

**Director of Customer Service and Vice President of Sales Call-Off
Contract for Serials, Periodicals, and Associated Services (Print &
Digital) LIB4054 SU**

PART 1 – ORDER FORM

PRENAX LIMITED

1st Floor, Barrington House, Watercombe Park, Lync Trading Estate, Yeovil, Somerset, BA20 2HL

(Registered No. 03966286)

20th November 2024

Dear Sirs

Call-Off Contract Reference UKRI-4211 for the supply of Library Journal Agent on behalf of UKRI

1 Further to the Framework Agreement which commenced on 1st August 2023, we wish to instruct you to supply the Goods and Services described below in accordance with the terms of the Framework Agreement, this Order Form and the Call-Off Terms and Conditions, as further set out and described in Brief attached at Annex A.

2 The particulars of this Call-Off Contract are set out below:

Item	Description		
Order Form Reference: (Front page of Call-Off Terms and Conditions)	The Order Form Reference is UKRI-4211		
Parties	Between: (1) UK Research and Innovation whose registered office is at Polaris House, North Star Avenue Swindon SN2 1FL (Customer); and (2) PRENAX LIMITED (company number 03966286) whose registered office is at 1 st Floor, Barrington House, Watercombe Park, Lync Trading Estate, Yeovil, Somerset, BA20 2HL (Supplier).		
Call-Off KPIs (Cl. 1.1)	KPI name	Performance Indicator	Required Standard
	Resolution of queries	Member Institution to be informed of resolution of queries or meaningful response where reliant on publisher for information, with details of action being taken and next steps	Year 1 of Agreement, Supplier to monitor and report % of queries resolved or meaningful response sent within 3 working days. Subsequent years will require agreed targets to be met.
	Requests for quotation	Request for new title quotations, excluding bulk	Year 1 of

		requests, within 3 working days of receipt of the request	agreement, Supplier to monitor. % completed within 3 working days. Subsequent years will require agreed targets to be met
	Order Confirmation	Written / email confirmation of all orders being placed with the publisher to be provided to member institution within 5 working days, including title, volume/issue, start and end date (orders only) current price (including original currency price where applicable), subscription period, delivery address and anticipated first delivery date.	85% of confirmations within 5 working days of receipt of order from Member Institution
	Cancellation Confirmation	Written / email confirmation that cancellations have been passed to the publisher to be provided to member institution within 5 working days, including title, volume/issue, end date of final issue; last paid price (including original currency price where applicable), delivery address and anticipated final delivery date.	85% within 5 working days of order from Member Institution
	Order Completion	Complete order for new subscriptions with the publisher within two days of receipt from the member institution	90% within 2 working days
	Accuracy of renewals and new orders	Achieve correct accuracy of at least 99% of new orders and renewals. Order accuracy to include but not limited to: <ul style="list-style-type: none"> • Correct title; • Correct start date and issue volume/ number • Correct pricing (including pricing tier/ band, 	99% or more

		<p>publisher list price etc.</p> <ul style="list-style-type: none"> • Correct delivery address (print subscriptions) • Correct electronic access activation details provided 	
	Speed of electronic access	<p>Notify member libraries of access arrangement for new electronic subscription including all details and information required to establish access within 2 days of receipt from publisher or at least one week prior to subscription commencement date</p> <p>- whichever is the earliest date</p>	95 % within 2 working days of receipt from publisher or at least one week before subscription commencement date - whichever is the earliest date
	Invoice and credit note accuracy	At least 99% of invoices, credit and financial statement transactions without error	99% or more
	Credit notices	<p>{a) All credits raised from the supplier shall be sent to the member institution within 1 calendar month from when the need for a credit was identified</p> <p>{b) All credits raised as a result of publisher error/ reliant on publisher shall be sent to the member within 1 calendar month from the point the refund or credit (as applicable) is received from the publisher by the supplier</p>	<p>100% 1 calendar month from Identification of need</p> <p>100% 1 calendar month from supplier receipt of refund / credit note from publisher</p>
	Claims Processing	<p>(a) All claims for missing printed material to be processed within two working days of notification by the member institution</p> <p>{b) Consolidation print claims to be processed within 24 hours of missing issues being identified by Consolidation team</p> <p>{c) All claims for loss of e-access to be processed on</p>	<p>85% Missing print material within 2 working days</p> <p>85% Missing consolidation print material claims processed within 24 hours 85% Loss of e-access same working day if</p>

		the same working day if received before 4pm, otherwise within 24 hours	received before 4pm otherwise within 24 hours
	Claims Reporting	<p>{a) Missing Print claims - Weekly updates/ status reports as set out in 5.4 above to be sent to Member Institutions and be visible via the Subscription Management System</p> <p>{b)Missing consolidation Print claims - Weekly updates/ status reports to be visible to customers via the SMS with additional notification being sent to members when 4 claims for a single issue have been made and including recommendations on options for resolution</p> <p>{c)E-access claims: immediate notification to member institution on resolution notification being received from publisher. Regular updates to member institution every 48 hours as per section 4.4 above until issue is resolved and to include estimated time for resolutions and action being taken by agent in the event of lack of response/ action by publisher.</p>	<p>Weekly</p> <p>Weekly with escalation and member institution notification on any titles where 4 claims for a single issue have issued but missing issue not supplied</p> <p>Direct Communication to member institution every 48 hours until access issue is resolved. After initial 48 hours, communication to customer to include escalation processes for resolving issue</p>
	Consolidation Services	<p>Suppliers must provide consolidation services with 99% of consolidation requirements handled accurately, to include:</p> <ul style="list-style-type: none"> • the correct delivery address, • correct content • correct and accurate processing to customer requirements including labels, class number, volume and issue details 	<p>99% of all consolidation to be despatched within one week of receipt from publisher or as otherwise agreed with the Member Institution</p> <p>99% of all consolidation subscriptions to be sent to the correct address and with correct and accurate processing of the consolidated issues</p>
	Transfer of subscriptions	<p>(a) Provided the Member Institution gives at least 3 months' notice, transfer of Supplier will be completed on 97% of current subscription holdings by the start of the next subscription period.</p>	<p>97% or more within 3 calendar months</p> <p>6 calendar months</p>

	<table border="1"> <tr> <td data-bbox="459 192 683 416"></td> <td data-bbox="683 192 1023 416">(b) Resources provided to support review of subscriptions transfer and resolution of any outstanding issues at six calendar months after the notification of change by the member institution</td> <td data-bbox="1023 192 1276 416"></td> </tr> <tr> <td data-bbox="459 416 683 663">Transfer of subscriptions</td> <td data-bbox="683 416 1023 663">Outgoing Supplier to provide the Member Institution with full information on current subscription holdings, including original start dates and current expiry dates, within five working days of the request.</td> <td data-bbox="1023 416 1276 663">100% Within 5 working days of request from Member Institution</td> </tr> <tr> <td data-bbox="459 663 683 801">Availability of Subscription Management System</td> <td data-bbox="683 663 1023 801">Access to Subscription Management System 24 hours a day 7 days a week no less than 99.4% of the time</td> <td data-bbox="1023 663 1276 801">More than 99.4% availability</td> </tr> </table>		(b) Resources provided to support review of subscriptions transfer and resolution of any outstanding issues at six calendar months after the notification of change by the member institution		Transfer of subscriptions	Outgoing Supplier to provide the Member Institution with full information on current subscription holdings, including original start dates and current expiry dates, within five working days of the request.	100% Within 5 working days of request from Member Institution	Availability of Subscription Management System	Access to Subscription Management System 24 hours a day 7 days a week no less than 99.4% of the time	More than 99.4% availability			
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Transfer of subscriptions	Outgoing Supplier to provide the Member Institution with full information on current subscription holdings, including original start dates and current expiry dates, within five working days of the request.	100% Within 5 working days of request from Member Institution											
Availability of Subscription Management System	Access to Subscription Management System 24 hours a day 7 days a week no less than 99.4% of the time	More than 99.4% availability											
Charges (Cl.1.1)	<p>The Charge(s) for this Order Form and Call-Off Contract shall be:</p> <p>Print Subscription Charges (include dual format 'print and digital' subscriptions here)</p> <p>Flat rate fee: 2.50% of publisher list price</p> <p>Digital Subscription Charges</p> <table border="1"> <thead> <tr> <th data-bbox="475 1182 778 1317"></th> <th data-bbox="778 1182 1046 1317">Average Subscription Cost</th> <th data-bbox="1046 1182 1235 1317">Handling fee (% of publisher list price)</th> </tr> </thead> <tbody> <tr> <td data-bbox="475 1317 778 1375">Lower maintenance accounts</td> <td data-bbox="778 1317 1046 1375">£3,000 +</td> <td data-bbox="1046 1317 1235 1375">1.25%</td> </tr> <tr> <td data-bbox="475 1375 778 1433">Medium maintenance accounts</td> <td data-bbox="778 1375 1046 1433">£1,000 - £2,999.99</td> <td data-bbox="1046 1375 1235 1433">1.95%</td> </tr> <tr> <td data-bbox="475 1433 778 1491">Higher maintenance accounts</td> <td data-bbox="778 1433 1046 1491">£0 - £999.99</td> <td data-bbox="1046 1433 1235 1491">3.00%</td> </tr> </tbody> </table> <p>Consolidation Fees: NOT USED</p>		Average Subscription Cost	Handling fee (% of publisher list price)	Lower maintenance accounts	£3,000 +	1.25%	Medium maintenance accounts	£1,000 - £2,999.99	1.95%	Higher maintenance accounts	£0 - £999.99	3.00%
	Average Subscription Cost	Handling fee (% of publisher list price)											
Lower maintenance accounts	£3,000 +	1.25%											
Medium maintenance accounts	£1,000 - £2,999.99	1.95%											
Higher maintenance accounts	£0 - £999.99	3.00%											
Contract End Date (Cl. 1.1)	<p>Means:</p> <ul style="list-style-type: none"> 20th November 2026 with an option to extend annually for a further 2 years until 20th November 2028. OR 												

	<ul style="list-style-type: none"> The expiry date of the last Serial Subscription ordered with the Supplier and any outstanding Claims have been closed in accordance with the Call-Off Terms and Conditions.
Customer Liability Cap (Cl. 1.1)	<p>Customer liability under this Contract shall be: 125% of the total charges paid and payable to the Supplier under this Contract (Annex B}</p> <p>The amount of FOIA Section 43 Commercial per annum</p>
Delivery Date(s) (Cl. 1.1)	NOT USED
Defects Rectification Period (Cl. 1.1)	In respect of the Goods to be supplied under this Call-Off Contract, the period ending 12 (twelve) months after the Contract End Date, or in respect of any Goods that are repaired or replaced under Clause 6.5 of the Call-Off Terms and Conditions, the period ending 12 (twelve) months after replacement of such Goods.
Goods (Cl. 1.1)	<p>The Goods to be supplied under this Call-Off Contract are as follows:</p> <p>See Annex A Project Brief</p>
Premises (Cl. 1.1)	The Goods are to be delivered to and/or the Services are to be supplied at Annex A Project Brief
Services (Cl. 1.1)	<p>The Services to be supplied under this Call-Off Contract are as follows:</p> <p>the provision of services associated with the supply of electronic and printed serials, journals, including domestic and overseas materials</p> <p>As per Annex A and as set out in the Framework Agreement Specification.</p>
Services Commencement Date (Cl. 1.1)	Supply of the Services is to commence on 21 st November 2024
Services End Date (Cl. 1.1)	Supply of the Services is to end on 20 th November 2026 with an option to extend annually for a further 2 years until 20 th November 2028 (2+1+1)

