



AGREEMENT FOR THE PURCHASE OF SCIENTIFIC EQUIPMENT

PART 1: COVER SHEET

Section 1: This Agreement

Parties, contact details and structure of this Agreement	
A. Parties	<p>This Agreement is made between:</p> <p>(1) University College London, a body corporate established by Royal Charter with company number RC000631 and whose registered office is at Gower Street, London WC1E 6BT (UCL); and</p> <p>(2) [●] Limited, a company incorporated in [●] under registered company number [●] whose registered office is at [●] (Supplier),</p> <p>each a Party and together the Parties.</p>
B. UCL Contact details	<p>UCL Representative: [●]</p> <p>Phone: [●] Email: [●]</p>
C. Supplier Contact details	<p>Supplier Representative: [●]</p> <p>Phone: [●] Email: [●]</p>
D. Structure of this Agreement	<p>This Agreement is made up of:</p> <p>(a) Part 1 (<i>Cover Sheet</i>);</p> <p>(b) Part 2 (<i>UCL Scientific Equipment Terms</i>), including the Appendix to Part 2; and</p> <p>(c) any other documents incorporated by reference in Part 1 (<i>Cover Sheet</i>) and Part 2 (<i>UCL Scientific Equipment Terms</i>) of this Agreement.</p>
E. UCL Purchase Order Number	[●]
F. Initial Term End Date	[●]

Section 2: Equipment

Equipment to be supplied by Supplier	
A. Equipment	<p>Supply of Scientific Equipment</p> <p>[●]</p> <p>[Internal UCL drafting note: insert a description of the types of Scientific Equipment to be supplied by the Supplier in as much detail as possible.]</p> <p>Supply of Spare or Replacement Parts</p> <p>[●] OR [Supplier is not obliged to supply Spare or Replacement Parts [as part of the [Support Services] [and/or] [Maintenance Services].]]</p> <p>[Internal UCL drafting note: confirm whether or not Supplier is required to supply Spare or Replacement Parts as part of the Support Services and/or Maintenance Services it provides. Insert details of the agreed arrangements in as much detail as possible.]</p>
B. Delivery Arrangements	<p>[●]</p> <p>[Internal UCL drafting note: insert a description of the delivery arrangements, including the delivery date, destination (including details such as the floor number and/or room number) and delivery hours.]</p>

C. Warranty Period	<p>[In respect of each item of <i>[insert reference to a type of equipment to be delivered]</i>], the warranty period for that Equipment item shall be the [●] month period starting on the [date of delivery of the item].</p> <p>[Internal UCL drafting note: amend and then repeat as necessary for each Equipment type – be they items of Scientific Equipment or Spare or Replacement Parts.]</p>
D. Specification	<p>[In respect of <i>[insert reference to a type of scientific equipment to be delivered]</i>], the specification for this item of Scientific Equipment is available at: [●]</p> <p>[Internal UCL drafting note: repeat as necessary for each Scientific Equipment type.]</p>

Section 3: Services

[Internal UCL drafting note: any services procured under this Cover Sheet must be connected to the Scientific Equipment being purchased under this agreement.]

Services to be performed by Supplier	
A. Set-up and Configuration Services	<p>Services description: [●]</p> <p>Services will be provided on the following dates/times: [●]</p> <p>[Internal UCL drafting note: insert a description of the set-up and configuration services to be purchased by UCL under this Agreement. If no Set-up and Configuration Services are to be purchased please delete the template wording above and clearly state “None”.]</p> <p>[Internal UCL drafting note: when completing this Section, please make sure that Supplier’s resources, roles and responsibilities – together with details of any documents to be provided by Supplier in connection with these services – are identified and appropriately included in the services description.]</p>
B. Maintenance Services	<p>Services description: [●]</p> <p>Services Start Date: [●]</p> <p>Services End Date: [●]</p> <p>Means by which the services will be provided: [●]</p> <p>Dates and times during which the service will be provided: [●]</p> <p>[Supply of Spare or Replacement Parts: As part of the Maintenance Services, Supplier shall, subject to and in accordance with the further terms of this Agreement, supply UCL with Spare or Replacement Parts and install such Spare or Replacement Parts into the Scientific Equipment. As part of these arrangements, the Parties agree that [●].]</p> <p>[Software updates/upgrades: As part of the Maintenance Services, Supplier shall, subject to and in accordance with the further terms of this Agreement, supply and install updates/upgrades to the Software forming part of [●].]</p> <p>[Internal UCL drafting note: insert a description of maintenance services to be purchased by UCL under this Agreement – including the means by which support will be provided (phone, on-site) and support hours. Ensure that the description makes it clear whether or not Spare or Replacement Parts will be supplied and installed as part of the services, adapting and fleshing out the template wording set out above (please also consider whether Supplier should be obliged to obtain UCL’s prior consent to the supply/replacement of parts to help control costs). Consider, and document if necessary, whether Supplier should be obliged to supply software updates/upgrades as part of the services. If no Maintenance Services are to be purchased please delete the template wording above and clearly state “None”.]</p> <p>[Internal UCL drafting note: when completing this Section, please make sure that Supplier’s resources, roles and responsibilities – together with details of any documents to be provided by Supplier in connection with these services – are identified and appropriately included in the services description.]</p>
C. Support Services	<p>Services Start Date: [●]</p> <p>Services End Date: [●]</p> <p>[As part of the Support Services, Supplier shall provide a [support helpdesk] by [telephone and e-mail] during the hours of [●] to [●] UK time on Business Days (Support Hours). The contact details for the support helpdesk are: [●].]</p>

[Internal UCL drafting note: update Support Hours to reflect the agreed arrangement; insert contact details for the support helpdesk.]

UCL may notify Supplier of any Incident of which it becomes aware.

Supplier shall assign a unique reference number to each Incident for the purpose of tracking and reporting the progress of the Incident and all correspondence relating to it and a priority rating. Supplier shall provide the unique reference number and priority rating for each Incident to UCL when Supplier is notified by UCL of an Incident.

The priority rating of an Incident shall be determined as follows:

Priority rating	Description
High	[An item of Scientific Equipment is inoperable, or is not operating or functioning properly, in a way that has a significant detrimental impact on UCL's ability to use the Scientific Equipment.]
Medium	[An item of Scientific Equipment is operable but one or more material functions of the Scientific Equipment is not functioning properly.]
Low	[All other Incidents affecting an item of Scientific Equipment.]

In respect of each Incident, Supplier shall (i) provide an initial response to UCL describing the Incident and its high-level plan for resolving the Incident; and (ii) resolve the Incident, in each case in accordance with the following service levels.

In respect of each Incident, Supplier shall provide initial response and resolution within the following timescales:

Priority rating	Response	Resolution
High	[•]	[•]
Medium	[•]	[•]
Low	[•]	[•]

[Supply of Spare or Replacement Parts: As part of the Support Services, Supplier shall, subject to and in accordance with the further terms of this Agreement, supply UCL with Spare or Replacement Parts and install such Spare or Replacement Parts into the Scientific Equipment. As part of these arrangements, the Parties agree that [•].]

