



Brownberrie Lane • Horsforth • Leeds • LS18 5HD • UK
Tel: +44 (0) 113 283 7100 • Fax: +44 (0) 113 283 7200
www.leedstrinity.ac.uk

AGREEMENT FOR THE PROVISION OF SOFTWARE AS A SERVICE (SAAS) TO LEEDS TRINITY UNIVERSITY

THIS AGREEMENT dated _____ is made BETWEEN:

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

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

WHEREAS

- A. The Supplier has been selected by the University to supply Software as detailed in the Tender Document (the "Software"), in accordance with the terms and conditions outlined herein.
- B. The Supplier has agreed to supply to the University, and the University shall receive and pay for, the Software subject to the terms and conditions of this Agreement as set out herein.
- C. The Parties now wish to define their rights and obligations with respect to the Supplier's performance for the Services and/or delivery of the Software.

1. INTERPRETATION

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

"Account"	means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;
"Agreement"	means this agreement including any Schedules, and any amendments to this Agreement from time to time;
"Business Day"	means any weekday other than a bank or public holiday in England;
"Business Hours"	means the hours of 09:00 to 17:00 GMT/BST on a Business Day;
"Charges"	means the following amounts: (a) the amounts specified in the Supplier's Pricing Proposal, as agreed during the tender process; (b) such amounts as may be agreed in writing by the parties from time to time; and (c) amounts calculated by multiplying the Supplier's standard time-based charging rates (as agreed during the tender process), by time agreed by the Parties for additional support and/or development services;
" Customer Confidential Information"	means: (a) any information disclosed by, or on behalf of the University, to the Supplier during the Term or at any

	<p>time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:</p> <ul style="list-style-type: none"> (i) was marked or described as "confidential"; or (ii) should have been reasonably understood by the Supplier to be confidential; and <p>(b) the University Data;</p>
"Customer Data"	<p>means all data, works and materials: uploaded to or stored on the Platform by the University; transmitted by the Platform at the instigation of the University; supplied by the University to the Supplier for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the University (but excluding analytics data relating to the use of the Platform and server log files);</p>
"Customer Personal Data"	<p>means any Personal Data that is processed by the Supplier on behalf of the University in relation to this Agreement, but excluding any data with respect to which the Supplier is a data controller;</p>
"Cyber Security Incident"	<p>means any thing, event, act or omission which gives, or may give, rise to:</p> <ul style="list-style-type: none"> a) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy); b) reduced integrity of an information system, data or electronic communications network; c) unauthorised use of any information system or electronic communications network for the processing (including storing) of data; d) disruption or change of the operation (including, but not limited to, takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network; e) unauthorised changes to firmware, software or hardware; f) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network; g) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network; h) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or i) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy;

	in connection with the Software and/or this Agreement;
"Data Controller"	shall have the same meaning as set out in the Data Protection Legislation;
"Data Processor"	shall have the same meaning as set out in the Data Protection Legislation;
"Data Protection Legislation"	means the Data Protection Act 2018, and all applicable laws and regulations relating to processing of personal data and privacy including where applicable the guidance and codes of practice issued by the Information Commissioner;
"Documentation"	means the documentation for the Hosted Services produced by the Supplier and delivered or made available by the Supplier to the University;
"Data Subject"	shall have the same meaning as set out in the Data Protection Legislation;
"Effective Date"	means the date of execution of this Agreement;
"Force Majeure Event"	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this Agreement; b) acts of terrorism; c) flood, storm or other natural disasters; d) fire; e) pandemic; f) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; g) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; h) compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen; i) industrial action which affects the ability of the Supplier to supply the to provide the Services.
"Foreground Intellectual Property"	means all Intellectual Property Rights created or developed by the Supplier in the course of providing the Services to the University;

"Good Industry Practice"	means the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;
"Hosted Services"	means the services procured under tender [insert ref number], which will be made available by the Supplier to the University as a service via the internet in accordance with this Agreement;
"Hosted Services Defect"	means a defect, error or bug in the Platform having an adverse effect or a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of: (a) any act or omission of the University or any person authorised by the University to use the Platform or Hosted Services; (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the University or by any person authorised by the University; (c) a failure of the University to perform or observe any of its obligations in this Agreement; and/or (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;
"Hosted Services Specification"	means the specification for the Platform and Hosted Services set out in the Documentation;
"Intellectual Property Rights"	means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);
"Key Performance Indicators (KPIs)"	means those indicators of performance detailed in the Service Level Agreement;
"Maintenance Services"	means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;
"Mobile App"	means any mobile that is made available by the Supplier;
"Personal Data"	has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"Platform"	means the platform managed by the Supplier and used by the Supplier to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;
"Schedule"	means any schedule attached to the main body of this Agreement;
"Services"	means any services that the Supplier provides to the University, or has an obligation to provide to the University, under this Agreement;
"Support Services"	means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;
"Supported Web Browser"	means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Supplier agrees in writing shall be supported;
"Term"	means the term of this Agreement;
"Update"	means a hotfix, patch or minor version update to any Platform software;
"Upgrade"	means a major version upgrade of any Platform software.