Supplier Liability Cap (Cl. 1.1)	Means the amount of Ten Thousand pounds (£10,000.00)	
Instalments (Cl. 9.4)	NOT USED	
Notices (Cl. [21.3])	<p>Any written notice provided under Clause 21.1 shall be sent:</p> <p>In the case of the Customer:</p> <p>To: UK Research and Innovation (UKRI)</p> <p>Polaris House, North Star Avenue Swindon SN2 1FL</p> <p>mrcprocurement@ukri.org</p> <p>Marked for the attention of: MRC procurement Manager.</p> <p>In the case of the Supplier:</p> <p>To: Prenax Limited</p> <p>Barrington House, Watercombe Park, Lynx Trading Estate</p> <p>Yeovil BA20 2HL</p> <p>FOIA Section 40 Personal Information</p> <p>Marked for the attention of: FOIA Section 40 Personal Information</p>	
Data Protection Particulars (Schedule 3)	The subject matter and duration of the Processing	The parties will Process Personal Data in the context of: Personal data of UKRI staff is required for communication with relevant UKRI staff regarding the management of journal subscriptions, and for communication with procurement staff regarding contract management.
	The nature and purpose of the Processing	The Processing will be for the purposes of: Provision of a serials/journal's agent service for UKRI Library Services to enable efficient purchasing, management and supply of titles, and access to required serials/journals by UKRI staff
	The type of Personal Data being Processed	The Personal Data will include:

		Names and email addresses IP address range (covers total FTE for the sites where we supply journals).
	The categories of Data Subjects	The Data Subjects will include: UKRI current employees

- 3 This Call-Off Contract incorporates all the terms and conditions of the Framework Agreement.
- 4 For the avoidance of doubt where you have carried out any work prior to the date of this Call-Off Contract in any way related to the Goods and Services to be supplied under this Call-Off Contract the terms and conditions of this Call-Off Contract and the Framework Agreement shall apply in respect of such work.
- 5 Words and expressions which are defined in the Framework Agreement shall have the same meaning in this Call-Off Contract unless expressly defined otherwise here.
- 6 You must not make any amendments to the Call-Off Terms and Conditions.
- 7 Nothing in this Call-Off Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of this letter pursuant to the Contracts (Rights of Third Parties) Act 1999.

Please sign and return the attached copy of this Order Form to signify your acceptance of its contents;

Please also sign and return the attached two copies of the Call-Off Terms and Conditions. We will sign Call-Off Terms and Conditions and date them as agreed between ourselves and will return one of the dated copies to yourselves.

Yours faithfully

Accepted and acknowledged by:

FOIA Section 40 Personal Information
[Redacted Signature]

FOIA Section 40 Personal Information
[Redacted Signature]

.....
for and on behalf of the UK Research and Innovation (UKRI) the
CUSTOMER

.....
for and on behalf of Prenax Ltd the
SUPPLIER

Name:

FOIA Section 40 Personal Information
[Redacted Name]

FOIA Section 40 Personal Information
[Redacted Name]

Designation:

Date: 31/10/2024

Date: 30/10/2024

Annex A: Brief

Annex A: Brief Title list

The following addresses are currently in use for journal subscriptions, but additional sites may be added or deleted as necessary.

UKRI-STFC

Journals delivery addresses and email contacts

Chadwick Library
(DL) STFC
Daresbury
Laboratory
Warrington

WA4 4AD

Email: **FOIA Section 40 Personal Information**

RAL Library (RAL)

STFC Rutherford Appleton
Laboratory Didcot

OX11 0QX

Email: **FOIA Section 40 Personal Information**

Delivery addresses UKRI-MRC:

MRC Laboratory of Molecular Biology (LMB)

Library, Francis Crick Avenue, Cambridge Biomedical Campus, Cambridge, CB2 0QH, UK
Contact: **FOIA Section 40 Personal Information**

Medical Research Council Head Office

Caxton House, Tothill Street, London, SW1H 9NA

Contact: **FOIA Section 40 Personal Information**

Nucleic Acid Therapy Accelerator (NATA), Research Complex at Harwell (RCaH),
Rutherford Appleton Laboratory, Harwell, Didcot, Oxon, OX11 0FA

Contact: **FOIA Section 40 Personal Information**

Delivery addresses UKRI-NERC:

NERC Multi-site Online Subscription Contact Address

Natural Environment Research Council, Multi Site, NERC Library Service, Keyworth, Nottingham, NG12 5GG, UK (SGS)

Contact **FOIA Section 40 Personal Information**

Natural Environment Research Council, British Antarctic Survey, Attn Library, High Cross, Madingley Road, Cambridge, CB3 0ET, UK

Contact **FOIA Section 40 Personal Information**

Natural Environment Research Council, British Geological Survey, Attn Library, BGS Environmental Science Centre, Keyworth, Nottingham NG12 SGG, UK (BGS)

Contact **FOIA Section 40 Personal Information**

British Antarctic Survey High Cross, Madingley Rd, Cambridge CB3 0ET

Contact **FOIA Section 40 Personal Information**

Journal list

The following lists of journals are currently requested at the commencement of the contract as dated, but additional titles may be added or deleted as necessary. Format delivery may be changed as required.

Managed by NERC Library Service		
Title	Research Centre/Institute	Format
Annual Review of Ecology, Evolution & Systematics (Tier 5, Print + Online)	British Antarctic Survey	Print and Online (Surface Mail, Online (Paid))
Applied & Environmental Microbiology (Online, Tier A, 1-200 Users)	British Antarctic Survey	Online only
Arctic Today Full Digital Access (Via IP Address)(NERC British Antarctic Survey)	British Antarctic Survey	Online only
Canadian Journal of Fisheries & Aquatic Sciences (Institutional Online)	British Antarctic Survey	Online only
Environmental Science & Technology (Site Licence)	British Geological Survey Multi Site	Online only

Ethical Consumer (Band A) (1-40 Users)	British Survey	Antarctic	Print and Online (Surface Mail, Online (Paid))
Geological Society of America Bulletin (Online, incl Online Archive)	British Survey	Antarctic	Online
Geology (Print + Online, incl Online Archive) (Single Site)	British Survey	Antarctic	Print and Online (Surface Mail, Online (Paid))
GeoScienceWorld Multisite	British Geological Survey Multi Site		Online
Harvard Business Review (Print + Online) (All Access Single User Subscription)	Polaris House, NERC Swindon (Attn: Ling Xu)		Print and one online user
Harvard Business Review (Print + Online) (All Access Single User Subscription)	British Survey	Antarctic	Print and one online user
JISC American Meteorological Society - Read & Publish (Publish)	ALL Multi Site		Online only
JISC American Meteorological Society - Read & Publish (Read)	ALL Multi Site		Online only
JISC Collections BioOne (UK SBS - NERC)	ALL Multi Site		Online only
Jisc T&F (Science & Technology Collection) - Publish NERC	ALL Multi Site		Online only
Jisc T&F (Science & Technology Collection) - Read NERC	ALL Multi Site		Online only
Marine Ecology Progress Series (MEPS) (Online)	British Survey	Antarctic	Online only
New Scientist Magazine (Print + Web + App) (UK Delivery)	British Survey	Antarctic	Print
Polar Journal (Online)	British Survey	Antarctic	Online only
Proceedings of the ICE: Geotechnical Engineering (Online)	British Survey	Geological	Online only
Science (Incl Science Now News Service) (Print)	British Survey	Antarctic	Print
The Economist (Digital)	British Survey	Geological	Online only

Managed by BAS Station Support BAS Cambridge	Research Centre/Institute	Format
BBC Science Focus	BAS -Rothera	Print
Breathe	BAS -Rothera	Print
Climber	BAS -Rothera	Print
Cyclist	BAS -Rothera	Print
Geographical	BAS -Rothera	Print + Online
Men's Health	BAS -Rothera	Print
Time	BAS -Rothera	Print + Online
Wanderlust	BAS -Rothera	Print
Womens Fitness	BAS -Rothera	Print
Woodturning Magazine	BAS -Rothera	Print
Let's Get Crafting	BAS -Rothera	Print
BBC Science Focus	BAS - KEP	Print
BBC Wildlife	BAS - KEP	Print
Delayed Gratification	BAS - KEP	Print
Wired	BAS - KEP	Print
BBC Science Focus	BAS - BI	Print
BBC Wildlife	BAS - BI	Print
Birdwatching	BAS - BI	Print
Geographical	BAS - BI	Print + Online
New Scientist	BAS - BI	Print

Manage by STFC Library Service Title	Research Centre/Institute	Format
Applied Spectroscopy (Institutional online)	RAL/DL	Online
Aviation Week & Space Technology (International Print + Online)	RAL	Print & Online
BBC Science Focus Magazine (Print)	RAL	Print
BBC Science Focus Magazine (Print)	DL	Print

Harvard Business Review (Print + Online) (All Access Single User Subscription)	RAL	Print & Online
Harvard Business Review (Print + Online) (All Access Single User Subscription)	DL	Print & Online
JISC American physical Society (APD) READ:	RAL / DL	Online
JISC American physical Society (APD) PUBLISH:	RAL / DL	Online
JISC Collections Wiley (Read & Publish Open Access Agreement)	RAL / DL	Online
JISC IOP Publishing (Read & Publish) (Publish Fee)	RAL/DL/ROE	Online
JISC IOP Publishing (Read & Publish) (Read Fee) - UK SBS STFC	RAL/DL	Online
JISC Royal Soc of Chemistry (Read & Publish)(Read)	RAL/DL	Online
JISC Royal Soc. of Chemistry (Read & Publish) - Publish	RAL	Online
JISC ScienceDirect Elsevier (Read & Publish) - Publish	RAL	Online
JISC ScienceDirect Elsevier (Read & Publish) - Reading	RAL / DL	Online
Journal of Atmospheric & Oceanic Technology (JAOT) (Non-Member)	RAL / DL	Online
New Scientist	RAL/DL	Online
New Scientist Magazine	RAL	Print
New Scientist Magazine	DL	Print
Proceedings of the National Academy of Sciences (PNAS)	DL	Print & Online
Scientific American Magazine	RAL	Print
Scientific American Magazine	DL	Print
Space News Magazine (International Print + free Online)	RAL	Print & Online
Springer Custom Package	RAL	Online

The Economist	DL	Print & Online
The Economist	RAL	Print & Online
Times Higher Education (T.H.E)	DL	Print & Online
Times Higher Education (T.H.E)	RAL	Print & Online

Manage by MRC Library Service	Research Centre/Institute	Format
Title		
BMJ	HO	Online
CELL REST OF WORLD, INCL. EUROPE	LMB	Print
ECONOMIST UK EDITION INCL.ECONOMIST COM RENEWAL WITHIN UK	LMB	Print
GENETICSTIER 2	LMB	Online
HUMAN MOLECULAR GENETICS (INST. REGULAR PRICE) WITHIN UK	LMB	Online
JOURNAL OF BIOCHEMISTRY (INST. REGULAR PRICE) WITHIN UK	LMB	Online
JOURNAL OF BIOMOLECULAR NMR FREE E- ACCESSREST OF WORLD EXCL. GERMANY	LMB	Print
JOURNAL OF IMMUNOLOGY ONLINE ONLY SINGLE SITE (SMALL FTE <1.000) NON-PROFIT RESEARCH INSTITUTION, GOVERNMENT, CORPORATE	LMB	Online
JOURNAL OF VIROLOGY TIER B FTE 201-1500	LMB	Online
LINUX FORMAT (INCL. DVD) WITHIN UK	LMB	Print
LINUX MAGAZINE INCL DVD WITHIN EUROPE	LMB	Print
Mac Format (Print)	LMB	Print
MOLECULAR AND CELLULAR BIOLOGY TIER B	LMB	Online

MOLECULAR BIOLOGY OF THE CELL TIER 2	LMB	Online
NEW SCIENTIST WITHIN UK	LMB	Print
PROTEIN ENGINEERING, DESIGN AND SELECTION (INST. REGULAR PRICE) WITHIN UK	LMB	Online
QUARTERLY REVIEWS OF BIOPHYSICS REST OF WORLD, INCL. EUROPE	LMB	Online
SCIENTIFIC AMERICAN FOR BUSINESSES/CORPORATES/HIGHER EDUCATION LIBRARY (ONLINE ACCESS VIA IPAD TO MULTIPLE SIM USERS) REST OF WORLD, INCL. EUROPE	LMB	Online
THE - TIMES HIGHER EDUCATION PRINT PACKAGE WITHIN UK	LMB	Print
The New Yorker Magazine (Print)	LMB	Print
THE WEEK WITHIN UK	LMB	Print
Nucleic Acid Therapeutics	NATA	Online

Annex B: Costs

The fixed cost for the full duration of the contract shall be in alignment with the fixed charges in section Cl.1.1 of the call off order form above.

