION**

- 22.1. Upon expiry of the Licence Term or termination of this Agreement for any reason:
  - 22.1.1. the Licence and any licences to Intellectual Property Rights granted under this Agreement shall terminate;
  - 22.1.2. the Supplier shall promptly refund such portion of the Licence Fee or Support Fees as relates to the period after termination on a pro rata basis;
  - 22.1.3. the Supplier shall promptly return, or at the University's option, destroy any University Materials and Data in the Supplier's possession and, if requested, certify that it has done so to the University in writing;
  - 22.1.4. where applicable, the Supplier shall provide all assistance reasonably required by the University to facilitate the smooth transition of the Support Services to the University or any replacement supplier appointed by it; and
  - 22.1.5. any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 22.2. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **23. INTELLECTUAL PROPERTY RIGHTS**



- 23.1. Nothing in this Agreement affects either party's rights in pre-existing Intellectual Property Rights (including pre-existing Intellectual Property Rights of either party contained in or relating to Confidential Information) ("**Pre-Existing IPR**"). All Pre-Existing IPR shall remain owned by each party (and its licensors).
- 23.2. All Intellectual Property Rights in the University Materials are and shall remain the exclusive property of the University (or its licensors). The University hereby grants to the Supplier a non-exclusive, non-transferable, royalty-free licence for the Licence Term to use the University Materials for the sole purpose of carrying out its obligations under this Agreement.
- 23.3. All Intellectual Property Rights in the Software (including any Maintenance Releases and New Versions) and the Support Services shall vest in the Supplier (or its licensors). Except as expressly stated in this Agreement, this Agreement does not grant the University any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Support Services.
- 23.4. The Supplier expressly acknowledges and agrees that the University (and its licensors) owns and retains all Intellectual Property Rights in the Data and the University's Operating Environment. Save to the extent necessary for the provision of the Support Services and the performance of its obligations under this Agreement, the Supplier shall have no rights to access, use, share or modify the Data or the University's Operating Environment unless it has the prior written consent of the University.

#### **24. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

- 24.1. The Supplier agrees to indemnify the University and its Affiliates against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses and all interest, penalties and reasonable legal and professional costs) suffered or incurred by the University or its Affiliates arising out of or in connection with any claim(s) made against the University or its Affiliates for actual or alleged infringement of a third party's Intellectual Property Rights as a result of or in relation to the University's or its Affiliates' use of the Software (including any Maintenance Releases or New Versions) or receipt of the Support Services (if applicable).
- 24.2. If any third party makes a claim or notifies an intention to make a claim against the University or any Affiliate which the University considers is likely to give rise to liability covered by the indemnity under Clause 24.1 ("**Claim**"), the University shall if requested by the Supplier:
- 24.2.1. as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- 24.2.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed) unless the University reasonably believes that any failure to settle the Claim would be prejudicial to it in any material respect;
- 24.2.3. give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to the University's or its Affiliates' Personnel and professional advisers, and to any relevant assets, documents and records within the

power or control of the University, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

24.2.4. subject to the Supplier providing security to the University's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

24.3. If any Claim is made against the Customer or any Affiliate, without prejudice to the University's other rights and remedies, the Supplier will:

24.3.1. procure for the University the right to continue using the Software and receiving the Support Services (if applicable) in accordance with the terms of this Agreement; or

24.3.2. modify the Software or the Support Services so that it ceases to be infringing; or

24.3.3. replace the Software or the Support Services with non-infringing software or services,

provided that if the Supplier modifies or replaces the Software or Support Services such modified or replacement Software or Support Services must continue to comply with the relevant Specifications and warranties set out in Section B and Section C (as applicable).

24.4. If a payment due from the Supplier under this Clause 24 is subject to tax (whether by way of direct assessment or withholding at its source), the University shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the University in respect of the payment is the same as it would have been were the payment not subject to tax.

## **25. LIMITATION OF LIABILITY**

25.1. This Clause 25 prevails over all other clauses and sets out the entire financial liability of the parties (including any liability for the acts or omissions of their employees, agents and sub-contractors) in respect of any breach of this Agreement, supply of the Software, provision of the Support Services, and any representation, misrepresentation (whether innocent or negligent), statement, or tortious act or omission (including negligence) arising under or in connection with this Agreement.

25.2. Nothing in this Agreement shall limit or exclude any liability of either party for:

25.2.1. death or personal injury resulting from negligence; or

25.2.2. fraud or fraudulent misrepresentation; or

25.2.3. breach of the Bribery Act 2010; or

25.2.4. any other matter which, by law, may not be excluded or limited.

25.3. Subject to Clause 25.2, neither party shall be liable for any indirect or consequential losses, damages, costs or expenses, whether or not such losses were reasonably foreseeable or the party in default or its agents had been advised of the possibility of the other incurring such losses.