[Internal UCL drafting note: insert a description of the support services to be purchased by UCL under this Agreement. Ensure that the description makes it clear whether or not Spare or Replacement Parts will be supplied and installed as part of the services, adapting and fleshing out the template wording set out above (please also consider whether Supplier should be obliged to obtain UCL's prior consent to the supply/replacement of parts to help control costs). Consider, and document if necessary, whether Supplier should be obliged to supply software updates/upgrades as part of the services. If no Support Services are to be purchased please delete the template wording above and clearly state "None".]

[Internal UCL drafting note: when completing this Section, please make sure that Supplier's resources, roles and responsibilities – together with details of any documents to be provided by Supplier in connection with these services – are identified and appropriately included in the services description.]

D. Training Services

Services description: [•]

Means by which the services will be provided: [•]

Services will be provided on the following dates: [•]

[Internal UCL drafting note: insert a description of the training services to be provided to UCL under this Agreement. If no training services are to be provided please delete the template wording above and clearly state "None".]

[Internal UCL drafting note: when completing this Section, please make sure that Supplier's resources, roles and responsibilities – together with details of any documents to be provided by Supplier in connection with these services – are identified and appropriately included in the services description.]

E. TUPE transfers in respect of this Agreement

[The Parties acknowledge and agree that the TUPE Entry Terms (as defined in the Appendix to Part 2 (UCL Scientific Equipment Terms)) shall not apply in respect of this Agreement.]

OR

[The Parties acknowledge and agree that the TUPE Entry Terms (as defined in the Appendix to Part 2 (UCL Scientific Equipment Terms)) shall apply in respect of this Agreement.]

	<p>[Internal UCL drafting note: The TUPE Entry Terms, as defined in the Appendix to Part 2 of this Agreement, are only relevant – and should only apply – if services that are the same as, or similar to, the Services are already being provided by UCL or an existing supplier prior to the commencement of this Agreement and there is likely to be a TUPE transfer on commencement of this Agreement to Supplier (being the new service provider). Please select the appropriate drafting option to confirm whether or not such terms should apply. Questions on this Section of the Cover Sheet and the application of TUPE more generally should be raised with UCL’s internal employment law specialists.]</p>
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Section 4: Charges

Agreed charges and payment arrangements	
A. Equipment	<p>Charges for the Scientific Equipment</p> <p>[●]</p> <p>[Charges for Spare or Replacement Parts</p> <p>[●]</p> <p>[Internal UCL drafting note: insert details of the agreed charges/invoicing/payment arrangements for Equipment. Where Supplier will supply Spare or Replacement Parts, please make sure that the charging arrangements are clearly documented.]</p>
B. Set-up and Configuration Services	<p>[●]</p> <p>[Internal UCL drafting note: insert details of the agreed charges/invoicing/payment arrangements for these services. If no Set-up and Configuration Services are to be purchased please state “Not applicable”.]</p>
C. Maintenance Services	<p>[●]</p> <p>[Internal UCL drafting note: insert details of the agreed charges/invoicing/payment arrangements for these services. If no Maintenance Services are to be purchased please state “Not applicable”.]</p> <p>[Internal UCL drafting note: where Supplier is to supply spare/replacement parts as part of the Maintenance Services please ensure that it is clearly stipulated how UCL will be charged for the spare/replacement parts.]</p>
D. Support Services	<p>[●]</p> <p>[Internal UCL drafting note: insert details of the agreed charges/invoicing/payment arrangements for these services. If no Support Services are to be purchased please state “Not applicable”.]</p> <p>[Internal UCL drafting note: where Supplier is to supply spare/replacement parts as part of the Maintenance Services please ensure that it is clearly stipulated how UCL will be charged for the spare/replacement parts.]</p>

Execution

This Agreement has been entered into by the Parties or their duly authorised representatives:	
Signed by UCL:	<p>Name of signatory: _____</p> <p>duly authorised for and on behalf of UCL</p> <p>Position: _____</p> <p>Signature: _____</p> <p>Date: _____</p>
Signed by Supplier:	<p>Name of signatory: _____</p> <p>duly authorised for and on behalf of Supplier</p> <p>Position: _____</p> <p>Signature: _____</p> <p>Date: _____</p>

PART TWO: UCL SCIENTIFIC EQUIPMENT TERMS

1 Introduction

UCL wishes to appoint Supplier to provide the Equipment and Services. This Agreement sets out the terms and conditions that apply to the sale by Supplier, and purchase by UCL, of the Equipment and Services.

2 Definitions and Interpretation

In this Agreement:

2.1 unless the context otherwise requires, the following expressions shall have the following meanings:

Acceptance Requirements has the meaning given to that term in Clause 8.3;

Adverse Credit Scoring means a credit score, according to a Credit Ratings Agency, that is worse than 'moderate' or 'average' risk;

Affected Party has the meaning given in Clause 29.2;

Agreement means the Cover Sheet and these Terms;

Associated Entity means in respect of a person, any entity that directly or indirectly Controls, is Controlled by or is under common Control with, that person from time to time;

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

Charges means the charges for Equipment and Services as set out in the Section 4 of the Cover Sheet;

Confidential Information means:

(a) in respect of either Party, all information (whether written, oral or in electronic form) concerning the business and affairs of the Party or its Associated Entities; and

(b) in respect of UCL and in addition to the information referred to in subparagraph (a) of this definition: (i) all information (whether written, oral or in electronic form) concerning UCL's staff, students, customers, contractors, commercial partners, research partners and collaborators; and (ii) the UCL Data,

in each case that the other Party obtains or receives as a result of the discussions leading up to or the entering into or the performance of this Agreement;

Control means the possession, directly or indirectly, of the power (whether by way of ownership of shares, proxy, contract, partnership agreement, agency or other agreement or arrangement) to: (i) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a meeting of a person; (ii) appoint or remove all, or the majority, of the partners, management, directors or other equivalent officers of a person; and/or (iii) give directions (whether in respect to actions, policy or otherwise) with which the partners, management, directors or other equivalent officers of a person are obliged to comply (whether by contract or through the ownership of voting securities, including the ownership of more than 50% of the voting equity, partnership or similar interest in such person), and **Controls** and **Controlled** shall be construed accordingly;

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

Cover Sheet means the Cover Sheet set out in Part 1 (Cover Sheet) of this Agreement;

Credit Ratings Agency means any of the companies used by UCL from time to time (including Dun & Bradstreet, Credit Safe and Experian) that assigns credit scores to organisations as an evaluation of the credit risk of any such organisation based on the organisation's perceived ability to pay back debt and the likelihood of corporate financial default or failure;

Data Protection Laws means all Regulations relating to the Processing of Personal Data;

Data Subject means the individual to which the Personal Data relates;

Deliverables means any materials, items, documents or deliverables prepared by or on behalf of Supplier, or otherwise delivered to UCL, as part of the provision of any Services;

Environmental Information Regulations means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner's Office or the relevant government department in relation to such regulations;

Environmental Law means all Regulations that have as a purpose or effect the protection of the environment;

Environmental Licence means any permit, licence, authorisation, consent or other approval required by Environmental Law;

Equipment means Scientific Equipment and Spare or Replacement Parts;

First Extension Term has the meaning given to that term in Clause 26.2(a);

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner's Office or relevant government department in relation to such legislation;

