

**CONTRACT TO SUPPLY**

**Software**

**(including Software as a Service (SaaS))**

**at**

**The University of Bradford**

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## **Section 1 Parties to the Contract**

**THIS CONTRACT** is made on the following date: [insert date]

**BETWEEN**

**(1) The University of Bradford** of Richmond Road, Bradford, BD7 1DP (“**the** **University**”) and

**(2) Supplier Name** Registered in England and Wales Company Registration No.[insert Registration No] the Registered Office of which is at [insert address of the Supplier] (“**the Supplier**”);

**IT IS HEREBY AGREED** between the University and the Supplier that:

1. The Contract shall only become binding in relation to an order for the provision of Software, Services, Support Services and/or Third-Party Products between the Supplier and the University upon signature of this document by an authorised signatory of the Supplier and the University. Both parties represent that it has read the terms and conditions appended hereto (“Terms and Conditions”) which will form part of the contract.
2. This Contract and the Terms and Conditions together with any schedules or appendices contains the entire agreement of the parties with respect to the subject matter of the contract and in particular no other terms and conditions (including any set out in any purchase order issued by the University) or prior representations of the Supplier or the University shall apply unless agreed in writing by the Supplier and the University.
3. Any purchase orders issued by the University for related Software, Software Services and Hardware subsequent to this contract and within the initial period or extensions thereof, shall be deemed to be issued against the Terms and Conditions appearing herein.

# **Section 2 Conditions of Contract**

**Definitions**

# In these Conditions of Contract the following words shall have the following meanings unless otherwise stated:

**Acceptance Certificate** means the document issued by the Authorised Officer confirming that all acceptance tests specified for the Services have passed such tests and the date of such acceptance;

**Acceptance Date** means the date on which the Authorised Officer has accepted the Goods in accordance with the Contract

**Additional Services** means any services which are not within the scope of the Services but which the University requests that the Supplier performs from time to time;

**Approved** or **Approval** means approved in writing;

**Affiliates** meansthose companies where the University has a shareholding in excess of fifty percent of the issued share capital or controls the appointment of the majority of the board of directors (or equivalent), or any organisation that similarly controls the University;

**Annual Support Fee** means the annual support fee payable by the University to the Supplier in respect of the Support Services, the first such annual support fee being due for payment on such date as is detailed in the Software Maintenance Schedule or Purchase Order.

**Authorised Officer** means a University employee authorised either generally or specifically by the University to sign a University’s Purchase Order, confirmation of which may be obtained from the University’s Registrar or Secretary or Director of Finance as applicable, or such other University nominated person as is notified to the Supplier in writing;

**Authorised** means signed by one of the University’s Authorised Officers or an authorised officer of the Supplier;

**Bespoke Software** means software and/or any part thereof, provided in object code form, designed or developed by the Supplier to satisfy specific requirements of the University, as detailed the schedules;

**Business Day** means any day other than a Saturday or Sunday or a public or bank holiday in England;

**Charging Rate** means as defined in the Schedule of Prices submitted by the Supplier and accepted by the University;

**Commencement Date** shall be as defined in the Purchase Order or original Tender/Quotation documents.

**Competent Trained Individual** means person(s) competent in functionally relevant management practices and procedures (including office procedures) to enable the University to make full and proper use of the Software who have attended suitable training for the Software modules being used by the University;

**Confidential Information** means information, however it is conveyed, that relates to the business, pricing, products, developments, Intellectual Property Rights, know-how, personnel and/or suppliers of either party, and which is either marked as confidential or which ought reasonably to be considered confidential;

**Contract** shall comprise the following documents which shall be read as one document and which, in the event of conflict or contradiction between Sections, shall be given precedence in the order listed:

* Parties to Contract, entire agreement and appointment;
* Terms and Conditions of Contract (including Special Conditions but in the event of any conflict or contradiction between the Terms and Conditions and the Special Conditions the Special Conditions shall be given precedence);
* University Purchase Order

**Contract Period** shall mean the period from the Commencement Date up to [end date], unless extended at the option of the University or terminated by the University in accordance with this Contract;

**Contract Sum** shall mean the price calculated in accordance with Schedule of Prices or in accordance with the Purchase Order, subject to any review during the contract period;

**Contract Year** means each 12-month period from the Commencement Date during the Contract Period;

**Current Supplier** shall mean the Supplier employed by the University in the period directly prior to the Commencement Date;

**University’s Representative** shall mean the Client’s Senior Post Holder with responsibility for the software, or his/her nominated representative;

**Customisation** means customisation of the Supplier Software being all the activities undertaken to alter the standard software solution beyond that which is possible via configuration but which does not require Bespoke Software – for the avoidance of doubt, configuration of the Supplier Software involves all activities undertaken to set up the Software solution which involve the use of standard menus and functionality;

**Delivered** shall mean the delivery of performance of the services or the delivery of goods at the place notified in the purchase order;

**Delivery Date** means the date specified in the Contract and/or confirmed by the Purchase Order;

**Delivery Instructions** means the instructions set out in the Contract for the provision of services, including any milestone events, and any other information the University considers appropriate to the provision of the services;

**Development Environment** means all the University’s physical or virtual servers together with all system, database and networking software necessary to run the Software in a development environment;

**Disaster Recovery Environment** means all the University’s physical or virtual servers together with all system, database and networking software necessary to run the Software in a disaster recovery environment;

**Documentation** means the published data sheets and printed or electronic system documentation for the Software;

**Environment** means any of the Production Environment, the Test Environment, Development Environment and/or the Disaster Recovery Environment;

**Enhancement Pack** means optional new functionality which creates a new user experience around a specific process and which may or may not be chargeable

**Equipment** shall mean all equipment requirement by the Supplier in order to fulfil their obligations under the Contract;

**Escrow Agent** means any company identified in this agreement as providing independent Escrow services.

**Practice** **Escrow Agreement** means the standard agreement issued by the Escrow Agent to the University under which the University shall have access to source code and documentation of the Supplier Software under the conditions defined therein.

**FOIA** shall mean the Freedom of Information Act 2000;

**Good Industry Practice** means using standards, practices, methods and procedures and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

**Goods** means the materials, Software, articles, works and Services described in the Contract;

**Implementation** means the process developed by the Supplier to deliver a standard set of business processes, documentation and templates. The Supplier will supply Good Industry Practice business processes, solution design documents, with supporting build plans for University review and to align to. Should, through alignment workshops, differences / changes be required, this will be managed through the change control process;

**Installation Address** means the location address at which the server element of the Software is installed as detailed in the Schedules. The location may be changed by the University as long as reasonable notice is given to the Supplier prior to a change taking place;

**Installation** the installation of the Software ready for configuration by the project team on the first Environment of the University;

**Installation Tests** means the Installation acceptance tests set out in the Schedules for acceptance of the relevant Supplier Software;

**Intellectual Property Rights** means all property in and rights to ­patents, licence, trademarks, tradenames, inventions and copyrights;

**Key Personnel** means those persons named in the Contract and any replacement from time to time authorised by the Authorised Officer in accordance with the Contract;

**Liabilities** means all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;

**Licence** means the licence for the Software granted as detailed in the Contract.

**Licence Fee** means the licence fee(s) for the Software set out in the Schedules;

**Localisation** means language translations or add on software to meet country or territory specific statutory or processing requirements;

**Managed Implementation Project** means a Project which is completed substantially by the Supplier’s consultants with system design input from the University;

**Managed Service** means any managed service to be provided to the University as detailed in any Schedules;

**Milestone** means a combination of quality improvements, error corrections and minor functional changes to existing modules of Software which is provided as part of the Support Services (subject to payment of the Annual Support Fee), for the relevant Supplier Software;

**Order Amendment** means Our Authorised Order Amendment or series of Order Amendments, each Order Amendment having precedence over any earlier Order Amendment.

**Package** means any type of package including bags, cases, carboys, cylinders, drums, pallets, tanks, wagons and other containers.

**Partner Software** means the third-party licensed software, if any, in object code form, related documentation, including all ­revisions and corrections, as detailed in a Schedules;

**Personnel** means the Supplier’s employees, agents and sub-contractors approved in advance by the University provided by the Supplier to execute the Service;

**Premises** means the location(s) where the Services are to be performed.

**Prevailing Rates** means the rates set out in the Schedules as fixed for the first 12 months from the date of the Contract and thereafter the rates as shown in the Supplier’s response to tender and in the absence of such rates, the current published rates from time to time of the Supplier;

**Price** has the meaning given in Condition 5.7 below.

**Production Environment** means all the University’s physical or virtual servers together with all system, database and networking software necessary to run the Software on a production (live) environment;

**Project** means a defined piece of work typically to implement or upgrade Software, being either on the basis of a Managed Implementation Project or as otherwise agreed in writing between the parties;

**Property** means tangible property of the University, such tangible property to include for the avoidance of doubt computer hardware and intangible property being solely software programs of or licensed to the University;

**Publicity** means use of the University logo on the Supplier’s website or documentation and of the Supplier’s logo on the University’s website or documentation; a Press Release including endorsement by senior management; the University acting as a reference site for the Supplier, the development of a case study;

**Release** means any new revision of the current Version of the Supplier Software or Partner Software (as appropriate) - which is provided as part of the Support Services (subject to payment of the Annual Support Fee), for the relevant Supplier Software and/or Partner Software;

**Renewal Date** means (i) in relation to Support the annual date of renewal of the Support Services for the relevant Software; (ii) in relation to Software provided as a service the annual date of renewal of the licence for the relevant Software provided as a service;

**Replacement Contractor** means any company, organisation or person who replaces the contractor following termination or expiry of all or part of this Contract.

**Response** means an initial contact by a support consultant in response to a Support Services request placed by the University. The support consultant may provide a solution at this point or may request additional information in order for further investigation to take place;

**Resolution** means one or more of the following actions, as appropriate, in response to a Support Services request:

* provision of the requested advice;
* explanation of how a particular element of functionality should be used;
* provision of an alternative method of system operation where an error has been identified and agreed;
* where no alternative method of system operation is possible, confirmation that an error has been identified and logged for error correction in accordance with the Contract.