- 25.4. Subject to Clause 25.2, the Supplier's total liability to the University in respect of:
- 25.4.1. any claim under the intellectual property indemnity under Clause 24.1 (Third Party Intellectual Property Rights) or the employment liability indemnity under Clause 15.3 (Supplier Personnel) shall be unlimited;
  - 25.4.2. any breach of its obligations under Section E (Data Protection) shall be capped at five million pounds (£5,000,000) in aggregate; and
  - 25.4.3. any liability for damage to property caused by breach of contract or negligence of the Supplier's Personnel in connection with this Agreement shall not exceed ten million pounds (£10,000,000) for any one event or series of connected events.
- 25.5. Subject to Clauses 25.2, 25.3, and 25.4 the Supplier's total liability to the University arising out of or in connection with this Agreement shall not exceed:
- 25.5.1. the limits specified in the Invitation to Tender; or
  - 25.5.2. where no such limits are specified in the Invitation to Tender or there is no Invitation to Tender, two hundred per cent (200%) of the total value of the Licence Fee and Support Fees (in aggregate) paid or payable under this Agreement.
- 25.6. Subject to Clauses 25.2 and 25.3, the University's total liability to the Supplier arising out of or in connection with this Agreement (whether in contract or tort) shall not exceed the lower of one hundred thousand pounds (£100,000) or the total value of the Licence Fee and Support Fees (in aggregate) paid or payable under this Agreement.
- 25.7. Each party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.

## **26. INSURANCE**

- 26.1. Unless otherwise specified in the Invitation to Tender (if applicable) or otherwise agreed by the University in writing, the Supplier shall take out and maintain in force, with a reputable insurance company, the following policies of insurance with the following minimum levels of cover:

<b>Insurance policy</b>	<b>Level of cover</b>
Public liability insurance	Ten million pounds (£10,000,000) per occurrence or series of occurrences.
Product liability insurance	Ten million pounds (£10,000,000) per occurrence or series of occurrences.
Professional indemnity insurance, or equivalent insurance cover in the territory where the Supplier is based	Five million pounds (£5,000,000) in respect of any one claim in any one period of insurance.
Employers' liability insurance (if mandated by the laws of England and Wales)	Ten million pounds (£10,000,000) per occurrence or series of occurrences.

Motor Vehicle Insurance (only relevant to Cars or Commercial Vehicles which may be driven on University grounds by, or on behalf of, the Supplier)	<p>Third Party Bodily Injury: Unlimited amount for any one claim.</p> <p>Third Party Property Damage:</p> <p><b>Car:</b> at least twenty million pounds (£20,000,000) for any one claim.</p> <p><b>Commercial vehicles:</b> at least ten million pounds (£10,000,000) for any one claim.</p>
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- 26.2. The Supplier shall, on the University's request, produce both the insurance certificate giving details of cover and receipt for the current year's premium in respect of each insurance policy.
- 26.3. The terms of any insurance policy or the level of cover shall not relieve the Supplier of any liabilities under this Agreement.

## 27. SUPPLIER STANDARDS & COMPLIANCE

### 27.1. Audit and record-keeping

- 27.1.1. The Supplier shall keep and maintain for the duration of this Agreement, and for a period of for six (6) years after completion of its obligations under this Agreement (unless otherwise agreed between the parties) full and accurate records of this Agreement including the Software supplied and any Support Services provided under it, all expenditure reimbursed by the University and all payments made by the University.
- 27.1.2. The Supplier shall, on request, afford the University or its representatives such access to those records as may be required for the purpose of conducting an audit in connection with this Agreement ("**Audit**").
- 27.1.3. If any Audit identifies that:
- 27.1.3.1. the Supplier has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the University about the Licence Fee or Support Fees, proposed Licence Fee or Support Fees, or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information; or
  - 27.1.3.2. the University has overpaid any Licence Fee or Support Fees, the Supplier shall pay to the University the amount overpaid within twenty (20) Business Days. The University may deduct the relevant amount from the Licence Fee or Support Fees if the Supplier fails to make this payment; or
  - 27.1.3.3. the University has underpaid any Licence Fee or Support Fees, then the University shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the University if the underpayment was due to the Supplier failing to invoice within twenty (20) Business Days.

### 27.2. Anti-bribery

- 27.2.1. In performing its obligations, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force, including (but not limited to) those relating to anti-bribery and anti-corruption including the Bribery Act 2010. The Supplier shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.
- 27.2.2. The Supplier shall comply, and shall procure that those of its Personnel comply, with the University's mandatory policies, including Anti-Corruption and Bribery Policy which can be accessed at: [www.bristol.ac.uk/secretary/legal/bribery/](http://www.bristol.ac.uk/secretary/legal/bribery/).
- 27.2.3. The Supplier shall promptly report to the University any request or demand which, if complied with, would amount to a breach of this Agreement or the Anti-Corruption and Bribery Policy.
- 27.2.4. The Supplier shall ensure that any of its Personnel engaged in supplying the Software or providing the Support Services under this Agreement does so only on the basis of a written contract which imposes on, and secures from, such Personnel, terms equivalent to those imposed on the Supplier under this Clause 27.2.
- 27.2.5. The Supplier acknowledges that any breach of this Clause 27.2 shall be deemed a material breach which cannot be remedied under Clause 20.3.1.