The total value of the contract value including optional extensions shall not exceed £1,931,110 excluding VAT.

The total annual value of the contract shall not exceed FOIA Section 43 Commercial excluding VAT per annum.

Part 2 – Call-Off Terms and Conditions

UK Research and Innovation

and

PRENAX LIMITED

**Call-Off terms and conditions for the supply of Periodicals, Serials
and Associated Services (Print and Digital)**

ORDER FORM REFERENCE: UKRI-4211

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Call-Off Terms and Conditions

Dated 21st November 2024

Between:

- (3) the Customer; and
 - (4) the Supplier,
- (the identities of the Customer and Supplier are set out in the Order Form).

Whereas:

- (A) The Authority acts as the lead organisation on behalf its Member Institutions (as defined below) providing its Member Institutions with pre-tendered arrangements for a variety of goods and services.
- (B) The Authority issued a contract notice 2023/S 000-010782 in Find a Tender and a contract notice 2023/S 077-231460 in the Official Journal of the European Union on 14/04/2023 seeking expressions of interest from potential suppliers for the provision of certain *goods and/or services* to Member Institutions and Participating Consortium (as defined below).
- (C) Following a tender process compliant with the requirements of the Public Contracts Regulations 2015, the Authority selected a group of suppliers to be eligible to provide the *Goods and/or Services* on a call-off basis and entered into individual framework agreements with those suppliers and this included the Authority and the Supplier entering into the Framework Agreement (as defined below).
- (D) Pursuant to the Framework Agreement, the Customer has appointed the Supplier to provide the *Goods and Services* in accordance with the Contract (as defined below).
- (E) These Call-off Terms and Conditions set out the terms and conditions for the provision of the *Goods and Services* and the obligations of the Supplier in the provision of the *Goods and Services*.

Now it is hereby agreed as follows:-

1 Definitions and Interpretation

- 1.1 In this Contract the following words and expressions shall have the following meanings:

Authority means Southern Universities Purchasing Consortium (SUPC), an operating unit of Southern Universities Management Services (company number 02732244; registered charity number 1042175) and whose registered office is at Reading Enterprise Centre, The University of Reading, Earley Gate, Whiteknights Road, Reading RG6 6BU;

ADR Notice has the meaning given in Clause 27.5;

Anti-Slavery Laws has the meaning given in Clause 29.1;

Brief means the Customer's requirements for the supply of the *Goods and Services* annexed to the Order Form and any changes to the same notified by the Customer to the Supplier from time-to-time;

Call-Off KPIs means the key performance indicators set out in the Order Form;

Call-Off Terms and Conditions means the terms and conditions set out in this Contract, as referred to in the Framework Agreement;

CEDR Model Mediation Procedure means the model mediation procedure of The Centre for Effective Dispute Resolution;

Charges means the charges set out in the Order Form (and **Charge** or **Charge(s)** shall be construed accordingly);

Claim(s) shall have the meaning as set out in the Specification for the Periodicals, Serials and Associated Services (Print and Digital) Framework Agreement;

Contract means the written agreement between the Customer and the Supplier consisting of the Order Form (and any appendices thereto), the Brief (annexed to the Order Form) and these Call-Off Terms and Conditions;

Contract End Date means the date detailed as such in the Order Form as such date may be extended pursuant to Clause 3.3 of this Contract;

Customer Liability Cap means the amount detailed as such in the Order Form;

Customer's IP means all Intellectual Property Rights in any Documentation provided by the Customer under the Contract;

Data Protection Legislation means all laws and regulations relating to the Processing of Personal Data as the same may be in force from time to time;

Delivery Date(s) means the date(s) detailed as such in the Order Form;

Defect means any part or parts of the Goods that are defective or not in accordance with the Contract;

Defects Rectification Period means the period set out as such in the Order Form;

Dispute means any dispute or difference of whatsoever nature in relation to the formation, operation or interpretation of, or otherwise in connection with, or arising out of, the Contract;

Dispute Notice means a written notice of any Dispute, setting out the Dispute's nature and full particulars of the Dispute and which states it is a "Disputes Notice";

Documentation means any data, information, records or documents in any media and form whatsoever (including paper or electronic form);

Effective Date means the date of these Call-Off Terms and Conditions;

EIR means the Environmental Information Regulations 2004;

FOIA means the Freedom of Information Act 2000;

Force Majeure Event means the occurrence of: (a) extreme abnormal weather conditions; (b) nuclear, chemical or biological contamination; (c) war, civil commotion or terrorist attack; (d) interruption or failure of a utility service

including electric power, gas or water; or (e) acts of God, floods or earthquakes; or (f) any other matter outside of the control of the party, but excluding in each case: (i) strikes or other forms of industrial action by the employees, agents or subcontractors of that party; or (ii) any other failure in Supplier's supply chain (other than that caused by (a) to (e)); or (iii) only to the extent the party could not mitigate the event by means of prudent contingency planning or any other prudent business means or precautions which ought reasonably to have been taken by that party;

Framework Agreement means the framework agreement for the supply of the Serials, Periodicals, and Associated Services (Print and Digital) made between the Authority; and the Supplier, which commenced on 1st August 2023;

Framework Agreement KPIs means the key performance indicators set out in Schedule 6 to the Framework Agreement;

FTS means the Find a Tender service, being the UK's e-notification service on which notices for new procurements are published;

Good Industry Practice means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the provision of *goods and services* similar to the *Goods and Services* under the same or similar circumstances as those applicable to this Contract;

Goods means the goods identified as such in the Order Form and only applicable where the Supplier or providing Consolidation Services;

Intellectual Property Rights means all intellectual property rights anywhere in the world including domain names, patents, design rights, copyrights including rights in computer software and databases (including database rights), rights in source code, topography right, trademarks, trade names, logos, trade secrets and know-how, and any applications or the right to make applications for any of the above, existing now or at any time in the future and whether registered or registrable or not;

KPIs means the Framework Agreement KPIs and the Call-Off KPIs;

Law means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, any applicable judgment of a relevant court of law which is a binding precedent in England and Wales, or directives or requirements of any Regulatory Body;

Losses means all liabilities, costs, expenses, damages and losses including but not limited to any direct loss, indirect loss or consequential loss, loss of contribution to incidental costs, loss of profit or overheads, loss of reputation and all interest, penalties and legal costs;

Member Institution has the meaning given in the Framework Agreement;

Mini Tender has the meaning given in the Framework Agreement;

Order means the order placed by the Customer to the Supplier in accordance with the Framework Agreement, which sets out the description of the *Goods and/or Services* to be supplied;

Order Form means the document used by the Customer to place the Order for this Contract;

Participating Consortium has the meaning given to it in the Framework Agreement;

Personnel means those personnel of the Supplier as shall be appointed by the Supplier to supply the *Goods and/or Services* in accordance with the Contract including the Supplier's employees and subcontractors;

Premises means the premises detailed as such in the Order Form;

Prohibited Act means the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts relating to this Contract or any other contract with the Customer; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or (iv) of defrauding attempting to defraud or conspiring to defraud the Customer (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); and (d) activity, practice or conduct which would constitute one of the offences listed under (c) if such activity, practice or conduct had been carried out in the UK;

Project IP means all Intellectual Property Rights in any Documentation provided by the Supplier under the Contract and all other Intellectual Property Rights created or discovered by the Supplier as a result of, for or in connection with the performance of its obligations under the Contract, but excluding Supplier's Background IP;

PCR means the Public Contracts Regulations 2015;

Publishers Charges means the relevant charges further defined below under Publisher List Price relating to the goods and services provided by the Publishers to the Customer on behalf of the Supplier;

Publisher List Price means the publisher's standard listed retail price or, where informed by the Member Institution, the NESLi2 publisher price (or future derivative), with no additional agent terms or discounts applied. This price should be the publisher's retail price listed for an institution, as applicable to the institution's banding, not for an individual person;

Regulatory Body means any government department and regulatory, statutory and other entity, committee, ombudsman and/or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;

Returning Employees has the meaning given in Schedule 2;

Schedule(s) means any one or more of the schedules attached to these Call-Off Terms and Conditions;

Services means the services identified as such in the Order Form;

Supplier Liability Cap means the amount detailed as such in the Order Form;

Supplier's Background IP means all Intellectual Property Rights existing prior to the date of the Contract and used by the Supplier for or in connection with the performance of its obligations under the Contract;

Supply Rates means the rates set out in Schedule 1 of the Framework Agreement as may be amended pursuant to the procedures set out in that Schedule 1;

Term means the period from the date of the Contract up to and including the earliest of:

- (a) the Contract End Date; or
- (b) the date the Contract is terminated in accordance with Clause 19;

Third Party Agreements has the meaning given in Clause 6.12;

Value Added Tax means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; and

Variation has the meaning given in Clause 7.

1.2 In these Call-Off Terms and Conditions unless the context otherwise requires:

- 1.2.1 clause headings are inserted for convenience only and shall not affect the construction and interpretation of this Contract and all references to Clauses, sub-Clauses, or Schedules are to Clauses and sub-Clauses of, and Schedules to, these Call-Off Terms and Conditions; and
- 1.2.2 words denoting the singular number include the plural and vice versa; and
- 1.2.3 words denoting the masculine include the feminine and vice versa; and
- 1.2.4 references to persons include reference to bodies corporate and unincorporate; and
- 1.2.5 references to statutes or statutory instruments or any Law are to be construed as references to any consolidation, modification, extension, amendment, replacement or re-enactment of them from time to time and any subordinate legislation under it.

2 **Contract Documents**

2.1 The Contract consists of the following documents:

- 2.1.1 these Call-Off Terms and Conditions;

- 2.1.2 the Schedule(s) to these Call-Off Terms and Conditions;
 - 2.1.3 the Order Form (and any appendices thereto); and
 - 2.1.4 the Brief (annexed to the Order Form).
- 2.2 The Contract is made pursuant to the Framework Agreement.
 - 2.3 In the event of any inconsistency or conflict between:
 - 2.3.1 the Framework Agreement and the Contract, the Framework Agreement shall prevail; or
 - 2.3.2 the Contract documents in Clause 2.1 above, the order of precedence shall be the order in which those documents appear.
 - 2.4 Save in respect of the Framework Agreement, the Contract supersedes all other oral and/or written communications, representations, agreements or undertakings between the parties.