**Review Date** means the date of an annual review of the Contract;

**Sale of Goods Act 1979** shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994;

**Schedule of Prices** shall mean the document detailing the cost of the Contract, submitted by the Supplier and accepted by the University, as detailed in the following Schedules or Purchase Order

**Schedules** meansthe Schedules to this contract initialled by authorised signatories of the University and the Supplier for the provision of Software, Services, Support Services and/or Third-Party Products and incorporating these Terms and Conditions;

**Services** means any or all of the following services and/or Goods provided by the Supplier to the University: general consultancy, implementation consultancy, installation services, project management services, technical assistance, data migration, design, addressing issues and faults, development of software, scheduled training, customised training courses, production of documentation or related materials, or any other time based activity;

**Service Pack** means a revision of the Supplier Software or Partner Software (as appropriate) issued at greater frequency than a Release, which contains corrections to errors in the Supplier Software or Partner Software;

**Service Level Agreement** shall mean the document detailing the service levels the Supplier must perform as appended to this contract;

**Site** means the location of the University where the Supplier is to perform the Services as set out in the Specification or as advised by the University from time to time;

**Software** means the Supplier Software, Bespoke Software and Partner Software licensed hereunder to the University by the Supplier together with any Localisations;

**Special Conditions** means any additional or varied conditions in relation to this contract as set out in the Agreement Summary Schedule;

**Specification** means the published data sheets and printed or electronic system documentation for the Software or (where there has been a documented tender process) the functionality set out in the Supplier’s response to tender as modified by any subsequent clarification documentation provided by the Supplier to the University and formally accepted by the University;

**Supplier** means the company detailed in the front page of this agreement;

**Supplier’s Representative** shall mean the named person responsible to the University for the management of the Service;

**Supplier Software** means the standard off the shelf software as set out in the Schedule(s) and/or any part or module thereof, or any other wholly owned software product as released from time to time together with any related documentation, sales aids, training aids, including all revisions and corrections provided by the Supplier, as detailed in the Schedules;

**Supply of Goods and Services Act 1982** shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994;

**Support Services** means the annual support and maintenance services provided by the Supplier as from the date of successful completion of the Supplier Software Installation Tests or from the date of Installation of Bespoke Software and Partner Software;

**Tender** if applicable, means a tender issued by the College for the supply of Services to the University;

**Termination Date** means the date of termination or expiry of this Contract;

**Terms and Conditions** means these contract terms and conditions including any schedules attached thereto;

**Test Environment** means all the University’s physical or virtual servers, together with all system and database software necessary to run the Software on a test environment;

**Third-Party Products** means any Third-Party Software and hardware supplied by the Supplier as detailed in the Schedules;

**Third-Party Software** means software supplied by the Supplier as detailed in the Schedules, which is the subject of a direct licence between the third0party licensor and the University;

**Trademarks** means any proprietary marks used by the Supplier and/or its licensors in the marketing of the Software;

**Update** means a revision of the Supplier Software or Partner Software (as appropriate) issued at greater frequency than a Service Pack or Milestone, which contains corrections to errors in the Supplier Software or Partner Software;

**User Acceptance Tests** means user acceptance tests defined within a reasonable timeframe by the University and in agreement with the Supplier to test compliance of the Software with the Specification to ensure that:

* the Services have been delivered so that the Supplier Software and Partner Software will deliver the functionality set out in the Specification in all material respects; and
* the Bespoke Software functions in accordance with the specification for such Bespoke Software;
* which for the avoidance of doubt shall apply to Managed Implementation Projects.

**Version** means a new software product (which may be chargeable) which the Supplier (or its licensors or software partners) may choose to name consistently with a previous product. In order for a revision to be classified as a new Version, the Supplier or its software partners need to be able to demonstrate that it is the result of substantial re-development in a new software environment;

**Writing** means in writing and signed by a duly authorised representative of the relevant party (and shall not for the avoidance of doubt include electronic data interchange, electronic mail and similar means of communication);

**Data Controller**, **Data Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach**, **Data Protection Officer** take the meaning given in the GDPR.

**Data Loss Event**: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Protection Impact Assessment**: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Legislation**: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;

**Data Subject Request**: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018**: Data Protection Act 2018

**GDPR**: the General Data Protection Regulation *(Regulation (EU) 2016/679)*

**Joint Controllers:** where two or more Controllers jointly determine the purposes and means of processing

**LED**: Law Enforcement Directive *(Directive (EU) 2016/680)*

**Sub-processor**: any Third-Party appointed to process Personal Data on behalf of that Processor related to this Agreement

## **Entire Agreement**

The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

## **Interpretation**

Any reference to the singular will include the plural and vice versa. Words importing natural persons shall include bodies corporate and other legal persons and vice versa. Any particular gender shall mean the other gender and vice-versa. The headings are for convenience only and shall not affect the construction of these terms. Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings. A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

In the event of any conflict or inconsistency between the documentation comprised in this Contract, the following order of precedence shall apply:

i) Any Schedules or Appendices thereto;

ii) Agreed Variations to the Contract;

iii) These Terms and Conditions

## **Term**

The Contract Period shall be from the Commencement Date up to [insert the end date of the contract]; unless terminated earlier in accordance with this Contract. The Supplier shall provide the Services from the Commencement Date and throughout the Contract Period. Either party shall have the ability to terminate the agreement by giving three months’ notice.

## **The Contract**

## The Supplier agrees to sell and the University agrees to purchase the Services / Goods in accordance with the Contract. The Contract shall expressly exclude the Supplier’s conditions of sale however these are purported by the Supplier to apply. Delivery of Services / Goods in response to a Purchase Order or Order Amendment shall be taken by the University that the Supplier has accepted the Terms and Conditions of this Contract.

## **Variation of Requirement**

## 1.5.1 The Supplier shall not alter or change the agreed scope of the Services except as agreed by the University but the University shall have the right from time to time during the execution of the Contract, by written notice to direct the Supplier to request to add to or omit, or otherwise vary, the Services, and the Supplier shall carry out such variations as are agreed and be bound by the same Contract Terms and Conditions set out in this Contract so far as is applicable, as though the said variations were stated in the Contract.

1.5.2 The Supplier shall not alter any of the Goods except as agreed by the University but the University shall have the right from time to time during the execution of the Contract, by written notice to direct the Supplier to add to or omit, or otherwise vary, the Goods, and the Supplier shall carry out such variations and be bound by the same Contract Terms and Conditions set out in this Contract so far as is applicable, as though the said variations were stated in the Contract.

1.5.3 In the event of any variation of the contractual requirement in accordance with conditions 1.5.1 and 1.5.2 above which would occasion an amendment to the Price the Supplier shall within seven (7) calendar days of receipt of such notification of variation, advise the University in writing of the impact on the Price and/or previously agreed Delivery Date. Any such proposed amendment shall be ascertained at the same level of pricing as that contained in the Supplier’s tender. Any proposed change to the Delivery Date shall give the reasons for such change.

1.5.4 If in the Supplier’s opinion any such variation in accordance with conditions 1.5.1 to 1.5.3 above is likely to prevent the Supplier from fulfilling any of its obligations under the Contract, the Supplier shall notify the University in writing immediately whereupon the University shall inform the Supplier within a maximum of ten (10) business days whether or not the said variations shall be carried out. Until the University confirms such variation instructions in writing they shall be deemed not to have been given. The University’s view shall be final in deciding whether or not to proceed with a variation.

# **Software**

## **Ownership**

## The Software and all copies of it are the property of the Supplier and/or its licensors and all Intellectual Property Rights, title or interest in the Software will at all times remain with the Supplier and/or its licensors.

## **Licence**

2.2.1 As at the date of this contract, the Supplier grants to the University an individual, non-exclusive, non-transferable licence to use the modules of the Software set out in the Schedules for the numbers of users specified in the Schedules (“the Licence”). The Licence is for a period of ninety-nine (99) years from the date of this contract unless (i) stated otherwise herein or in the Schedules or (ii) terminated by either party in accordance with these Terms and Conditions.

2.2.2 Subject to clause 2.2.3 the University is licensed to use the server elements of the Software on a single installation at the Installation Address. The licensed number of users for each module and each Software product may not be split across multiple server installations unless the parties specifically agree otherwise in the Schedules.

2.2.3 The Supplier will create additional installations of the server elements of the Software for the University for one Production Environment, one Test Environment and one Development Environment. In addition the University is authorised to create itself an additional installation of the server elements of the Software for the purposes of maintaining a Disaster Recovery Environment and additional Test Environments (including training environments).

2.2.4 In the case of Bespoke Software, unless otherwise specified in the Schedules, the University is licensed for an unlimited number of users.

2.2.5 The Software and Documentation may only be used by:

2.2.5.1 the University and its employees and sub-contractors for data inputting and reporting for the internal business purposes of the University and/or its Affiliates (such sub-contractors being persons acting on behalf of the University either under (i) an outsourcing or facilities management arrangement on terms requiring the sub-contractor to comply with these Terms and Conditions and notified to the Supplier in advance of any such arrangement; or (ii) a consultancy agreement on terms requiring the sub-contractor to comply with these Terms and Conditions; and

2.2.5.2 the University and its employees for configuration purposes in the normal course of the respective businesses of the University and/or its Affiliates OR by the University’s sub-contractors for configuration purposes where such sub-contractors are either approved services partners of the Supplier or approved by the Supplier expressly in writing for such purpose; and

2.2.5.3 the University’s Affiliates for their own internal business purposes in each instance, and/or

2.2.5.4 consumers of the University or its Affiliates who would reasonably need access to the Software and/or Documentation in order for the stated business purpose of the Software to be fulfilled.

2.2.6 With the exception of the permitted users defined in clause 2.2.5, the Software may not be used to provide data processing services to any third party.

2.2.7 The University accepts responsibility and liability for the acts and/or omissions of its employees, Affiliates, temporary staff or sub-contractors or consumers in relation to any breaches of the Licence or its/their obligations under these Terms and Conditions by such employees, Affiliates, temporary staff or sub-contractors or consumers.

## **University’s Licence Obligations**

2.3.1 The University and any party granted use of the Software in accordance with Clause 2.2.5 shall:

2.3.1.1 secure and protect the proprietary rights in the Software and any copies which are made of it;

2.3.1.2 with the exception of the distribution of client based Software to permitted users as defined in clause 2.2, ensure that no copies of the Software in any form will be given to any Third-Party without the express permission of the Supplier in writing;

2.3.1.3 instruct its employees having access to the Software not to copy (with the exception of the copies permitted in these Terms and Conditions), decompile, disassemble, reverse engineer or duplicate the Software or provide information or assistance relating to these activities to any third party;

2.3.1.4 not permit access to the Software by any Third-Party (other than those set out in clause 2.2.5) without the prior written permission of the Supplier to do so;

2.3.1.5 reproduce any copyright notice on all material related to, or part of, the Software on which any such copyright notice is displayed,;

2.3.1.6 not remove any copyright notices, Trademarks, trademark credits, confidentiality notice, mark, legend or other information included in the Software;

2.3.1.7 not purport to assign, transfer, mortgage, charge, part with possession, or in any way deal with any of its rights, duties, or obligations under this Licence without the previous consent in writing of the Supplier.