Force Majeure Event means, in respect of an Affected Party, an act, event or circumstance (other than lack of funds) which is beyond the reasonable control of the Affected Party, including an act of God, war or threat of or preparation for war, armed conflict, flood, earthquake, windstorm, or other natural disaster, sabotage, riot, insurrection, civil commotion, civil unrest, martial law, major systems failure (except that the failure of systems controlled by the Affected Party (or its sub-contractors) shall not constitute a Force Majeure Event) strike or other industrial dispute (except that an industrial dispute, strike or other action involving (where UCL is the Affected Party) only employees of UCL or (where Supplier is the Affected Party) only the Supplier Personnel shall not constitute a Force Majeure Event), pandemic, epidemic, quarantine, nuclear, chemical or biological radiation or radioactive contamination;

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

Hazardous Waste means any waste or materials that may be harmful to human health or the environment and as such are classified as hazardous waste under Environmental Law, including asbestos, chemicals and paint;

Incident has the meaning given to that term in Clause 10.2;

Initial Term has the meaning given to that term in Clause 26.2;

Initial Term End Date has the meaning given to that term in Section 1F of the Cover Sheet;

Intellectual Property Rights means rights in the nature of passing off, get-up, registered designs and unregistered designs and design rights, trade marks, service marks, topography rights, copyright (including copyright in software), moral rights, database rights, rights in inventions, patents, know-how, trade secrets and other confidential information, and all other intellectual property rights and rights of a similar or corresponding character which may exist now or in the future subsist in any part of the world (whether registered or not or the subject of an application for registration) and including all rights to apply for, and obtain, registrations in respect of any and all of the foregoing, each for their full term including extensions, revivals and renewals thereof;

Maintenance Services means any maintenance services set out in Section 3B of the Cover Sheet;

Non-Affected Party has the meaning given in Clause 29.2;

Parties means Supplier and UCL and **Party** shall mean either Supplier or UCL, as the context so requires;

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;

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;

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

Regulations means all applicable laws, statutory and other rules, regulations, instruments and provisions in force from time to time, including the rules, codes of conduct, codes of practice, guidance, practice requirements and accreditation terms stipulated by any Regulatory Authority from time to time;

Regulatory Authorities means competent regulatory authorities that have responsibility for regulating the businesses of either Party from time to time;

Request for Information means a request for information under FOIA or the Environmental Information Regulations;

Scientific Equipment means the equipment set out in Section 2A of the Cover Sheet;

Second Extension Term has the meaning given to that term in Clause 26.2(b);

Services means the Set-up and Configuration Services, Maintenance Services, Support Services and Training Services;

Set-up and Configuration Services means any set-up and configuration services set out in Section 3A of the Cover Sheet;

Software means any software installed in or on, or otherwise forming part of, any item of Equipment (including any upgrades, updates and/or new versions of any such software as may be supplied or installed from time to time by the Supplier as part of any of the Services or otherwise by or on behalf of the original equipment manufacturer of the Equipment item);

Spare or Replacement Parts means any spare or replacement parts that Supplier supplies to UCL, from time to time, as part of the Maintenance Services and/or Support Services;

Specification means, in respect of each type of Equipment item, the specification referred to in Section 2D of the Cover Sheet (if any) for that Equipment item;

Sub-processor has the meaning given in Clause 19.3(h);

Supplier has the meaning given to that term in the Cover Sheet;

Supplier Personnel means all employees, staff, other workers, agents and consultants who are engaged by Supplier and/or any Associated Entity of Supplier in the carrying out of Supplier's obligations under this Agreement (including the provision of any of the Services);

Support Services means any support services set out in Section 3C of the Cover Sheet;

Terms means these UCL Scientific Equipment Terms and Conditions;

Training Services means any training services set out in Section 3D of the Cover Sheet;

UCL has the meaning given to that term in the Cover Sheet;

UCL Assets has the meaning given in Clause 18.2;

UCL Data means all data (including Personal Data), information, text, drawings, diagrams, documents and images which are embodied in any electronic or tangible medium and which are:

(a) made available by or on behalf of UCL to Supplier, or otherwise accessed, obtained, used, or held by Supplier in connection with the performance of its obligations under this Agreement; and/or

(b) created, generated, modified, maintained, stored and/or otherwise processed by or on behalf of Supplier in connection with the performance of its obligations under this Agreement;

UCL Policies means the policies, procedures and compliance requirements of UCL, as determined by UCL and published on UCL's policies webpage from time to time, which webpage is available at <https://www.ucl.ac.uk/commercial-procurement/ucls-supply-chain-policy/values-and-policies>;

UCL Premises means premises owned, leased, licensed, or occupied by UCL;

Warranty Period means, in respect of each type of Equipment item, the warranty period set out in Section 2C of the Cover Sheet, except that where no warranty period is set out in Section 2C of the Cover Sheet, the warranty period shall be 12 months from the date of delivery of the Equipment item; and