### 27.3. Conflicts of Interest

The Supplier shall take appropriate steps to ensure that neither the Supplier nor its Personnel are placed in a position where there is or may be an actual or potential conflict between the pecuniary or personal interest of the Supplier or its Personnel 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. The provisions of this Clause 27.3 shall apply during the continuance of this Agreement.

### 27.4. Disruption

- 27.4.1. The Supplier shall take reasonable care to ensure that in its performance of this Agreement it does not disrupt the operations of the University or the University's Personnel.
- 27.4.2. The Supplier shall immediately inform the University of any actual or potential industrial action, whether such action may be brought by their own Personnel or others, which affects or might affect its ability at any time to perform its obligations under this Agreement.
- 27.4.3. In the event of industrial action by the Supplier's Personnel, the Supplier shall seek the University's written consent to the Supplier's proposals in connection with the performance of its obligations under this Agreement.
- 27.4.4. If the University considers the Supplier's proposals referred to in Clause 27.4.3 are insufficient or unacceptable, then the University may terminate this Agreement by notice in writing with immediate effect.

### 27.5. Environmental requirements

- 27.5.1. The Supplier shall perform its obligations under this Agreement in accordance with the University's environmental policy which is to conserve energy, water, wood, paper and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 27.5.2. The Supplier shall comply fully with any other acts, order, regulations and codes of practice relating to environmental regulation which may apply in the performance of its obligations under this Agreement including (if applicable) the requirements of the Waste Electrical and Electronic Equipment (WEEE) Regulations 2006 and the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (as amended).

27.6. Social Value, equality, diversity, human rights, and modern slavery

- 27.6.1. The Supplier shall perform its obligations under this Agreement in accordance with the University's commitment to Social Value Policy which can be found at: <http://www.bristol.ac.uk/directory/procurement/information-for-suppliers/how-to-work-with-the-university/social-value/>.
- 27.6.2. The Supplier shall not unlawfully discriminate within the meaning of any legislation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment and shall take all reasonable steps to ensure that its Personnel observe the same.
- 27.6.3. The Supplier shall comply with the provisions of the Human Rights Act 1998 ("HRA 1998") as if it were a public body as defined by the HRA 1998, as appropriate to the provision of the Software and Support Services (if applicable).
- 27.6.4. The Supplier shall comply with all anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and shall not in any circumstances engage in, promote or otherwise support child labour, human trafficking or any other means of exploitation. The Supplier shall take reasonable steps to monitor and manage its own direct supply chain and sub-contractors compliance with all anti-slavery and human trafficking laws, statutes and regulations from time to time in force.
- 27.6.5. If requested by the University, the Supplier shall demonstrate effective implementation of its policies and procedures in relation to equality, diversity, human rights and Modern Slavery and take specific action to make any necessary changes.

27.7. Counter Terrorism and Security Act 2015 (Prevent Duty)

The University has a statutory duty under section 26 (1) of the Counter Terrorism and Security Act 2015, when exercising its functions, to have due regard to the need to prevent people from being drawn into terrorism. The Supplier shall assist the University with this duty when carrying out its obligations under this Agreement, at no expense to the University.

27.8. Health and safety

- 27.8.1. The Supplier shall comply, and shall procure that those of its Personnel comply, with: a) the University's Group Health and Safety Policy (as updated from time to

time) which can be accessed at <http://www.bristol.ac.uk/safety/media/po/group-health-safety-policy.pdf>; and b) any additional rules made known or instructions given to the Supplier or the Supplier's Personnel together with all applicable statutory rules and regulations regarding health and safety matters.

27.8.2. Each party shall notify the other as soon as practicable of any health and safety hazards which may arise in connection with the performance of this Agreement. Furthermore, the Supplier shall notify the University immediately in the event of any incident occurring in the performance of this Agreement at the Premises which causes or could cause personal injury or damage to property.

27.8.3. The University may request that any of the Supplier Personnel vacate the Premises where it becomes aware of any risk posed to their health and safety.

## 27.9. Security

The Supplier shall comply, and shall procure that those of its Personnel comply, with the University's security requirements (including the University's IT security requirements) while on the Premises.

## 27.10. Export

27.10.1. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

27.10.2. Each party undertakes:

27.10.2.1. contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out in Clause 27.10.1; and

27.10.2.2. if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 28. **CONFIDENTIALITY & ANNOUNCEMENTS**

28.1. Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party except as permitted by Clause 28.2.

28.2. Each party may disclose the other party's Confidential Information:

28.2.1. to those of its Personnel or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party

shall ensure that its Personnel or advisers to whom it discloses the other party's Confidential Information comply with this Clause 28; and

28.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

28.3. No party shall use any other party's Confidential Information for any purposes other than to perform its obligations under this Agreement.

28.4. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party.