## **Escrow**

If required by the University, the Supplier warrants one copy of the most recent version of the source code of the Supplier Software has been deposited with the organisation noted as escrow Agents on the front page of this agreement and shall be updated in accordance with any new Releases or Milestones of the Supplier Software. The University shall have right of access to the source code in the event of the Supplier being placed in receivership or liquidation. This right is dependent upon the University taking out a contract for this service with the Escrow agent and paying the appropriate charges.

## **Change control**

2.5.1 The Supplier shall provide such additional services and shall make such changes to the Services (and consequential pricing or timing issues) as shall be agreed between the parties in accordance with the change control process agreed prior to the initiation of any Project.

2.5.2 Any changes to these Terms and Conditions shall be in writing and signed by a director or duly authorised representative of each party.

## **Implementation**

2.6.1 The Supplier shall provide Implementation Services where such services are specified in a Implementation Services Schedule, such Implementation Services to be provided at the Location, for the number of Person Days and at the Charges specified therein. Unless otherwise agreed in writing, the Supplier gives no representations or warranties as to the results which will be achieved from the Implementation Services.

2.6.2 Both parties shall use their reasonable endeavours to comply with their obligations as set out in the Implementation Services Schedule and the System Installation Details Schedule .

2.6.3 The University and the Supplier will, as soon as reasonably possible after signing this Agreement, agree a procedure for monitoring the progress of the Implementation Services. This shall include, amongst other matters, regular review meetings attended by representatives of the parties authorised to make decisions with respect to the delivery of the Implementation Services.

2.6.4 If the University has reasonable objective cause for dissatisfaction with any part of the Implementation Services provided, the Supplier will, at its option, repeat in a satisfactory manner all or part of the Implementation Services concerned or make a proportionate reduction of its Charges based upon the unsatisfactory portion of work undertaken.

2.6.5 Any part of a Person Day shall be charged proportionately to a whole Person Day.

2.6.6 The fixed price Implementation Services provided by the Supplier include all Supplier resources required to deliver the System in accordance with the agreed project plan. For the avoidance of doubt the Supplier is not responsible for the coordination or interface of the agreed project plan with any other procurement, project or programme of work. Should the University reasonably request additional resources (project management, consultancy, training etc) the Supplier shall use reasonable endeavours to make such Additional Services available.

2.6.7 Where an interface to a Third-Party product is to be supplied by the Supplier as set out in the contract, the Supplier will ensure that the Third-Party (i) co-operates with the University and itself, (ii) provides reasonable information required by itself and the University and (iii) adheres to timescales reasonably required by the Supplier.

# **Support**

## **Support Services**

### 3.1.1 Support Services will be provided for the SupplierSoftware as from the date that the Installation Tests are completed and signed off by the University and a *Supplier* approved consultant, and Support Services will be provided for the Bespoke Software and Partner Software from the date of Installation of Bespoke Software and Partner Software and in each instance will continue up until and including the anniversary of such date. Thereafter Support Services will be provided for successive annual periods of 12 months and will continue to be provided for the duration of this Contract and thereafter subject to termination at the sole decision of the University, giving *the Supplier* not less than thirty (30) calendar days’ notice prior to a Renewal Date, or until terminated as provided for elsewhere in these Terms and Conditions.

3.1.2 The Supplier shall appoint a Contract Manager who shall be responsible for co-ordination of all matters relating to the Software and Services.

3.1.3 The Supplier shall take all reasonable steps to ensure that all staff, agents or sub-contractors are eligible to work in the UK, are appropriately qualified for the level of work assigned to them, and have been appropriately trained in the operation of the software and in the specific business environment of the College such that the uses to which the software are put are understood.

3.1.4 The Supplier shall ensure that all staff, agents and sub-contractors use all reasonable skill and care commensurate with their qualifications and training in carrying out any services.

3.1.5 The Supplier must, on the reasonable request of the University, provide a suitably trained alternative member of staff where the University requests a change on the grounds of failure to interface effectively with the University’s staff, or perceived inadequate knowledge and skills to fulfil the allocated tasks.

3.1.6 The Contract Manager will hold at least one meeting with the University in each calendar year to review the effectiveness of the software and services provided.

## **Competent Trained Individuals**

### 3.2.1 The University will appoint at least two Competent Trained Individuals and two technical contacts for the Software.

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### 3.2.2 In addition, the University will appoint at least two Competent Trained Individuals for each major modular area, e.g. Financials, HR.

3.2.3 The Competent Trained Individuals will provide a first level of support for University end users, qualifying all support requests prior to passing them on to the Supplier service desk. The Competent Trained Individuals are the primary point of contact with the Supplier service desk, and the University will use reasonable endeavours to route support requests through these individuals. The Supplier will provide support to suitably qualified and experienced University staff in the absence of the Competent Trained Individuals.

3.2.4 Where it is clear that a Competent Trained Individual requires additional training in order to satisfactorily operate and support the system, a reasonable programme of additional education will be proposed by the Supplier to be undertaken at the expense of the University. The training courses may be online courses or face to face training provided by Supplier staff at locations notified by the Supplier.

## **Support request prioritisation**

3.3.1 One of four priorities, as described below, will be assigned to a support request. The Supplier will use the priority specified by the University unless this is clearly inconsistent with the nature of the problem, in which case the revised priority will be agreed between the parties. The escalation procedure shall apply in the event that the parties are unable to agree the appropriate priority.

* **Priority 1 -** This priority should be assigned to a support request if the University is unable to use a business critical feature and as a result is unable to continue with its normal course of business.
* **Priority 2 -** This priority should be assigned to a support request if the University is unable to use an important feature and as a result is being caused major inconvenience, but is not prevented from continuing with its business operation.
* **Priority 3 -** This priority should be assigned to a support request if the University is unable to use a feature and as a result is being caused some but not major inconvenience.
* **Priority 4 -** This priority should be assigned to a support request if the problem being reported has minimal business impact.

3.3.2 Where at any time in the sole opinion of the University’s Level 2 or 3 Escalation Contact, or his or her temporary replacement there is an event which results in or is about to result in the cessation of operation of the Software, this will be notified to the Supplier for prioritisation as Priority 1 if deemed a Crisis and at Priority 2 if deemed an Emergency.

## **Target Response and Resolution times**

Once a support request has been logged, the Supplier will assign the support request to a support consultant for Response and Resolution.

The Supplier shall use reasonable endeavours to meet the Response and Resolution times set out. In the event that the Supplier reasonably believes that it will be unable to meet such times, the Supplier shall contact the Level 1 University Escalation contact as shown in the Schedule with a revised estimate using reasonable endeavours to provide a Resolution and Response as soon as possible thereafter. The Supplier must all Reasonable Endeavours where an item is reported under 3.3.

In the event that an Update, a Service Pack, Release or Milestone is provided which contains corrections to errors which cannot otherwise be rectified in the University’s current Update, Service Pack, Release or Milestone, then the University will not receive support relating to these errors other than in relation to the new Update, Service Pack, Release or Milestone.

Where a support request is in relation to Bespoke Software, the Supplier will pass the support request to its relevant bespoke software team to be dealt with directly with the University but in line with the target Resolution times set out above.

Where a support request is in relation to Partner Software, the Supplier will pass the support request to its relevant software partner to be dealt with by the software partner directly with the University (but in line with the Resolution times set out in this clause 3.4).

## **Error correction**

3.5.1 Where it has been established that there is an error in the Supplier Software or Partner Software, the following procedures will be used to provide corrections:

* **Priority 1** - a workaround or solution will be provided to the University as soon as reasonably possible. In the event that an appropriate workaround or solution is not possible, then a software fix will be delivered via an Update or Service Pack for the relevant supported Release or Milestone (as relevant) as soon as reasonably possible.
* In the case of other errors, the Supplier and its software partners will use all reasonable endeavours to achieve the following:
* **Priority 2** -provide an accepted workaround and provide a correction in the next Service Pack or Update if feasible to do so;
* **Priority 3** -provide an accepted workaround and evaluate the suitability of providing a correction in the next Service Pack, Release or Milestone (as relevant) and to do so if appropriate and feasible;
* **Priority 4** -evaluate the suitability of providing a correction in the next Release, Milestone, Experience Pack or Version and to do so if appropriate and feasible.

3.5.2 Where it has been established that there is an error in the Bespoke Software, such error will be dealt with in line with the Supplier’s quality assured Bespoke Support error correction procedures.

3.5.3 The Supplier and its software partners have no obligation to provide error correction services in relation to:

3.5.3.1 defects or errors resulting from the failure of the University to utilise the appropriate versions of other software required to run in conjunction with the Software as detailed in the Schedules(s) or on the Supplier University extranet or relevant software partner extranet;

### 3.5.3.2 defects or errors resulting from any installation of, or modifications or enhancements to the Software by any person other than the Supplier or the relevant software partner;

### 3.5.3.3 user error or incorrect use of the Software; or any fault in any hardware or software manufactured by a Third-Party used in conjunction with the Software;

### 3.5.3.4 defects or errors caused by the use of the Software on or with equipment not recommended or approved in writing by the Supplier or the relevant software partner.

## **Diagnosis of errors**

In order for the Supplier and its software partners to be able to diagnose a suspected problem, the error condition needs to be reproducible. The University must make available an electronic link as specified by the Supplier, at the University’s expense, in order for the Supplier and its software partners to remotely access the system for diagnostic purposes, using the remote access standards defined by the Supplier. The electronic link must be available promptly on request from the Supplier. If the link is not made available within the agreed timescale, the Supplier reserves the right to re-schedule the diagnostic work at its convenience when suitable resources become available. The University may control access to the electronic link by the Supplier and its software partners by disconnection of the link when it is not authorised for use.

## **Escalation**

3.7.1 The University will in the first instance escalate support requests to the service desk team leaders using the escalation process provided by the Supplier.