- Waste Materials** means all waste generated as a result of the supply of the Equipment and/or performance of the Services from time to time, including any Hazardous Waste;
- 2.2 words importing the singular shall include the plural and vice versa and words importing **persons** shall include bodies corporate, unincorporated associations and partnerships;
- 2.3 any reference to a **statute**, statutory provision or subordinate legislation is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;
- 2.4 any phrase introduced by the terms **including, include, in particular, such as** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 2.5 references to **Sections** are to sections of the Cover Sheet, references to **Clauses** are references to clauses of these Terms, and references to **paragraphs** are references to paragraphs of the Appendix;
- 2.6 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 2.7 the Appendix attached to these Terms forms part of these Terms as if expressly set out in the body of these Terms and any reference to these Terms shall include the Appendix.
- 3 Application**
- 3.1 UCL appoints Supplier from the date of this Agreement to supply the Equipment and Services to UCL in accordance with the terms and conditions of this Agreement. Supplier accepts such appointment on the terms and conditions of this Agreement to the exclusion of all other terms and conditions, including any terms and conditions which Supplier may purport to apply under any quotation, offer, confirmation of order or similar document.
- 3.2 UCL and Supplier agree that this Agreement will take precedence over any prior written contract and/or other agreement existing between the Parties, including any prior contracts and agreements for the sale and purchase of the type of equipment and/or services that are the subject of this Agreement.
- 3.3 If there is any conflict or ambiguity in the provisions of this Agreement then the following order of decreasing precedence shall apply: (i) the provisions of the Cover Sheet; (ii) the provisions of these Terms; and (iii) the provisions of any documents referred to in this Agreement.
- 4 Cancellation**
- 4.1 UCL may cancel (terminate) this Agreement (or any part thereof) in respect of all or any of:
- (a) the items of Equipment to be supplied by giving Supplier notice of the cancellation at any time before those items (or any part thereof) have been delivered; and/or
- (b) the Services to be performed by giving Supplier notice of the cancellation at any time before those Services (or any part thereof) have been performed,
- and UCL will not be liable to pay for those Equipment items and/or Services that have been so cancelled in accordance with this Clause 4.1.
- 5 General terms relating to the supply of Equipment**
- 5.1 In respect of each item of Equipment that Supplier supplies to UCL under this Agreement, and notwithstanding the acceptance by UCL of that Equipment item pursuant to Clauses 8 or 13 or otherwise, Supplier shall ensure that the Equipment item:
- (a) is properly and securely packed in accordance with the currently applicable national and international standards;
- (b) corresponds with (i) its description and the Specification (together with any other requirements set out in the Cover Sheet); and (ii) any relevant samples;
- (c) is of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by Supplier or made known to Supplier by UCL (expressly or impliedly) prior to or at the time this Agreement is made;
- (d) unless agreed otherwise by UCL in writing, is new and, where appropriate, carries the UKCA (UK Conformity Assessed) marking or, for so long as the CE marking remains valid in the UK in respect of the relevant equipment items, the "CE" marking;
- (e) operates in accordance with its Specification (and any other requirements set out in the Cover Sheet) and is free from defects in design, materials and workmanship and remains so for at least the duration of the Warranty Period; and
- (f) complies with all Regulations relating to the manufacture, labelling, packaging, storage, handling and delivery of the Equipment, including all Regulations relating to health and safety and all Environmental Laws.
- 5.2 Supplier shall ensure that:
- (a) it has the legal right to sell the Equipment to UCL;
- (b) it holds and maintains any necessary permits, licences, permissions, authorisations, consents or other approvals (including Environmental Licences) required under the Regulations for the supply of the Equipment; and
- (c) each item of Equipment that Supplier supplies (including, for the avoidance of doubt, any Software forming part of it), and any person's use of the same, does not infringe any rights (including any Intellectual Property Rights) of a third party.
- 5.3 To the extent that any Software is installed in or on, or otherwise forms part of, any Equipment item, Supplier hereby grants (or shall procure the grant) to UCL of an irrevocable, perpetual, non-exclusive and worldwide licence for UCL to use (and allow others to use) the Software in connection with the use and operation of the Equipment item by any person and for any purpose. References in this Agreement to any such Equipment items shall include the Software. Each such licence shall be capable of being transferred by UCL (and UCL may transfer such licence) to any third party to whom UCL sells, leases or lends that Equipment item from time to time.
- 5.4 Supplier shall ensure that any and all Software (i) shall be free from viruses, malicious code and anything else that may impair the performance, operation or functionality of the Software; and (ii) is and shall remain suitable for use with the relevant Equipment item for the full life of that Equipment item.
- 5.5 Supplier shall advise UCL in writing (which may be by email) of any hazards relating to the transport, handling, storage, and/or use of each type of Equipment item supplied under this Agreement.
- 5.6 Supplier shall deliver the Scientific Equipment on the date, to the destination and during the delivery hours specified in Section 2B of the Cover Sheet. Where no delivery date, destination and/or delivery time is specified in the Cover Sheet, Supplier shall deliver the Scientific Equipment during UCL's normal business hours within 10 days of the date this Agreement is made to the destination notified to Supplier by UCL or otherwise in accordance with UCL's written instructions. Supplier shall deliver any Spare or Replacement Parts to UCL as part of the Support Services and/or Maintenance Services, as applicable.
- 5.7 Supplier shall ensure that a delivery note accompanies each Equipment delivery made pursuant to this Agreement and which sets out: (i) the date of this Agreement; (ii) UCL's purchase order number (where provided by UCL); (iii) the type and quantity of the Equipment items(s), including the code number of each such item (where applicable); (iv) details of any special storage or handling instructions; and (v) if the Equipment items are being delivered by instalment, details of the number of such items being delivered and the remaining balance of Equipment items to be delivered in the future (if any).
- 5.8 Supplier shall not deliver the Equipment in instalments without UCL's prior written consent. UCL may treat any delivery of the Equipment in instalments without its prior written consent as an irremediable material breach of this Agreement and terminate this Agreement in accordance with Clause 26.
- 5.9 If the Equipment is to be delivered under this Agreement in instalments, then this Agreement will be treated as a single Agreement and will not be severable. If the Cover Sheet includes specific details about how the Equipment is to be delivered (for example "x" number of Equipment items to be delivered on each pallet or in each box) then Supplier shall ensure that its delivery complies with those details.
- 5.10 In respect of each item of Equipment (to be) supplied by Supplier pursuant to this Agreement, risk of loss of or damage to each item of Equipment will pass to UCL upon delivery in accordance with this Agreement. Title to each item of Equipment will pass to UCL upon delivery unless payment for the Equipment item is made prior to delivery, in which case title to the item of Equipment will pass to UCL at the time payment is made.
- 6 General terms relating to the performance of the Services**
- 6.1 In respect of each of the Services that Supplier performs for UCL under this Agreement, and notwithstanding the acceptance by UCL of those Services pursuant to Clauses 8 or 13 or otherwise, Supplier shall:
- (a) be responsible for providing at its own cost and expense all the personnel necessary to perform the Services in accordance with the provisions of this Agreement;
- (b) use appropriately experienced, qualified and trained personnel to perform the Services that are familiar, where appropriate, with UCL's requirements under this Agreement;
- (c) perform the Services in accordance with Good Industry Practice and the Regulations, including all Regulations relating to health and safety and all Environmental Laws (including the Health and Safety at Work etc Act 1974, the Management of Health and Safety at Work Regulations 1999, the Construction (Design and Management) Regulations 2015, the Electricity at Work Regulations 1989 and the Gas Safety (Installation and Use Regulations 1998);
- (d) ensure that it holds and maintains any necessary permits, licences, permissions, authorisations, consents or other approvals (including Environmental Licences) required under the Regulations for performance of the Services, including the transportation, handling, storage and disposal of any Waste Materials;
- (e) ensure that the Services (including any Deliverables) corresponds with any services description and/or specification set out (or referred to) in the Cover Sheet;
- (f) comply with any reasonable instructions given to it from time to time by UCL concerning the provision of the Services within a reasonable period of the instructions being given (taking into account the nature and extent of the instructions);
- (g) in providing the Services, act in good faith and co-operate fully, and procure that each of its employees, agents and sub-contractors co-operate fully, with UCL's employees, agents and sub-contractors; and
- (h) observe fully all reasonable requirements and procedures notified to Supplier by UCL, including any health and safety and security requirements.
- 6.2 Supplier shall perform the Services within the period stated in the Cover Sheet. Where the Services are to be performed at any UCL Premises then Supplier will (unless expressly agree by the Parties in writing, whether in the Cover Sheet or otherwise) carry them out during UCL's usual business hours. If the Cover Sheet does not specify a date by when the Services are to be completed, then Supplier must complete them within a reasonable time of the date of this Agreement or otherwise in accordance with UCL's written instructions.
- 6.3 If the Cover Sheet includes specific details about how the Services are to be delivered, then Supplier shall ensure that its performance of the Services complies with those details.
- 7 TUPE transfers**
- 7.1 UCL and Supplier have agreed the terms and conditions which shall apply in relation to employees upon the commencement and termination of this Agreement and/or cessation of any of the Services (in each case in whole or in part), as appropriate, in the Appendix (*TUPE transfers*). Each Party shall comply with the provisions of the Appendix (*TUPE transfers*).
- 8 Set-up and Configuration Services**