## **29. DATA PROTECTION**

29.1. The parties shall process any Personal Data under or in connection with this Agreement in compliance with the Data Protection Legislation. When for the purposes of Data Protection Legislation the Supplier is to process Personal Data as Processor on behalf of the University, and the University is to act as the Controller of such Personal Data pursuant to this Agreement, the provisions of Section E (Data Protection) shall apply. This Clause 29.1 is in addition to and does not relieve, remove or replace either party's rights or obligations under the Data Protection Legislation.

29.2. The Supplier acknowledges and agrees that the University and its Affiliates (as appropriate) shall own all right, title and interest in and to all of the University Data (as defined in Section E).

## **30. FREEDOM OF INFORMATION & ENVIRONMENTAL INFORMATION REGULATIONS**

30.1. The Supplier recognises that the University and certain of its Affiliates are subject to legal duties which may require the release of information under the EIR or FOIA and any other applicable legislation or codes governing access to information and that the University and certain of its Affiliates may be under an obligation to provide information on request. Such information may include matters relating to, or arising out of or in connection with, this Agreement including information provided by or relating to the Supplier.

30.2. Where the University receives any requests under Clause 30.1:

30.2.1. it shall promptly notify the Supplier of the nature and extent of the request; and

30.2.2. where requested by the Supplier, the University agrees that it shall endeavour to claim any exemptions which are aimed at protecting the Supplier's commercial interests (including those relating to Confidential Information and trade secrets).

30.3. If the Supplier receives directly a request for information under any applicable code or legislation governing access to information, the Supplier shall:

30.3.1. immediately pass such request together with full background details and any supporting documentation to the University; and

30.3.2. not act or make any representations which may prejudice the University's or its relevant Affiliates' position in relation to such request.



- 30.4. The Supplier accepts and acknowledges that any decision to disclose information and/or the application of any exemption under any applicable code or legislation governing access to information will be at the University's or its Affiliates' sole and ultimate discretion.

## **31. GRANT FUNDING**

- 31.1. When in receipt of grant funding and in the event that the University has reasonable grounds to believe the Supplier has breached Subsidy Control Regulations, it shall notify the Supplier who will provide the University with such information which the University reasonably requires to enable a full assessment to be undertaken.
- 31.2. In the event that there has been a breach of the Subsidy Control Regulations as reasonably determined by the University, the University reserves the right to seek claw back from the Supplier to ensure compliance with the Subsidy Control Regulations.

## **32. GENERAL WARRANTIES**

- 32.1. The Supplier warrants, represents and undertakes to the University that:
- 32.1.1. the information contained in the Supplier's Response to PQ or Tender (to the extent that it has not been amended or superseded by written agreement with the University) is accurate and not misleading (whether by inclusion or by omission) in any material respect;
  - 32.1.2. if there shall be any material change to the information contained in the Supplier's Response to PQ or Tender between the date of the Supplier's Response to PQ or Tender (as the case may be) and the expiry or termination of this Agreement, it shall promptly notify the University of the same and provide such information as the University may reasonably require in this regard;
  - 32.1.3. it has the full capacity and authority (including the authority of any parent company, where required by its constitutional documents) and all necessary consents to enter into and perform its obligations under this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
  - 32.1.4. it has and will continue to have sufficient working capital, skilled Personnel, equipment and other resources required to provide the Software and Support Services (if applicable) in accordance with this Agreement;
  - 32.1.5. it holds and will maintain all licences, permissions, consents and permits which may be required for the provision of the Software and Support Services (if applicable);
  - 32.1.6. the University's receipt, possession and use, in accordance with this Agreement, of the Software, Support Services and any other materials and information (including third-party materials and information) supplied or procured by the Supplier to the University shall not cause the University (including any of its Authorised Users and Affiliates) to infringe the rights including any Intellectual Property Rights, of any third party;
  - 32.1.7. it will not introduce, or permit the introduction of, any Viruses or Vulnerabilities into the University's Operating Environment;

- 32.1.8. it is not subject to an outstanding order for the recovery of aid or Subsidy which has been declared by the European Commission, a court or other authority of competent jurisdiction to be illegal; and
- 32.1.9. it shall not do anything, or cause anything to be done, which may damage the reputation of the University or bring the University into disrepute.

### **33. ASSIGNMENT AND OTHER DEALINGS**

- 33.1. The University may at any time assign, transfer, novate, mortgage, charge or otherwise deal in any other manner with any or all of its rights or obligations under this Agreement. The University shall notify the Supplier in writing in such circumstances.
- 33.2. The Supplier shall not assign, transfer, mortgage, charge, novate or otherwise deal in any other manner with any or all of its obligations under this Agreement without the University's prior written consent.