In the event of the University being dissatisfied with the level of Support being provided in relation to one or more matters, the University may then escalate the issue to higher levels of management as follows shown in the Issue Escalation Schedule.

The University shall give each person detailed above a reasonable amount of time to resolve the issue before requesting escalation to the next level.

When any issue is escalated to Level 2 or 3, it is expected that the University will have referred internally to Level 2 or 3 as well

## **Upgrades to Supplier Software and Partner Software**

3.8.1 The Supplier and its software partners will from time to time provide upgrades to the Supplier Software and Partner Software (as appropriate) and these will be incorporated into an Update, Service Pack, Release or Milestone. Additional optional functionality which creates a new user experience around a specific process may also be available from time to time via an Experience Pack.

3.8.2 The University will receive new Updates, Service Packs, Releases and Milestones free of charge assuming that all appropriate Annual Support Fees (or appropriate Licence Fees in the case of Software as a service) are paid to the Supplier relating to the relevant Supplier Software and Partner Software (as appropriate). The Supplier (on behalf of itself and its software partners) reserves the right to charge a reasonable upgrade fee to a new Version of the Supplier Software or Partner Software (as appropriate), provided that no such fee shall be payable within the initial period of this contract.

3.8.3 It is the University’s responsibility to implement new Updates, Service Pack, Releases or Milestones as soon as reasonably practical.

3.8.4 In the event that the University requires any Services to assist with implementation of an Update, Service Pack, Release, Milestone, Experience Pack or Version then this shall be paid for by the University according to the Supplier’s Prevailing Rate.

3.8.5 The University acknowledges that owing to changes and advances in technology, new Versions, Releases, Milestones or Experience Packs of the Software may in the future not always be compatible with any of the Environments present at the date of Installation. The Supplier will use its reasonable endeavours to provide the University with as much advance notice as it reasonably can, should the Supplier be aware that new Versions, Releases , Milestones or Experience Packs of the Software will require changes to an agreed Environment. It is the University’s responsibility to upgrade the Environments, as advised by the Supplier with reasonable notice, in order to meet the requirements of new Versions, Releases, Milestones or Experience Packs. The Supplier reserves the right with not less than 12 months notice to withdraw the Support Services for new Versions, Releases, Milestones or Experience Packs of the Software for certain database systems or operating systems used by the University which in the Supplier’s reasonable opinion are no longer in wide commercial use.

3.8.6 In addition for a University using the payroll module in the UK an Update will be issued in January each year to comply with year end requirements from HMRC and any changes for payroll processing in the following year. As a pre-requisite the University will need to ensure that its Live Environment is up to date with the latest software Update and Service Pack for the Release it is running (or the latest Update for the Milestone it is running, as appropriate). The payroll Update will only be issued for supported Releases and Milestones of the Supplier Software or Partner Software unless the new Release or Milestone is not made available until after 1st September, in which case an additional Update will be issued. A formal notice will be sent out by the Supplier to the nominated payroll support contact at the end of October each year with confirmations of the supported Releases, Milestones and pre-requisites. This does not apply to a University using payroll to support HR, or for other purposes not requiring HMRC compliance. A University using payroll in other jurisdictions will need to refer to local requirements.

## **Upgrades of Bespoke Software**

3.9.1 Where required for continued operation with a new Release or Milestone of Supplier Software, the Supplier will, at its own expense, provide revisions to the Bespoke Software, provided that the University pays all appropriate Annual Support Fees to the Supplier relating to the Bespoke Software.

3.9.2 The Supplier reserves the right to make a charge for the provision of revisions to the Bespoke Software, if these are required to permit satisfactory operation of the Bespoke Software with a new Version or Enhancement Pack of the Supplier Software.

## **Release and Milestone Frequency**

3.10.1 Supplier Software Release and Milestone Frequency

The Supplier guide to release frequency of the Supplier Software is as set out in the Software Release Expected Frequency and Notice Schedule. The Supplier shall notify the University not less than the minimum notoce period in advance of the issue of a new Version, Release, Milestone or Enhancement Pack of the Supplier Software.

 Where required for continued operation with a new Release or Milestone of Supplier Software, the Supplier will, at its own expense, provide revisions to the Localisations, provided that the University pays all appropriate support fees to the Supplier relating to the Localisations.

3.10.2 Bespoke Software Frequency Release

The provisions of this clause 3.10 do not oblige the Supplier to provide a new Version, Release, Milestone or Experience for the Bespoke Software. the Supplier shall comply with clause 3.9 in relation to Bespoke Software.

3.10.3 Partner Software Frequency Release

The provisions of this clause 3.10 do not oblige the Supplier’s software partners to provide a new Version, Release, Milestone or Experience Pack for the Partner Software. In such cases, the Supplier’s new Version, Release, Milestone or Experience Pack will maintain inter-operability with existing Partner Software.

3.10.4 Legislative and Regulatory Changes

The Supplier and its sub-contractors will use all reasonable endeavours to ensure that software Updates or Releases required to ensure compliance with legislative or other regulatory change will be available to the University in good time to be implemented, tested and accepted in time for the University to meet its legal and regulatory obligations.

## **Supported Software**

3.11.1 At any time the Supplier and its software partners shall provide Support Services for the current and the previous Release of the Software. For Universitys declining to adopt a new Version, Support Services will be provided for the supported Releases of the previous Version.

3.11.2 For the avoidance of doubt, access to the support website provided by the Supplier is restricted to use by the Supplier’s licensees or their permitted users defined in this Contract. Any access given to third parties shall constitute a material breach of these Terms and Conditions.

## **Support Charges**

### 3.12.1 The Supplier reserves the right to review the Annual Support Fee (or annual Licence Fee where such applies to Software provided annually as a service). Any revision will only take effect from the first Renewal Date and each subsequent Renewal Date. The increase in the Annual Support Fee for the basic Support Services (i.e. application support) in any one year will be the annual increase in the consumer prices index as published in the month prior to the raising of the renewal notice or the amount shown in the Supplier’s tender response forming part of this contract.

### 3.12.2 The Annual Support Fee in respect of the Software is calculated on the basis that the University uses the Software on the operating system and database combination identified by the University at the time of Installation. If the University wishes to run the Software using other operating system or database combinations, the Supplier reserves the right to review the Annual Support Fee in consultation with the University.

### 3.12.3 If the University purchases additional modules or increases licensed users at any time, then the Annual Support Fee (or annual Licence Fee where such applies to Software provided annually as a service) will rise accordingly. In the support year in which such an event occurs the Annual Support Fee (or annual Licence Fee, as appropriate) will be pro-rated to terminate in line with the main Support Services.

### 3.12.4 Any increase in the Annual Support Fee or Managed Services fee for annually contracted technical services; such as Technical Support, or Managed Services, is subject to the then current Supplier price list unless set out and agreed in the tender response forming part of this contract (such annual services are actually the provision of Services and therefore are priced according to market forces). The University may terminate within 30 days of receipt of the annual renewal notice.

## **Customisations**

### 3.13.1 Customisations made by the University or its contractors are not supported by the Supplier. Any assistance, with resolving issues or with upgrades of the Customisation, will be subject to review and extra charge.

### 3.13.2 If standard functionality within a new Release or Milestone replaces a Customisation, the University will be required to adopt the standard functionality.

### 3.13.3 Any Customisation that is covered by a valid Supplier customisation support agreement will be upgraded and provided to the University as part of the Upgrade process. The upgraded customisation will be unit tested by the Supplier. The University will be responsible for User Acceptance Testing on its Supplier Software Environments. Any extra support required for the User Acceptance Tests will be subject to extra charge.

### 3.13.4 Supplier Support Services cover Supplier Software, Bespoke Software and Customisation where a valid support agreement is in place for each individual element.

**3.14. Managed Service \* Delete if inapplicable**

3.14.1. The Managed Service to be provided and the Software covered by the Managed Service is specified in the Schedules

3.14.1. The Managed Service will commence on installation of the first server at the University’s designated location and will continue for an initial period of three (3) years. The Managed Service will continue in force until it is terminated by the University, giving the Supplier not less than ninety (90) calendar days notice in writing where the termination date is no earlier than three (3) years after the date of installation of the first server at the University’s designated location, or until it is terminated by either party as provided for elsewhere in these Terms and Conditions.

**3.14.2 Managed Service Fees \* Delete if inapplicable**

3.14.2.1 In order to receive the Managed Services, the University must pay the Managed Service fees annually in advance to the Supplier.

3.14.2.2 The Supplier is entitled to increase the basic annual Managed Service fees by giving not less than thirty days’ notice prior to an anniversary of the installation of the first server at the University’s designated location. No increase in charges may take effect less than 12 months from the date of installation of the first server.

3.14.2.3 The Supplier may at any time increase the basic annual Managed Service fees for the backup solution, where the data volumes exceed those which the University has provided.

3.14.2.4 The annual Managed Service fee is based on standard remote access being available for Supplier access and for backup purposes. Should the University require remote access using anything other than Supplier standard access protocols, the Supplier may need to charge additional fees. A copy of the Supplier’s standard access protocol is available on request.

**3.15** **Software provided as a service\* Delete if inapplicable**

**3.15.1 Software provided as a service**

3.15.1.1 Where any Software is delivered to a University as a “software as a service” application, the Licence shall be annual and shall commence on the date of Installation (unless agreed otherwise in an Agreed Order).. The Software shall continue to be provided as a service either (i) on an annual basis until it is terminated by either party giving the other party not less than thirty (30) calendar days notice prior to the annual Renewal Date or (ii) such other basis as is agreed between the parties from time to time in writing until it is terminated by either party giving the other party not less than thirty (30) calendar days notice to the other.

3.15.1.2 The Supplier reserves the right to review the annual Licence Fee applicable to Software provided annually as a service. Any revision will only take effect from the first Renewal Date and each subsequent Renewal Date. Any increase will be limited to the amount set out in the tender response forming part of this contract, and in the absence of this, to an increase in line with the Consumer Price Index.

