



University of  
BRISTOL

Reference:	
Date of Invitation to Tender	
Date of Supplier's Response	
Purchase Order Number	

## AGREEMENT FOR THE SUPPLY OF GOODS AND 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 19 (Payment Terms).

Date:	
University	<b>UNIVERSITY OF BRISTOL</b> a body incorporated by Royal Charter under company number RC000648 having its administrative office at Beacon House, Queens Road, Bristol, BS8 1QU, acting on behalf of NCC..
Supplier	<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"	

## SUMMARY

Commencement Date	[DATE]
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<input type="checkbox"/>	Goods & Services	Complete Appendix 1 and 2 (see Appendix 6, Sections B and C)
<input type="checkbox"/>	Goods only	Complete Appendix 1 (see Appendix 6, Section B)
<input type="checkbox"/>	Services only	Complete Appendix 2 and 3 (see Appendix 6, Section C)

<input type="checkbox"/>	<b>TUPE applicable?</b>	<b>Complete Appendix 6, Section F - (see Appendix 6, Section F, Schedule 2)</b>
<input type="checkbox"/>	<b>Government Contract, including at Official Sensitive security classification?</b>	<b>Complete Appendix 6, Section G, Part 1 (see Appendix 6, Section G)</b>
<input type="checkbox"/>	<b>Security Technical Specification required?</b>	<b>Complete Appendix 6, Section H (see Appendix 6, Section H)</b>
<input type="checkbox"/>	<b>Service Credits applicable?</b>	<b>Complete Appendix 6, Section I (see Appendix 6, Section I)</b>

<b>Have any Special Terms been agreed? Complete Appendix 5</b>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
<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 31 and section E).</b>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
<b>If the answer above is “yes”, does the Supplier propose to process data outside the EEA/UK? (see Section E).</b>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>

<b>Short description of the Goods and/or Services</b>		
<b>In case of “Goods”, has a Specification been provided? If “yes” complete Appendix 1, Part 3</b>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
<b>Any “Dependencies” applicable? If “yes” complete Appendix 3 (see Clause 21)</b>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
<b>Delivery date(s) for Goods and Charges (see Appendix 1)</b>		
<b>Duration/performance dates for Services and Fees (see Appendix 2)</b>		
<b>Total contract value (excluding VAT)</b>	£[AMOUNT]	

**PLEASE NOTE:** The above checkboxes are provided for signposting purposes only and shall not affect the application of the terms of this agreement.

## **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>		

## ACCEPTANCE

This Agreement (as defined under Clause 2.6 of Appendix 6 (Standard Terms and Conditions)) 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>	

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## APPENDIX 1 – THE GOODS

### Part 1 – Supply of the “Goods”

The Goods are to be supplied by the Supplier to the University as follows:

Item #	Description	Qty	Charges	Delivery Date(s)	Notes

### Part 2 – Delivery Location

The Goods shall be delivered to the following Delivery Location: [Location]

### Part 3 - Specification

[INTENTIONALLY BLANK]

## APPENDIX 2 – THE SERVICES

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

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

Description	Performance Date(s)/Duration	Fees	Notes

### **Part 2 - Deliverables**

*[INTENTIONALLY BLANK]*

### **Part 3 – Key Personnel**

*[INTENTIONALLY BLANK]*

### **Part 4 – Service Levels**

*[INTENTIONALLY BLANK]*

### **APPENDIX 3 – DEPENDENCIES**

The Supplier has identified the following Dependencies in accordance with Clause 21 (Dependencies):

#### Part 1 - Goods

*[INTENTIONALLY BLANK]*

#### Part 2 – Services

*[INTENTIONALLY BLANK]*

## APPENDIX 4 – DATA PROTECTION

### **Part 1 – Data Processing Officers**

- a) The contact details of the University's Data Protection Officer at NCC 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 Suppliers Data Protection Officer]

### **Part 2 – Summary of Processing Activities**

*Subject to Clause 31.1, where the Supplier is Processor and the University is 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 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 **Schedule 1 (Data Protection)** 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 Section A:

**[INTENTIONALLY BLANK]**

## APPENDIX 6 – STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS & 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 and purchase of Goods and/or Services and which is construed in accordance with Clause 2.5, as varied from time to time in accordance with Clause 41.
<b>"Applicable Laws"</b>	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, national security, international sanctions, money laundering, and terrorist financing.
<b>"Authorised Representatives"</b>	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>"Bespoke Goods"</b>	Goods (or any part of them) that are to be designed, manufactured and/or customised specifically for the University in accordance with the Specification.
<b>"Business Day"</b>	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>"Charges"</b>	the charges payable by the University to the Supplier in respect of the supply of the Goods as set out in Appendix 1.
<b>"Confidential Information"</b>	has the meaning given to at Clause 30.1.

<b>“Control”</b>	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 outstanding 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>"Critical Service Level Failure"</b>	Has the meaning set out in Section I of this Agreement.
<b>“Data”</b>	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.
<b>“Controller / Processor”</b>	has the meaning given to them in Schedule 1 (Data Protection)
<b>“Data Protection Legislation”</b>	has the meaning given to it in Schedule 1 (Data Protection);
<b>“Delivery” or “Delivered”</b>	has the meaning given to it in Clause 7.5.
<b>“Delivery Date(s)”</b>	has the meaning given to it in Clause 7.4.
<b>“Delivery Location”</b>	has the meaning given to it in Clause 7.1.
<b>“Deliverables”</b>	all documents, products and materials developed by the Supplier or the Supplier's Personnel as part of or in relation to the Services in any form or media, including artwork, drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts) whether or not listed in Part 2 of Appendix 2.
<b>“Dependencies”</b>	the assumptions and/or dependencies (if any) which must be met in order for the Goods to be supplied and/or the Services to be provided under this Agreement, as set out under Clause 21 and Appendix 3.
<b>“EIR”</b>	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>“Fees”</b>	the fees payable by the University to the Supplier in respect of the provision of the Services as set out in Clause 17 and Appendix 2.
<b>“FOIA”</b>	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>“Goods”</b>	the goods as described in Part 1 of Appendix 1 (or any part of them) whether or not they are Bespoke Goods.
<b>“Good Industry Practice”</b>	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 regulations and engaged in the same type of activity and under the same or similar circumstances, terms and conditions as the Supplier.
<b>“Intellectual Property Rights”</b>	all intellectual and industrial property rights of any nature anywhere in the world, including patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights under licences, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use and protect confidentiality (including know-how and trade secrets) , in each case whether registered or unregistered and including all applications 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>	the University’s invitation for suppliers to submit tenders for the supply of the Goods and/or Services on the date specified at the beginning of this Agreement (if applicable).
<b>“Key Personnel”</b>	those persons named in Part 3 of Appendix 2 (if applicable) as being key personnel in relation to the provision of the Services under this Agreement.
<b>“Personal Data”</b>	has the meaning given to it in Schedule 1 (Data Protection).
<b>"NCC"</b>	the National Composite Centre in Bristol.
<b>"NSI Act"</b>	the National Security and Investment Act 2021, as amended from time to time.
<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 (including, in relation to the Supplier, the Key Personnel).

<b>“Premises”</b>	NCC's premises including (but not limited to) the Delivery Location.
<b>“Purchase Order Number”</b>	a purchase order number provided by the University to the Supplier unless agreed otherwise, by email sent from <a href="mailto:supplierinvoices@nccuk.com">supplierinvoices@nccuk.com</a> in respect the Goods and/or Services which are the subject of this Agreement.
<b>“Services”</b>	the services (or any part of them) as described in Part 1 of Appendix 2 and as set out in the Specification (if any).
<b>“Service Levels”</b>	the service levels and/or performance standards or key performance indicators (if any) as set out in the Specification or in any other document or agreement entered into by the parties, or as may be implied by law.
<b>“Special Terms”</b>	the special terms and conditions (if any) set out in Appendix 5.
<b>“Specification”</b>	any specification for the Goods and/or Services as set out in Part 3 of Appendix 1 (Goods) or Part 4 of Appendix 2 (Services) or annexed to this Agreement (including any related plans, drawings and other materials as agreed between the parties).
<b>Sub-Contract</b>	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 Rules</b>	<p>means:</p> <p>(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</p> <p>(b) any requirements under Applicable Laws insofar as they relate to subsidy control; and</p> <p>(c) [where the good or services are supplied from Northern Ireland, the provisions set out in Annex 5 of the Northern Ireland Protocol],</p> <p>as amended and/or replaced from time to time.</p>
<b>“Supplier’s Response”</b>	the Supplier’s response to any pre-qualification questionnaire (PQQ), preliminary questionnaire (or equivalent).
<b>“Tender”</b>	the Supplier’s response to the Invitation to Tender on the date specified at the beginning of this Agreement.
<b>“TUPE”</b>	Transfer of Undertakings (Protection of Employment) regulations 2006 (as amended)
<b>“University Closure Day”</b>	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>

<p><b>“University Materials”</b></p>	<p>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, its Affiliates and representatives to the Supplier.</p>
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## 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, Annexes or Schedules refer to Appendices, Annexes or 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);
  - 2.5.2. The provisions of Appendixes 1 to 4;
  - 2.5.3. The provisions of Appendix 6 (Standard Terms and Conditions and any Schedules);
  - 2.5.4. The Invitation to Tender;
  - 2.5.5. The Tender;
  - 2.5.6. The Supplier’s Response; and
  - 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, Appendixes or Annexes 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: GOODS**

### **3. SUPPLY OF THE GOODS**

In consideration for the University's agreement to pay the Charges, the Supplier shall supply the Goods to the University subject to and in accordance with the terms and conditions of this Agreement.