### **34. SUBCONTRACTING**

- 34.1. Subject to Section E (Data Protection) and Appendix 4, Part 3 (where applicable), the Supplier shall not be permitted to enter into any Sub-Contract in respect of any or all of its obligations under this Agreement with any third party without the University's prior written consent and if such consent is granted the Supplier shall comply with the provisions of Clauses 34.2 to 34.6.
- 34.2. Where the Supplier proposes to subcontract any of its obligations under this Agreement, the Supplier shall:
- 34.2.1. be responsible for the acts and omissions of its subcontractors as though they are its own;
  - 34.2.2. impose obligations on its subcontractors in substantially the same terms as those imposed on it by the University under this Agreement; and
  - 34.2.3. be liable to the University for any costs, losses, damages or expense suffered or incurred by the University arising out of or in connection with any act or omission of its subcontractors.
- 34.3. The Supplier shall ensure that all Sub-Contracts contain a provision requiring the Supplier to:
- 34.3.1. consider and verify each invoice received from its sub-contractors in a timely manner with a view to ascertaining whether each invoice is valid and undisputed; and
  - 34.3.2. pay each invoice received from its sub-contractors within a specified period not exceeding thirty (30) days from the date on which the Supplier determines each invoice to be valid and undisputed.
- 34.4. The Supplier shall:
- 34.4.1. pay each invoice received from its sub-contractors within thirty (30) days from the date on which the Supplier determines each invoice to be valid and undisputed; and

34.4.2. at the University's request, provide the University with such evidence of compliance with this Clause 34.4 as it may reasonably require.

34.5. The Supplier shall include in every Sub-Contract:

34.5.1. a right for the Supplier to terminate the Sub-Contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social and labour law; and

34.5.2. a requirement that the sub-contractor includes a provision having the same effect as Clause 34.3.1 above in any subcontracts which it awards.

34.6. Where the University considers whether the grounds for exclusion of a sub-contractor under Regulation 57 of the Public Contract Regulations 2015, then:

34.6.1. if the University finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the sub-contractor; and

34.6.2. if the University finds there are non-compulsory grounds for exclusion, the University may require the Supplier to replace or not appoint the sub-contractor and the Supplier shall comply with such a requirement.

## **35. RIGHTS AND REMEDIES**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law. All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies provided that neither party may recover twice (or more) for the same loss or damage.

## **36. SEVERANCE**

36.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

36.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties (acting reasonably) shall negotiate with a view to amending such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## **37. ENTIRE AGREEMENT**

37.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

37.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this

Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

### **38. FORCE MAJEURE**

- 38.1. Subject to Clause 38.2, neither party shall be in breach nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control including acts of God, pandemic, endemic, riots, war, acts of terrorism, imposition of sanctions, embargo, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain ("**FM Event**").
- 38.2. In case of a FM Event the affected party shall be entitled to a reasonable extension of time for performing its obligations, provided that:
- 38.2.1. it promptly notifies the other party of the FM Event, its estimated duration and the effect it has on its ability to perform its obligations;
  - 38.2.2. it takes reasonable steps to avoid or mitigate the effect the FM Event will have on the performance of its obligations;
  - 38.2.3. the time for performance of the corresponding obligations of the other party is extended to the same extent as those obligations of the affected party; and
  - 38.2.4. if the period of delay or non-performance continues for a continuous period of thirty (30) days ("**Affected Period**"): (a) the parties may during the Affected Period agree in good faith amendments to this Agreement in order to mitigate the effect of the FM Event, such amendments to maintain the same overall balance of obligations, benefits and liabilities and risk between the parties; or (b) if the parties cannot reach agreement on such amendments by the end of the Affected Period, either party may terminate this Agreement by giving written notice to the other party.
- 38.3. If the FM Event results in the suspension in the University's use of the Software or receipt of the Support Services, then the University shall not be obliged to pay the Licence Fee and Support Fees until such time as the FM Event shall have ceased to have effect and use of the Software and receipt of the Support Services recommence and are delivered in accordance with this Agreement.
- 38.4. The Supplier shall have in place an appropriate Disaster Recovery Plan to ensure that it is able to comply with its obligations under this Agreement and shall maintain, update and test (and apply as necessary) such Disaster Recovery Plan, and notify full details of its then current Disaster Recovery Plan to the University no less frequently than every 6 months. If such Disaster Recovery Plan is invoked, the cost and expense of invoking and executing such Disaster Recovery Plan shall be borne by the Supplier.

### **39. AMENDMENT & WAIVER**

- 39.1. No amendment of this Agreement (whether such amendment relates to a matter required to be agreed between the parties under this Agreement or otherwise) shall be effective unless it is made in writing and signed by each party's duly authorised representatives.

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

#### **40. THIRD PARTY RIGHTS**

A person who is not a party to this Agreement (including the University's and the Supplier's Personnel) shall not have any right to enforce any term of this Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both parties, which agreement should specifically refer to this Clause 40.

#### **41. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party, except as expressly authorised by the University or the Supplier (as the case may be).

#### **42. COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which shall be an original, and such counterparts shall together constitute one and the same agreement. Transmission of an executed counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement provided that (without prejudice to the validity of the agreement thus made), each party provides the other with the original of such counterpart as soon as reasonably possible thereafter.

#### **43. NOTICES**

- 43.1. Except for any communications between the Authorised Representatives regarding the practical implementation of this Agreement, any notice required to be given under this Agreement shall be made in writing, sent and deemed served in accordance with the following table:

<b>Method for serving of Notice</b>	<b>Deemed service of notice date and time</b>	<b>Address for service</b>
Delivery by hand	On signature of a delivery receipt	Authorised Representative's work address as set out at the beginning of this Agreement, unless
Pre-paid first class post, recorded delivery or other next working day delivery service	9.00am on the second Business Day after posting.	