3.15.1.3 The Supplier shall ensure that any data input of the University which is used or held by the Software (“University Data”) is securely processed and/or held and shall be backed up at least once every working day. The parties in this regard shall at all times comply with their respective legal obligations under the Data Protection Act 1998 with the University being the data controller and the Supplier and/or its licensors/partners (as appropriate) being the data processor. The University grants the right to the Supplier and/or its licensors/partners to process the University Data in the manner anticipated and required for the provision of the Software as a service. .\*This clause will not apply where the Software is hosted by the University

3.15.1.4 The Supplier and/or its licensors/partners (as appropriate) shall make the Software available 99.9% of the time during working hours and 97% of the time outside normal working hours, such calculation not including (i) planned maintenance which shall normally fall outside working hours; and (ii) extension of planned maintenance or emergency maintenance, which may unavoidably fall within working hours. .\*This clause will not apply where the Software is hosted by the University

3.15.1.5 University Data shall be the property of the University. Data derived directly or indirectly from usage of the Software as a service shall be the property of the Supplier or its licensors/partners (as appropriate).

# **ANCILLARY**

## **Third-Party Software**

### The third-party licensor’s standard licence terms relating to the Third-Party Software and documentation will apply. The licence for the Third-Party Software will be a direct licence between the licensor of the software and the University. It is the University’s responsibility to ensure that the terms of such a licence are complied with.

4.1.2 Except as detailed in the Schedules, all support for Third-Party Products will be provided directly to the University by the Third-Party licensor, manufacturer or its agent.

## **Maintenance of hardware**

The maintenance of any hardware provided to the University under this Contract is subject to the Contract Schedules.

## **Export**

The University acknowledges that the Software and Third-Party Products may be subject to export and import control and that export or import contrary to such regulation is prohibited. The University agrees that the Software and Third-Party Products will not be exported from the UK directly or indirectly separately or as part of a system without the University at its own cost first complying with all applicable laws and regulations of and obtaining all licences from the UK Government, the United States Department of Commerce and any other appropriate agency. At the University's request and expense the Supplier may assist the University to apply for such licences.

## **Insurance and ownership**

### Ownership of Third-Party Software shall remain vested at all times in the Third-Party Software licensor.

4.4.2 Ownership of Third-Party Products (other than Third-Party Software) supplied under the Schedules shall pass to the University upon payment in full for the Third-Party Products supplied.

4.4.3 Where Third-Party Products are provided under the Schedules they shall be provided in accordance with Incoterms either:

4.4.3.1 Free Carrier to the University’s premises;

Risk and the responsibility for insuring all Third-Party Products shall pass to the University on delivery to the University’s premises; or

4.4.3.2 Ex works from the Supplier’s premises;

 Risk and the responsibility for insuring all Third-Party Products shall pass to the University on notification from the Supplier that the Third-Party Products are available for collection.

as specified in the Schedules (and where no option is specified the Third-Party Products shall be deemed to be provided in accordance with (4.4.3.1) above).

4.4.4 If Third-Party Products are being delivered Ex works and the Supplier takes out delivery in transit insurance for the Third-Party Products at the University’s request such insurance will be for the University’s account. The University can never derive more rights from this insurance arrangement than it would have had if it had taken out the insurance itself.

# **General Terms**

## **Warranty**

### 5.1.1 The Supplier and its software partners warrant that the Software, when used in accordance with its relevant Documentation and the relevant software vendor’s instructions, will both on successful installation, and thereafter while the Software is covered by the Support Services perform substantially in accordance with the Specification.

### 5.1.2 Subject to this warranty, the University acknowledges that the Supplier Software and Partner Software is off-the-shelf software and not a bespoke program prepared to meet the University's individual requirements (even if the Supplier is aware of such requirements). The University has issued an Invitation to Tender including a Specification to which the Supplier has issued a detailed response. It is therefore not the responsibility of the University to ensure that the facilities and functions described in the Documentation and by the Supplier are in accordance with the Tender Response. The Supplier and its software partners (as appropriate) shall not be liable for any failure of the Supplier Software or Partner Software to provide any facility or function not specified in the Specification.

### 5.1.3 The Supplier warrants and represents that it has the right to sub-license any part of the Software which it is sub-licensing to the University or (as appropriate) the right to distribute any Partner Software or Third-Party Software which it is providing to the University.

### 5.1.4 The Supplier and its software partners warrant that any new Update, Service Pack, Release, or Version of the software issued within the initial period will continue to provide the functionality as set out in the Specification. Where errors of this nature are identified, correction of them will be treated as a Priority 1 item unless agreed otherwise in writing by the University.

### 5.1.5 The Supplier and its software partners accept no liability for any failure of the Software to provide any facility or function as a result of:

###

### 5.1.5.1 a modification to the Software code which has not been carried out by the Supplier or its software partners or any action which is expressly excluded in the Documentation (and any approval shall be at the cost and expense of the University);

### 5.1.5.2 any combination of the Software with any software or materials not supplied or approved by the Supplier or its software partners;

### 5.1.5.3 use of the Software in a manner for which it was not intended or other than as permitted by these Terms and Conditions;

### 5.1.5.4 where the University has failed to install a new Update, Service Pack, Release and/or Milestone (as relevant) which has been released to remedy an error or use of any Release and/or Milestone (as relevant) which is not the most recent or penultimate Release or Milestone (as relevant) of the Software.

### 5.1.6The Supplier on behalf of itself and its software partners does not warrant that the operation of the Software will be uninterrupted or error free. The University acknowledges that the Software will not be error free.

### 5.1.7 The Supplier does not provide any warranty in respect of Third-Party Products but will pass on to the University any warranties relating to Third-Party Products which are provided by the manufacturer of such products.

### 5.1.8 The Supplier on behalf of itself and its software partners warrants that any Services, Managed Services and Support Services provided under the Schedules and these Terms and Conditions will be of a professional quality and conform to Good Industry Practice. The Supplier and its software partners shall provide the Services, Managed Services and Support Services with reasonable care and skill.

### 5.1.9 The Supplier on behalf of itself and its software partners accept no liability for any failure of the Services, Managed Services or Support Services to provide any facility or function as a result of:

###  **5**.1.9.1 a modification to the Software code which has not been carried out by the Supplier or its software partners or any action which is expressly excluded in the documentation (and any approval shall be at the cost and expense of the University)

### 5.1.9.2 any combination of the Software with any software or materials not supplied or approved by the Supplier or its software partners

### 5.1.9.3 use of the Software in a manner for which it was not intended or other than as permitted by these Terms and Conditions

### 5.1.9.4 where the University has failed to install a new Update, Service Pack Release and/or Milestone (as relevant) which has been released to remedy an error or bug or use of any Release or Milestone which is not the most recent or penultimate Release or Milestone (as relevant) of the Software

### 5.1.9.5 incorrect instructions or information from the University or the University's failure to provide information or documentation.

### 5.1.10 The Supplier and its software partners will have no liability under this Services, Managed Services and Support Services warranty unless the Supplier has received written notice of the breach of the warranty within six months of the delivery of the relevant item of Services, Managed Services or Support Services.

### 5.1.11 Except as expressly provided in these Terms and Conditions no warranty, condition, undertaking or term, express or implied, statutory or otherwise as to the condition, quality, performance, suitability, merchantability or fitness for purpose of the Software, Services, Managed Services and Third-Party Products, provided under this contract, is given or assured by the Supplier and all such warranties, conditions, undertakings or terms are excluded to the fullest extent permitted by law. In the event of the Software failing to perform in accordance with the above warranty, The Supplier’s primary obligation shall be to remedy such failure by the provision of Support Services. It is acknowledged by the University that the remedies expressed in these Terms and Conditions set out the whole extent of the Supplier’s liability and obligations in respect of any breach of any warranty.

## **University’s** **responsibilities**

Unless otherwise stated:

5.2.1 The University shall provide the Supplier and its software partners with all information and documentation which may reasonably be requested by the Supplier in order to allow the Supplier and its software partners to fulfil their obligations.

5.2.2 The University shall provide the Supplier, at no cost to the Supplier, access during normal working hours to facilities, telephone usage and computer time, as the Supplier may reasonably consider necessary for performance of its obligations.

5.2.3 The University shall be responsible for connectivity to its network and the Internet including the agreed mechanism for remote support access.

5.2.4 The University will ensure that the users of the Software have received adequate training and that the users undertake to carry out their role in relation to the operation of the Software in line with Good Industry Practice and in accordance with any Documentation and reasonable advice given by the Supplier or its software partners.

5.2.5 If the University fails to provide access or facilities or accurate information to the Supplier and its software partners as previously agreed between the parties and this causes the Supplier or its software partners to repeat the provision of any Services, the Supplier reserves the right to charge the University for the additional time incurred.

5.2.6 The University is responsible for the safety and integrity of its data at all times. This includes, but is not limited to, ensuring that appropriate back-ups are made of all data on a daily basis in accordance with either BS7799 or ISO27000/27001/27002 and ensuring that the system can be restored to its previous state in the event of problematic maintenance operations on a Production Environment. The Supplier will provide a restoration service at the University’s cost provided up-to-date backups are available. Where the Supplier requires assistance from any sub-contractor to the University (e.g. an ISP) to carry out such restoration work, the University will procure such assistance for the Supplier at no additional charge to the Supplier.

5.2.7 Where Managed Services are being provided by the Supplier then the University’s back up obligations in clause 5.2.6 shall not apply as the Supplier will provide a back-up service as part of the Managed Service and the restoration service will be at the Supplier’s cost.

5.2.8 In the event that any data is at any time corrupted, lost or sufficiently degraded as to be unusable and the University has complied with its obligations in Clause 5.2.6 above, then the Supplier shall assist the University to recover or restore such data either by using its own internal resource (to the extent of its ability to do so in this field of operation) or by co-operating with a specialist Third-Party data recovery firm used by the University, at any additional charge agreed between the parties in advance of any work being carried out.

5.2.9 The University is responsible for the accuracy of the inputs to and the outputs from the Software and Third-Party Products used in conjunction with the Software, as well as ensuring the parameters of the Software are set correctly for the administration, processing of data and calculations in accordance with any legal, accounting or tax requirements. The University is also responsible for the security of the data.

5.2.10 The University must ensure that its operating systems and database software are at all times compatible with the Software and are not malfunctioning in a way that adversely affects the operation of the Software.

5.2.11 The University is responsible for ensuring that the necessary equipment for the efficient operation of the Software is procured and ready for the commencement of Services on a date mutually agreed in advance between the parties.

5.2.12 The University is responsible for setting (with advice from the Supplier or its Software Partners) and carrying out User Acceptance Tests.

5.2.13 Any transfer of data by the University into the database used by the Software must be carried out using the standard interfacing tools supplied with the Software, or such other tool approved in writing from time to time by the Supplier. Without prejudice to the Supplier’s other rights and remedies under these Terms and Conditions any work carried out by the Supplier arising directly or indirectly from a breach of this clause 5.2.14 shall be charged to the University at the then applicable consultancy rate.