- 8.1 Section 3A of the Cover Sheet sets out details of the Set-up and Configuration Services to be provided by Supplier. Supplier shall perform the Set-up and Configuration Services in accordance with the arrangements set out in Section 3A of the Cover Sheet in respect of each item of Scientific Equipment that Supplier supplies.
- 8.2 Save as may be expressly set out in Section 3A of the Cover Sheet, as part of the Set-up and Configuration Services Supplier shall install, set-up, configure and calibrate each item of Scientific Equipment supplied by Supplier following its delivery on the days, and during the hours, set out in Section 3A of the Cover Sheet in order to ensure that the Scientific Equipment item:
- is properly calibrated (where calibration is required);
 - operates properly, accurately and without error; and
 - meets (i) all of the requirements of this Agreement including each of the requirements set out in Clause 5.1 and in the Cover Sheet; and (ii) any other requirements expressly made known to Supplier by UCL.
- 8.3 Supplier shall notify UCL once it has successfully installed, set-up, configured and calibrated an item of Scientific Equipment, whereupon UCL may conduct such checks and tests as it sees fit to verify that the Scientific Equipment item meets the requirements of this Agreement and, in particular, the requirements set out in Clause 8.2(a) to 8.2(c) inclusive, (**Acceptance Requirements**). Supplier shall provide such assistance as UCL may reasonably require for this purpose.
- 8.4 In respect of each item of Scientific Equipment, within 10 Business Days (or such other period as is expressly set out in the Cover Sheet) of the date on which Supplier notifies UCL pursuant to Clause 8.3, UCL will either:
- issue an acceptance confirmation to Supplier stating that the Scientific Equipment item meets the Acceptance Requirements, whereupon the Equipment item shall have been accepted by UCL for the purposes of this Agreement; or
 - notify Supplier in writing where UCL, acting reasonably, decides that the Scientific Equipment item (in whole or in part) does not meet the Acceptance Requirements.
- 8.5 If UCL notifies Supplier that, in its reasonable opinion, an item of Scientific Equipment (in whole or in part) does not meet some or all of the Acceptance Requirements, then Supplier shall promptly re-perform the Set-up and Configuration Services at no cost to UCL in order to make sure that the Scientific Equipment item meets all of the Acceptance Requirements within five Business Days (or such other period as the Parties may agree in writing) of UCL's notification under Clause 8.4(b), except that where Scientific Equipment item does not meet some or all of the Acceptance Requirements as a result (in whole or in part) of a defect, issue or other problem with the Scientific Equipment item itself, then Supplier shall at no cost to UCL:
- either (i) repair the Scientific Equipment item so that that it meets the requirements of this Agreement; or (ii) supply a replacement Scientific Equipment item (of exactly the same type and specification) that meets the requirements of this Agreement; and
 - then Supplier re-perform the Set-up and Configuration Services in order to ensure that the repaired or replaced Scientific Equipment item meets all of the Acceptance Requirements,
- within five Business Days (or such other period as the Parties may agree in writing) of UCL's notification under Clause 8.4(b).
- 8.6 Once Supplier has re-performed the Set-up and Configuration Services in respect of an item of Scientific Equipment, or repaired or replaced the Scientific Equipment item and then re-performed the Set-up and Configuration Services, as applicable, UCL may conduct such checks and tests as it sees fit to verify that the Scientific Equipment item meets the Acceptance Requirements. UCL shall notify Supplier in writing within 10 Business Days (or such other period as the Parties may agree in writing) of the date on which Supplier first makes the Scientific Equipment item available for testing by UCL whether or not the Scientific Equipment item meets, in UCL's reasonable opinion, the Acceptance Requirements. If, following such tests and checks, UCL is of the reasonable opinion that the Scientific Equipment item does not meet some or all of the Acceptance Requirements, then UCL may terminate this Agreement with immediate effect by giving notice of such termination to Supplier in writing, whereupon Supplier shall refund to UCL all sums paid by UCL to Supplier under this Agreement and no further amounts shall be payable by UCL to Supplier hereunder.
- 8.7 Each item of Scientific Equipment supplied, installed, set-up, configured and calibrated by Supplier shall only be taken to be accepted at the time UCL issues a written acceptance confirmation (which may be given by email) stating that it is satisfied the Scientific Equipment item meets the Acceptance Requirements.
- 9 **Maintenance Services**
- Section 3B of the Cover Sheet sets out details of the Maintenance Services to be provided by Supplier. Supplier shall perform the Maintenance Services from the services start date as set out in Section 3B of the Cover Sheet. Supplier shall cease to provide the Maintenance Services on the services end date as set out in Section 3B of the Cover Sheet. Each Party shall comply with its obligations under Section 3B of the Cover Sheet in respect of such Maintenance Services. Supplier shall provide the Maintenance Services through the means, on the days, and during the hours, set out in Section 3B of the Cover Sheet.
- 10 **Support Services**
- 10.1 Section 3C of the Cover Sheet sets out details of the Support Services to be provided by Supplier. Supplier shall perform the Support Services from the services start date as set out in Section 3C of the Cover Sheet. Supplier shall cease to provide the Support Services on the services end date as set out in Section 3C of the Cover Sheet. Each Party shall comply with its obligations under Section 3C of the Cover Sheet in respect of such Support Services. Supplier shall provide the Support Services through the means, on the days, and during the hours, set out in Section 3C of the Cover Sheet.
- 10.2 In particular, where UCL notifies Supplier of any incident, issue or problem affecting the operation, functionality and/or use of any item of Scientific Equipment or that otherwise falls within the scope of the Support Services (**Incident**), Supplier shall (i) provide an initial response describing the Incident and its high-level plan for resolving the Incident; and (ii) resolve the Incident, in each case in accordance with the agreed arrangements relating to the Support Services described in Section 3C of the Cover Sheet.
- 11 **Supply and installation of Spare or Replacement Parts**
- 11.1 Where, as part of the Support Services and/or Maintenance Services, Supplier supplies and/or installs in any item of Scientific Equipment any Spare or Replacement Parts, Supplier shall, in addition to the further requirements of this Agreement (and, in particular, the requirements of Clause 5) and unless otherwise agreed with UCL in writing (which may be by email):
- only supply and install Spare or Replacement Parts manufactured and sold by the original equipment manufacturer;
 - only replace a part or component with a Spare or Replacement Part that is of identical type and specification to the part or component that is being replaced;
 - ensure that the installation and replacement of the part or component with the Spare or Replacement Part is conducted in accordance with the original equipment manufacturer's recommended processes and techniques;
 - ensure that no damage is caused to the relevant Scientific Equipment item, or data is lost, as a result of the replacement of the part or component with the Spare or Replacement Part; and
 - ensure that, following the replacement of the part or component with the Spare or Replacement Part, the Scientific Equipment item is, where necessary, tested, recommissioned, recalibrated and reconfigured and returned to UCL in a fully operational and functional state and that the Scientific Equipment item operates properly, accurately and without error.
- 12 **Training Services**
- Section 3D of the Cover Sheet sets out details of the Training Services to be provided by Supplier. Each Party shall comply with its obligations under Section 3D of the Cover Sheet in respect of such Training Services. Supplier shall provide the Training Services through the means, on the day(s), and during the hours, set out in Section 3D of the Cover Sheet.
- 13 **Problems with the Equipment or Services**
- 13.1 Save as may be expressly agreed by the Parties in writing, UCL will not be deemed to have accepted any item of Scientific Equipment or any Set-up and Configuration Services other than in accordance with the acceptance process set out in Clause 8. For Spare or Replacement Parts and each of the Support Services, Maintenance Services and Training Services, UCL will not be deemed to have accepted:
- any such Spare or Replacement Parts until UCL has had a reasonable amount of time to inspect them following the later of delivery and installation; and
 - any such Services (including any Deliverables) until UCL has had a reasonable amount of time to inspect the results and output of the Services (including any Deliverables) following performance.
- 13.2 Notwithstanding any other provision of this Agreement, acceptance of any of the Equipment items or Services shall not prejudice any of UCL's rights under this Agreement with respect to any latent defect that UCL only becomes aware of later or otherwise, including with respect to the requirements set out in Clause 5.1 and in the Cover Sheet.
- 13.3 In particular, if any item of Equipment or Services (including any Deliverables) are not supplied or performed in accordance with the provisions of this Agreement then UCL may, in addition to its other rights (and irrespective of whether or not UCL has accepted such Equipment and/or Services pursuant to Clause 8, this Clause 13 or otherwise):
- refuse to accept any subsequent delivery of Equipment or Services (including any Deliverables) which Supplier attempts to make;
 - require a refund from Supplier of sums paid in advance for the Equipment or Services that Supplier has not provided;
 - recover from Supplier any costs incurred by UCL in obtaining substitute Equipment or Services from a third party;
 - require Supplier to repair the Equipment or to supply replacement Equipment or Services (including Deliverables) in accordance with this Agreement;
 - claim damages for any additional costs, loss or expenses incurred by UCL which are in any way attributable to Supplier's failure to carry out its obligations under this Agreement; and/or
 - terminate this Agreement subject to and in accordance with Clause 26.4 and require the repayment of any part of the Charges that UCL has paid Supplier for the Equipment and Services.
- 14 **Charges**
- 14.1 The Charges are set out in Section 4 of the Cover Sheet.
- 14.2 The Charges for the Equipment and Services will apply irrespective of any charges that Supplier may include on any quotation, offer, confirmation of order or similar document.
- 14.3 All Charges payable under this Agreement are:
- exclusive of any applicable value added tax (which will be payable by UCL subject to UCL receiving a valid value added tax invoice from Supplier); and
 - inclusive of all charges for packaging, packing, insurance and delivery of the Equipment and any duties, taxes or levies other than value added tax.
- 14.4 Details of the Charges UCL pays Supplier for the Equipment and/or Services under this Agreement shall be treated by Supplier as information of a confidential nature.