3 **Appointment**

- 3.1 The Customer appoints the Supplier as the supplier of the *Goods and Services* set out in the Order Form.
- 3.2 The Contract shall take effect on and from the date of the Contract and shall expire automatically at the end of the Term.
- 3.3 The Customer may, by giving written notice to the Supplier not less than 3 (three) month(s) before the Contract End Date, extend the Contract End Date for any further period or periods specified in the Order Form provided that the total Term does not exceed 4 (four) years. The provisions of the Contract will apply throughout any such extended period.
- 3.4 Any omission on the part of the Customer to inspect, review or disapprove shall not diminish or relieve the Supplier from any of its obligations or responsibilities

under or in connection with the Contract.

3.5 The Supplier shall be responsible for the accuracy of all drawings, documents and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein. Notwithstanding the aforementioned, where such discrepancies, errors or omissions arise out of or in connection with drawings, documentation and information based on / prepared by reference to drawings, documents and information provided to the Supplier by the Customer, the Supplier shall have no such responsibility or obligation to pay.

4 **No Partnership or Agency**

4.1 Nothing in this Contract is intended to, or shall be deemed to:

- 4.1.1 establish any partnership or joint venture between any of the parties;
- 4.1.2 constitute any party as the agent of another party; or
- 4.1.3 authorise any party to make or enter into any commitments for or on behalf of any other party.

4.2 The Supplier confirms it is acting on its own behalf and not for the benefit of any other person.

5 **Non-Exclusivity**

The Supplier acknowledges that, in entering the Contract, no form of exclusivity has been granted by the Customer for the supply of any *goods and services* and that the Customer is at all times entitled to enter into other contracts and arrangements with any other suppliers for the supply of any *goods and services* which are the same or similar to that which the Supplier may supply.

6 **Supply of the Goods and Services**

6.1 The Supplier warrants and undertakes to the Customer that:

- 6.1.1 it shall supply the relevant *Goods and Services* diligently and in accordance with the Contract and in compliance with all applicable Laws and Good Industry Practice;
- 6.1.2 it has exercised and shall continue to exercise in the performance of all its duties under the Contract all the skill, care and diligence reasonably to be expected of a properly qualified and competent supplier experienced in the supply of *goods and services* of a similar nature to the *Goods and Services*;
- 6.1.3 it shall supply the relevant *Goods and Services* in such a manner and at such times so that no act, omission or default of the Supplier shall cause or contribute to any breach of Law;
- 6.1.4 it shall supply the relevant *Goods and Services* in compliance with all reasonable instructions given in writing under or in connection with the Contract;
- 6.1.5 it shall at all times observe and provide the *Goods and Services* in accordance with the KPIs;

6.2 NOT USED

6.3 Upon delivery of the Goods, by Supplier in connection with the performance of Consolidation Services, the Supplier shall provide the Customer with a delivery note specifying name and address of recipient, account number, order number, date of shipment, box number in relation to total number of boxes, Serial title and number, volume number, issue number, issue date, number of copies and the box number the title is packed in.

6.4 Notwithstanding the provisions of Clause 6.9, the Customer shall be entitled to reject the *Goods* by notice to the Supplier within 30 (thirty) days of delivery to the Premises if they do not comply with the terms of the Contract. Any rejected *Goods* shall be returned to the Supplier at the Supplier's risk and expense and the Supplier shall be required to deliver replacement *Goods* to the Customer within an appropriate and reasonable lead time (to be agreed between the Supplier and the Customer, each acting reasonably) following receipt of the Customer's rejection notice, at no extra cost to the Customer.

A Customer's right to reject under this Clause 6.4 shall apply equally to any *Goods* replaced hereunder.

6.5 No failure by a Customer to reject the relevant *Goods* under Clause 6.4 shall constitute acceptance or acknowledgment by the Customer of the relevant *Goods* or the condition in which they were delivered, or in any way diminish or relieve the Supplier from any of its obligations or responsibilities under or

6.6 NOT USED

6.7 NOT USED

6.8 Notwithstanding Clause 6.9, during the Term and the applicable Defects Rectification Period, the Supplier shall make good any Defect(s) discovered in the *Goods* (by replacement or otherwise) at its own cost and expense within an appropriate and reasonable lead time (to be agreed between the Supplier and the Customer, each acting reasonably) of receiving notice from the Customer regarding the Defect, provided always that such Defect did not arise as a result of the Customer using the *Goods* other than in accordance with their proper usage. If the Supplier fails to comply with its obligations under this Clause 6.8, the Customer shall be entitled to engage another supplier to make good any Defect(s) discovered in the relevant *Goods* and the Customer shall be entitled to recover the cost of doing so from the Supplier as a debt.

6.9 Title to the *Goods* (or part thereof) shall pass to the Customer upon the earlier of:

6.9.1 delivery of the *Goods* (or part thereof) to the Premises in accordance with the Contract; or

6.9.2 NOT USED

- 6.10 If title to the Goods (or part thereof) passes to the Customer prior to delivery, the Supplier shall arrange for the Goods to be marked as the Customer's property and shall ensure that they are stored and handled separately from other goods.
- 6.11 Risk of loss or damage to the Goods (or part thereof) shall pass to the Customer when the Goods (or part thereof) are delivered to the Premises in accordance with the Contract, save to the extent that any loss or damage after delivery is attributable to an act of the Supplier or its Personnel.
- 6.12 The Supplier shall, so far as practically possible, have regard to all obligations on the part of the Customer in any third party agreements or in any other documentation relating to the Contract to which the Customer is a party to and of which copies (subject to the deletion of any confidential information therein) have been provided by or on behalf of the Customer (**Third Party Agreements**). The Supplier warrants and undertakes to the Customer that the Supplier will supply the relevant *Goods and Services* and will use reasonable endeavours to perform its obligations under the Contract in such a manner and at such times that no act, omission or default of the Supplier shall cause or contribute to any breach by the Customer of any of its obligations under the Third Party Agreements or other documentation mentioned in this Clause 6.12.
- 6.13 If the Supplier becomes aware of any matter that may impact on its ability to deliver the relevant *Goods and Services* in

accordance with the Contract, it must immediately notify the Customer and shall propose and, if accepted by the Customer, implement any measures which may be practical to overcome or reduce any adverse impact on the Customer. The Supplier shall bear the cost of implementing such measures save where the relevant matter is a direct result of any wilful act, negligence or breach by the Customer of its obligations under the Contract.

6.14 The Supplier shall comply with the provisions of Schedule 4 (KPIs).

6.15 The Supplier shall comply with the provisions of Schedule 5 (Supply of Goods)

7 Use of the Software

NOT USED

8 Variations to the Contract

8.1 The parties acknowledge that the Customer may, at any time:

8.1.1 instruct the Supplier to add or omit any *Goods and Services* to or from that which is being supplied under the Contract; or

8.1.2 instruct a change to the Brief annexed to the Order Form,
(a **Variation**)

provided always that such Variation shall not amount to a substantial variation for the purposes of regulation 72 of PCR (which the Customer shall determine in its sole discretion).

8.2 If any Variation instructed by the Customer shall:

8.2.1 in respect of the *Goods and Services* being supplied under the Contract, increase or decrease the relevant Charge(s); and/or

8.2.2 in respect only of the *Goods* being supplied under the Contract, affect the Supplier's ability to supply the *Goods* by the relevant Delivery Date(s).

8.2.3 the Supplier shall submit a quotation to the Customer within 10 (ten) days of the Variation instruction setting out the proposed increase or decrease to the relevant Charge(s) (calculated solely on the basis of the Supply Rates) and, where Clause 8.2.2 **OR** 8.2.3 applies, the proposed extension(s) to the relevant [Delivery Date(s)].

- 8.3 Within 10 (ten) days of receipt of a Supplier's quotation pursuant to Clause 8.2, the Customer shall either accept the quotation, in which case the relevant Charge(s) and Delivery Date(s) if applicable) shall be adjusted accordingly, or withdraw the Variation instruction.
- 8.4 Until the Supplier's quotation is accepted in accordance with Clause 8.3, the Supplier shall continue to perform its obligations under the Contract as if the Variation had not been instructed and the Supplier agrees that the preparation of a quotation to be provided under Clause 8.2 will not cause any delay to the supply of the relevant Goods and Services.
- 8.5 The Supplier shall have no entitlement to any increase in the relevant Charge or any extension(s) to the relevant Delivery Date(s) where it complies with a Variation instruction prior to its quotation being accepted in accordance with Clause 8.3.
- 8.6 The Customer shall be entitled to refuse any Variation which does or could amount to a substantial variation for the purposes of regulation 72 of PCR.
- 8.7 The Supplier may request, in writing, a variation to the Charge(s) in the event there is a change in Law which was not reasonably foreseeable prior to the date of the Contract which impacts on the Charge under the Contract. If the Supplier so requests a variation, the parties shall meet within 10 (ten) days of the date of such written request and shall agree any changes to the Charge in writing.
- 8.8 The Supplier and Customer acknowledge that in the event

that the Supply Rates are amended in accordance with the procedures set out in Schedule 1 of the Framework Agreement, such amendments shall not apply to the Charge under this Contract unless agreed otherwise in writing between the parties and the Authority (in accordance with paragraph 8 of Schedule 1 of the Framework Agreement).

9 **Payment of the Charge(s)**

Payment of the Charge(s)

- 9.1 The Customer shall pay the Supplier the Charge(s) as stated in the Order Form as full remuneration for the supply of the *Goods and Services* in accordance with the Contract.
- 9.2 Each Charge is fully inclusive of all costs and expenses of every kind incurred by the Supplier in connection with the supply of the *Goods and Services*.
- 9.3 For the avoidance of doubt, each Charge shall be exclusive of Value Added Tax. The Customer shall account for and pay the total amount of Value Added Tax properly due thereon.
- 9.4 The Charge(s) shall be paid to the Supplier in accordance with any stages set out in the Order Form and within 30 (thirty) days of receipt of properly rendered invoice(s) in accordance with Clause 9.5.
- 9.5 The Supplier shall submit invoices to the Customer in respect of any of the Charge(s) properly due to the Supplier under the Contract and all invoices submitted by the Supplier shall show amounts due, amounts invoiced to date and will provide any additional supporting documentation as the Customer may request (acting reasonably).

9.6 The Supplier acknowledges and agrees that the Authority, or any other Participating Consortia or any Member Institution has no liability to the Supplier for the payment of any Charges due to the Supplier pursuant to the Contract, unless the Authority or such Participating Consortia or Member Institution is the Customer under the Contract.

10 **Set Off**

10.1 The parties acknowledge that the Customer may at any time, without notice to the Supplier, set-off any liability owed by the Supplier to the Customer against any liability owed by the Customer to the Supplier, whether either liability is present, liquidated or unliquidated and whether or not liability arises under the Contract. Any such exercise of set-off by the Customer shall not limit or affect any of the Customer's rights or remedies available under this Contract.

10.2 For the avoidance of doubt, all amounts due from the Supplier to the Customer under this Contract shall be paid in full without any set-off, counterclaim, deduction or withholding by the Supplier.

11 **Personnel**

11.1 The Supplier warrants to the Customer that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to perform their duties as required under the Contract.

11.2 The Supplier warrants to the Customer that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to meet the standards offered by the Supplier under the Contract.

- 11.3 The Supplier shall provide such details of its Personnel that may require access to the Premises to perform their duties as required under the Contract as are reasonably requested by the Customer.
- 11.4 The Supplier shall ensure that when on the Premises, its Personnel at all times comply with all Laws and other requirements that may be in force from time to time in relation to the Premises.
- 11.5 The Customer may request in writing the removal of any Supplier's Personnel, where in the Customer's reasonable opinion such Personnel's performance or conduct is or has been unsatisfactory. The Supplier shall promptly remove and replace such Personnel at the Supplier's own cost and expense.