5.2.14 If the Supplier is prevented or delayed from performing any of its obligations under these Terms and Conditions by reason of any act, default or omission of the University its agents or sub-contractors, then the Supplier shall be deemed not to be in breach of any terms of these Terms and Conditions which it might otherwise be in breach of as a result of the said act, default or omission.

## **Liability for Loss**

### Nothing in these Terms and Conditions, particularly this clause 5.3, shall limit or exclude either party’s liability for fraud or for death or personal injury resulting from negligence or to the extent such limitation or exclusion is unlawful.

5.3.2 Limits of liability shall be as follows:

5.3.2.1   Neither party shall exclude or limit liability for personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of itself, its servants, agents or subcontractors; or fraudulent misrepresentation.

5.3.2.2   Subject to the provisions of clause 5.3.2.1 the total liability of the Supplier shall not exceed the applicable financial limit shown here:

* the aggregate liability of the Supplier for loss or damage to tangible property shall be limited to £1,000,000 (one million pounds); and
* the aggregate liability of the Supplier for all other loss shall be limited to 1.5x the total charges paid or payable by the University to the Supplier in accordance with the terms of this Agreement.

5.3.2.3   Without prejudice to the provisions of clause 5.3.2.1 in no event shall either party be liable to the other for any economic, indirect or consequential loss or damages.

5.3.2.4   In no event shall the Supplier be liable for loss of profits, business, revenue, goodwill; loss of contracts; loss of anticipated savings; loss of damage to or corruption of data (unless hosted by the Supplier); and/or loss of the use of any equipment or process or loss of operational time or loss of availability (unless hosted by the Supplier).

5.3.2.5   the Supplier shall be liable for, and the levels of liability in this clause 5.3.2 shall be applicable to, any acts/or omissions of its servants, agents and subcontractors.

### The foregoing limits of liability shall not apply to any liability arising under clause 5.4.

## **Intellectual property infringement indemnity**

5.4.1 The Supplier and its software partners (as relevant) will defend any action brought against the University which alleges that any Software supplied infringes any copyright provided that the University promptly notifies the Supplier of the action, makes no admission of liability and gives the Supplier or its software partners (as relevant) sole authority, information and assistance (at the Supplier’s or its software partner’s (as relevant) expense) for the defence or settlement of the action.

5.4.2 The Supplier may at any time it is concerned about the possibility of such an infringement at its option and expense, either:

5.4.2.1 obtain for the University the right to continue using the Software; or

5.4.2.2 replace or modify the Software so that infringement or alleged infringement will not exist; or

5.4.2.3 remove the Software involved and refund a portion of the price depreciated by an equal amount over the lifetime of the Software. (This last option may only be pursued by the Supplier once it has used all reasonable endeavours to resolve the matter using the previous two options).

5.4.3 The Supplier disclaims all other liability for copyright, patent or other infringement including any incidental or consequential damages.

5.4.4 The Supplier and its software partners (where relevant) will have no liability to the University to the extent that an infringement or claim is based upon any circumstance detailed in 5.1.5.

5.4.5 The Supplier provides no intellectual property infringement indemnity for any Third-Party Products provided as part of this contract and the University should address any such issues directly with the appropriate licensor or hardware manufacturer under its separate licence agreement with them.

5.4.6 This clause sets out the total liability of the Supplier to the University in respect of Intellectual Property Rights infringement.

## **Service times & daily fees**

5.5.1 Unless otherwise expressly stated, all Services, Managed Services and Support Services will be provided from Monday to Friday, excluding English Bank Holidays, between the hours of 9.00 am and 5.30 pm; and 24 x 7 to log and review support requests via the web self-service facility.

5.5.2 A working day at any location other than a Supplier office in the UK consists of seven (7) hours excluding travelling time and lunch. The Supplier may charge the University for additional time worked as fractions of a day. The minimum chargeable time is one (1) hour within a supplier’s office and one half (½) of one day when on site. The University will permit the Supplier’s Personnel sufficient access to its premises to enable the Supplier to provide the Support Services. When working at the University’s premises, the University shall allow the Supplier’s Personnel to have the use and benefit of a suitable working area and suitable technical equipment. If the Supplier agrees to supply additional Services on an hourly basis, during standard working hours as documented in clause 5.5.1, for example by telephone, the fee shall be the daily rate applicable to the University calculated pro rata plus any associated costs. The University agrees to pay all reasonable expenses for accommodation, subsistence and travel incurred by the Supplier in supplying any Services at premises other than the Supplier’s, in accordance with the Schedule attached, save that travel expenses shall be no more than HMRC approved rates for car travel and rail travel shall not exceed standard second class charges.

## **Cancellation at short notice**

5.6.1 If the University and the Supplier have agreed specific dates for delivery of Services and for any reason the University cancels or defers the arrangements or the Services cannot for any reason be provided by the Supplier due to the University’s actions or failure to act (including but not limited to the University failing to meet the pre-requisites specified by the Supplier) the University agrees to pay any costs which the Supplier incurs as a result of the cancellation, for example, travel or accommodation costs, but not the direct cost themselves.

## **Pricing** **and Payment**

Unless otherwise specified in the Schedules or Purchase Order, the University will make payments to the Supplier in accordance with this clause.

5.7.1 The invoice date for the Licence Fees for Software and licence fees for Third-Party Software shall be the date specified in the Schedules of the Contract. In addition in the case of Software provided as a service the invoice date for annual Licence Fees thereafter shall be thirty (30) days or more prior to each Renewal Date and for monthly Licence Fees thereafter shall be at the beginning of each month.

5.7.2 The invoice date for Services (including Localisation work) shall be the end of each month in respect of Services delivered in such month.

5.7.3 The invoice date for Support Services shall be the date of the contract and annually thereafter thirty (30) days or more prior to each Renewal Date.

5.7.4 The University shall pay to the Supplier the sums detailed in the Schedules together with VAT and any other tax or levy which may be imposed by a statutory authority.

5.7.5 The Supplier shall only charge for delivery of software and documents where agreed in advance with the University and in unusual conditions of urgency. The Supplier shall use reasonable endeavours to keep delivery charges to a minimum.

5.7.6 All invoices are due within thirty (30) calendar days of invoice date (save in relation to invoices for the Annual Support Fees, the first invoice for such Annual Support Fees being due for payment on the first day of the calendar month following the date of successful completion of the Installation Tests or Installation of Bespoke Software and Partner Software and all subsequent invoices being due prior to the relevant Renewal Date).

5.7.7 Expenses are charged in addition at the rates set out in the Schedules.

5.7.8 Subject to clause 5.7.5, in the event of late payment:

5.7.8.1 The Supplier reserves the right (in addition to its other rights) and after notice to the University to charge interest from the due date at the statutory interest rate on the outstanding balance until payment is received in full by the Supplier and to recover from the University all costs and expenses incurred in the recovery of the overdue money from the University; and

5.7.8.2 The Supplier will be under no obligation to supply Software, Services, Managed Services or Support Services while any invoice remains unpaid thirty (30) calendar days after the due date until all outstanding sums due to the Supplier from the University have been paid to the Supplier by the University; and

5.7.8.3 in the event that the University fails to pay any correctly submitted invoice for a training course by the due date, then the Supplier reserves the right to cancel the training course booking.

### 5.7.9 The use of the Software may require a temporary password which will disable the University's use of the Software after the password end date if the University fails to pay the Licence Fee in accordance with these Terms and Conditions, The Supplier will issue a permanent password when the Supplier has received the Licence Fee in full.

### 5.7.10 Unless specifically stated otherwise in these Terms and Conditions, all Annual Support Fees and Managed Service fees are non-refundable.

5.7.11 If requested by the University, the Supplier shall accept the use of corporate purchasing cards at no additional costs to the University.

5.7.12 If requested by the University the Supplier shall participate in the e-procurement system of the University’s choice. This shall be at no additional costs to the University providing that any ongoing Supplier costs do not exceed the costs of purchasing cards.

## **Dispute of invoices**

5.8.1 Any dispute regarding the content of an invoice submitted by the Supplier to the University must be raised in writing by the University within twenty-one (21) calendar days of the invoice date. For the purposes of the payment of invoices (subject always to any subsequent disputes which may arise during the period set out in the statute of limitations, invoices will be deemed to have been properly submitted and due for payment where an invoice has not been disputed within twenty-one (21) calendar days of the invoice date.

### 5.8.2 If all or any part of any invoice is the subject of a genuine and reasonable dispute, the University shall provide written details of the amount disputed and the cause of the dispute and shall pay to the Supplier any undisputed amount(s) as these undisputed amounts become due. The parties shall in good faith attempt to resolve the dispute as to the unpaid amount in accordance with the procedure set out in clause 5.26.1 during which time, if the University has complied in full with this clause 5.8.2, the Supplier shall not have the right to charge interest or to withhold Services in respect of that disputed amount.

## **Verification**

Subject to reasonable notice, the University will grant the Supplier the right to periodically inspect the system and related documentation and media to ensure that the terms of the licence to use the Software and other terms of these Terms and Conditions are being complied with.

## **Assignment**

Neither party shall be entitled to sell, assign, sub-licence, delegate, transfer or otherwise dispose of whether directly or indirectly any of its rights or obligations under this contract except with the other party’s prior written permission, which will not be unreasonably withheld or delayed. Where either party wishes to assign the contract to another legal entity within its overall group or organisation for purposes of internal reorganisation only, the other party will not refuse such assignment. Further where the University is a public body or government department, such University may assign its rights under the contract to any statutory body, government department or other public body who takes over the relevant functions of the University.

## **Confidential Information**

5.11.1 Both parties agree to treat as confidential all information contained in or embodied in any documentation made available to them and shall not disclose the whole or any part of the information to a Third-Party without the prior written permission of the other party. The terms of this clause shall not apply to the following information:

5.11.1.1 information which was in the public domain at the time of disclosure;

5.11.1.2 information which, though originally Confidential Information, subsequently is in the public domain through no fault of the party receiving the Confidential Information;

5.11.1.3 information independently conceived, perfected or developed by employees or agents of either party or is now or is hereafter in either party’s or any such employees’ or agents’ lawful possession as shown by their written records where such party employee or agent can show it had no access to confidential information received under an Agreed Order;

5.11.1.4 information disclosed to any adviser of either party bound by a professional duty of conduct;

5.11.1.5 information disclosed with the other party’s prior written approval.