### **4. DESCRIPTION & QUALITY OF THE GOODS**

- 4.1. Unless described in Appendix 1 and/or the Specification, the Goods are as described in the Supplier's quotation, catalogue or other marketing or promotional materials provided to the University.
- 4.2. Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them and shall not form part of this Agreement.
- 4.3. The Supplier warrants and undertakes that the Goods:
  - 4.3.1. are sold to the University with full, valid and unrestricted title;
  - 4.3.2. conform with any functional or technical requirements (including those described in the Specification, if applicable), drawings and descriptions set out in any quotations, estimates, proposals, brochures, sales, marketing and technical literature or other material supplied by or on behalf of the Supplier to the University or as set out in this Agreement;
  - 4.3.3. are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier, or expressly or by implication made known to the Supplier by the University (and in this respect, the University relies on the Supplier's skill and judgement);
  - 4.3.4. are free from defects in design, materials and workmanship and will remain so for the longer of:
    - (a) twelve (12) months from the date of delivery; or
    - (b) the manufacturer's warranty period;
  - 4.3.5. comply with all with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods. Where applicable, the Goods must be UKCA marked and must conform with all relevant standards applicable in Great Britain at the date of delivery.
  - 4.3.6. To the extent that any of the Goods is a Qualifying Asset within the meaning of section 7 of the NSI Act, that it is not, and could not be, used in connection with any of the activities set out in The National Security and Investment Act 2021 (Notifiable

Acquisition) (Specification of Qualifying Entities) Regulations 2021 (the "**Notifiable Acquisition Regulations**") or any activities closely linked thereto. If the Supplier cannot make this representation and undertaking, it shall use its best efforts to disclose to the University the reasons for it and to cooperate with the University in carrying out a detailed assessment to ascertain whether either party should submit a voluntary notification of the University's acquisition of control of such item pursuant to section 18 of the NSI Act, taking into account the risk of receiving a call-in notice pursuant to section 1 of the NSI Act.

4.4. The Supplier confirms that it will:

- 4.4.1. where applicable, assign or make available to the University the full benefit of any manufacturer's warranty in relation to the Goods; and
- 4.4.2. maintain (or, if the Goods have not been manufactured by the Supplier, procure that the manufacturer maintains) in stock sufficient spare parts in respect of the Goods which will, if incorporated at any time in the future as part of the Goods, be subject to the undertakings given in Clause 4.3.

## **5. BESPOKE GOODS**

- 5.1. The University shall have the right (but not the obligation) to, or invite any third party to, inspect and test the Bespoke Goods at the Supplier's premises and at the University's own cost and expense at any time before Delivery. If following such inspection or testing the University considers that the Bespoke Goods do not conform or are unlikely to conform with the Specification and/or the Supplier's undertakings under Clause 4.3, the University shall inform the Supplier and the Supplier shall immediately take such remedial action (at its own cost and expense) as is necessary to secure compliance.
- 5.2. Notwithstanding any inspection or testing pursuant to Clause 5.1, the Supplier shall remain fully responsible for the Bespoke Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations and shall be without detriment to other rights and remedies the University has under this Agreement, and the University shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

## **6. CANCELLATION OF THE ORDER FOR GOODS**

- 6.1. The University shall have the right, by providing notice to the Supplier in writing, to cancel the ordered Goods (and where delivery is to be made by instalments, any instalment of the ordered Goods) subject to Clauses 6.2 and 6.3.
- 6.2. In the case of Bespoke Goods, the University may cancel all (or any part of) the ordered Bespoke Goods which the Supplier has already started designing or manufacturing subject to the University paying reasonable compensation to the Supplier for any cost or expenses incurred in the design and/manufacturing of the Bespoke Goods, including the cost of materials purchased to manufacture the Goods which cannot be:
  - 6.2.1. reasonably used for any other customer orders; or

- 6.2.2. returned to the supplier of those materials for a refund (the Supplier agreeing to use its reasonable endeavours to obtain a refund in such circumstances).
- 6.3. Where the University exercises its right of cancellation pursuant to Clause 6.1, the University shall pay such Charges (or that part of the Charges) for the Goods which have been Delivered to the University or which, on the deemed date of service of the notice of cancellation are already in transit, together with the reasonable delivery costs.
- 6.4. Subject to Clause 28.1, the University shall not be liable to the Supplier other than as set out under clauses 6.2 and 6.3 in respect of any losses arising as a result of a cancellation under clause 6.1.

## **7. DELIVERY & ACCEPTANCE**

- 7.1. The Supplier shall Deliver the Goods to the location specified in Part 2 of Appendix 1 or to such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the University that the Goods are ready for dispatch and delivery.
- 7.2. The Supplier shall not Deliver the Goods by instalments without the University's prior written consent (not to be unreasonably withheld, having regard to the type and quantity of the Goods). Where it is agreed that the Goods are to be delivered by instalments, each instalment may be invoiced and paid for separately. However, failure by the Supplier to Deliver Goods under any one instalment on time or at all shall entitle the University to the remedies set out in Clause 9 (Remedies in relation to the Goods) in respect of that instalment or future instalments.
- 7.3. The Supplier shall ensure that Delivery of the Goods is accompanied by a delivery note which shows:
- 7.3.1. the relevant Purchase Order number;
  - 7.3.2. the type and quantity of the Goods delivered (including any code numbers for the Goods, where applicable);
  - 7.3.3. special storage instructions (if any); and
  - 7.3.4. if the Goods are being delivered by instalments, the outstanding balance of the Goods remaining to be delivered.
- 7.4. Delivery of the Goods to the Delivery Location shall take place on such date (or dates, where the Goods are to be delivered by instalments) and at such time(s) or between such hours as the parties may agree in writing ("**Delivery Date(s)**").
- 7.5. Delivery of the Goods shall be completed once unloading of all the ordered Goods (or instalment, if applicable) has been completed at the Delivery Location ("Delivery"/"Delivered").
- 7.6. Where the Goods do not require installation, the University shall be deemed to have accepted the Goods when the University has had reasonable time (which shall be no less than ten (10) Business Days) to inspect the Goods following Delivery (or following a latent defect becoming

apparent, if applicable) and the University has not exercised in writing any of its rights or remedies under Clause 9.2 (for breaches by the Supplier under clause 9.1).

## **8. INSTALLATION, TESTING & ACCEPTANCE**

- 8.1. To the extent that the Goods are to be installed by the Supplier, the Supplier shall install the Goods at the location, date and times set out under this Agreement or otherwise agreed in writing by the parties, and shall complete such installation in accordance with Good Industry Practice and in a good and workmanlike manner.
- 8.2. The Supplier shall inspect and test Goods following installation to ensure and certify that they comply with the agreed requirements or the Specification (if applicable) (**“Completion of Installation”**). The Supplier shall give the University reasonable advance notice testing the Goods and one or more representatives of the University shall be entitled to attend. The University shall have the right, at its option and at its own cost and expense, to perform or engage a third party to perform the tests in respect of the Goods.
- 8.3. Without prejudice to the University’s other rights and remedies under this Agreement, the University shall be deemed to have accepted the Goods when the University has had reasonable time (which shall be no less than ten (10) Business Days) to inspect the Goods following notification by the Supplier of the Completion of Installation (or following a latent defect becoming apparent, if applicable) and the University has not exercised in writing any of its rights or remedies under Clause 9.2 (for breaches by the Supplier under clause 9.1).