- 1.2 References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Agreement to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of this Agreement.
- 1.5 References in this Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 The Supplier shall bear the cost of complying with its obligations under this Agreement.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.8 Words denoting the singular shall include the plural and vice versa.

- 1.9 Where a term of this Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the Contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the University’s requirements and any other part of this Agreement, such other part of this Agreement shall prevail.
- 1.11 Where a document is required under this Agreement, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the University to procure any course of action from any third party, this shall mean that the University shall use its reasonable endeavours to procure such course of action from that third party.

2. SUPPLIER OBLIGATIONS

- 2.1 The Supplier shall implement and maintain all security measures:

- a) as may be required under applicable;
- b) to enable it to discharge its obligations under this Agreement; and
- c) to protect availability, confidentiality and integrity of Customer Data and Leeds Trinity University systems and services;

in all cases to the University’s reasonable satisfaction and in accordance with Good Industry Practice.

- 2.2 The Supplier shall, as a minimum, be compliant with xx and hold xx certification.

- 2.3 The Supplier shall notify the University promptly of any changes in its ability to meet any specific cyber security requirements the University may have, including any changes to certifications and accreditations.

3. HOSTED SERVICES

- 3.1. The Supplier shall create an Account for the University and shall provide to the University login details for that Account on or promptly following the Effective Date.
- 3.2. The Supplier hereby grants to the University a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the University in accordance with the Documentation during the Term.
- 3.3. The University shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.

- 3.4. The University shall use reasonable endeavours to not exceed the number of user licences purchased.
- 3.5. The University and the Supplier shall undertake a licence audit at agreed periods to ensure that, wherever possible, the University does not exceed the number of user licences purchased as part of the Agreement. Where user numbers are found to be in excess of agreed licence numbers, the University and Supplier will agree a plan to remedy the situation.
- 3.6. The Supplier shall use all reasonable endeavours to maintain the availability of the Hosted Services to the University at the gateway between the public internet and the network of the hosting services Supplier for the Hosted Services.
- 3.7. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- a) a Force Majeure Event;
 - b) a fault or failure of the internet or any public telecommunications network;
 - c) a fault or failure of the University's computer systems or networks;
 - d) any breach by the University of this Agreement; or
 - e) scheduled maintenance carried out in accordance with this Agreement.
- 3.8. The University will not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 3.9. The University will not use the Hosted Services:
- a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.10. For the avoidance of doubt, the University has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

4. MAINTENANCE SERVICES

- 4.1. The Supplier shall provide the Maintenance Services to the University during the Term.
- 4.2. The Supplier shall where practicable give to the University at least 10 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Supplier's other notice obligations under this main body of this Agreement.
- 4.3. The Supplier shall give to the University at least 10 Business Days' prior written notice of the application of an Upgrade to the Platform.

- 4.4. The Supplier shall give to the University written notice of the application of any security Update to the Platform and at least 10 Business Days' prior written notice of the application of any non-security Update to the Platform.
- 4.5. The Supplier shall provide the Maintenance Services in accordance with the standards of skill and care reasonably expected from a leading service Supplier in the Supplier's industry.

5. SUPPORT SERVICES

- 5.1. The Supplier shall provide the Support Services to the University during the Term.
- 5.2. The Supplier shall make available to the University a helpdesk in accordance with the provisions of this main body of this Agreement.
- 5.3. The Supplier shall provide the Support Services in accordance with the standards of skill and care reasonably expected from a leading service Supplier in the Supplier's industry.
- 5.4. The University may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the University will not use the helpdesk for any other purpose unless otherwise agreed.
- 5.5. The Supplier shall respond promptly to all requests for Support Services made by the University through the helpdesk.