5.11.2 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Contract for whatever reason.

5.11.3 Nothing in this clause 5.11 shall be deemed or construed to prevent the University from disclosing any Confidential Information obtained from the Supplier to:

5.11.3.1 any Affiliate, (or department or agency in the case of public sector Universitys) of the University provided that the University has required that such information is treated as confidential by such Affiliate, (or department or agency in the case of public sector Universitys) and their employees;

5.11.3.2 any consultant or sub-contractor engaged by the University provided that the University shall have obtained from the consultant or sub-contractor a signed confidentiality undertaking on substantially the same terms as are contained in this clause 5.11;

5.11.3.3 to any person or Third-Party rightfully requesting information under the Freedom of Information Act 2000 where any provisions relating to the Freedom of Information Act 2000 shall take precedence;

and in respect of both the Supplier and the University neither will be in breach of this clause 5.11 when information is disclosed pursuant to a duty to disclose imposed by law or the requirements of a regulatory body but only to the extent so required.

## **Termination**

5.12.1 The University may terminate this contract by giving ninety (90) days prior notice to the Supplier. Any licence and support fees already paid will not be refundable. Any licence and support fees not yet charged will be pro-rated up to the termination date.

5.12.2 The Supplier shall have the right to terminate this contract including the Software licence immediately if (i) there is any breach of clause 2 or clause 5.4; or (ii) the University has not paid for sixty (60) calendar days or more any fees due under this contract; or (iii) the University permanently discontinues the use of the Software and notifies the Supplier in writing to this effect.

5.12.3 In the event that the University has not paid their Annual Support Fees for sixty (60) calendar days or more, the Support Services will be terminated but the University’s right to continue to use their then installed Software (properly covered by paid Licence Fees) shall continue.

5.12.4 The contract may be terminated by either party on giving written notice to the other if:

5.12.4.1 the other commits a material breach of any term of the contract which (in the case of a breach capable of being remedied) shall not have been remedied within thirty (30) calendar days of a written request to remedy the same;

5.12.4.2 the other shall convene a meeting of its creditors;

5.12.4.3 in respect of the other a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or similar situation arises;

5.12.4.4 the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

5.12.4.5 a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party;

5.12.4.6 in respect of the other, a petition is presented (and not discharged within thirty (30) calendar days) or a meeting is convened for the purpose of considering a resolution, or other steps are taken for the winding up of the other party, or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

5.12.4.7 the other ceases to be in a position to fulfil its obligations under the contract;

5.12.4.8 the other suffers any event in a foreign jurisdiction analogous to or comparable with any of the foregoing.

## 5.12.5 In the event that the Supplier becomes entitled to serve notice of termination in circumstances where an administrative, receiver or administrator of the University has been appointed (or equivalent appointment is made), the Supplier shall not serve such notice of termination unless the Supplier reasonably believes that a breach of these Terms and Conditions may occur or that the Software is or may become in jeopardy.

## **Effect of termination**

5.13.1 Any termination of the contract will be without prejudice to the accrued rights and liabilities of either party and shall not automatically terminate any other contracts in force. The termination will not affect the coming into force or the continuance in force of any term which is expressly or by implication intended to come into or continue in force after any termination.

5.13.2 On any termination of the contract by the Supplier, the University will within 30 days return the Software to the Supplier, or at the Supplier’s request destroy the Software and all copies of the whole or any part of the Software and within seven (7) calendar days certify to the Supplier in writing that it has returned or destroyed the Software, as applicable.

5.13.3 Failure by the University to effect the return or destruction will entitle the Supplier, upon giving reasonable notice, to enter any premises of the University to remove or supervise the destruction of the Software. In such circumstances, the University hereby irrevocably authorises and licenses the Supplier its employees or agents to enter the University's premises for that purpose. The University shall be liable for all reasonable costs incurred by the Supplier in connection with the recovery of Software, such costs to be paid on an indemnity basis.

## **Data Protection**

* + 1. The Supplier undertakes to:
			1. keep confidential and procure that its managers and other staff keep confidential all information (written, oral or in any form) concerning the affairs of the University that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Contract or otherwise obtains or receives during or in connection with the provision of the Services (“the **Information”**). The term “Information” extends to all knowledge and information relating to the activities, operations, organisations, finances, business, processes, methods of and concerning the University and any of its staff, students or suppliers;
			2. not without the University’s written consent to disclose the Information in whole or in part to any other person, save those of its employees, agents and sub-Suppliers involved in the provision of the Services and who have a need to know the same; and
			3. use the Information solely in connection with the provision of the Services and not for its own benefit or the benefit of any third party.
		2. The provisions of this clause shall not apply to the whole or any part of the Information to the extent that it is:
			1. already in the Supplier’s possession on the date of its disclosure without breach of any obligation of confidentiality;
			2. in the public domain other than as a result of a breach of this Clause; or

* + - 1. independently developed by the Supplier without reference to or use of the Information.

The Supplier undertakes to make all its relevant Staff, employees, agents and sub-Suppliers aware of the confidentiality of the Information and the provisions of this clause and, without limitation to the foregoing, to take all such steps as shall from time to time be necessary to ensure compliance by its Staff, employees, agents and sub-Suppliers with the provisions of this clause.

Immediately following the Termination Date the Supplier shall promptly deliver up to the University all property supplied by it and all materials incorporating any Information, and will destroy any Information contained in any materials prepared by the Supplier. Within 14 days after the Termination Date the Supplier shall certify in writing to the University that the Supplier has fully complied with its obligations under this clause. If the Supplier fails to return or destroy (as the case may be) any such property or materials, the University shall be entitled, and is licensed, to enter the Supplier’s premises and seize and destroy the same.

* + 1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the University is the Controller and the Supplier is the Processor unless otherwise specified in any Data Protection Schedule. The only processing that the Processor is authorised to do is listed in such a Schedule by the Controller and may not be determined by the Processor.
		2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

5.14.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

* + 1. a systematic description of the envisaged processing operations and the purpose of the processing;
		2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
		3. an assessment of the risks to the rights and freedoms of Data Subjects; and
		4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

5.14.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

* + 1. process that Personal Data only in accordance with the Data Protection Schedule unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
		2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
			1. nature of the data to be protected;
			2. harm that might result from a Data Loss Event;
			3. state of technological development; and
			4. cost of implementing any measures;
		3. ensure that :
			1. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Protection Schedule.
			2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
				1. are aware of and comply with the Processor’s duties under this clause;
				2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
				3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
				4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
		4. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
			1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
			2. the Data Subject has enforceable rights and effective legal remedies;
			3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
			4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
		5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

5.14.7 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

* + 1. receives a Data Subject Request (or purported Data Subject Request);
		2. receives a request to rectify, block or erase any Personal Data;
		3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
		4. receives any communication from the Information Commissioner or any other regulatory University in connection with Personal Data processed under this Agreement;
		5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
		6. becomes aware of a Data Loss Event.
		7. The Processor’s obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
		8. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
		9. the Controller with full details and copies of the complaint, communication or request;
		10. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
		11. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
		12. assistance as requested by the Controller following any Data Loss Event;
		13. assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.

5.14.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

* + 1. the Controller determines that the processing is not occasional;
		2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
		3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

5.14.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

* + 1. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

15.14.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

* + 1. notify the Controller in writing of the intended Sub-processor and processing;
		2. obtain the written consent of the Controller;
		3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause such that they apply to the Sub-processor; and
		4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
		5. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
		6. The Controller may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
		7. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Controller may on not less than 30 Working Days’ notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
		8. Where the Parties include two or more Joint Controllers as identified in any Data Protection Schedule in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of Clauses 2.32.3-2.32.17 for the Personal Data under Joint Control.

## **5.15 Health and Safety and Safeguarding**

5.15.1 The University has sole responsibility for Health and Safety and Safeguarding of children and vulnerable adults on its sites. Any of the Supplier’s staff, agents or sub-contractors must comply promptly with any security requirements including a requirement to wear a suitable name badge visible at all times, a right to search, compliance with the University’s Alcohol or Substance abuse policies or a request to leave the University’s site whatever the reason.

5.15.2 The Supplier will ensure that, where requested by the University, for all of its staff attending the University’s site, other than for short accompanied meetings, it holds a Disclosure and Barring Service (DBS) check at the Enhanced Level and has taken up references confirming that there is no known reason why they should not work in an environment with children and vulnerable adults. Details of the check, from time to time must be provided to the University on request.

5.15.3 The Supplier’s staff must co-operate fully with any Safeguarding or Health and Safety investigation carried out by the University including, where necessary, providing witness statements or attending hearings. Where the Supplier’s staff have a direct involvement it is likely this will be at the Supplier’s expense, otherwise at the University’s expense. Each case will be judged on its merits.

## **5.16 Public Relations**

5.16.1 Unless expressly permitted in writing by the other party, neither the Supplier nor the University shall publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with this Agreement or the work of the other party. This clause shall not preclude the University or the Supplier from mutually agreeing to promotional or publicity initiatives regarding the supply of Goods or Services to the University’s Institution.

5.16.2 Subject to the other party’s approval of the terms of any announcements on each and every occasion taking into consideration any subsequent disruption to the University’s or Supplier’s business, the Supplier or University may request participation in publicity exercises such as: a Press Release including endorsement by senior management; the University acting as a reference site for the Supplier; the development of a case study; joint presentation of seminars.

5.16.3 Consent under clauses 5.16.1 and 5.16.2 shall not be unreasonably withheld.

## **5.17 Non-Solicitation**

During the term of the Support Services and for 6 months after its expiration or termination, both parties undertake that they shall not, without the prior written consent of the other party (whether by the relevant party, its employees, agents, third parties or otherwise howsoever) employ or solicit for employment, or solicit to provide services, as an employee, independent contractor or consultant any employee, independent contractor or consultant of the other party, at the relevant time, who has been introduced to the first party as a result of this contract, and with whom the first party has had contact under the contract in the previous 12 month period.

Each party acknowledges that a breach by it of the provisions of this clause 5.16 requires the expenditure of time and expense by the other party in replacing any such employee for which the other is entitled to recover as liquidated damages an amount equal to 50% of the gross annual salary or fee of the individual concerned as at the time of the breach. This provision shall be without prejudice to the other party's right to seek injunctive relief.