## **9. REMEDIES IN RELATION TO THE GOODS**

- 9.1. The University shall be entitled to the rights and remedies set out under clause 9.2 if the Supplier fails to:
  - 9.1.1. supply Goods which comply with the warranties under Clause 4.3 (either on Delivery or following Completion of Installation); or
  - 9.1.2. install, inspect, and test the Goods in accordance with Clause 8; or/and
  - 9.1.3. deliver the Goods in accordance with Clause 7.
- 9.2. If clause 9.1 applies, the University shall have the right to any one or more of the following remedies (as applicable):
  - 9.2.1.1. right to terminate this Agreement;
  - 9.2.1.2. right to reject the Goods (or any part of them) and return them to the Supplier at the Supplier’s own risk and expense;
  - 9.2.1.3. right to require the Supplier (without further cost to the University) to repair or replace the rejected Goods or, where the Goods cannot be repaired or replaced within a reasonable period of time having regard to the University’s intended use of the Goods, to provide a full refund of the Charges (if paid);
  - 9.2.1.4. right to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

- 9.2.1.5. where the University has paid in advance for the Goods, right to require such sums to be refunded by the Supplier; and/or
- 9.2.1.6. right to recover from the Supplier any costs and expenses reasonably and foreseeably incurred by the University in procuring replacement goods (including any ancillary services thereto) at short notice which are substantially similar in type, functionality, quality, quantity and specification to the Goods.
- 9.3. The terms of this Agreement relating to the Goods shall also apply to any repaired or replacement Goods supplied by the Supplier.
- 9.4. The Supplier shall indemnify the University against all suffered losses arising from any claim made against the University by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

## 10. TITLE AND RISK IN THE GOODS

- 10.1. Risk in the Goods shall pass to the University:
  - 10.1.1. upon Delivery of the Goods (where the Goods do not require installation and testing by the Supplier); or
  - 10.1.2. upon acceptance or deemed acceptance of the Goods in accordance with Clause 8.3 (where the Supplier is to install, inspect and test the Goods).
- 10.2. Title in the Goods shall pass to the University on the earlier of:
  - 10.2.1. payment for the Goods by the University; and
  - 10.2.2. acceptance of the Goods in accordance with Clauses 7.6 and 8.3, as the case may be.
- 10.3. The Supplier warrants that it has the full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the University such that the University shall acquire valid and unrestricted title to the Goods upon completion of Delivery and acceptance.
- 10.4. Where the Goods come from a territory outside Great Britain:
  - 10.4.1. the Supplier shall ensure it holds the required export licences or certificates or, in the case of any items whose import is controlled by any UK sanctions regime, import licenses, required to supply the Goods to the University;
  - 10.4.2. Delivery dates for the Goods are approximate only, and unless otherwise expressly stated time is not of the essence for Delivery of Goods;
  - 10.4.3. if the Supplier is registered for VAT in Great Britain, the supplier shall Deliver the Goods to the University on the basis of Delivery Duty Paid. For the purpose of this Agreement, **Delivery Duty Paid** means the Supplier will assume all the responsibility (including making a Customs import declaration, organising, preparing and submitting any required documentation), risks, charges and costs ( including payment of export and import tariffs, Customs duties, insurance and any costs and expenses associated with transportation of the Goods to the Delivery Location); and
  - 10.4.4. if the Supplier is not registered for VAT in Great Britain, the Supplier shall:

- 10.4.4.1. notify the University of this as soon as practicably possible and before an Order has been issued by the University;
- 10.4.4.2. pay for all costs and expenses associated with transportation of the Goods to the Delivery Location; and
- 10.4.4.3. promptly provide to the University with all the information required by the University for the purpose of making a successful customs import declaration and ensuring a safe and swift Delivery of the Goods.

## **11. CHARGES**

- 11.1. The Charges shall represent the full and exclusive remuneration of the Supplier in respect of the supply of the Goods.
- 11.2. Unless otherwise agreed by the University in writing the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods including the costs and charges of packaging, duties and imposts, insurance, transport and unloading of the Goods.
- 11.3. Where the Supplier contemplates any increase in the Charges due to any request made by the University (including any request to change the Delivery Date(s), quantity or type of Goods ordered, or the Specification), the Supplier shall give reasonable notice of the same to the University prior to Delivery and the Authorised Representatives, acting reasonably and in good faith shall discuss whether and to what extent the Charges may be increased.
- 11.4. The Supplier may invoice the University for the Charges in respect of the Goods at any time after Delivery or Completion of Installation of the Goods, unless otherwise agreed in writing between the parties.
- 11.5. The provisions in Clause 19 (Payment Terms) shall apply in respect of the Charges.

## **SECTION C: SERVICES**

### **12. PROVISION OF THE SERVICES**

- 12.1. In consideration of the University's agreement to pay the Fees, the Supplier shall provide the Services to the University subject to and in accordance with the terms and conditions of this Agreement.
- 12.2. Where the provision of the Services is ancillary to the supply of the Goods, payment by the University of the Charges shall be deemed to be good consideration and, unless otherwise specified in Appendix 1, shall include the provision of those Services.
- 12.3. In providing the Services, the Supplier shall:
  - 12.3.1. ensure that the Services and Deliverables will conform with the University's requirements (including those described in the Specification, if applicable) and that the Deliverables shall be fit for any purpose expressly made known to the Supplier by the University;
  - 12.3.2. cooperate fully with the University in all matters relating to the Services and comply with the University's reasonable instructions;
  - 12.3.3. perform the Services in accordance with Good Industry Practice;
  - 12.3.4. 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;
  - 12.3.5. provide all equipment, consumables, tools, vehicles and such other items as are required to provide the Services;
  - 12.3.6. hold all University Materials in safe custody at its own risk and maintain them in good condition until return to the University, and not dispose or use the University Materials other than in accordance with the University's written instructions or authorisation;
  - 12.3.7. comply with all Applicable Laws applicable to the manner of its provision of any Services; and
  - 12.3.8. 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 business (and in this respect, the University relies on the Supplier's skill and judgement).

### **13. CANCELLATION OF THE ORDER FOR SERVICES**

- 13.1. The University shall have the right to cancel any order for the Services (or any part of them) which have not yet been provided to the University by providing written notice to the Supplier.
- 13.2. Where the University exercises its right of cancellation pursuant to Clause 13.1, the University shall pay such Fees or that part of the Fees for the Services which have already been provided to the University together with the costs of any materials which the Supplier



has purchased in order to provide the Services provided that such materials cannot reasonably be used for any other customers or returned to the supplier of those materials for a refund (the Supplier agreeing to use its reasonable endeavours to obtain a refund in such circumstances).

- 13.3. Subject to Clause 27.1, the University shall not be liable to the Supplier other than as set out under Clause 13.2 in respect of any losses arising as a result of cancellation under clause 13.1.

#### **14. SUPPLIER'S PERSONNEL**

- 14.1. If the University reasonably believes that any of the Supplier's Personnel are unsuitable to undertake work, or do not have or lose the necessary security access clearances to provide the Services, the University may, by giving written notice to the Supplier:

- 14.1.1. refuse admission to the relevant person to the Premises; and
- 14.1.2. 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.

- 14.2. The Key Personnel shall not be released from providing the Services without the University's prior written consent, except by reason of long-term illness, maternity leave, paternity leave, termination of employment and other exceptional circumstances. Any replacement shall be as qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced.
- 14.3. Where applicable, the Supplier shall comply with the provisions of Schedule 2 (TUPE) to the extent these are applicable in accordance with its provisions and Clause 22.4.
- 14.4. The Supplier shall be responsible for obtaining any required visas, work permits or any other clearances associated with the performance of the Services by the Supplier's personnel or by any other individuals performing the Services behalf of the Supplier.

#### **15. UNIVERSITY'S OBLIGATIONS**

- 15.1. The University shall:
- 15.1.1. provide the Supplier with reasonable access at reasonable times to the Premises for the purposes of providing the Services; and
  - 15.1.2. provide such information and the University Materials to the Supplier as it may reasonably request and which the University considers reasonably necessary for the purpose of providing the Services.

#### **16. REMEDIES IN RELATION TO THE SERVICES**

- 16.1. If the Supplier fails to perform the Services by or on the applicable dates, the Services do not comply with the undertakings given by the Supplier as set out in

Clause 12.3, or the Supplier's performance of the Services results in a Critical Service Level Failure (if applicable), then the University shall have the right to any one or more of the following remedies:

- 16.1.1. to terminate this Agreement;
  - 16.1.2. to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 16.1.3. where the University has paid in advance for 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
  - 16.1.4. to recover from the Supplier any costs and expenses reasonably and foreseeably incurred by the University in obtaining substitute services from a third party operating at a similar level within the Supplier's industry, profession or trade.
- 16.2. This Agreement shall extend to any substituted or remedial services provided by the Supplier.