6. CUSTOMER DATA

- 6.1. The Supplier is required to provide to the University information relating to how and where its data will be stored and used, including whether it will be copied, reproduced, distributed, published, exported, adapted, edited or translated. Upon receipt, the University will consider and where appropriate provide approval for these process and activities to take place.
- 6.2. Subsequent to University approval as per Clause 6.1, the Supplier is granted a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the University Data to the extent reasonably required for the performance of the Supplier's obligations and the exercise of the Supplier's rights under this Agreement. The University also grants to the Supplier the right to sub-license these rights to its hosting, connectivity and telecommunications service Suppliers, subject to any express restrictions elsewhere in this Agreement.
- 6.3. The University warrants to the Supplier that the Customer Data when used by the Supplier in accordance with this Agreement will not infringe the Intellectual Property Rights, or other legal rights, of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 6.4. The Supplier shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Supplier to restore the Hosted Services to the state they were in at the time the back-up was taken (as detailed in the Tender Response), and shall retain and securely store each such copy for a minimum period of 30 days.
- 6.5. Within the period of 1 Business Day following receipt of a written request from the University, the Supplier shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Supplier in accordance with Clause 6.4. The University acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

7. CHARGES

- 7.1. The University shall pay the Charges to the Supplier in accordance with this Agreement.
- 7.2. If the Charges are based in whole or part upon the time spent by the Supplier performing the Services, the Supplier must obtain the University's written consent before performing Services that result in any estimate of time-based Charges given to the University being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the University agrees otherwise in writing, the University shall not be liable to pay to the Supplier any Charges in respect of Services performed in breach of this Clause 7.2.
- 7.3. All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the University to the Supplier.

8. PRICE AND PAYMENT

- 8.1. The Agreement Price shall be as stated in or calculated in accordance with the Pricing Schedule and shall be payable in any instalments specified therein. The Supplier shall; submit to the University invoices as set out in the Pricing Schedule.
- 8.2. Unless otherwise stated in the Pricing Schedule the Agreement Price:
- 8.2.1. Shall remain fixed during the Term; and
- 8.2.2. Is the entire price payable by the University to the Supplier in respect of this Agreement and includes, without limitation:
- 8.2.2.1. Any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Agreement, and any licence rights granted to the University; and
- 8.2.2.2. Is the entire price payable by the University to the Supplier in respect of this Agreement and includes, without limitation, any royalties, licence fees, supplies and all consumable used by the Supplier, travel costs, accommodation expenses and the cost of staff.
- 8.3. No increase shall be made by the Supplier to the Agreement Price for any reason without the prior written consent of the University.
- 8.4. The Agreement Price shall be considered exclusive of VAT, which, if properly chargeable, the University shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 8.5. The University shall pay each undisputed invoice received within thirty (30) days of receipt of such invoice provided:
- 8.5.1. The invoice is served by email to: invoices@leedstrinity.ac.uk
- 8.5.2. The invoice quotes a current and full University purchase order number.
- 8.6. The University shall not be liable for delays in payment should the Supplier's invoice be disputed or invalid by the Supplier's error or failure to comply with the University's invoicing instructions.
- 8.7. The University reserves the right to deduct monies due to the Supplier from the University from any monies due to the University from the Supplier under this Agreement.

9. SUPPLIER'S CONFIDENTIALITY OBLIGATIONS

- 9.1. The Supplier must:
- a) keep the Customer Confidential Information strictly confidential;

- b) not disclose the Customer Confidential Information to any person without the University's prior written consent, and then only under conditions of confidentiality approved in writing by the University;
 - c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Supplier uses to protect the Supplier's own confidential information of a similar nature, being at least a reasonable degree of care;
 - d) act in good faith at all times in relation to the Customer Confidential Information; and
 - e) not use any of the Customer Confidential Information for any purpose other than provision of the Hosted Services.
- 9.2. Notwithstanding Clause 9.1, the Supplier may disclose the Customer Confidential Information to the Supplier's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.
- 9.3. This Clause 9 imposes no obligations upon the Supplier with respect to Customer Confidential Information that:
- a) is known to the Supplier before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
 - b) is or becomes publicly known through no act or default of the Supplier; or
 - c) is obtained by the Supplier from a third party in circumstances where the Supplier has no reason to believe that there has been a breach of an obligation of confidentiality.
- 9.4. The restrictions in this Clause 9 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Supplier on any recognised stock exchange.
- 9.5. The provisions of this Clause 9 shall continue in force indefinitely following the termination of this Agreement.

10. DATA PROTECTION

- 10.1. The Supplier shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 10.2. The University warrants to the Supplier that it has the legal right to disclose all Personal Data that it does in fact disclose to the Supplier under or in connection with this Agreement.