Each party acknowledges that these clauses cannot limit their ability to appoint staff following response to a widely available public advertisement and competitive interview for a role.

## **5.18. Freedom of information**

5.18.1. Where the University is a public sector University and is under a duty to comply with the provisions under the Freedom of Information Act 2000 or any statutory modification or re-enactment or any related guidance or codes of practice relating to such Act (“FOIA”), the Supplier shall assist the University, within five (5) working days of receipt of any such written request (the Supplier at all times using its reasonable endeavours to respond as quickly as possible to the University ) in meeting any requests for information (“RFI”) in relation to the relevant tender response relating to the contract or the Terms and Conditions or the goods and/or services supplied by the Supplier which are made to the University in connection with the FOIA.

5.18.2 For the avoidance of doubt, the Supplier shall not be obliged to retrieve or provide data or information stored and accessible by the University using the Software but shall provide information held solely by the Supplier relating to the provision of the Software and Services by the Supplier.

5.18.3 The University shall consult with the Supplier prior to disclosing information relating to the contract to the extent that it is required so to do by the FOIA.

5.18.4 The University shall, in responding to such requests for information, consider the exemptions described within Part II of the Freedom of Information Act 2000.

## 5.19 Bribery and corruption

5.19.1 The University shall be immediately entitled to terminate the contract and to recover from the Supplier the amount of any loss resulting, plus the value of any gift or consideration, if in relation to the contract or any other agreement with the University:

5.19.2 the Supplier, or any of its employees (whether with or without the Supplier’s knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing, or not doing any action; or

5.19.3 the Supplier or any of its employees shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or given any fee or reward, the receipt of which is an offence under Section 117 (2) of the Local Government Act, 1972.

5.19.4 the Supplier or any of its employees shall have committed any breach of any applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 or have engaged in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

 The decision of the University in relation to this clause 5.18 shall be final and conclusive.

## **5.20** **Whole agreement**

5.20.1 The Contract and these Terms and Conditions constitute the entire agreement between the parties and supersedes all prior communications, representations and agreements between the parties, whether written or oral, relating to the subject matter of the contract. The parties acknowledge that no reliance is placed on any communication, representation or agreement made but not embodied in the contract and waive any right either party may have in respect of any misrepresentation not contained in the contract, unless such misrepresentation was made fraudulently.

## 5.20.2 The application of the Contracts (Rights of Third Parties) Act 1999 under English Law is expressly excluded from the contract EXCEPT TO THE EXTENT that any of the Supplier’s software partners may wish to enforce the software licence terms relating to Partner Software.

## **5.21 Force Majeure**

5.21.1 The parties are not under an obligation to fulfil any obligation if fulfilment is impossible as a consequence of force majeure. The term force majeure shall be taken to include force majeure of the Supplier’s suppliers, the failure to properly fulfil obligations by suppliers which the University has instructed the Supplier to use, as well as any defectiveness of Third-Party Products or software which the University has instructed the Supplier to use.

5.21.2 If a situation of force majeure lasts longer than ninety (90) calendar days, the parties shall have the right to terminate the contract by giving notice to the other in writing. Any Software, Services, Support Services or Third-Party Products which have been delivered or performed pursuant to an Agreed Order before the force majeure event may be invoiced by the Supplier and will be payable by the University.

5.21.3 Neither party will be liable for any delay in performing its obligations if the delay is caused by circumstances beyond its reasonable control, including without limitation, any delay caused by war, terrorism, interruption of electricity, internet, means of telecommunication, strikes and unavailability of personnel and any delay caused by any act or omission of the other party.

## **5.22** **Severability**

The parties agree that the limitations and exclusions incorporated in these Terms and Conditions are reasonable in all the circumstances of the University's business relationship with the Supplier but if any term is later found to be unenforceable or invalid in a specific circumstance its application in any other circumstances and the remaining terms will not be affected.

## **5.23 Waiver**

The failure of either party to insist on any occasion upon the performance of any provision of an Agreed Order will not act as a waiver of that breach or any later breach of the same or any other provision.

## **5.24 Notices**

Any notices, requests or demands shall be in Writing and sent by fax, courier or any form of registered/recorded post at the address set out in the Contract or such other address as the recipient may have designated by notice in accordance with the provisions of this clause. Notices shall be deemed to have been received:

5.24.1 if sent by fax on receipt of confirmation of successful transmission of all pages from the receiving machine, on the day the fax was transmitted (or, if not a working day in the UK, the next working day in the UK);

5.24.2 if sent by courier, on the day when the recipient signs the courier's confirmation note (or, if not a working day in the UK, the next working day in the UK);

5.24.3 if sent by registered/recorded post within the UK, on the second working day in the UK after the despatch by prepaid registered/recorded post.

## **5.25 Relationship of the parties**

Nothing in these Terms and Conditions shall constitute or be deemed to constitute either party as being the agent or joint venture partner of the other party.

## **5.26 Dispute procedure and governing law**

5.26.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the parties will first try to settle such dispute by negotiation between executive members of the parties. Should this negotiation fail to reach settlement within twenty one (21) working days of notification of a dispute by either party to the other, then either party may serve notice in writing (“ADR Notice”) to the other requesting a mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (“the Model Procedure”). The procedure in the Model Procedure will be amended to take account of any relevant provisions in this Agreement and any other agreement which the parties may enter into in relation to the conduct of the mediation (“Mediation Agreement”). The mediation will take place in England and the language of the proceedings will be English. The Mediation Agreement shall be governed by and construed and take effect in accordance with English Law. The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with the mediation. The mediation will commence not later than twenty eight (28) days after the date of the ADR Notice. No party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until the parties have attempted to settle such dispute by mediation and that mediation has terminated.

5.26.2 The construction, validity and performance of an Agreed Order will be governed by English Law and subject to the exclusive jurisdiction of the English courts.

* 1. **United Kingdom Modern Slavery Act 2015**
		1. In performing its obligations under this Contract, the Supplier shall comply fully with the Modern Slavery Act 2015.
		2. The Supplier in contracting with the University confirms that all parts of its business and supply chains where there is a risk of slavery and human trafficking taking place has been rigorously assessed, and that it will demonstrate to the University upon demand the steps it has taken to assess and manage that risk.
		3. Where slavery or human trafficking or the risk of slavery or human trafficking is suspected or confirmed, the Supplier must immediately cease using those elements of their supply chains where such activities are under review.
		4. The Supplier shall notify the University of any such findings and at the sole discretion of the University, acknowledges that the University has the explicit right to immediately termination the contract where any impact to the reputation of the University is proven.

* 1. **Energy Management and Environmental Protection**

5.28.1 The Supplier is responsible for ensuring compliance with the following:

* Policy Statement on Green Housekeeping issued by the Department of the Environment
* ISO14001
* Carbon Trust Standards
* The Environmental Protection Act 1990
* The non-use of CFC based products or other pollutant materials
* Environmental Technology Best Practice Programme
* The Environmental Policy of the University.

The Supplier must ensure that the Contract is delivered in the most Sustainable way in terms of environmental, economic, and social value, taking into account safety standards and practical working requirements

**ANNEX A:** **VARIATION TO CONTRACT FORM**

|  |  |
| --- | --- |
| Site Address: | Contract:Contract For  |
| Supplier: | Job Reference: |
| Issue Date: |
| Instruction No. |

|  |  |  |
| --- | --- | --- |
| The Contract Sum will be adjusted whereapplicable in accordance with the terms of the Contract. | Omit | Add |
|  | £ p | £ p |
| Instruction |  |  |
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| Signature of Supplier’s Representative: |  |  |  |
| Contract Sum |  |  |
| Value of previous instructions |  |  |
| Signature of University’s Representative: | Sub-total |  |  |
| Value of this instruction |  |  |
| Adjusted Total |  |  |

## **Section 3 Service Level Agreement**

[To be inserted from tender if applicable]

[Remove if not applicable: Otherwise, Service Levels must comply with the Specification agreed (either verbally or in writing) between the Supplier and the University prior to placement of the Purchase Order]

##

## **Section 4 Software Specification**

[To be inserted from tender if applicable]

[Remove if not applicable: Otherwise, Software must comply with the Specification agreed (either verbally or in writing) between the Supplier and the University prior to placement of the Purchase Order]

## **Section 5 Schedule of Prices**

 [To be inserted from tender if applicable]

[Remove if not applicable: Otherwise, Pricing for the Software and related services must comply with the Prices agreed (either verbally or in writing) between the Supplier and the University prior to placement of the Purchase Order]

**Milestone Payments/Invoicing**

[Include for bespoke and/or high-risk software projects, delete if not applicable]

Payment for the development and implementation of new systems installations or software set-up will be made in milestones, to be agreed with the Supplier on Contract Award. As a minimum, the University expects milestones to reflect the following structure:

**Milestone 1:** Development and Acceptance of final solution (10%)

**Milestone 2:** System installation/implementation/delivery, completion of user acceptance testing, and completion of training (20%)

**Milestone 3:** Successful system go-live (70%)

## **Section 6 Data Protection Schedule**

[To be completed if applicable, delete otherwise]

|  |  |
| --- | --- |
| *The subject matter and duration of the Processing* | *The parties will Process Personal Data in the context of: [●] [describe the relevant services and describe how long the personal data will be processed for- will this be determined by time period or for as long as the purpose continues? Consider longevity of the contract and if the personal data will need to be retained post termination of the contract.]* |
| *The nature and purpose of the Processing* | *The Processing will be for the purposes of: [●] [describe what processing of the personal data will take place and for what purpose e.g. for the provision of IT services to individual students, record of usernames etc…]* |
| *The type of Personal Data being Processed* | *The Personal Data will include:**[●] [e.g. Names, e-mail addresses, postal address, ip address, username and related password, student ID number, national insurance number.]* |
| *The categories of Data Subjects* | *The Data Subjects will include:**[●] [e.g. Suppliers, students, employees etc…]* |

This Contract is entered into on the date hereof: \_\_\_\_\_

**SIGNED on Behalf of Bradford University (The University):**

Authorised Signatory:

Date:

Name:

Designation:

**SIGNED on behalf of [insert name of Supplier] (The Supplier) by (Director/Secretary).**

Authorised Signatory:

Date:

Name:

Designation:

*[Remove if not applicable: If these Conditions of Contract are applied in relation to a Purchase Order, then the issue of that Purchase Order by the University and its Acceptance by the Supplier shall constitute official agreement of the Contract terms].*