12 **Premises**

NOT USED

13 **Assignment and Sub-contracting**

- 13.1 Subject to Clause 13.2, the Supplier shall not assign, charge or transfer any right or obligation under this Contract or in any way deal or part with its interest in this Contract or any part of it to any person, without the Customer's prior written consent, which shall not be unreasonably withheld (provided always that the Customer shall be entitled to refuse to consent to any assignment, charge or transfer which could or does breach any regulation(s) of the PCR).
- 13.2 Save where permitted pursuant to Clause 13.3, the Supplier shall not sub-contract to any person the performance of any of its obligations under this Contract:

- 13.2.1 except with the Customer's prior written consent, such consent not to be unreasonably withheld;
- 13.2.2 if any such sub-contracting would be inconsistent with the Supplier's tender in the Original Tender Process and/or the Mini Tender; and
- 13.2.3 if any such sub-contracting could or would in the sole opinion of the Customer breach any regulation(s) of the PCR.

13.3 Notwithstanding Clause 13.2 above, the Customer hereby grants the Supplier consent to sub-contract its delivery obligations under this Contract.

13.4 If the Customer consents to the Supplier to sub-contract, then the Supplier shall co-ordinate and integrate such services provided by the sub-supplier with his own and no sub-contracting by the Supplier and no consent by the Customer shall in any way relieve the Supplier from any liability or obligation in respect of the performance of its obligations under this Contract.

13.5 The Customer may at any time assign by absolute legal assignment the benefit of all the Supplier's obligations and the entire benefit arising under or out of this Contract to

- 13.5.1 any Contracting Authority (as defined in the PCR);
- 13.5.2 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer;
- 13.5.3 any private sector body which substantially performs the functions of the Customer,

provided that any such assignment shall not increase the Supplier's obligations under the Contract.

13.6 If the Supplier sub-contracts the Contract in accordance with this Clause 13, the sub-contract must be entered into on equivalent and no less onerous terms than the terms of this Contract.

14 Intellectual Property Rights

- 14.1 Any Customer's IP shall remain vested in the Customer and the Customer shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use such IP for the purpose of performing its obligations under this Contract.
- 14.2 The Project IP shall immediately vest in the Customer upon its creation or discovery and the Customer shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use the Project IP for the purpose of performing its obligations under this Contract.
- 14.3 The Supplier's Background IP shall remain vested in the Supplier and the Supplier shall grant the Customer an irrevocable, transferable non-exclusive, royalty free licence to use the Supplier's Background IP for any purpose related to this Contract and the *Goods and Services* supplied hereunder.
- 14.4 The licences granted under this Clause 14 include a right to sub-license.
- 14.5 All royalties or other sums payable in respect of the supply and use of any patented article, processes or inventions required for and in relation to the performance of the Supplier's obligations under this Contract shall be paid by the Supplier.
- 14.6 The Supplier shall not be liable for any use of the Supplier's Background IP or Project IP other than that for which they were prepared.
- 14.7 The Customer shall not be liable for any use of the Customer's IP other than that for which they were prepared.

15 **Confidentiality and publicity**

15.1 Subject to Clauses 16 and 25, each party will keep confidential all financial information, supplier lists, manuals, software (including its source code), trade secrets, business forecasts, specifications, correspondence, books, records, documents, agreements, photographs, quotations, invoices, files, plans, drawings, any other similar material or information relating in any way to this Contract, and/or the business of the other party. Neither party will disclose details of these to any person, other than to its professional advisers, insurers and personnel, without the consent of the other party, and then only insofar as such disclosure is necessary for the effective performance of the Supplier's obligations under this Contract. The provisions of this Clause will continue to apply notwithstanding any novation and/or termination of this Contract for any reason and notwithstanding the completion of the performance of either party's obligations under this Contract.

15.2 Neither party shall be liable for the disclosure of any confidential material which is referred to in Clause 15.1 which:

15.2.1 is or becomes available to the public, other than by means of a breach of this Contract; or

15.2.2 is required by Law to be disclosed.

15.3 Neither party shall, without the other party's prior written consent, use the other party's corporate name or any other unnamed trademark associated with the other party for any purpose, including but not limited to by illustration, advertising, publicising, marketing or selling services and/or products, except as may

otherwise be required by Law. In that event, that party shall provide the other party with written notice of such request as soon as reasonably practicable, sufficient to allow the other party an opportunity to object prior to such disclosure.

15.4 Notwithstanding the provisions in this Clause 15 and Schedule 3 (Data Protection), the parties shall comply with the Data Protection Legislation.

15.5 To the extent there are any inconsistencies and/or conflicts between this Clause 15 and any separate confidentiality agreement entered into between the Authority and the Supplier (pursuant to the Original Tender Process) and/or between the Customer and the Supplier, the terms of any such confidentiality agreement(s) will prevail.

16 Freedom of Information

16.1 The Supplier acknowledges that the Customer may be subject to the FOIA and the EIR and the Supplier shall, at its cost, use all reasonable endeavours and take all necessary steps to assist the Customer in complying with the FOIA and/or the EIR.

16.2 If the Supplier receives a 'request' from any third party (as that term is defined in the FOIA and the EIR, as applicable), it shall immediately provide the Customer with a written copy of that request.

16.3 The Supplier shall use reasonable endeavours to ensure, to the extent it is able to do so, that the provisions of this Clause 16 are included in any subcontract it enters into in respect of this Contract.

17 Insurance

17.1 The Supplier warrants that it currently maintains and shall continue to maintain:

17.1.1 public liability insurance in the sum of not less than £5,000,000.00 (five million pounds) for each and every claim in respect of Services and £2,000,000 in respect of Goods; and

17.1.2 employer's liability insurance in the sum of not less than £5,000,000 (five million pounds) for each and every claim,

for the periods set out in Clause 13.1 of the Framework Agreement, all with a well-established and reputable insurance office or underwriter of repute carrying on business in the United Kingdom and the European Union with a limit and basis of indemnity as set out in Article 3 of the Memorandum of Agreement in the Framework Agreement for each and every claim provided always that such insurance is generally available in the United Kingdom and the European Union to the business of the Supplier at commercially reasonable rates and terms. The Supplier shall immediately inform the Customer if such insurance ceases to be generally available at commercially reasonable rates and terms and for the avoidance of doubt it is hereby agreed and declared that any increased or additional premium required by insurers by reason of the Supplier's own claims record or other acts, omissions, matter or things particular to the Supplier shall be deemed to be within commercially reasonable rates.

17.2 As and when the Supplier is reasonably requested in writing to do so by the Customer, the Supplier shall produce for inspection sufficient documentary evidence in the form of a standard insurance broker's certificate that the insurance required under Clause 17.1 is being maintained in accordance with the terms of this Contract. If the Supplier fails to supply the relevant evidence, the Customer shall be at liberty to effect such insurance cover as it deems necessary at the Supplier's cost.

17.3 The Supplier shall not, once a claim under Clause 17.1 of this Contract has been notified to it, voluntarily do anything which would reduce or tend to reduce the scope of indemnity under its insurance policies or the amount of indemnity monies which will be available thereunder were the claim against it to succeed in full.

17.4 The Supplier shall:

- 17.4.1 do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and
- 17.4.2 notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

17.5 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 17.1.

17.6 If the Supplier fails or is unable to maintain insurance in accordance with Clause 17.1, or fails to provide for inspection the sufficient documentary evidence referred to in Clause 17.2, the Customer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

18 Warranties and Undertakings

18.1 Each party warrants and undertakes to the other party on the Effective Date that:

- 18.1.1 it has the power and is duly authorised to enter into, perform and comply with its obligations under this Contract;
- 18.1.2 this Contract is executed by one of its authorised representatives;
- 18.1.3 it has obtained and shall maintain for the duration of this Contract all requisite regulatory and supervisory consents, licences, authorisations and approvals necessary for it to carry out its obligations under this Contract; and
- 18.1.4 its entry into this Contract and its performance of and compliance with its obligations under it do not and will not violate any restriction imposed by:
 - (a) any regulation to which it is subject;
 - (b) its memorandum or articles of association; or
 - (c) any agreement to which it is a party.

18.2 The Supplier warrants and undertakes to the Customer on the Effective Date that in entering into this Contract it has

not committed any Prohibited Act.

19 Suspension and/or Termination

- 19.1 The Customer may, in addition to any other rights and remedies which it may have, by giving not less than:
- 19.1.1 7 (seven) days' written notice to the Supplier, suspend the Supplier's appointment under this Contract; or
 - 19.1.2 90 (ninety) days' written notice to the Supplier, terminate the Supplier's appointment under this Contract.
- 19.2 If the Supplier's appointment is suspended pursuant to Clause 19.1 then the Customer may, by giving not less than 7 (seven) days' written notice, require the Supplier to resume performance at any time within a period of 6 (six) months from the date of suspension. The Supplier shall use all reasonable endeavours to resume performance of its obligations under this Contract as soon as possible after receipt of the Customer's written notice. If the Customer has not required the Supplier to resume performance within such period, then the Supplier's appointment under this Contract shall be deemed to have been terminated on the date falling 6 (six) months after the date of suspension.
- 19.3 The Customer or the Supplier may suspend and/or terminate the Supplier's appointment under this Contract upon serving written notice on the other in the event that:
- 19.3.1 the other is in breach of this Contract in any material respect and the other has failed within 30 (thirty) days of the service of the other's written notice to remedy such breach or breaches; and/or
 - 19.3.2 distress or execution is levied or threatened upon any of the other's property or any judgement against the other remains unsatisfied for more than 14 (fourteen) days or the other (being an individual) is bankrupt or unable to pay his debts or seeks an arrangement with his creditors, or the other (being a company) has an administrator appointed of it or a receiver or manager or administrative receiver is appointed of it or any of its assets or it enters into

liquidation or it proposes or makes any voluntary arrangement with its creditors; any petition is presented or any resolution passed or any steps or proceedings taken which may lead to any of the foregoing occurrences; the other ceases to carry on business; and/or

19.3.3 if any of the termination provisions of regulation 73(1) of PCR apply.

19.4 The Customer may terminate this Contract in accordance with:

19.4.1 Schedule 1 (Anti-bribery and Corruption); or

19.4.2 Schedule 4 (KPIs).

19.5 Suspension or termination of the Supplier's appointment under this Contract, howsoever arising, shall be without prejudice to the rights and remedies of either of the parties in relation to any negligence, omission or default of the other prior to such termination.

19.6 If the Supplier's appointment under this Contract has been suspended or terminated by the Customer pursuant to Clause 19.1, or terminated by the Supplier pursuant to Clause 19.3 then:

19.6.1 after suspension or termination of the Supplier's appointment under this Contract, the Supplier shall immediately provide to the Customer copies of all Documentation for and in relation to this Contract which has been prepared by it or on its behalf or is in its possession;

19.6.2 the Supplier shall be entitled to send an invoice to the Customer for all outstanding Charges earned by the Supplier for the Services properly performed (whether wholly or in part) and Value Added Tax due thereon;

19.6.3 the Customer shall not be liable for any Losses howsoever arising out of or in connection with the suspension or termination of this Contract; and

19.6.4 pursuant to the terms of this Contract, the Customer shall pay to the Supplier any instalments of any Charge and any other amounts which have accrued due prior to the date of suspension or termination, together with a proportion of the next following instalment of any Charge commensurate with the Services properly performed up to the date of suspension or termination carried out prior to the date of suspension or termination.

19.7 If the Supplier's appointment under this Contract has been suspended or terminated by the Customer pursuant to Clause 19.3 or 19.4:

- 19.7.1 after termination of the Supplier's appointment under this Contract, the Supplier shall immediately provide the Customer with copies of all Documentation for and in relation to this Contract which has been prepared by it or on its behalf or is in its possession; and
- 19.7.2 the Customer shall not be liable for any Losses howsoever arising out of or in connection with the suspension or termination of this Contract.