## **17. FEES**

- 17.1. The Fees shall represent the full and exclusive remuneration of the Supplier in respect of the supply of the Services.
- 17.2. Unless otherwise agreed by the University in writing, the Fees shall include every cost and expense of the Supplier directly or indirectly incurred in connection with providing the Services including the costs of producing any materials and travel and accommodation expenses.
- 17.3. The Supplier shall maintain complete and keep accurate records of the time spent and materials used by the Supplier in providing the Services, and shall (without prejudice to Clause 29.1 (Audit and record-keeping)) allow the University to inspect such records at all reasonable times upon written request.
- 17.4. Where the Supplier contemplates any increase in the Fees due to any request made by the University, the Supplier shall give reasonable notice of the same to the University prior to performance of the Services and the Authorised Representatives, acting reasonably and in good faith, shall discuss whether and to what extent the Fees may be increased.
- 17.5. The Supplier may invoice the University for the Fees at any time after satisfactory completion of the Services or in accordance with any payment arrangements as specified Appendix 2.
- 17.6. Where applicable, if Service Credits have accrued in accordance with Section I , the Supplier shall deduct the value of the Service Credits from their invoice (to the extent that they have not already been paid or deducted from previous invoices).
- 17.7. The provisions in Clause 19 (Payment Terms) shall apply in respect of the Fees.

## SECTION D: GENERAL TERMS & CONDITIONS

### 18. BASIS OF CONTRACT

- 18.1. A quotation for Goods and/or Services given by the Supplier shall not constitute an offer.
- 18.2. This Agreement shall commence on Commencement Date and shall continue in full force and effect until its expiry or until it is terminated by either party in accordance with its provisions.
- 18.3. The terms and conditions set out in this Agreement apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 19. PAYMENT TERMS

- 19.1. Each invoice raised by the Supplier shall be made in GBP Sterling, reflect the agreed Charges and/or Fees 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 19.1 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).
- 19.2. The University shall consider and verify each invoice in a timely manner with a view to ascertaining whether each invoice is valid and undisputed.
- 19.3. 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.
- 19.4. To the extent that any invoice (or any part of an invoice) is disputed by the University:
  - 19.4.1. the University shall pay any undisputed portion in accordance with Clause 19.3;
  - 19.4.2. the Authorised Representatives (acting in good faith) shall attempt to resolve such dispute; and
  - 19.4.3. 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).
- 19.5. All Charges and 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 Charges and Fees.

- 19.6. 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.

## **20. E-INVOICING**

- 20.1. The Supplier agrees to implement at least one of the following payment/ordering methods when reasonably requested by the University. This includes:
- 20.1.1. sending invoices in electronic format, either PDF, CSV or XML files to the designated email address: [supplierinvoices@nccuk.com](mailto:supplierinvoices@nccuk.com);
  - 20.1.2. Acceptance of bank-based purchasing cards;
  - 20.1.3. Direct integration with the University's IT systems; or
  - 20.1.4. Consolidated invoicing.

## **21. DEPENDENCIES**

- 21.1. 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.
- 21.2. The University shall not be liable to pay the Supplier for any Fees, Charges or other costs or expenses arising out of or in connection with the Supplier's failure to:
- 21.2.1. properly identify or meet any Dependencies; or
  - 21.2.2. give notice to the University in accordance with Clause 21.3; and
- the Supplier shall not be released from performing any of its obligations under this Agreement notwithstanding any failure.
- 21.3. 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.

## **22. TERMINATION**

- 22.1. Without detriment to the University's right of cancellation of orders for Goods (Clause 6) and Services (Clause 13), the University may terminate this Agreement with immediate effect by giving written notice to the Supplier, if the Supplier:
- 22.1.1. 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;

- 22.1.2. is in breach of Clause 30 (Confidentiality and Announcements) or , if applicable, Section G (Government Contracts - Official Sensitive);
  - 22.1.3. if applicable, the Supplier's performance of the Services results in a Critical Service Level Failure, as provided in greater detail in Section I of this Agreement;
  - 22.1.4. has given any warranty or made any representation in this Agreement or in the Supplier's Response or Tender which is found to be untrue or misleading in any material respect or any such warranty is breached; or
  - 22.1.5. has committed a breach of the Subsidy Control Regulations in accordance with Clause 34.2.
- 22.2. Either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 22.2.1. 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 thirty (30) days after being notified in writing to do so;
  - 22.2.2. 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;
  - 22.2.3. 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;
  - 22.2.4. 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;
  - 22.2.5. 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;
  - 22.2.6. 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);
  - 22.2.7. 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;

- 22.2.8. 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;
- 22.2.9. 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;
- 22.2.10. 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 22.2.3 to 22.2.9 (inclusive);
- 22.2.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 22.2.12. there is a change of Control of the other party.

## **23. 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 19 (Payment Terms)

## **24. CONSEQUENCES OF TERMINATION**

- 24.1. Upon termination or expiry of this Agreement for any reason:
  - 24.1.1. the Supplier shall promptly return, or at the University's option, destroy any University Materials in the Supplier's possession and, if requested, certify that it has done so to the University in writing;
  - 24.1.2. the Supplier shall immediately deliver to the University all Bespoke Goods and Deliverables whether or not then complete. If the Supplier fails to do so, then the University may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
  - 24.1.3. any licences to Intellectual Property Rights granted by the University to the Supplier under this Agreement shall terminate;
  - 24.1.4. where applicable, the Supplier shall provide all assistance reasonably required by the University to facilitate the smooth transition of the Services to the University or any replacement supplier appointed by it; and
  - 24.1.5. 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.

- 24.2. Without detriment to Clause 25.1, when the Agreement relates to Services, upon termination or partial termination of the Agreement for any reason Schedule 2 (TUPE) shall apply in accordance with its provisions.
- 24.3. 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.

## **25. INTELLECTUAL PROPERTY RIGHTS**

- 25.1. 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 to use the University Materials for the sole purpose of carrying out its obligations under this Agreement.
- 25.2. All Intellectual Property Rights in the Goods and Deliverables shall remain exclusive property of the Supplier (or its licensors) save to the extent that these are Bespoke Goods or have been designed and/or produced specifically for the University's requirements in which case these rights shall vest in, and are hereby assigned to, the University with full title guarantee, free from third party rights, throughout the world and in all existing and future media.
- 25.3. The Supplier grants to the University and its Affiliates an irrevocable, free, perpetual, free from third party infringement, non-exclusive, worldwide and capable of sub-license licence insofar as it is necessary for the University or its Affiliates to make use of the Goods and/or Deliverables in accordance with this Agreement. To the extent that such license conveys rights or interests in any idea, information or technique that is a Qualifying Asset within the meaning of section 7 of the NSI Act, the Supplier warrants and undertakes that such Qualifying Asset is not, and could not be, used in connection with any of the activities set out in the Notifiable Acquisition Regulations or any activities closely linked thereto. If the Supplier cannot make this representation and undertaking, it shall use its best efforts to disclose to the University the reasons for it and to cooperate with the University in carrying out a detailed assessment to ascertain whether either party should submit a voluntary notification of the University's acquisition of control of such item pursuant to section 18 of the NSI Act, taking into account the risk of receiving a call-in notice pursuant to section 1 of the NSI Act.
- 25.4. The Supplier shall obtain waivers of all moral rights in the Bespoke Goods and Deliverables referred to under clause 26.3 to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 25.5. The Supplier shall, promptly at the University's request, do all such further acts and things to execute all such other documents as the University may from time to time require for the purpose of securing for the University the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to the University in accordance with Clause 25.2.

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

- 26.1. The Supplier agrees to indemnify the University 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 arising out of or in connection with any claim made against the University for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods, Services and/or Deliverables.
- 26.2. If any third party makes a claim or notifies an intention to make a claim against the University which the University considers is likely to give rise to liability covered by the indemnity under clause 26.1 or clause 9.4 ("**Claim**"), the University shall if requested by the Supplier:
- 26.2.1. as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
  - 26.2.2. 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;
  - 26.2.3. give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to the University's 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
  - 26.2.4. 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.
- 26.3. If a payment due from the Supplier under this clause 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.