Pre-paid airmail (where the Supplier is situated outside the UK)		9.00am on the fifth Business Day after posting	otherwise specified in writing by each party.
Email	At the time of transmission	Authorised Representative's work email address as set out at the beginning of this Agreement, unless otherwise specified in writing by each party.	

- 43.2. Where the Supplier serves notice under this Agreement, a copy of such notice must be sent in the same manner to: Director of Legal Services, Office of the University Secretary, Beacon House, Queens Road, Bristol, BS8 1QU with a copy sent by email to [secretarys-office@bristol.ac.uk](mailto:secretarys-office@bristol.ac.uk).
- 43.3. For the purposes of Clause 43.1 and calculating deemed receipt of any notice:
- 43.3.1. all references to time are to local time in the deemed place of receipt;
- 43.3.2. University Closure Days shall only be relevant where the Supplier serves a notice on the University; and
- 43.3.3. if deemed receipt would occur on a day which is not a Business Day, receipt will be deemed to take place at 9.00am on the next Business Day in the place of receipt.
- 43.4. Clauses 43.1 to 43.3 do not apply to the service of any proceedings or other documents in any legal action.

#### **44. GOVERNING LAW & JURISDICTION**

- 44.1. This Agreement and any dispute or claim arising out of in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
- 44.2. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of in connection with this Agreement or its subject matter (including non-contractual disputes or claims).

## SECTION E: DATA PROTECTION SCHEDULE

### 1. Definitions and interpretation

**“Commissioner”**: means the Information Commissioner (Article 4(A3), UK GDPR and section 114, DPA 2018);

**“Data Exporter”**: means a Party making or proposing to make a transfer of Personal Data to a Restricted Country;

**“Data Importer”**: means a Party in receipt of Personal Data as a result of a transfer to a Restricted Country;

**“Data Protection Legislation”**: means any applicable law to which a party to this Agreement is subject from time to time in any territory in which it Processes Personal Data and which relates to the protection of individuals with regards to the Processing of Personal Data and privacy rights, including without limitation: a) the **EU GDPR** and the e-Privacy Directive and relevant member state laws in the European Economic Area ("**EEA**"); and b) in relation to the United Kingdom ("**UK**"), the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (amended by SI 2011 no. 6) and the EU GDPR (as incorporated into UK law under the UK European Union (Withdrawal) Act 2018) as the same are amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586), as amended to be referred to as "**DPA 2018**", "**PECR**", and the "**UK GDPR**" respectively, as the same are amended, consolidated, modified, re-enacted or replaced from time to time, and any code of practice, guidance published by a relevant regulator or binding pronouncements issued by a relevant regulator or a court of law. **Controller, Processor, Process, Processed, Data Subject, Personal Data, Personal Data Breach and Processing** have the meanings given to them in the relevant part of the Data Protection Legislation, as applicable;

**“Data Transfer Agreement” / “DTA”**: means:

- (a) the European Commission's standard contractual clauses for the transfer of Personal Data from the European Union to third countries issued by the European Commission Decision of 4 June 2021, as amended, varied, supplemented or substituted from time to time, as applicable in respect of transfers of Personal Data from Controllers or Processors in the EEA to Controllers or Processors in third countries without an adequacy decision;
- (b) the addendum approved by the Commissioner as amended, varied, supplemented or substituted from time to time;
- (c) the standard contractual clauses adopted by the government of the UK, or approved by the government of the UK as updated, replaced, consolidated and/or amended from time to time, for transfers of Personal Data from Controllers or Processors in the UK to Controllers or Processors in third countries without an adequacy decision; or
- (d) any standard contractual clauses adopted under the applicable laws to which the Data Exporter is subject, as updated, replaced, consolidated and/or amended from time to

time, for transfers of Personal Data from a Data Exporter to Controllers or Processors in Restricted Countries;

**“EU GDPR”**: means the General Data Protection Regulation ((EU) 2016/679);

**“Restricted Country”**: means a country, territory or jurisdiction which: (i) is not covered by an adequacy determination by a competent authority with jurisdiction over the Data Exporter; or (ii) otherwise in relation to which a transfer restriction applies under the applicable laws of the Data Exporter; and

**“University Data”**: means the Personal Data Processed by (or on behalf of) the University or any of its Affiliates under or in connection with this Agreement, as more particularly described in Appendix 4, Part 2 (Data Processing Particulars).

## **2. Personal data types and Processing purposes**

- 2.1 The University and the Supplier agree and acknowledge that for the purpose of the Data Protection Legislation:
- (a) the University is the Controller and the Supplier is the Processor in respect of the University Data; and
  - (b) Appendix 4, Part 2 of this Agreement describes the scope, nature, purpose and duration of the Processing, as well as the types of Personal Data and categories of Data Subject in respect of which the Supplier may Process University Data under this Agreement.