- 14.5 The Charges payable by UCL to Supplier shall be inclusive of all out-of-pocket expenses and other costs which may be incurred by Supplier or any Supplier Personnel in connection with the supply of Equipment and/or performance of the Services.
- 14.6 Each of UCL and Supplier shall bear its own costs and expenses incurred in respect of its compliance with its obligations under this Agreement.
- 15 Payment**
- 15.1 The invoicing and payment arrangements for the Equipment and each of the Services are set out in Section 4 of the Cover Sheet. All invoices must be sent by Supplier to: apinvoices@ucl.ac.uk.
- 15.2 Save as expressly set out otherwise in the Cover Sheet, UCL will pay all undisputed sums set out in an invoice within 30 days of receiving it and UCL will make payment in pounds sterling.
- 15.3 Each invoice submitted under this Agreement must refer to the Equipment supplied and/or Services performed, as applicable, and must state the unique UCL purchase order number to which it relates.
- 15.4 UCL may withhold payment of any disputed sums and UCL may deduct from any monies UCL owes Supplier under this Agreement any monies Supplier owes UCL.
- 15.5 If payment is not made when due under this Agreement pursuant to this Clause 15, Supplier may charge interest at 3% per annum above the base rate of Barclays Bank at the time on all such unpaid amounts in relation to the period between the date payment becomes overdue and the date payment is made in full.
- 16 Intellectual Property Rights**
- 16.1 Save as otherwise expressly set out in this Agreement (including in these Terms) and subject to Clause 16.6: (i) the Intellectual Property Rights created by a Party under or in connection with this Agreement shall vest in and remain with that Party at all times; and (ii) neither Party shall, by virtue of this Agreement, obtain any rights to use, or any other rights in or to, any Intellectual Property Rights of the other Party.
- 16.2 In respect of this Agreement (and notwithstanding Clause 16.1, but subject to Clause 16.6):
- (a) all Foreground Intellectual Property is to be owned by UCL and Supplier hereby assigns to UCL (by way of present and, where appropriate, future assignment) with full title guarantee all Foreground Intellectual Property;
- (b) Supplier shall procure, to the extent permitted by the Regulations, that the authors of the Foreground Intellectual Property have irrevocably and unconditionally waived all moral rights and any rights of a like nature vesting in them in any part of the world in connection with their authorship of the whole or any part of the Foreground Intellectual Property, including the right to be identified as the author of the Foreground Intellectual Property (or any part of it) and the right not to have the Foreground Intellectual Property (or any part of it) subjected to derogatory treatment;
- (c) Supplier shall do all such further acts and execute such further deeds and documents as may be necessary or desirable to fully and effectively vest in UCL the rights specified in this Clause 16.2 and in order for UCL to apply for, and obtain, registrations in respect of such rights; and
- (d) UCL grants to Supplier a limited, royalty-free, non-exclusive and personal licence to use the Foreground Intellectual Property assigned to UCL pursuant to this Clause 16.2 for the sole purpose of performing the Services (including preparing the Deliverables) under and in accordance with the terms and conditions of this Agreement.
- 16.3 In respect of this Agreement:
- (a) all Background Intellectual Property is and shall remain the property of the Party owning it (or, where applicable, the third party from whom its right to use the Background Intellectual Property has derived) and nothing in this Agreement shall operate to transfer any Background Intellectual Property of one Party to the other Party;
- (b) UCL grants to Supplier a limited, royalty-free, non-exclusive and personal licence to use its Background Intellectual Property for the sole purpose of Supplier performing the Services (including preparing the Deliverables) under and in accordance with the terms and conditions of this Agreement; and
- (c) Supplier grants to UCL a royalty-free, worldwide, non-exclusive, perpetual and irrevocable licence to use (and allow others to use) its Background Intellectual Property to the extent required for UCL to use and exploit (and allow others to use and exploit) the Deliverables (including the Foreground Intellectual Property) in any manner of UCL's choosing.
- 16.4 Supplier warrants and undertakes to UCL that it has the right to (i) assign to UCL the Foreground Intellectual Property in accordance with Clause 16.2; and (ii) licence UCL to use and exploit (and to allow others to use and exploit) its Background Intellectual Property in accordance with Clause 16.3.
- 16.5 In respect of this Agreement:
- (a) Supplier undertakes that the Equipment and Services (including any Deliverables and Software) Supplier supplies to UCL and any person's use of the same shall not infringe any rights (including any Intellectual Property Rights) of any third party; and
- (b) Supplier shall indemnify UCL against all costs (including the cost of defending any legal action brought against UCL), damages, losses and expenses suffered or incurred by UCL arising out of or in connection with any claim made or threatened alleging that the Equipment and/or Services (including, for the avoidance of doubt, any Deliverables and Software) and/or the use or receipt of the same (or any part of them) constitutes an infringement or other violation of any rights (including any Intellectual Property Rights) of any third party,
- provided that the foregoing undertaking and indemnity shall not apply to the extent that the alleged infringement or other violation of any rights (including any Intellectual Property Rights) of a third party relates to any Background Intellectual Property of UCL that has been supplied or made available by UCL to Supplier for use in connection with the performance of the Services (where applicable).