- 10.3. The Supplier shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 10.
- 10.4. The Supplier shall only process the Customer Personal Data on the documented instructions of the University (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in this Agreement or any other document agreed by the parties in writing.
- 10.5. The Supplier shall promptly inform the University if, in the opinion of the Supplier, an instruction of the University relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 10.6. Notwithstanding any other provision of this Agreement, the Supplier may process the Customer Personal Data if and to the extent that the Supplier is required to do so by applicable law. In such a case, the Supplier shall inform the University of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 10.7. The Supplier shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 10.8. The Supplier and the University shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 10.9. The Supplier must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the University. In the case of a general written authorisation, the Supplier shall inform the University at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the University objects to any such changes before their implementation, then the Supplier must not implement the changes. The Supplier shall ensure that each third party processor is subject to the same legal obligations as those imposed on the Supplier by this Clause 10.
- 10.10. As at the Effective Date, the Supplier is hereby authorised by the University to engage, as sub-processors with respect to Customer Personal Data, the third parties identified in the Documentation.
- 10.11. The Supplier shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the University with the fulfilment of the University's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 10.12. The Supplier shall assist the University in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Supplier shall report any Personal Data breach relating to the Customer Personal Data to the University within 24 hours following the Supplier becoming aware of the breach.

- 10.13. The Supplier shall make available to the University all information necessary to demonstrate the compliance of the Supplier with its obligations under this Clause 10 and the Data Protection Laws.
- 10.14. The Supplier shall, at the choice of the University, delete or return all of the Customer Personal Data to the University after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data. These services are to be
- 10.15. The Supplier shall allow for and contribute to audits, including inspections, conducted by the University or another auditor mandated by the University in respect of the compliance of the Supplier's processing of Customer Personal Data with the Data Protection Laws and this Clause 10.
- 10.16. If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

11. CYBER SECURITY INCIDENTS

- 11.1 The Supplier shall notify the University immediately as soon as it knows or believes that a Cyber Security Incident has or may have taken place and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it (where applicable) any mitigation measures recommended by it to be taken by the University. Where such initial notification is not in writing, the Supplier shall provide the University with a written notification setting out the details required under this clause 11.1, and in any case within twenty-four (24) hours from the initial notification.
- 11.2 Following a Cyber Security Incident, the Supplier shall:
- a) use its best endeavours to mitigate the impact of the Cyber Security Incident;
 - b) investigate the Cyber Security Incident completely and promptly, and shall keep the University fully informed of the progress and findings of its investigation;
 - c) where required to do so, inform any applicable regulator of the Cyber Security Incident; and
 - d) take any action deemed necessary by the University in the circumstances, including complying with any additional security measures deemed appropriate by the University.
- 11.3 The Supplier shall perform its obligations under this clause 11 at no additional charge to the University, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the University.

12. INFORMATION AND AUDIT

- 12.1 Promptly upon request, the Supplier shall provide to the University such information and records, including any security certifications and/or assurances, in connection with the Supplier's obligations under this Agreement as the University may request.

12.2 The Supplier agrees that the University, its agents and its representatives may conduct such audits as are considered necessary by the University acting reasonably, including for the following purposes:

- a) to ascertain the impact of any Cyber Security Incident;
- b) to review and verify the integrity, confidentiality and security of any data relating to this Agreement;
- c) to penetration test the public facing part of the Service;
- d) to review the Supplier's and/or any sub-contractor's compliance with its obligations under this Agreement;
- e) to ensure the safe removal and disposal of Customer Data and links to University systems, as set out in Clause 18.3.3.

13. WARRANTIES

13.1. The Supplier warrants to the University that:

- a) the Supplier has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- b) the Supplier shall meet and comply with any cyber security requirements in connection with the provision of the Services and this Agreement (including in respect of any certification or accreditation);
- c) the Supplier will comply with all applicable legal and regulatory requirements applying to the exercise of the Supplier's rights and the fulfilment of the Supplier's obligations under this Agreement; and
- d) the Supplier has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

13.2. The Supplier warrants to the University that:

- a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
- b) the Hosted Services will be free from Hosted Services Defects;
- c) the application of Updates and Upgrades to the Platform by the Supplier will not introduce any Hosted Services Defects into the Hosted Services;
- d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- e) the Platform will incorporate security features reflecting the requirements of Good Industry Practice.

13.3. The Supplier warrants to the University that the Hosted Services, when used by the University in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.