20 **Force Majeure**

20.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract (except in relation to payment) if such delay or failure result from a Force Majeure Event.

20.2 In such circumstances the relevant party shall use all reasonable endeavours to mitigate any such delays and the time for performance shall be extended by a period equivalent to the period during which the performance of the obligation has been delayed or failed to be performed by the Force Majeure Event or the affected party shall be entitled to a reasonable extension of time for performing such obligations.

21 **Communications**

21.1 Except as otherwise provided for in this Contract, all notices or other communications under or in respect of this Contract to either party must be in writing and shall be deemed to be duly given or made when delivered, in the case of personal delivery or sent by prepaid recorded delivery or registered post, or when posted, deemed to have been received 48 (forty-eight) hours after the same shall have been posted, or when despatched, in the case of e-mail, to the party addressed to him at the address stated in Clause 21.3 or such other address as such party may by

notice in writing nominate for the purpose of service.

21.2 A written notice includes a notice by e-mail. A notice or other communication received on a non-working day or after normal business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place.

21.3 Any written notice provided under Clause 21.1 shall be sent:

21.3.1 in the case of the Customer, as set out in the relevant Order Form; and

21.3.2 in the case of the Supplier, as set out in the relevant Order Form.

21.4 Either party may change its respective notice correspondence information referred to in Clause 21.3 by prior written notice to the other party.

22 Indemnities

22.1 The Supplier shall indemnify and keep indemnified in full the Customer from and against all Losses suffered or incurred by the Customer arising out of or in connection with:

22.1.1 the Supplier infringing or being held to infringe any Intellectual Property Rights in the performance of the Supplier's obligations under this Contract;

22.1.2 the Customer infringing or being held to infringe any Intellectual Property Rights through the use of the Supplier's Background IP, the Project IP or the relevant *Goods and Services* (excluding any Goods manufactured or developed by third parties);

22.1.3 any wilful act, breach or negligent performance or non-performance of its obligations under this Contract by the Supplier;

22.1.4 subject to the provisions of Clause 23.2.1, the death or personal injury of any person or physical damage to any property attributable to the Supplier's performance or non-performance of its obligations under this Contract;

22.1.5 any breach by the Supplier of its obligations pursuant to Schedule 3 (Data Protection) of this Contract; and/or

22.1.6 any breach by the Supplier which is detailed in the indemnity set out in Schedule 5;

22.2 The indemnities in Clause 22.1 shall not apply to the extent that

the relevant Losses are attributable to the Customer's breach, wilful act or negligent performance or non-performance of this Contract.

23 Limit of liability

23.1 Except where expressly stated elsewhere in this Contract:

- 23.1.1 the Supplier's total liability to the Customer for all Losses howsoever arising under, for breach of, or in connection with this Contract is limited to, and shall not exceed the Supplier Liability Cap in the aggregate, save in respect of any indemnities granted by it under Clause 22.1 or any Schedule;
- 23.1.2 the Customer's total liability to the Supplier for all losses howsoever arising under, for breach of, or in connection with this Contract is limited to, and shall not exceed the Customer Liability Cap in the aggregate; and
- 23.1.3 the Customer shall not be liable to the Supplier for any indirect loss or consequential loss, loss of contribution to incidental costs, loss of profit or overheads or loss of reputation, howsoever arising under, for breach of, or in connection with this Contract.

23.2 Nothing in this Contract shall limit or exclude:

- 23.2.1 either party's liability to the other for death or personal injury resulting from that party's negligence; or
- 23.2.2 any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other.

24 Anti-bribery and Corruption

The parties shall comply with Schedule 1 in relation to anti-bribery and corruption.

25 Data Protection

The parties shall comply with Schedule 3 in relation to data protection.

26 Conflicts of interest

26.1 The Supplier may not, without the Customer's prior written consent, be directly or indirectly engaged, concerned or have any financial interest in any capacity with the Customer.

26.2 The Supplier shall promptly notify the Customer in writing of any actual or potential conflict of interest which arises during the Term and the Customer shall be entitled to require the Supplier to take such reasonable steps to

remedy any conflict of interest as are reasonably required by the Customer.

27 **Dispute Resolution**

- 27.1 If a Dispute arises in respect of this Contract then the procedure set out in this Clause 27 shall apply.
- 27.2 In the event of a Dispute, either party shall serve on the other party a Dispute Notice, together with any relevant supporting documentation.
- 27.3 Following the service of any Dispute Notice pursuant to Clause 27.2, The UKRI Library Service Manager/s of the Customer and Simon Jackson, Business Development Manager of the Supplier shall use reasonable endeavours to resolve the Dispute, in good faith.
- 27.4 If the UKRI Library Service Manager's of the Customer and Simon Jackson, Business Development Manager of the Supplier are for whatever reason unable to resolve the Dispute within 30 (thirty) days of service of the relevant Dispute Notice, the Dispute shall be referred to the UKRI Commercial Business Partner/s of the Customer and Jan Den Hartog, Country Manager of the Supplier who shall use reasonable endeavours to resolve the Dispute, in good faith.
- 27.5 If the UKRI Commercial Business Partner/s of the Customer and Jan Den Hartog, Country Manager of the Supplier are for whatever reason unable to resolve the Dispute within 30 (thirty) days of the Dispute being referred to them pursuant to Clause 27.4, the parties will seek to settle the Dispute by mediation in accordance with the CEDR Model Mediation

Procedure. The Mediator shall be nominated by CEDR Solve, unless otherwise agreed (in writing) between the parties. To initiate the mediation, a party must provide a written notice (**ADR Notice**) to the other party to the Dispute, requesting mediation. A copy of any such ADR Notice must be sent to CEDR Solve. The mediation will not start later than 15 (fifteen) after the date of the ADR Notice and the party providing the ADR Notice shall be responsible for all costs associated with the provision of such ADR Notice (subject to any agreement made between the parties in relation to costs associated with such mediation).

27.6 In the event that:

- 27.6.1 the Dispute is not resolved within 30 (thirty) days after the service of an ADR Notice; or
 - 27.6.2 either party fails to participate or fails to continue to participate in the mediation before the expiry of such 30 (thirty) days; or
 - 27.6.3 the mediation terminates before the expiry of such 30 (thirty) days,
- the Dispute shall be referred to the Courts of England and Wales in accordance with Clause 37 of this Contract.

27.7 No party may commence any court proceedings under Clause 37 of this Contract in relation to the whole or any part of a Dispute until 60 (sixty) days after the service of the ADR notice (provided that the right to issue proceedings is not prejudiced by a delay).

28 **Records and Audit Access**

28.1 The Supplier shall keep and maintain until 6 (six) years after the date of the end of the Term, full and accurate records and accounts of the operation of this Contract including but not limited to the *Goods and Services* provided under it in accordance with good accountancy practice.

28.2 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of 6 (six) years after the date of the end of the Term to the Customer and/or the auditor and/or any statutory body entitled by Law on written request and shall provide the Customer and/or the auditor and/or any statutory body entitled by Law access to such records and accounts as may be required from time to time.

28.3 Subject the provisions of Clause 15, the Supplier shall on written request provide the auditor with all reasonable co-operation and assistance in relation to each audit, including:

- 28.3.1 all information requested by the auditor within the scope of the audit;
- 28.3.2 reasonable access to sites controlled by the Supplier and to equipment and materials used in the provision of the *Goods and Services*; and
- 28.3.3 access to the Supplier's Personnel.

28.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 28 unless the audit reveals a material breach by the Supplier of good accountancy practice and/or this Contract, in which case the Supplier shall reimburse the Customer for the reasonable costs it incurs in relation to the audit.

29 **Compliance with Anti-Slavery and Human Trafficking Laws and Policies**

29.1 In performing its obligations under this Contract the Supplier shall comply with all applicable labour, anti-slavery and human trafficking legislation and regulations in force from time to time in the United Kingdom, including but not limited to the Modern Slavery Act 2015 (**Anti-Slavery Laws**).

29.2 The Supplier represents and warrants that, as at the date of this Contract, neither the Supplier nor any of its officers, employees or agents have been convicted of any offence involving slavery and/or human trafficking, nor have they been or are the subject of an investigation, inquiry or enforcement proceedings by any governmental, administrative or Regulatory Body regarding any offence or alleged offence of or in connection with slavery and/or human trafficking whether pursuant to the Anti-Slavery Laws or any other relevant legislation in force from time to time.

29.3 NOT USED

30 **Sustainability**

30.1 In supplying the *Goods and Services*, the Supplier shall, taking into account best available techniques not entailing excessive cost, have appropriate regard, insofar as the Supplier's activities may impact on the environment, of the need to:

- 30.1.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
- 30.1.2 enhance the environment and have regard to the global target of achieving, as far as is practically possible, net-zero carbon emissions by the year 2050; and
- 30.1.3 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

31 **Handover**

In the event that there are any Returning Employees then the provisions of Schedule 2 shall apply.

32 **Contracts (Rights of Third Parties) Act 1999**

Nothing in this Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

33 **Severability**

If any part of this Contract becomes, or is determined by any court or tribunal to be, illegal or unenforceable, the remaining provisions shall remain in full force and effect.

34 **Counterparts**

This Contract may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by all the parties shall constitute a full original of this Contract for all purposes.

35 **Waiver**

35.1 A party's failure or delay to exercise a power or right under this Contract does not operate as a waiver of that power or right.

35.2 A waiver of a power or right will only be effective:

35.2.1 if it is in writing and signed by the party who has the benefit of the power or right being waived; and

35.2.2 in respect of the specific instance to which it relates and for the specific purpose for which it is given.

35.3 Communications between the parties made before the date of the Contract which are not expressly contained within the Contract shall not be deemed to be incorporated into the Contract.

35.4 Notwithstanding any other provision of the Contract, the terms approval or comment or consent when used in the context of any approval, comment or consent to be given by the Customer shall have the meaning acceptance of general principles only and no such approval, comment or consent shall diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.

36 **Amendments to this Contract**

36.1 An amendment or variation to this Contract shall not be effective or binding unless it is in

writing and signed by the Supplier and the Customer.

36.2 No amendment or variation to this Contract shall be permitted which could or does amount to a substantial variation for the purposes of regulation 72 of PCR (which the Customer shall determine in its sole discretion).

36.3 For the avoidance of doubt, the Customer shall be entitled to refuse any proposed amendment or variation to this Contract which does or could amount to a substantial variation for the purposes of regulation 72 of PCR.

37 **Governing Law and Jurisdiction**

37.1 The terms and conditions of this Contract and any Dispute shall be governed by the laws of England and Wales.

37.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute.

This document has been entered into by the parties or their duly authorised representatives on the date set out at the beginning of this document.