## **3. Supplier’s obligations**

- 3.1 The Supplier will only Process the University Data to the extent, and in such a manner, as is necessary for the purpose of this Agreement in accordance with the University’s written instructions. The Supplier will not Process the University Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. The Supplier must promptly notify the University if, in its opinion, the University’s instructions do not comply with the Data Protection Legislation.
- 3.2 The Supplier must comply promptly with any University lawful written instructions requiring the Supplier to amend, transfer, delete or otherwise Process the University Data, or to stop, mitigate or remedy any unauthorised Processing.
- 3.3 The Supplier shall take all necessary steps to ensure that any University Data which comes into its possession or control in the course of supplying the Software or providing the Support Services is protected in accordance with the University’s guidelines or policies on data protection (which can be accessed at [www.bris.ac.uk/secretary/dataprotection/resourcedocs.html](http://www.bris.ac.uk/secretary/dataprotection/resourcedocs.html)) and information security (which can be accessed at [www.bristol.ac.uk/infosec/policies/docs](http://www.bristol.ac.uk/infosec/policies/docs)) and any additional rules made known to the Supplier or its Personnel from time to time.
- 3.4 The Supplier shall maintain the confidentiality of the University Data and shall not disclose the University Data to third parties unless the University or this Agreement specifically authorises the disclosure, or as required by applicable law, court or relevant regulator in which case the



Supplier must first inform the University of such legal or regulatory requirement and give the University an opportunity to object or challenge the requirement unless this is prohibited by applicable law, a court or regulator.

- 3.5 The Supplier must promptly notify the University of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Supplier's performance of this Agreement.
- 3.6 The Supplier will only collect University Data for the University by using a notice or method that the University specifically pre-approves in writing, which contains an approved data privacy notice informing the Data Subject of the University's identity, its appointed data protection representative, the purpose or purposes for which their University Data will be Processed, and any other information that, having regard to the specific circumstances of the collection and expected Processing, is required to enable fair Processing. The Supplier will not modify or alter the notice in any way without the University's prior written consent.
- 3.7 The Supplier will ensure that all of its Personnel a) are informed of the confidential nature of, and are bound by confidentiality obligations by virtue of written agreement in respect of, University Data; b) have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and c) are aware of the Supplier's duties and of their personal duties and obligations under the Data Protection Legislation and this Agreement.
- 3.8 The Supplier must at all times implement appropriate technical and organisational measures against unauthorised or unlawful Processing, access, copying, modification, reproduction, display or distribution of University Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of University Data, which are appropriate to a) the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction, alteration, disclosure or damage, b) the nature of the data to be protected, c) having regard to the state of technological development and the cost of implementing any measures. Those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring ongoing confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after a technical or physical incident, and regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures adopted by it for ensuring the security of Processing.
- 3.9 If the Supplier becomes aware of any Personal Data Breach, it shall without undue delay (and in any event within 24 hours) notify the University providing sufficient information and assistance to enable the University to evaluate the impact of any such breach, to meet its obligations to the relevant supervisory authority or regulator, and to notify the Data Subjects in accordance with Data Protection Legislation .
- 3.10 The Supplier will cover all reasonable expenses associated with the performance of its obligations under Paragraph 3.9 unless the matter arose from the University's specific written instructions, negligence, wilful default or breach of this Agreement, in which case the

University will cover all reasonable expenses. Without prejudice to any other rights or remedies the University may be entitled to under this Agreement or at law, the Supplier will also reimburse the University for actual reasonable expenses that the University incurs when responding to a Personal Data Breach to the extent that the Supplier caused such Personal Data Breach.

- 3.11 The Supplier must, at no additional cost to the University, promptly provide such information and assistance to the University as the University may require to enable the University to comply with its obligations under the Data Protection Legislation, including in relation to the rights of Data Subjects (e.g. subject access rights, the rights to rectify, port and erase personal data, object to the Processing and automated Processing of personal data, and restrict the Processing of personal data), security, breach notifications, impact assessments, and reporting to and consulting with the Commissioner or other relevant regulator under the Data Protection Legislation.
- 3.12 The Supplier must notify the University immediately in writing if it receives any complaint, notice or communication that relates directly or indirectly to the Processing of the Personal Data or to either party's compliance with the Data Protection Legislation.
- 3.13 The Supplier must notify the University within 48 hours if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation. The Supplier will give the University, at no additional cost to the University, its full co-operation and assistance in responding to any complaint, notice, communication, or Data Subject request.
- 3.14 At the University's request, the Supplier will give the University, or a third party nominated in writing by the University, a copy of or access to all or part of the University Data in its possession or control in the format and on the media reasonably specified by the University.
- 3.15 On termination of this Agreement for any reason or expiry of its term, the Supplier will promptly securely delete or destroy or, if directed in writing by the University, return and not retain all or any of the Personal Data related to this Agreement in its possession or control, save in case of applicable law, regulation, or government or regulatory body which requires the Supplier to retain any documents or materials or Personal Data that the Supplier would otherwise be required to return or destroy, in which case the Supplier will promptly notify the University in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends. The Supplier will certify in writing to the University that it has destroyed the Personal Data within 48 hours after it completes the deletion or destruction.
- 3.16 The Supplier will keep detailed, accurate and up-to-date written records regarding any Processing of the Personal Data, including but not limited to, the access, control and security of the Personal Data, approved Sub-Processors, the Processing purposes, categories of Processing, any transfers of personal data to a third country and related safeguards, and a

general description of the technical and organisational security measures referred to in Paragraph 3.8 and the Supplier will provide the University copies of such records on request.