## **27. LIMITATION OF LIABILITY**

- 27.1. Nothing in this Agreement shall limit or exclude the liability of either party for:
- 27.1.1. death or personal injury resulting from negligence;
  - 27.1.2. fraud or fraudulent misrepresentation;
  - 27.1.3. breach of the Bribery Act 2010;
  - 27.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979;



- 27.1.5. breach of section 2 of the Consumer Protection Act 1987; or
- 27.1.6. any other matter which, by law, may not be excluded or limited.
- 27.2. Subject to Clause 27.6, the Supplier's liability under Clause 26.1 (Third Party's Intellectual Property Rights) and under Paragraph 1.6 of Schedule 2 (TUPE) shall be unlimited.
- 27.3. Subject to clause 27.1, the Supplier's liability to the University under Schedule 1 (Data Protection) shall be capped at five million pounds (£5,000,000) in aggregate.
- 27.4. Subject to Clauses 27.1, 27.2, and 27.3, the Supplier's total remaining liability to the University arising out of or in connection with this Agreement shall not exceed:
- 27.4.1. the limits specified in the Invitation to Tender; or
- 27.4.1.1. 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 Goods or/and Services provided under this Agreement.
- 27.5. Subject to Clause 27.1, the University's aggregate liability to the Supplier arising out of or in connection with this Agreement shall not exceed the lesser of one million pounds (£1,000,000) or the total value of the Goods supplied and/or Services provided under this Agreement.
- 27.6. Subject to Clauses 27.1 and 27.7, neither party shall be liable to the other for any indirect, special or consequential loss.
- 27.7. Where Section G is incorporated into this Agreement, the Supplier shall remain liable for indirect, special and consequential losses. The Supplier acknowledges that the University may have relations with customers, collaborators and other third parties which are likely to rely on the Supplier's performance of this Agreement (including in relation to Official Sensitive Information entrusted to the University) and may, along with the University, incur losses as a consequence of the Supplier's breach of this Agreement.
- 27.8. Each party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.

## **28. INSURANCE**

- 28.1. 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:

Insurance policy	Level of cover
Public liability insurance	Ten million pounds (£10,000,000) per occurrence or series of occurrences.

Product liability insurance (only relevant where Goods or Deliverables are supplied).	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 (Only relevant where Services are supplied).	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)	Third Party Bodily Injury: Unlimited amount for any one claim. Third Party Property Damage: <b>Car:</b> at least [twenty million pounds (£20,000,000) for any one claim. <b>Commercial vehicles:</b> at least ten million pounds (£10,000,000) for any one claim.

- 28.2. 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.
- 28.3. The terms of any insurance policy or the level of cover shall not relieve the Supplier of any liabilities under this Agreement.

## 29. SUPPLIER STANDARDS & COMPLIANCE

### 29.1. Audit and record-keeping

- 29.1.1. The Supplier shall keep and maintain 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 Goods supplied and Services provided under it, all expenditure reimbursed by the University and all payments made by the University.
- 29.1.2. 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**").
- 29.1.3. If any Audit identifies that:
- 29.1.3.1. 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 Charges or Fees, proposed Charges or Fees or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

- 29.1.3.2. the University has overpaid any Charges or 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 Charges or Fees if the Supplier fails to make this payment; or
- 29.1.3.3. the University has underpaid any Charges or 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.

## 29.2. Anti-bribery

- 29.2.1. The Supplier shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 and 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.
- 29.2.2. The Supplier shall comply, and shall procure that those of its Personnel comply, with the **University's 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/).
- 29.2.3. 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.
- 29.2.4. The Supplier shall ensure that any of its Personnel engaged in supplying the Goods or providing the 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 29.2.
- 29.2.5. The Supplier acknowledges that any breach of this Clause 29.2 shall be deemed a material breach under Clause 22.2.1.

## 29.3. 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 29.3 shall apply during the continuance of this Agreement.

## 29.4. Disruption

- 29.4.1. 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.
- 29.4.2. 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.

29.4.3. 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.

29.4.4. If the University considers the Supplier's proposals referred to in Clause 29.4.3 are insufficient or unacceptable, then the University may terminate this Agreement by notice in writing with immediate effect.

## 29.5. Environmental requirements

29.5.1. The Supplier shall perform its obligations under this Agreement in accordance with the University's environmental policy ([Policy, strategy and compliance | Sustainability | University of Bristol](#)) 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.

29.5.2. 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).

## 29.6. Air Quality & Ambient Air Pollution Reduction Schemes

It is the Supplier's responsibility to check if there are any applicable local or national ambient air pollution reduction schemes i.e. Congestion Charges, Toxicity Charges, Clean Air Zones, Diesel Free Zone, or similar that may apply at the place of Delivery or on route to the place of Delivery. Unless otherwise expressly agreed in this Agreement the Supplier shall be solely responsible for obtaining any necessary permits or consents and for payment of any charges or penalties at the prevailing rate in effect at the time.

## 29.7. Social Value, equality, diversity, human rights, and modern slavery

29.7.1. The Supplier shall perform its obligations under this Agreement in accordance with Universities' commitment to Social Value Policy which can be found at: [\\_ Social Value | Directory of Professional Services | University of Bristol](#)

29.7.2. 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.

- 29.7.3. 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 Goods and/or Services.
- 29.7.4. 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.
- 29.7.5. 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.

29.8. 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.

29.9. Health and safety

- 29.9.1. The Supplier shall comply, and shall procure that those of its Personnel comply, with:
- a) **NCC's Group Health and Safety Policy** (as updated from time to time) which can be accessed at [a](#) 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.
- 29.9.2. 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.
- 29.9.3. Where the Goods or Deliverables comprise or include substances hazardous to health, the Supplier shall provide the University on or before Delivery of such Goods with all data (in English) necessary to allow the University to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable statutory rules and regulations. Unless specifically agreed by the parties in writing, the Goods supplied under this Contract shall not contain asbestos.
- 29.9.4. 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.

## 29.10. Security

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

29.10.2. If the relevant tick boxes are selected in the Summary Section of this Agreement, the Supplier must comply with Section G and Section H of this Agreement..

## 30. **CONFIDENTIALITY & ANNOUNCEMENTS**

30.1. "**Confidential Information**" means all confidential and proprietary information relating to the business of one Party ("**Discloser**") directly or indirectly obtained by or on behalf of the other Party ("**Recipient**") (whether before, on or after the date of this Agreement and in whatever form or on whatever media or by way of demonstrations or observation or discovery in any manner), including without limitation:

30.1.1. any information classified as Official-Sensitive or higher, and, subject to Clause 30.3, if Section G applies to this Agreement any other information supplied by the University in relation to this Agreement;

30.1.2. any information relating to the identity, details or affairs of: Discloser or its Affiliates or its or their actual or potential or prospective: customers, clients, suppliers, licensees, licensors, contractors, consultants, agents, representatives, directors, employees or officers;

30.1.3. any products or data owned by or licensed by or to any of the people described in Clause 30.1.1 (other than Recipient's own products or data); or

30.1.4. any know-how, trade secrets, systems, methodologies, business ideas, concepts, strategies, price lists, databases, designs, concepts, models, business or market plans, reports, research, developments, documents, manuals, materials and specifications relating to or belonging to any of the people or items in Clauses 30.1.1 or 30.1.3,

together with all notes, records, extracts, copies, reproductions, evaluations or analysis of any such information; and which information is designated as confidential or which a reasonable person would consider to be confidential; but where in any event Discloser's intellectual property rights shall form part of its "Confidential Information" and the existence of this Agreement shall be deemed to be "Confidential Information".

30.2. In respect of Confidential Information for which it is Recipient, each party shall:

30.2.1. use such Confidential Information strictly to provide the Goods and/or Services only;

30.2.2. permit access to such Confidential Information only to such of its Authorised Representatives, directors, officers, subcontractors or employees as need such access to provide the Goods and/or Services; and

30.2.3. not disclose or provide access to such Confidential Information to any other person without Discloser's express prior written consent.

- 30.3. The obligations of confidentiality in this Agreement shall not apply to any such part of Discloser's Confidential Information that Recipient can show by documentary evidence to Discloser's satisfaction promptly upon discovery:
- 30.3.1. was or becomes legitimately in the public domain other than by act or default of Recipient or of anyone to whom Recipient disclosed Discloser's Confidential Information; or
  - 30.3.2. was rightfully received by Recipient without restriction on disclosure or use from a third party who had no duty of confidentiality to Discloser in respect of it.
- 30.4. Subject to the provisions of this Clause 30.4, Recipient may disclose Confidential Information to the minimum extent required by: (i) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction; or (ii) the laws or regulations of any country to which its affairs are subject.
- 30.4.1. Before Recipient discloses any Confidential Information pursuant to this Clause 30.4, it shall, to the extent permitted by law, give Discloser as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with this Clause 30.4.1, Recipient shall take into account Discloser's requests in relation to the content of this disclosure.
  - 30.4.2. If Recipient is unable to inform Discloser before Confidential Information is disclosed pursuant to Clause 30.4.1, it shall, to the extent permitted by law, inform Discloser in writing of the full circumstances of the disclosure and the information that has been disclosed as soon as possible after such disclosure has been made.
- 30.5. Recipient shall at all times:
- 30.5.1. only reproduce Discloser's Confidential Information to the extent strictly necessary for the Purpose or another purpose authorised by Discloser in writing;
  - 30.5.2. if applicable, ensure that Discloser's Confidential Information in Recipient's possession bears Discloser's proprietary notices, which Recipient shall not remove or obscure;
  - 30.5.3. use all reasonable endeavours to ensure that no unauthorised person discovers any of Discloser's Confidential Information as a result of its acts or omissions;
  - 30.5.4. where applicable, comply with Section G of this Agreement;
  - 30.5.5. ensure that each person to whom Recipient discloses Discloser's Confidential Information has first agreed to keep Discloser's Confidential Information strictly confidential (or is otherwise under a professional obligation to keep it strictly confidential) on terms no less strict than under this Agreement and Recipient shall use all reasonable endeavours to enforce such obligations; and
  - 30.5.6. Immediately inform Discloser upon becoming aware of a breach of this Clause 30, including any improper or wrongful or unauthorised use of Discloser's Confidential Information, and Recipient shall co-operate with Discloser in every reasonable way

to help Discloser regain possession of Discloser's Confidential Information and prevent its further use.