Signed for and on behalf of UKRI)
Research and Innovation)
CUSTOMER)

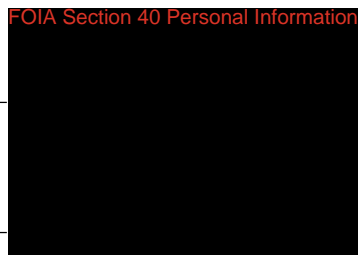
sign here: _____

print name: _____

Signed for and on behalf of Prenax)
Ltd)
SUPPLIER)

sign here: _____

print name: _____



Schedule 1: Anti-bribery and Corruption

1. The Supplier:
 - (a) shall not, and shall procure that the Supplier's Personnel shall not, in connection with Contract, commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that any agreement has been reached to that effect, in connection with the execution of this Contract; and
 - (c) warrants that in entering into this Contract it has not committed any Prohibited Act (as declared by the Supplier pursuant to the Original Tender Process in accordance with regulation 57 of the PCR).
2. The Supplier shall:
 - (a) if requested in writing, provide the Customer, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - (b) within 20 (twenty) days of the date of this Contract, and annually thereafter, certify in writing to the Customer compliance with this Schedule 1 by the Supplier and all persons associated with it or any other persons who are supplying the *Goods and Services* in connection with this Contract. The Supplier shall provide any such supporting evidence of compliance with this Schedule 1 as the Customer may reasonably request.
3. The Supplier shall put in place and maintain an anti-bribery policy (a copy of which shall be provided to the Customer within 20 (twenty) days of the date of this Contract) which shall, as a minimum, prevent any Personnel from committing a Prohibited Act and shall enforce it where appropriate.
4. If at any time any breach of paragraph 1 above is suspected or known, the Supplier must notify the Customer immediately with the details of any such breach to follow in writing as soon as reasonably practicable.
5. If the Supplier notifies the Customer that it suspects or knows that there may be a breach of this Schedule 1, the Supplier will respond promptly to all of the Customer's enquiries in relation to any such suspected or actual breach and will co-operate at all times with any investigation, and permit the Customer access to and audit of any books, records and any other relevant documents. The obligation under this paragraph shall continue for 7 (seven) years following the expiry or termination of this Contract.
6. The Customer may terminate this Contract by written notice with immediate effect if the Supplier, its Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches paragraph 1 of this Schedule 1. Any such termination shall be without prejudice to any right or remedy which has already accrued or which subsequently accrues to the Customer.
7. Any notice provided by the Customer pursuant to paragraph 6 must specify:
 - (a) the nature of the Prohibited Act;

- (b) the identity of the party who the Customer believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate in accordance with the applicable provisions of this Schedule 1.
8. Notwithstanding Clause 27 (Dispute Resolution) of this Contract, the Customer shall determine any Dispute relating to the interpretation of this Schedule 1 and/or the amount or value of any gift, consideration or commission and any such determination by the Customer shall be final and binding upon the parties.

Schedule 2: Re-tendering, handover and TUPE

1. In this Schedule, the following words and expressions shall have the following meanings:

Assigned Employees has the meaning given in paragraph 2(a) of this Schedule 2;

Deliverables Provision Change means the date of any transfer of all or part of the Services to the or a New Supplier whether pursuant to regulations 3(1)(a) and/or 3(1)(b) of TUPE and/or otherwise;

Employee Liability Information means the information specified in regulation 11(2) of TUPE;

New Supplier means any person who following the end of the Term who provides all of the Services which immediately before such end of the Term were provided by the Supplier or its subcontractors pursuant to this Contract;

Retendering Information has the meaning given in paragraph 2(a) of this Schedule 2;

Returning Employees means those employees of the Supplier and its subcontractors who are wholly or mainly engaged in the provision of Services at or immediately before the expiry or termination of the provision by the Supplier or its subcontractor of such Services and whose employment transfers to a New Supplier pursuant to TUPE; and

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

RE-TENDERING AND HANDOVER (EMPLOYEE RELATED INFORMATION)

2. Without prejudice to Clause 0 of this Contract and subject to any restriction on processing of information under the Data Protection Legislation (in which case the definition of Retendering Information set out in paragraph 2(a) below shall be limited accordingly), the Supplier shall within the period of 12 (twelve) months immediately preceding any Contract End Date or immediately following any notice to terminate this Contract:

- (a) on receiving a written request from the Customer, provide in respect of any person engaged or employed by the Supplier or any subcontractor in the provision of the Services (**Assigned Employees**) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment and of other matters affecting each such individuals who it is expected, if they remain in the employment of the Supplier until immediately before the relevant Contract End Date or immediately before the date this Contract is terminated (as relevant), would be Returning Employees (the **Retendering Information**);
- (b) provide the Retendering Information promptly and at no cost to the Customer or any New Supplier;
- (c) promptly notify the Customer and/or any New Supplier forthwith in writing of any material changes to the Retendering Information as and when such changes arise.

3. The Supplier shall not and shall procure that its subcontractors shall not within the period of 12 (twelve) months immediately preceding any Contract End Date or immediately following any notice to terminate Contract:
 - (a) make any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed);
 - (b) make any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed);
 - (c) transfer any of the Assigned Employees to another part of its business or move other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services, to provide any of the Services, save with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
4. Without prejudice to paragraph 2 and 3 of this Schedule 2, the Supplier shall provide the Employee Liability Information at such time or times as are required by TUPE and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such Employee Liability Information as are required by TUPE.

TRANSFER OF RETURNING EMPLOYEES

5. The Supplier will comply with all reasonable instructions from the Customer with regard to arrangements connected with any Deliverables Provision Change (including the orderly transfer of any Returning Employees) and will take all reasonable steps to mitigate any costs which the Customer as a result of any Deliverables Provision Change.
6. On the expiry or earlier termination of this Contract, the parties agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any services equivalent to the Services but the position shall be determined in accordance with Law in force at such time, and the following provisions of this Schedule 2 are without prejudice to such determination.
7. Upon expiry or termination of this Contract, the following provisions shall apply:
 - (a) the Supplier shall, or shall procure that, all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Supplier and its subcontractors and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Supplier or its subcontractors up to the relevant date of expiry or termination are satisfied; and
 - (b) without prejudice to paragraph 7(a), the Supplier shall:
 - (i) remain responsible for all of its and its subcontractors' employees (other than the Returning Employees) on or after the relevant date of expiry or termination and shall indemnify and keep indemnified in full the Customer for itself and any New Supplier against all Losses incurred by the Customer or any New Supplier resulting from any claim

whatsoever whether arising before on or after the relevant date of expiry or termination, by or on behalf of, any of the employees of the Supplier or any of its subcontractors who do not constitute the Returning Employees;

- (ii) in respect of Assigned Employees or former Assigned Employees, indemnify and keep indemnified in full the Customer and any New Supplier against all Losses incurred by the Customer or any New Supplier resulting from any claim whatsoever, by or on behalf of, any of the Assigned Employees or former Assigned Employees in respect of the period on or before the relevant date of expiry or termination (whether any such claim, attributable to the period up to and on the relevant date of expiry or termination, arises before, on or after such date) including but not limited to any failure by the Supplier or any of its subcontractors to comply with its or their obligations under regulations 13 and 14 of TUPE and any award of compensation under regulation 15 of TUPE and/or Article 6 of Directive as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of the Customer or any New Supplier;
 - (iii) indemnify and keep indemnified in full the Customer and any New Supplier against all Losses arising out of any claim or allegation by any person (other than an Assigned Employee) that his/her employment transfers to the Customer and/or any New Supplier by virtue of TUPE including the employment and/or dismissal of any such individuals by the Customer and/or any New Supplier ; and
- (c) the Customer shall be entitled to assign the benefit of this paragraph 7 to any New Supplier.
8. If TUPE does not apply on the relevant expiry or termination date, the Customer shall use its reasonable endeavours to procure that any New Supplier shall offer employment to the persons employed by the Supplier or its subcontractors and assigned immediately before the relevant expiry or termination date to the provision of the Services which the Supplier and its subcontractors are to cease to provide from such date and the following provisions shall apply:
- (a) if an offer of employment is made in accordance with this paragraph 8, the employment shall be on the same terms and conditions (except for any entitlement to membership of an occupational pension scheme) as applied immediately before the relevant expiry or termination date including full continuity of employment, except that the Customer or the New Supplier may, at its absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of paragraph 3 of this Schedule 2;
 - (b) where any such offer as referred to in paragraph 8(a) is accepted, the Supplier shall indemnify and keep indemnified in full the Customer and any New Supplier on the same terms and conditions as those set out in paragraph 7(b) as if there had been a "relevant transfer" for the purposes of TUPE in respect of each and every employee who has accepted any such offer and for the purposes of this Clause, each and every such employee shall be treated as if they were a Returning Employee; and

- (c) where such offer as referred to in paragraph 8(a) is not accepted and TUPE does not apply, the employee shall remain an employee of the Supplier or its subcontract as appropriate.
- 9. No later than 14 (fourteen) days following the relevant expiry or termination date, the Supplier shall provide to the Customer and any New Supplier, updated payroll information following the final payroll run and P45 details in respect of all Returning Employees.
- 10. For a period of 12 (twelve) months after the relevant expiry or termination date, the Supplier shall within 21 (twenty one) days of receipt forward to the New Supplier as directed by the Customer or the New Supplier, any notices, correspondence, information or enquiries which relate to any Returning Employees who are employed by the Customer or any New Supplier after the relevant expiry or termination date.

Schedule 3: Data Protection

In this Schedule, the following words and expressions shall have the following meanings:

Controller means the person which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data;

Data Protection Particulars means, in relation to any Processing under the Contract: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects as set out in the Order Form;

Data Subject means the identified or identifiable natural living person to whom the Personal Data relates;

Personal Data means any information relating to an identified or identifiable living individual;

Personal Data Breach means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;

Processor means the person which Processes Personal Data on behalf of the Controller;

Processing means any operation or set of operations which is performed on Personal Data, or on sets of Personal Data, whether or not by automated means and **Process**, **Processes** and **Processed** shall be construed accordingly; and

Sensitive Personal Data means Personal Data that reveals such categories of data as are listed in the Data Protection Legislation.

1 Data Protection

1.1 The parties acknowledge and agree that:

- (a) the Contract will require the Processing of Personal Data by the Supplier on behalf of the Customer;
- (b) the Customer shall determine the purposes for which and the manner in which Personal Data will be processed by the Supplier on behalf of the Customer under the Contract;
- (c) the Customer is the Controller and the Supplier is the Customer's Processor in respect of all such Personal Data; and
- (d) the only Processing of Personal Data that the Supplier is authorised to do is listed in the Data Protection Particulars.

1.2 Where, under or in connection with the Contract, the Supplier Processes Personal Data on behalf of the Customer and the Customer's Processor, the Supplier shall Process the Personal Data only:

- (a) to the extent, and in such as manner, as is necessary for the performance by the Supplier of its obligations under the Contract and in accordance with the Customer's written instructions; and
- (b) as otherwise required by the Data Protection Legislation to which the Supplier is subject, in which case the Supplier shall inform the Customer of that legal requirement before Processing the Personal

Data (unless that law, on important grounds of public interest, prohibits the Supplier from informing the Customer).