- 16.6 Nothing in this Agreement shall operate to transfer ownership of any of the Intellectual Property Rights subsisting in any Software, which shall remain with Supplier or the relevant third party licensor(s), as applicable.
- 16.7 For the purposes of these Terms:
- (a) **Background Intellectual Property** means, in respect of a Deliverable, any Intellectual Property Rights subsisting in the Deliverable other than any Foreground Intellectual Property; and
- (b) **Foreground Intellectual Property** means, in respect of a Deliverable, any Intellectual Property Rights subsisting in the Deliverable that are obtained by, or that are created by or on behalf of, Supplier exclusively in the performance of the Services under this Agreement.
- 16.8 Nothing in this Agreement shall give Supplier the right to (and Supplier shall not and shall ensure that its Associated Entities shall not): (i) use UCL's name or any of UCL's trademarks or logos; or (ii) refer to or name UCL as a client, customer or user of Supplier. The use of any of UCL's name, trademarks and/or logos, and the reference to or naming of UCL as a client, customer or user of Supplier, shall be subject to the Parties entering into a separate written agreement (signed by the Parties) in respect of such matters, which UCL may do, or may refuse to do, in its absolute discretion.
- 17 UCL Premises**
- 17.1 In relation to UCL Premises that UCL permits Supplier to enter to enable it to supply the Equipment or carry out the Services, Supplier shall ensure that all persons supplying the Equipment or carrying out the Services on such premises:
- (a) comply with the security and safety policies and regulations from time to time in force on those premises and all instructions of UCL notified to Supplier in relation to its access to such premises (including the removal of any persons where required by UCL); and
- (b) leave such premises in no worse condition than the condition of the premises prior to the commencement of the supply of Equipment and/or provision of the Services (fair wear and tear excepted).
- 17.2 UCL reserves the right to refuse entry to any of the UCL Premises to any person(s) supplying Equipment or carrying out Services where UCL considers such admission to be undesirable, such refusal not to be vexatiously or spuriously exercised.
- 18 UCL Assets**
- 18.1 Supplier shall be responsible for providing at its own cost and expense all the assets, premises, equipment and tools necessary to perform the Services or supply the Equipment in accordance with this Agreement, other than any UCL Assets or any UCL Premises.
- 18.2 UCL may, in its discretion, supply Supplier with information, materials, UCL Data, assets, equipment and tools in connection with Supplier's supply of Equipment and/or provision of Services to UCL (**UCL Assets**). All UCL Assets are and will remain at all times property of UCL and Supplier shall return all UCL Assets (and all copies Supplier has made of all or any part of UCL Assets) to UCL on demand and, in any event, on termination of this Agreement. Supplier may use UCL Assets only for the purpose of supplying Equipment and/or providing Services to UCL and Supplier shall:
- (a) maintain UCL Assets in good order and condition and make good any loss or damage to UCL Assets; and
- (b) comply with any and all reasonable instructions, conditions and security requirements in relation to its use of UCL Assets as shall from time to time be notified in writing (including by email) to Supplier by UCL.
- 19 Data protection**
- 19.1 This Agreement may require the Processing of Personal Data by Supplier on behalf of UCL. In such circumstances, UCL (i) alone shall determine the purposes for which and the manner in which Personal Data will be Processed by Supplier on behalf of UCL under this Agreement; and (ii) shall be the Controller and Supplier shall be UCL's Processor in respect of all such Personal Data.
- 19.2 Where, under or in connection with this Agreement, Supplier Processes Personal Data on behalf of UCL, Supplier shall Process Personal Data on behalf of UCL in connection with the provision of the Equipment and/or Services under this Agreement for the duration of this Agreement. The Personal Data Supplier Processes will be Personal Data collected by or provided to Supplier in connection with the provision of the Equipment and/or Services and, unless otherwise stated in UCL's purchase order or confirmatory email, as applicable, for this Agreement will:
- (a) be Personal Data of UCL's staff and/or students; its customers', contractors' or commercial partners' staff; and/or other individuals that are the subject of all or any of the Equipment and/or Services; and
- (b) consist of non-sensitive types of Personal Data, such as the Data Subjects' names, addresses and email addresses; in some cases more sensitive types of Personal Data, such as health details and criminal convictions data; together with any other types of Personal Data that are required to be Processed in connection with the provision of the Equipment and/or Services.
- 19.3 Where under or in connection with this Agreement, Supplier Processes Personal Data on behalf of UCL as its Processor, Supplier shall:
- (a) comply with its obligations as a Processor under the Data Protection Laws to which Supplier is subject;
- (b) Process the Personal Data only (i) on the written instructions of UCL and to the extent reasonably necessary for the performance by Supplier of its obligations under this Agreement; or (ii) as otherwise required by any law to which Supplier is subject, in which case Supplier shall inform UCL of that legal requirement before Processing the Personal Data (unless that law, on important grounds of public interest, prohibits Supplier from informing UCL);
- (c) immediately inform UCL if, in its opinion, Processing the Personal Data in accordance with a written instruction received from UCL or in the performance of its obligations under this Agreement infringes Data Protection Laws to which either UCL or Supplier (in its capacity as a Processor) is subject;