- 30.6. As between the Parties, unless otherwise agreed in writing, all rights of any nature in relation to any of Discloser's Confidential Information remain vested in Discloser. No licence is granted to Recipient hereunder other than a non-exclusive licence to use Discloser's Confidential Information strictly to provide the Goods and/or Services, subject to the restrictions set out in this Agreement.
- 30.7. Upon request from Discloser, Recipient shall:
- 30.7.1. cease all rights to use Discloser's Confidential Information;
  - 30.7.2. destroy or return to Discloser all documents and materials (and any copies) containing, reflecting, incorporating or based on Discloser's Confidential Information which are in Recipient's possession or under Recipient's control;
  - 30.7.3. erase all Discloser's Confidential Information from any computer and communications systems and devices used by it or which is stored in electronic form, which are in Recipient's possession or under Recipient's control;
  - 30.7.4. to the extent technically and legally practicable, erase all Discloser's Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
  - 30.7.5. certify in writing to Discloser that it has complied with the requirements of this Clause 30.7.
- 30.8. 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.

## **31. DATA PROTECTION**

- 31.1. 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 Schedule 1 (Data Protection) and Appendix 4 shall apply. This Clause 32.1 is in addition to and does not relieve, remove or replace either party's rights or obligations under the Data Protection Legislation.
- 31.2. 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 Data.

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

- 32.1. 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.

32.2. Where the University receives any requests under Clause 32.1:

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

32.2.2. 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).

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

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

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

32.4. 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.

### **33. GRANT FUNDING**

33.1. When in receipt of grant funding for the procurement of goods and services 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.

33.2. 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.

### **34. GENERAL WARRANTIES**

34.1. The Supplier warrants, represents and undertakes to the University that:

34.1.1. the information contained in the Supplier's Response 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;

34.1.2. if there shall be any material change to the information contained in the Supplier's Response or Tender between the date of the Supplier's Response 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;

- 34.1.3. 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;
- 34.1.4. it has and will continue to have sufficient working capital, skilled Personnel, equipment, licences, permissions, consents, permits and other resources available to provide the Goods and/or Services in accordance with this Agreement;
- 34.1.5. 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
- 34.1.6. 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.

## **35. ASSIGNMENT AND OTHER DEALINGS**

- 35.1. 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.
- 35.2. 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.

## **36. SUBCONTRACTING**

- 36.1. If Section G of this Agreement applies and the Supplier proposes to enter into any Sub-Contract, in the event of a conflict the terms in Section G shall take precedence over this Clause 36.
- 36.2. Subject to Schedule 1 (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 36.3 to 36.6.
- 36.3. Where the Supplier proposes to subcontract any of its obligations under this Agreement, the Supplier shall:
  - 36.3.1. be responsible for the acts and omissions of its subcontractors as though they are its own;
  - 36.3.2. impose obligations on its subcontractors in substantially the same terms as those imposed on it by the University under this Agreement; and
  - 36.3.3. 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.

- 36.4. The Supplier shall ensure that all Sub-Contracts contain a provision requiring the Supplier to:
- 36.4.1. 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
  - 36.4.2. 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.
- 36.5. The Supplier shall:
- 36.5.1. 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
  - 36.5.2. at the University's request, provide the University with such evidence of compliance with this Clause 36.5 as it may reasonably require.
- 36.6. The Supplier shall include in every Sub-Contract:
- 36.6.1. 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
  - 36.6.2. a requirement that the Sub-Contractor includes a provision having the same effect as Clause 36.4.1 above in any subcontracts which it awards.
- 36.7. Where the University considers whether the grounds for exclusion of a Sub-Contractor under Regulation 57 of the Public Contract Regulations 2015, then:
- 36.7.1. if the University finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; and
  - 36.7.2. 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.

## **37. 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.

## **38. SEVERANCE**

- 38.1. 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.

- 38.2. 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.

#### **39. ENTIRE AGREEMENT**

- 39.1. 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.
- 39.2. 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.

#### **40. FORCE MAJEURE**

- 40.1. 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").
- 40.2. In case of a FM Event the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that:
- 40.2.1. 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;
  - 40.2.2. it takes reasonable steps to avoid or mitigate the effect the FM Event will have on the performance of its obligations;
  - 40.2.3. 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
  - 40.2.4. 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.

#### **41. AMENDMENT & WAIVER**

- 41.1. 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.

- 41.2. 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.
- 41.3. 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.

## **42. THIRD PARTY RIGHTS**

No person who is not a party to this Agreement (including the University's and the Supplier's Personnel) shall 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 42.

## **43. 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).

## **44. 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.

## **45. NOTICES**

- 45.1. Except for any communications between the Authorised Representatives regarding the practical implementation of this Agreement (which may be made by telephone or email), any notice required to be given under this Agreement shall be made in writing. Notices must be sent and shall be deemed to be served in accordance with the following table:

<b>Method for serving of Notice</b>	<b>Deemed service of notice date and time</b>
Delivery by hand	On signature of a delivery receipt
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

Email sent to the relevant party's duly authorised representative and, in the case of the University, to <a href="mailto:Procurement@nccuk.com">Procurement@nccuk.com</a> and marked for the attention of Head of Sustainable Procurement (and provided an original copy of the notice is also sent by any of the methods set out above)	At the time of receipt of the email
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45.2. Where the Supplier gives any notice under this Agreement, a copy of such notice must be sent in the same manner as notice is given above 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)

45.3. For the purposes of Clause 45.1 and calculating deemed receipt of any notice:

45.3.1. all references to time are to local time in the deemed place of receipt;

45.3.2. University Closure Days shall only be relevant where the Supplier serves a notice on the University; and

45.3.3. 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.

45.4. Clause 45 does not apply to the service of any proceedings or other documents in any legal action.

## **46. GOVERNING LAW & JURISDICTION**

46.1. 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. The United Nations Convention on Contracts for the International Sale of Goods 1980 (the Vienna Sales Convention) shall not apply to this Agreement. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with this Agreement, this Agreement shall prevail.

46.2. 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:

## SCHEDULE 1 – DATA PROTECTION

### 1. Definitions and interpretation

**“Commissioner”**: 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”**: 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”**:

- (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
- (a) 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”**: 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 providing the 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 in accordance with Clause 30, shall handle University Data in accordance with NCC’s security requirements at Clause 29.10 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 clause 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 clause 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 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 Subject to any further restrictions placed on the Supplier by Sections G and H, 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 Subject to Clause 27.3 of the Agreement, 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.

## SECTION F:

## SCHEDULE 2 – TUPE

### 1. Definitions and Interpretation:

**“Future Service Provider”** means any person who provides services which are identical or substantially similar to any of the Services to the University (directly or indirectly) following the termination or expiry of this Agreement or the termination or expiry of the provision of any of the Services by the Supplier;

**“Sub-Contractor”** means any party to a Sub-Contract (other than the Supplier);

**“Transfer Date”** means the date on which responsibility for the provision of the Services, or any part of the Services, transfers from the Supplier to the University or a Future Service Provider;

**“Transferring Employee”** means an individual whose contract of employment has effect from and after the Transfer Date, by virtue of the operation of TUPE, as if originally made between such person and the University or a Future Service Provider;

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

2. Subsequent to the commencement of this Agreement the identity of the provider of the Services (or part of the Services) may change whether as a result of expiry, or termination (or partial termination) of this Agreement resulting in a transfer of Services (in whole or in part) (“Service Transfer”). If a Service Transfer is a relevant transfer for the purposes of TUPE, then, the University or a Future Service Supplier would inherit liabilities in respect of any Transferring Employee, in which case the provisions of this Schedule 2 (TUPE) shall apply.