- 1.3 If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Schedule 3, the Supplier shall immediately inform the Customer of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law). The Supplier shall immediately inform the Customer if, in its opinion, Processing the Personal Data in accordance with written instruction received from the Customer or in the performance of its obligations under the Contract infringes Data Protection Legislation to which either the Customer or the Supplier is subject.
- 1.4 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any data protection impact assessment, as defined in the Data Protection Legislation, prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:
 - (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the performance of the Contract;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.5 The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the United Kingdom except with the Customer's prior written consent and where such consent is given, take such actions and enter into such agreements as the Customer may require to ensure that such transfer or disclosure complies with Law.
- 1.6 The Supplier will keep a record of any Processing of Personal Data it carries out under the Contract.
- 1.7 The Supplier shall not disclose Personal Data to any person except under the Contract or with the Customer's written consent.
- 1.8 The Supplier shall ensure that access to Personal Data is limited to:
 - (a) those employees who need access to Personal Data to meet the Supplier's obligations under the Contract; and
 - (b) in the case of any access by any employee, such part or parts of Personal Data as is strictly necessary for performance of that employee's duties.
- 1.9 The Supplier shall ensure that employees that require access to Personal Data:
 - (a) are informed of the confidential nature of Personal Data;
 - (b) have undertaken training in Law (including Data Protection Legislation) relating to handling Personal Data; and

- (c) are aware both of the Supplier's duties and their personal duties and obligations under Law (including Data Protection Legislation) and the Contract.
- 1.10 Without prejudice to Clause 15 of the Contract, the Supplier shall ensure that all persons authorised to Process Personal Data are under an appropriate contractual or other legal obligation of confidentiality in respect of Personal Data.
- 1.11 The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in the Contract.
- 1.12 The Supplier shall, taking into account the nature of the Processing, implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and to ensure the security of the Personal Data and prevent Personal Data Breaches, having taken account of the:
 - (a) nature of the Personal Data to be protected;
 - (b) harm that might result from a Personal Data Breach;
 - (c) state of technological development; and
 - (d) cost of implementing any measures.
- 1.13 Appropriate technical and organisational measures include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, taking reasonable steps to ensure the reliability of its employees with access to Personal Data and regularly assessing and evaluating the effectiveness of such measures adopted.
- 1.14 The Supplier shall, upon becoming aware, immediately and in any event within 24 hours notify the Customer of any Personal Data Breach and shall work together with the Customer to provide the Customer with full co-operation and assistance, including to investigate the Personal Data Breach (including by (i) assisting with any investigation launched by the Customer; (ii) facilitating interviews with the Supplier's employees and others involved in the matter; and (iii) making available all relevant records reasonably required by the Customer to investigate the Personal Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Personal Data Breach or its investigation).
- 1.15 The Supplier shall not engage another Processor to Process Personal Data on behalf of the Customer except with the Customer's prior specific written authorisation and, where such authorisation is given, enter into a contract with the Processor that imposes the same contractual obligations set out in this Schedule 3 on that Processor, and remain liable for any Processor that it engages in accordance with the terms of this Schedule 3.
- 1.16 The Supplier shall assist and fully co-operate with the Customer to enable it to comply with its obligations as a Controller under and in accordance with Law (including the Data Protection Legislation) including in relation to the security of Processing, data subject right requests, reporting Personal Data

Breaches to the supervisory authority and conducting data privacy impact assessments. The Supplier shall notify the Customer within 24 hours if it receives a request from a Data Subject to exercise its rights under Law or any communication from a Data Subject, the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract.

- 1.17 The Supplier shall promptly comply with any request from the Customer requiring the Supplier to amend, transfer or delete Personal Data. At the Customer's request, the Supplier shall provide to the Customer a copy of all Personal Data held by it in the format and on the media reasonably specified by the Customer.
- 1.18 The Supplier shall at any time on the request of the Customer, return all Confidential Information and/or data (including any Personal Data that the Supplier Processes for and on behalf of the Customer) to that Customer and/or permanently delete the same from its systems, including any back-up copies.
- 1.19 The Supplier shall at the Customer's option, delete or return to the Customer all Personal Data on termination of the Contract and delete any existing copies of Personal Data except to the extent that the Customer is required to retain Personal Data by Law (including the Data Protection Legislation).
- 1.20 The Supplier shall make available to the Customer all information necessary to demonstrate the Customer's compliance with the obligations under this Schedule 3 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
- 1.21 The Supplier shall immediately inform the Customer if, in its opinion, an instruction from the Customer infringes Law (including the Data Protection Legislation).
- 1.22 The Supplier shall, in connection with the Contract, comply in all respects with Law relating to data protection (including the Data Protection Legislation) and have established procedures to ensure continued compliance with Law (including the Data Protection Legislation). The Supplier shall comply with its obligations as a Processor under and in accordance with Law (including the Data Protection Legislation).
- 1.23 The Supplier shall only collect any Personal Data in a form which is fully compliant with Law which will contain a data protection notice informing the data subject of the identity of the Controller, the identity of any data protection representative it may have appointed, the purposes or purpose for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair and compliant under Law.
- 1.24 The Customer may, at any time on not less than 30 working days' notice, revise this Schedule 3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 1.25 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 working days'

notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 1.26 The Supplier shall Process Personal Data the performance of the Contract as notified by the Customer only for as long as required and for no longer than the term of this Contract.
- 1.27 The Supplier warrants that it shall:
- (a) Process the Personal Data in compliance with Law (including the Data Protection Legislation); and
 - (b) take appropriate technical and organisational measures against Personal Data Breaches occurring.
- 1.28 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Customer against all costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Schedule 3.

Schedule 4: Key Performance Indicators

1. The Call-Off KPIs are as set out in the Order Form.
2. The parties acknowledge the provisions of Schedule 6 of the Framework Agreement.
3. The parties agree that the Customer may amend the Call-Off KPIs during the term as agreed, in writing, with the Supplier.
4. The Supplier shall establish suitable processes to ensure it can monitor its performance of the provision of the *Goods and Services* in accordance with the Call-Off KPIs under this Contract and that it is able to report on the same to the Customer.
5. Within two weeks of the end of each quarter during the Term, if requested, the Supplier shall provide the Customer (and, pursuant to the Framework Agreement, the Authority) with a report containing sufficient data setting out the Supplier's performance of the Call-Off KPIs. The Supplier acknowledges that the Customer will review such reports to determine the Supplier's effectiveness and efficiency of the Supplier's performance of the Call-Off KPIs.
6. If in the Customer's opinion, acting reasonably, the Supplier is not meeting the requirements of the Call-Off KPIs following a review of the reports provided pursuant to paragraph 5 above, the Customer may within 15 (fifteen) days give written notice (an **Initial KPI Warning Notice**) to the Supplier setting out:
 - (a) the matter or matters giving rise to such notice;
 - (b) the date by which such matters must be rectified by; and
 - (c) a reminder of the implications of such notice.

Any such Initial KPI Warning Notice shall state on it that is an Initial KPI Warning Notice.
7. If the Supplier (in the Customer's reasonable opinion) fails to adequately address the matter or matters set out in the Initial KPI Warning Notice by the date contained in such Initial KPI Warning Notice, the Customer may (at its discretion) issue a further written notice (a **Final KPI Warning Notice**) to the Supplier setting out:
 - (a) the matter or matters continuing rise to such notice;
 - (b) the date by which such matters must be rectified by; and
 - (c) a reminder of the implications of such notice.

Any such Final KPI Warning Notice shall state on it that is a Final KPI Warning Notice.
8. Without prejudice to any other rights under this Contract if the Supplier (in the Customer's reasonable opinion) fails to adequately address the matter or matters set out in the Final KPI Warning Notice by the date contained in such Final KPI Warning Notice, the Customer may terminate this Contract by giving not less than 30 (thirty) days written notice to the Supplier.

9. In the event that the Framework Agreement is terminated in accordance with Schedule 6 of the Framework Agreement, the Supplier acknowledges that the Customer may terminate this Contract.

Schedule 5: Supply of Goods via Consolidation Services, where not dependent on publishers

1 Definitions

1.1 Defined terms used but not defined in this Schedule shall have the meanings ascribed to them in the Call-Off Terms and Conditions.

1.2 The following definitions shall apply for the purposes of this Schedule:

Claim has the meaning given in paragraph 7.2.

Delivery means completion of delivery of Goods specified in an Order in accordance with paragraph 4.1.

Delivery Address means the address for delivery of the Goods as specified in the Order or as may be otherwise notified to the Supplier by the Customer from time to time.

Delivery Date means the date for delivery of the Goods as specified in the Order or as may be otherwise notified to the Supplier by the Customer from time to time.

2 Orders

2.1 The Supplier shall use all reasonable endeavours to supply the Goods in accordance with the Order.

2.2 The Customer may, at any time prior to dispatch of the Goods, amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of any reasonable costs which have been reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that the Customer shall have no liability to the Supplier where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this Contract.

3 Manufacture, quality and packing

3.1 The Supplier shall manufacture, pack and supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.

3.2 The Goods supplied to the Customer by the Supplier under this Contract shall conform to the Order;

3.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer;

3.2.3 be free from defects in design, material and workmanship and remain so for twelve (12) months after Delivery; and

3.2.4 comply with all applicable statutory and regulatory requirements.

3.3 The Supplier warrants that it shall:

- 3.3.1 ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 3.3.1 obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Goods in accordance with the terms of this Contract; and
- 3.3.2 comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Goods.
- 3.3.3 The Customer shall have the right to enter the Supplier's premises to inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Goods.
- 3.3.4 Inspections carried out pursuant to paragraph 3.3 shall be carried out during business hours on reasonable notice to the Supplier, provided that, in the event of an emergency, the Supplier shall grant the Customer immediate access to its premises.
- 3.3.5 If, following an inspection, the Customer reasonably considers that the Goods are not, or are not likely to be, as warranted paragraph 3.2, the Customer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under paragraph 3.2. The Customer shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions.

4 Delivery

- 4.1 The Supplier shall deliver the Goods to the Customer at the Delivery Address and on the Delivery Date.
- 4.2 Delivery of the Order shall be complete on the completion of unloading of the Goods at the Delivery Address.
- 4.3 If an Order is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Customer may have, the Customer may:
- 4.3.1 refuse to take any subsequent attempted delivery of the Order;
- 4.3.2 obtain substitute goods from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute goods; and
- 4.3.3 subject to Clause 23 of the Call-Off Terms and Conditions, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this Contract.
- 4.4 Each delivery of Goods shall be accompanied by a delivery note from the Supplier showing the purchase order number, the date of the Order, the type and quantity of Goods included in the Order, including the code numbers of the Goods if applicable.

4.5 If the Supplier requires the Customer to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Order, and any such returns shall be at the Supplier's expense.

5 Acceptance and defective Goods

6.1 The Customer shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

6.2 If any Goods delivered to the Customer do not comply with paragraph 3.2, or are otherwise not in conformity with the terms of this Contract, then, without limiting any other right or remedy that the Customer may have, the Customer may reject those Goods and:

6.2.1 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within 5 (five) working days of being requested to do so; or

6.2.2 require the Supplier to repay the price of the rejected Goods in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Goods); and

6.2.3 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that do not conform with the terms of this Contract.

6.3 The Customer's rights and remedies under this paragraph 5 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Contract by the Sale of Goods Act 1979.

6.4 The terms of this Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

6.5 If the Supplier fails to promptly repair or replace rejected Goods in accordance with paragraph 5.2, the Customer may, without affecting its rights under paragraph 5.3, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so.

6.6 If the parties dispute whether any Goods comply with paragraph 3.2, either party shall follow the dispute resolution procedure set out in Clause 27 of the Call-Off Terms and Conditions.

7 Title and risk

7.1 The risk in Goods delivered to the Customer shall pass to the Customer on Delivery.

7.2 Title to Goods delivered to the Customer shall pass to the Customer on Delivery.

8 Insurance and liability

9.1 The Supplier shall, in accordance with the provisions of this Contract, maintain in force during the period stipulated in the Contract adequate insurance cover with reputable insurers acceptable to the Customer.

- 9.2 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- 9.2.1 any full or partial loss or destruction of, or damage to, any work produced by or on behalf of the Customer arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the loss, destruction or damage to the work;
 - 9.2.2 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods;
 - 9.2.3 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier, its employees, agents or subcontractors; and
 - 9.2.4 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 9.3 If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (a **Claim**), the Customer shall:
- 9.3.1 as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 9.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Customer may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Supplier, but without obtaining the Supplier's consent) if the Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - 9.3.3 give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 9.3.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 9.4 If a payment due from the Supplier under this paragraph is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the

payment is the same as it would have been were the payment not subject to tax.

- 9.5 Nothing in this paragraph shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.