- 3.17 The Supplier shall permit (and give the necessary assistance to) the University (and its third-party representatives) to audit the Supplier's compliance with its obligations under this Agreement on reasonable written notice, and such audits shall be conducted not more than once in a twelve (12) months period for the term of the Agreement except where the University knows or reasonably believes that there has been a Personal Data Breach or that the Supplier is in breach of any of its obligations of this Schedule.

#### **4. Cross-border transfers of personal data**

- 4.1 The Supplier (and any Sub-processors) must not transfer or otherwise Process the University Data outside the UK (other than the EEA) without obtaining the University's prior written consent. For this the Supplier will submit a written request (at its own cost) to the University for its written approval containing the information requested by the University and in doing so the Supplier shall have regard to and comply with Data Protection Legislation.

- 4.2 Where consent is granted by the University pursuant to Paragraph 4.1, the Supplier may only Process, or permit the Processing of, the University Data outside the UK (other than the EEA) under the following conditions:

- (a) the Supplier (or its Sub-processor) is Processing the Personal Data in a territory which is subject to adequacy regulations under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals in the territory that is subject to such adequacy regulations; or
- (b) the Supplier (or its Sub-processor) participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that the Supplier, its Sub-processor (and the University) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals when transferring their Personal Data to a Restricted Country. This will include (without limitation):
  - (i) the execution by the University as Data Exporter and by the Supplier as Data Importer of a DTA (in the form approved by the University) and the incorporation of such DTA into this Agreement; or
  - (ii) in the case of a Sub-processor acting as Data Importer (without detriment to the provisions of Paragraph 5) the Sub-processor:
    - a. at the University's option enters into a data processing agreement either direct with the University on such terms as may be required by the University, or with the Supplier on data processing terms which are equivalent to those agreed between the University and the Supplier (save that such Sub-processor shall have no right to transfer the University Data to any other third party or otherwise transfer the University Data outside of the recipient country except for transfers back to the University); and
    - b. enters into a DTA (in the form approved by the University) with the University or the Supplier (as Data Exporter); and

- c. adopts such technical and organisational measures which the University deems necessary for the purpose of protecting the University Data and ensuring that the Data Subjects have enforceable rights and effective remedies.

- 4.3 Where consent is granted by the University pursuant to Paragraph 4.1, the Supplier shall ensure there are no changes to the Processing locations or onwards transfers of University Data to any other locations without seeking the University's prior written consent.
- 4.4 The Supplier agrees that any liabilities, costs, expenses, damages and other losses incurred by the University as a result of a breach of any DTA by a Data Importer ("**Data Export Loss**") will be recoverable by the University from the Supplier as if such Data Export Loss had been caused by the Supplier's own acts or omissions.

## 5. Sub-processors

- 5.1 The Supplier may only authorise a third party ("**Sub-processor**") to Process the Personal Data if:
  - (a) the University provides written consent prior to the appointment of such Sub-processor, unless the Sub-processor has been approved at the commencement of this Agreement as set out in Appendix 4, Part 3 of this Agreement;
  - (b) the Supplier enters into a written contract with the Sub-processor that contains terms substantially the same as those set out in this Schedule, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the University's written request, provides the University with copies of the relevant excerpts from such contracts;
  - (c) the Supplier maintains control over all of the Personal Data it entrusts to the Sub-processor; and
  - (d) the Sub-processor's contract terminates automatically on termination of this Agreement for any reason.
- 5.2 Where the Sub-processor fails to fulfil its obligations under the written agreement with the Supplier referred to under Paragraph 5.1(b), the Supplier remains fully liable to the University for the Sub-processor's performance of its agreement obligations.
- 5.3 On the University's written request, the Supplier will audit a Sub-processor's compliance with its obligations regarding the Personal Data and provide the University with the audit results. Where the University concludes reasonably that the Sub-processor is in material default of its obligations regarding the University Data, the University may in writing instruct the Supplier to instruct the Sub-processor to remedy such deficiencies.

## 6. Remedies

- 6.1 The Supplier's failure to comply with the terms of this Schedule is a material breach of the Agreement. In such event, the University may terminate the Agreement immediately on written notice to the Supplier without further liability to or obligation of the University.

- 6.2 The Supplier agrees to indemnify, keep indemnified and defend at its own expense the University against all costs, claims, damages or expenses incurred by the University due to any failure by the Supplier or its employees, subcontractors or agents to comply with any of its obligations under this Agreement or the Data Protection Legislation.