13.4. The Supplier warrants to the University that the Hosted Services, when used by the University in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

13.5. If the Supplier reasonably determines, or any third party alleges, that the use of the Hosted Services by the University in accordance with this Agreement infringes any person's Intellectual Property Rights, the Supplier may at its own cost and expense:

- a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- b) procure for the University the right to use the Hosted Services in accordance with this Agreement.

13.6. The University warrants to the Supplier that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

13.7. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

14. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS

14.1. The University acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Supplier gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

14.2. The University acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Supplier does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

14.3. The University acknowledges that the Supplier will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Supplier does not warrant or represent that the Hosted Services or the use of the Hosted Services by the University will not give rise to any legal liability on the part of the University or any other person.

15. LIMITATION AND EXCLUSIONS OF LIABILITY

15.1. Nothing in this Agreement will:

- a) limit or exclude any liability for death or personal injury resulting from negligence;
- b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- c) limit any liabilities in any way that is not permitted under applicable law; or
- d) exclude any liabilities that may not be excluded under applicable law.

15.2. Notwithstanding Clause 15.3 and subject to Clause 15.1, the total liability of the either Party to the other under or in connection with this Agreement whether arising in Agreement, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to 125% of the Agreement Price paid or payable by the University to the Supplier for the Services under this Agreement.

15.3. Subject to Clause 15.1, the total liability of the Supplier to the University under or in connection with this Agreement, relating to breaches of Data Protection Legislation whether arising in Agreement, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to £1,000,000 (one million GBP).

15.4. Under no circumstance shall either Party be liable to the other for any losses, damages and/or other costs and expenses under or in connection with this

Agreement, whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.

- 15.5 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the other Party is entitled to bring a claim against the other pursuant to this Agreement.

16. FORCE MAJEURE EVENT

- 16.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 16.2. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- a) promptly notify the other; and
 - b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 16.3. A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

17. TERMINATION

- 17.1. Either party may terminate this Agreement by giving to the other party at least three months written notice of termination.
- 17.2. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 17.3. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors

- b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

18. EFFECTS OF TERMINATION

18.1. Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

18.2. Within 30 days following the termination of this Agreement for any reason:

- a) the University must pay to the Supplier any Charges in respect of Services provided to the University before the termination of this Agreement; and
- b) the Supplier must refund to the University any Charges paid by the University to the Supplier in respect of Services that were to be provided to the University after the termination of this Agreement,

without prejudice to the parties' other legal rights.

18.3 Immediately following expiry or earlier termination of this Agreement:

- 18.3.1 the Supplier shall comply with its obligations under any agreed exit plan;
- 18.3.2 all data, including without limitation Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, and all other items provided on loan or otherwise to the Supplier by the University shall be promptly returned by the Supplier to the University (such return not to be unreasonably withheld or delayed); and
- 18.3.3 provide to the University xx certification or other proof, as considered appropriate by the University, that all data has been removed from Supplier systems and destroyed appropriately and all access to University systems and resources has been removed.

18.4 The Supplier shall cooperate fully with the University or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following termination of this Agreement. This cooperation shall extend to providing

access to all information relevant to the operation of this Agreement, as reasonably required by the University to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.

- 18.5 In the event that the University terminates the Agreement in accordance with Clauses 17.2 or 17.3, the University shall be entitled to a refund of any sums paid under this Agreement provided the University informs the Supplier in writing of its intention to claim such refund no later than thirty (30) days of the effective date of such termination.
- 18.6 The expiry or earlier termination of this Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

19. NOTICES

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

20. SUBCONTRACTING

- 20.1. The Supplier must not subcontract any of its obligations under this Agreement without the prior written consent of the University, providing that the University must not unreasonably withhold or delay the giving of such consent.
- 20.2. The Supplier shall remain responsible to the University for the performance of any subcontracted obligations.

- 20.3. Subcontractor obligations are the same as Supplier obligations, as per Clause 2. It is the Suppliers responsibility to ensure that subcontractor processes and policies, including but not limited to, those relating to data protection and cyber security, are at least equivalent to those of the Supplier and meet all legislative and statutory requirements and those set by the University.
- 20.4. Notwithstanding the provisions of this Clause 20 but subject to any other provision of this Agreement, the University acknowledges and agrees that the Supplier may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

21. GENERAL

- 21.1. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 21.2. If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 21.3. This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 21.4. Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 21.5. This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 21.6. This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 21.7. This Agreement shall be governed by and construed in accordance with English law.
- 21.8. The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.