3. During the period of six months preceding the termination or expiry of this Agreement, or at any time after the University or the Supplier has given notice to terminate this Agreement or notice to cease the provision of some of the Services, or at any time after the Supplier has actually ceased to provide any of the Services:

- a. the Supplier shall promptly, upon the University’s reasonable request disclose to the University details of the name, number, age, terms and conditions of employment, proportion of time spent in the provision of the Services, employment history (including disciplinary or grievance issues), employee liability information as required under Regulation 11 of TUPE and such other information as the University may reasonably require in relation to any Supplier’s Personnel;
- b. the University shall be entitled to pass on any information provided to it pursuant to Paragraph 3.b. of this Schedule to any person intending to tender or tendering for any contract for the provision of services that are the same or similar to the Services, and the University shall be entitled to rely upon and warrant the accuracy of any such information to any Future Service Provider, and the Supplier shall indemnify and keep indemnified the University (for itself and on behalf of any Future Service Provider) against all and any costs, expenses, liabilities, damages and losses arising out of or in connection with any failure by the Supplier to provide accurate information under this cause; and
- c. the Supplier shall not and, if relevant, shall procure that any Sub-Contractor shall not, vary the terms and conditions of employment or engagement of any Supplier Personnel or redeploy, replace or dismiss any Supplier’s Personnel, or employ or engage any

additional individual in the provision of the Services, without the prior written consent of the University.

4. All wages, salaries, bonus and commission payments, contributions to pension schemes, entitlement to holiday pay and any other emoluments (whether monetary or otherwise), tax and national insurance contributions relating to the Transferring Employees shall be paid or borne by the Supplier (or Sub-Contractor) in relation to the period before the Transfer Date (and the Supplier shall procure such payment by any Sub-Contractor) and by the University or relevant Future Service Provider thereafter (and the University shall procure such payment by any Future Service Provider), and all necessary apportionments shall be made.
5. The Supplier shall and/or, if relevant, shall procure that any Sub-Contractor shall:
  - a. comply with its or their obligations to inform and consult the Transferring Employees pursuant to Regulation 13 of TUPE;
  - b. use reasonable endeavours to agree with the University or a Future Service Provider, and deliver to the Transferring Employees prior to the Transfer Date, a suitable joint statement regarding the proposed transfer of their employment to the University or a Future Service Provider on the Transfer Date; and
  - c. give employees of the University or a Future Service Provider such access to the Transferring Employees prior to the Transfer Date as the University or a Future Service Provider may reasonably require for the purposes of consultation or of effecting an efficient transfer of the Services and Transferring Employees with effect from the Transfer Date.
6. The Supplier shall indemnify and keep indemnified the University (for itself and any relevant Future Service Provider) against all and any costs, expenses, liabilities, damages and losses arising out of or in connection with any claim, demand, action or proceeding which is made or brought:
  - a. by any Transferring Employee in relation to any act of omission of the Supplier (or any Sub-Contractor) occurring or arising during the period on or after the Transfer Date but up to and including the Transfer Date and/or in relation to any events or circumstances relating to the employment or termination of employment of any Transferring Employee occurring or arising during the period up to and including the Transfer Date;
  - b. in relation to the Supplier's (or any Sub-Contractor's) failure or alleged failure to comply with its or their obligations under Regulation 13 of TUPE, save to the extent that any such failure or alleged failure is as a result of or in consequence of a failure by the University or any Future Service Provider to comply with its obligations under Regulation 13(4) of TUPE; or
  - c. by any person who is not a Transferring Employee (a "Non-Disclosed Transferring Employee") and which is made by virtue of the operation or alleged operation of TUPE and relates to circumstances or events occurring or arising at any time, whether before or after the Transfer Date, in relation to or arising out of any such Non-Disclosed Transferring Employee's employment, alleged employment, dismissal or alleged dismissal.

## **SECTION G: Government Contracts - Official Sensitive**

Where this Section G is incorporated into this Agreement, the University reserves the right to not appoint a Supplier if they fail to meet all requirements of this Section G. The Supplier agrees to comply with all of the University's reasonable requests to screen compliance with the requirements of this Section G.

### **Part 1 SAL Flow Down and other Requirements**

1. This Section G, flows down such terms and conditions, of the Security Aspect Letter, onto the Supplier, in relation to their supply of Goods and/or Services under this Agreement.
2. [Unless the context otherwise requires, the words in the flowed down terms and conditions shall have the meanings given to them in DEFCON 501 (Edn 10/21) or as prescribed by the other relevant Defence Condition, with the following exceptions:
  - a) "Authority" means the University acting as [Contractor / Subcontractor] on the behalf of [INSERT RELEVANT SECRETARY OF STATE / GOVERNMENT BODY];
  - b) "Contractor" means the Supplier;
  - c) "Security Aspect Letter" or "SAL" means the security aspect letter entered into by or flowed down to the University, which forms the basis of this Agreement; and
  - d) [INSERT FURTHER DEFINITIONS AS REQUIRED]].
3. The following sections of the SAL are flowed down to the Supplier:
  - a) [Defence Condition 531, as amended from time to time, is incorporated into this Agreement.](#)

**[NCC TO INSERT ANY OBLIGATIONS TO BE FLOWED DOWN, AS MAY BE REQUIRED BY THE SAL OR DESIRED BY NCC. PLEASE ALSO CONSIDER IF NCC WOULD LIKE TO EXPRESSLY REFER TO THE RELEVANT DEFCONS]**

4. In addition to the sections of the SAL flowed down at Part 1, paragraph 3 of this Section H, the following additional requirements are placed on the Supplier:

**[NCC TO INSERT ANY FURTHER OBLIGATIONS TO BE PLACED ON THE SUPPLIER, AS DESIRED BY NCC. THIS MIGHT INCLUDE REQUIREMENTS AROUND PROCESSING DATA, REPORTING, OR ANY OTHER PROJECT SPECIFIC REQUIREMENTS THAT FEED INTO THE OFFICIAL-SENSITIVE NATURE OF THE WORK]**

### **Part 2 Unauthorised Disclosure of Information**

Without limiting the Supplier's obligations contained in this Agreement, and, in particular Part 1 of this section G and Defence Condition 531, the Parties agree the following supplemental provisions in respect of disclosure of information:

1. For the Purpose of this Part 2, "Information" has the meaning of given to it in DEFCON 531, as amended from time to time..
2. Unless the Supplier can prove to the satisfaction of NCC that Information falls within one of the exceptions provided under Clause 30.3 of this Agreement, Information also falls within the definition of Confidential Information, as defined at Clause 30.1 of this Agreement.



3. The Supplier:

- a. shall treat in confidence all Information it receives;
  - b. shall not disclose any of that Information to any third party without the prior written consent of NCC, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such of its employees and to such extent as may be necessary for the performance of the Agreement;
  - c. shall not use any of that Information otherwise than for the purpose of this Agreement; and
  - d. shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Agreement.
4. The Supplier must immediately inform NCC upon becoming aware of a breach of this Part 2 or DEFCON 531, including any improper or wrongful or unauthorised use of Information disclosed by NCC, and the Supplier shall co-operate with NCC in every way to help NCC regain possession of such Information and prevent its further use.

**Part 3 Government Security Classification Policy**

1. NCC and the Supplier acknowledge that everyone who works for or with the government has a responsibility to safeguard any government information they handle (regardless of whether it is marked), and confirm that they shall adhere to the Government Security Classification Policy, its key principles and its accompanying guidance, which is accessible at <https://www.gov.uk/government/publications/government-security-classifications>.
2. Unless communicated otherwise by NCC in writing, the parties agree that information and documents created shall be marked and treated at the "Official-Sensitive" classification level. The Supplier may challenge NCC's classification if it believes it to be incorrect, but classification shall be at NCC's sole discretion.
3. On becoming aware of any non-compliance with this Section G, the Supplier must immediately inform NCC, and the Supplier shall co-operate with NCC in every reasonable way to help NCC mitigate any adverse effects of such non-compliance.
4. Without prejudice to the generality of the obligations set out above at paragraph 1 and as provided in government guidance note 1.5, NCC and Supplier must as a minimum have the following set of security controls in place:

<b>Personnel Security</b>	<ul style="list-style-type: none"><li>• Appropriate recruitment checks (e.g. the BPSS, or equivalent)</li><li>• Reinforce personal responsibility and duty of care through training</li><li>• 'Need to Know' for sensitive assets</li></ul>
<b>Physical Security</b> a. Document handling	<ul style="list-style-type: none"><li>• Clear desk / screen policy</li><li>• Consider proportionate measures to control and monitor access to more sensitive assets</li></ul>

b. Storage	<ul style="list-style-type: none"> <li>Storage under single barrier and / or lock and key</li> <li>Consider use of appropriate physical security equipment / furniture (see the NPSA Catalogue of Security Equipment (CSE))</li> </ul>
c. Remote Working	<ul style="list-style-type: none"> <li>Ensure information cannot be inadvertently overlooked whilst being accessed remotely</li> <li>Store more sensitive assets under lock and key at remote locations</li> </ul>
d. Moving assets by hand	<ul style="list-style-type: none"> <li>Single cover</li> <li>Precautions against overlooking when working in transit</li> <li>Authorisation required for significant volume of records/files</li> </ul>
e. Moving assets by post / courier	<ul style="list-style-type: none"> <li>Include return address, never mark classification on envelope</li> <li>Consider double envelope for sensitive assets</li> <li>Consider using registered Royal Mail service or reputable commercial courier's 'track and trace' service</li> </ul>
f. Moving assets overseas	<ul style="list-style-type: none"> <li>Trusted hand under single cover</li> <li>Consider using reputable commercial courier's 'track and trace' service</li> </ul>
g. Bulk Transfers	<ul style="list-style-type: none"> <li>Local management approval, subject to departmental policy, appropriate risk assessment and movement plans</li> </ul>
<b>Electronic Information Security</b>  a. Electronic Information at Rest	<ul style="list-style-type: none"> <li>Electronic Information shall be protected at rest in accordance with principles and guidance outlined in Cyber Assessment Framework (CAF) B.3.</li> <li>End User Devices should be protected in line with the NCSC Device Security</li> <li>Collection for security principles and platform-specific guidance.</li> <li>Wherever data is stored, even temporarily, it may be vulnerable to unauthorised access, tampering or deletion. The NCSC's data security guidance will encourage activities for identifying what data you have</li> </ul>

	<p>and applying appropriate controls to mitigate identified data risks throughout its lifecycle.</p>
b. Productivity/ Collaboration Suites	<ul style="list-style-type: none"> <li>• Productivity/Collaboration suites shall meet CAF principle B.2.</li> <li>• Productivity/Collaboration suites shall be configured to support cross-department working by default</li> <li>• Productivity/Collaboration suites shall be configured to make sharing information through official channels (sharing a link to a document) easier than sharing the same information in a different way (document attached to email)</li> <li>• For cloud-based and cloud-enabled products, you should follow the NCSC Cloud security guidance</li> <li>• For Microsoft 365 / Microsoft Office 365, you should follow: NCSC Securing Office 365 guide and the Microsoft 365 Collaboration Blueprint for UK Government</li> </ul>
c. Electronic information in transit. (Email)	<ul style="list-style-type: none"> <li>• Electronic Information in transit shall be protected at rest in accordance with CAF B.3.</li> <li>• Information may be emailed / shared to external partners / citizens, subject to local business policies and procedures</li> <li>• You shall implement policy on Securing Government Email including supporting at minimum Transport Layer Security Version 1.2 (TLS v1.2) or an updated TLS Version for sending and receiving email securely.</li> <li>• To protect email systems and ensure the confidentiality and integrity of government data, departments shall have Domain-based Message Authentication Reporting and Conformance (DMARC), DomainKeys Identified Mail (DKIM) and Sender Policy Framework (SPF) records in place for their domains. This shall be accompanied by the use of Mail Transfer Agent Strict Transport Security (MTA-STX) and TLS Reporting (TLS-RPT). Spam and malware filtering controls shall also be implemented on inbound email</li> </ul>
d. ICT services	<ul style="list-style-type: none"> <li>• ICT services should identify, assess and understand security risks in accordance with CAF A.2</li> <li>• ICT services could be designed in alignment with Secure By Design principles</li> <li>• ICT services could follow the NCSC device security guidance as applicable based on ICT architectural approaches and risk management processes</li> </ul>

	<ul style="list-style-type: none"> <li>ICT services developed by a Department or delivery partner must follow the risk management processes as set out in NCSC Risk Management Toolbox and follow standard architectural approaches</li> </ul>
e. Removable Media (data bearing)	<ul style="list-style-type: none"> <li>The use of removable media should be minimised, and other approved information exchange mechanisms should be used where available in preference to removable media</li> <li>Any information moved to or transferred by removable media shall be minimised to the extent required to support the business requirement. Consider appropriate encryption to protect the content, particularly where it is outside the organisation's physical control</li> </ul>
f. Telephony (Mobile and Landline)	<ul style="list-style-type: none"> <li>Details of sensitive material should be kept to a minimum</li> <li>Recipients should be waiting to receive faxes containing personal data and / or data marked – SENSITIVE</li> </ul>
<b>Archiving and Transfer to The National Archives</b>	<ul style="list-style-type: none"> <li>Transfer as open records wherever possible, at 20 years and in accordance with the Public Records Act</li> </ul>
<b>Disposal / Destruction</b>	<ul style="list-style-type: none"> <li>Dispose of with care using approved commercial disposal products to make reconstitution unlikely (refer to NPSA guidance and NCSC's Secure Sanitisation of Storage Media)</li> </ul>
<b>Incident Reporting</b>	<ul style="list-style-type: none"> <li>Local reporting arrangements</li> <li>Escalation to DSO and SSA/SA as appropriate for significant incidents. ICO notified of "significant" losses of personal data</li> <li>GSG and NCSC for ICT incidents</li> </ul>

## **SECTION H:            Security Technical Specification**

Supplier confirms that it meets the below requirements for the technical specifications for security, or where it does not meet the requirements, it has informed the University and the University has confirmed in writing that its security infrastructure are sufficient.

[INSERT SECURITY SPECIFICATION REQUIREMENTS]

## SECTION I: Service Levels and Performance Management

### 1 Assessment of the Service Levels

- 1.1 The Service Levels which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in Appendix 2, Part 4.
- 1.2 Each of NCC and the Supplier shall, once every three months on following the Commencement Date ("**Period**") (and independently of each other) carry out an audit to assess the performance by the Supplier against each Service Level. Each Service Level shall be scored out of 3, on the following basis:
  - (a) score of 3 - meets contractual standard, no further action required
  - (b) score of 2 - meets contractual standard, further work required
  - (c) score of 1 - below contractual standard, requires improvement / action plan.
- 1.3 The score achieved for each Service Level shall be multiplied by the weighting specified for that Service Level, to give an 'outcome' for that Service Level. The outcomes for each Service Level will be added together, to give a total Service Level score achieved by the Supplier in the relevant Period. That aggregated Service Level score will be expressed as a percentage of the maximum Service Level score which could have been achieved in the relevant Period.
- 1.4 Not more than [10 days] after the end of each Period, representatives of the Supplier and NCC shall meet to:
  - (a) discuss the performance of the Supplier in the preceding Period, and to prepare a combined Service Level score. That combined Service Level score (**Aggregated Service Level Percentage**) will be calculated as the average of the percentages achieved by the Supplier in the previous Period, as specified in each of the Supplier's audit and NCC's audit;
  - (b) consider the reasons for the scores achieved by the Supplier, and to discuss any areas for improvement on poor performance, or consolidation of good performance, by the Supplier;
  - (c) identify any persistent failures against the Service Levels, and to discuss proposals by the Supplier to remedy those failures in the following Period.
- 1.5 In carrying out the audit described above, NCC and the Supplier shall both act in good faith to give a fair appraisal of the performance by the Supplier against each Service Level.
- 1.6 Notwithstanding the provisions of paragraphs 2 and 3 below, the parties agree that the Service Level audit prepared in respect of the Period following the Commencement Date during which Services are provided to NCC shall be for information only, to assist the Supplier in establishing and improving the provision of the Services. As such, the provisions relating to Service Credits and Critical Failure shall only apply in relation to the second and subsequent Periods.

## 2 Calculation of Service Credits

2.1 The Service Credit payable in respect of any Period shall be calculated as follows:

- (a) if, in any Period, the Aggregate Service Level Percentage is greater than or equal to [90%], no Service Credits shall apply in respect of that Period;
- (b) if, in any Period, the Aggregate Service Level Percentage is less than [90%] but greater than or equal to [85%], the Service Credit payable in respect of that Period shall be an amount equal to [XX% of the fees for the Period / INSERT AMOUNT]; and
- (c) if, in any Period, the Aggregate Service Level Percentage is less than [85%], the Service Credit payable in respect of that Period shall be an amount equal to [XX% of the fees for the Period / INSERT AMOUNT].

## 3 Critical Service Level Failure

- 3.1 The parties agree that, notwithstanding the general obligation of the Supplier to perform the Services in accordance with the Service Levels, the Service Levels set out at Appendix 2, Part 4 point(s) [INSERT SERVICE LEVEL NUMBERS] are of particular importance to the University. The parties agree that shortfalls against those Service Levels which constitute Critical Service Level Failures will give the University the right to terminate this agreement in accordance with the provisions of Clause 22.1.3.
- 3.2 Critical Service Level Failure shall mean an Aggregated Service Level Percentage, calculated by reference only to Appendix 2, Part 4 point(s) [INSERT SERVICE LEVEL NUMBERS], of [50%] or less in respect of any Period.