- (d) not sell the Personal Data;
- (e) not disclose the Personal Data to any person except as required or permitted by this Agreement or UCL's prior written consent;
- (f) ensure that all persons authorised by Supplier to Process the Personal Data (including Supplier Personnel) (i) Process the Personal Data in accordance with the provisions of this Agreement and, in particular, this Clause 19.3; and (ii) are under an appropriate contractual or other legal obligation to keep the Personal Data confidential;
- (g) taking into account the state of the art, the nature, scope, context and purposes of the Processing and the risks to Data Subjects, implement appropriate technical and organisational measures to ensure the security of the Personal Data and prevent Personal Data Breaches;
- (h) not engage another Processor to Process the Personal Data on behalf of UCL (**Sub-processor**) except with UCL's prior written consent;
- (i) prior to engaging a Sub-processor, enter into a written contract with the Sub-processor that imposes on the Sub-processor obligations that are the same as, or more onerous than, the obligations imposed on Supplier under this Clause 19. Supplier shall remain fully liable and responsible for all acts and omissions of its Sub-processors and the acts and omissions of those employed or engaged by its Sub-processors as if they were its own;
- (j) not transfer or Process the Personal Data outside the UK, nor disclose the Personal Data to any party located outside the UK, except with UCL's prior written consent. Where such consent is given by UCL, Supplier shall take such actions and enter into such written agreements as UCL may require in order to help ensure that such transfer, disclosure, or Processing complies with the Data Protection Laws to which UCL is subject;
- (k) provide such assistance and co-operation as UCL may require from time to time in relation to the Personal Data to help UCL comply with its obligations under the Data Protection Laws to which it is subject, including its obligations in relation to: (i) keeping Personal Data secure; (ii) dealing with Personal Data Breaches; (iii) carrying out data protection impact assessments; and (iv) dealing with requests from Data Subjects to exercise their legal rights in relation to their Personal Data. This shall include Supplier putting in place appropriate technical and organisational measures and entering into such other written agreements as may be required by UCL from time to time to enable UCL to comply with the Data Protection Laws to which it is subject;
- (l) notify UCL without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach in respect of the Personal Data;
- (m) at UCL's option, permanently and securely delete or return to UCL all the Personal Data promptly on termination of this Agreement and delete any existing copies of the Personal Data save to the extent that Supplier is required to retain copies of the Personal Data by any law to which Supplier is subject;
- (n) make available to UCL all information necessary to demonstrate its compliance with its obligations under this Clause 19 and allow for and contribute to audits, including inspections, conducted by UCL or its representatives;
- (o) co-operate with and assist UCL's dealings with Regulatory Authorities to the extent the same are connected to the Processing of Personal Data under or in connection with this Agreement; and
- (p) co-operate with and assist the data protection officer(s) appointed by UCL in connection with the Processing of Personal Data under or in connection with this Agreement.
- 19.4 In respect of the Personal Data Supplier Processes on behalf of UCL as its Processor under this Agreement, Supplier shall notify UCL of any:
- (a) complaint, notice or other communication it receives that relates to the Personal Data or to Supplier's or UCL's compliance with the Data Protection Laws to which it is subject; or
- (b) request it receives from a Data Subject to exercise its legal rights in relation to the Personal Data,
- within 48 hours of Supplier's receipt of the complaint, notice, communication or request. To the extent permitted by law, Supplier shall not respond to the complaint, notice, communication or request without first consulting with UCL.
- 19.5 Supplier acknowledges and understands that Personal Data relating to Supplier's employees, agents and contractors may be Processed by UCL in connection with this Agreement as a Controller. Supplier shall inform each such Data Subject that its Personal Data may be Processed by UCL in connection with this Agreement in the manner and for the purposes described in (i) UCL's Privacy Notice, available at <https://www.ucl.ac.uk/legal-services/privacy/general-privacy-notice>; and (ii) any other privacy notices applicable to the Data Subject which are provided or made available to Supplier by UCL from time to time.
- 19.6 Supplier shall indemnify UCL against all costs (including the costs of defending legal action brought against UCL), damages, losses and expenses, suffered or incurred by UCL arising out of or in connection with a breach by Supplier of this Clause 19.
- 20 **Confidentiality**
- 20.1 Each Party shall hold in confidence all Confidential Information of the other Party.
- 20.2 Neither Party shall disclose to any third party any Confidential Information in relation to the other Party save as expressly set out in Clause 20.4 or with the prior express written permission of the other Party.
- 20.3 The provisions of Clauses 20.1 and 20.2 shall not apply to any information which:
- (a) is or becomes public knowledge other than by breach of this Clause 20;
- (b) is already in the possession of a Party without restriction in relation to disclosure before the date of its receipt from the other Party or one of its Associated Entities; or
- (c) is received from a third party (who, for the avoidance of doubt, is not an Associated Entity of the receiving Party) who lawfully acquired or developed it and who is under no obligation restricting its disclosure.
- 20.4 A Party may disclose Confidential Information in relation to the other Party:
- (a) to those of its officers, employees, professional advisers (including its auditors and legal advisers), insurers, Associated Entities, agents or sub-contractors, as may be reasonably necessary for the purpose of fulfilling its obligations under this Agreement or, in the case of professional advisers and insurers, for use in their professional capacity, provided that before any such disclosure that Party shall make such officers, employees, professional advisers, insurers, Associated Entities, or agents or sub-contractors aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those persons with them; or
- (b) where such disclosure is required by any law, court order or Regulatory Authority.
- 20.5 Without prejudice to the other rights of the disclosing Party, in the event of an unauthorised disclosure or use of its Confidential Information occurring directly or indirectly through disclosure made to the receiving Party, the receiving Party shall (as soon as it becomes aware of the same) notify the disclosing Party of such unauthorised disclosure and use all reasonable endeavours to assist the disclosing Party in recovering and preventing the use of, dissemination, sale or other disposal of such Confidential Information.
- 20.6 No media releases, public announcements or public disclosures by Supplier or its employees, agents or sub-contractors relating to this Agreement may be made without the prior written approval of UCL.
- 21 **Freedom of Information**
- 21.1 Supplier acknowledges that UCL is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and co-operate with UCL (at Supplier's expense) to enable UCL to comply with these information disclosure requirements.
- 21.2 In particular, in respect of this Agreement, Supplier shall:
- (a) transfer any Request for Information to UCL as soon as reasonably practicable after receipt and in any event within three Business Days of receiving the Request for Information;
- (b) provide UCL with a copy of all information in its possession or power in the form that UCL requires within five Business Days of UCL requesting that information; and
- (c) provide all necessary assistance as reasonably requested by UCL to enable UCL to respond to the Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 21.3 UCL shall, in respect of this Agreement, be responsible for determining at its absolute discretion whether any information:
- (a) is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations; and
- (b) is to be disclosed in response to a Request for Information.
- 21.4 In no event shall Supplier respond directly to a Request for Information unless expressly authorised to do so by UCL.
- 21.5 Supplier acknowledges that UCL may, acting in accordance with the Cabinet Office's Freedom of Information Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, July 2018), be obliged under FOIA or the Environmental Information Regulations to disclose information in respect of this Agreement without consulting with Supplier or following consultation with Supplier and having taken its view into account.
- 22 **Business continuity**
- Supplier shall have in place a business continuity plan and a disaster recovery plan that is appropriate in the context of its obligations under this Agreement and its business and shall implement it in accordance with its terms.
- 23 **Compliance**
- 23.1 Supplier shall:
- (a) ensure that it has the legal right to supply the Equipment to UCL and/or perform the Services for UCL;
- (b) ensure that it has obtained and shall maintain for the duration of this Agreement all requisite regulatory and supervisory consents, licences, registrations and approvals necessary for it to carry out its obligations under this Agreement; and
- (c) perform all of its obligations under this Agreement in accordance with (i) the Terms; (ii) Good Industry Practice; and (iii) the Regulations (and all changes thereto).
- 23.2 Supplier shall (i) comply, and shall procure that its employees, agents and sub-contractors comply, with the UCL Policies; and (ii) report to UCL any alleged or suspected violation of any of the UCL Policies as soon as reasonably practicable.
- 23.3 Supplier shall:
- (a) comply with all Regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with such ethics, anti-bribery and anti-corruption policies of UCL from time to time in force as are provided to Supplier from time to time;
- (d) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all Regulations relating to anti-bribery (including the UK Bribery Act 2010) and this Clause 23.3, and will enforce them where appropriate;
- (e) promptly report to UCL any request or demand for any undue financial or other advantage of any kind received by Supplier in connection with the performance of this Agreement; and

- (f) ensure that any person associated with Supplier who is providing any item of Equipment and/or the Services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Supplier in this Clause 23.3 (**Relevant Terms**). Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to UCL for any breach by such persons of any of the Relevant Terms.
- 23.4 For the purposes of Clause 23.3:
- (a) the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively; and
- (b) a person associated with Supplier includes any sub-contractor of Supplier.
- 23.5 In performing its obligations under this Agreement, Supplier shall, and (if applicable) shall ensure that each of its subcontractors shall, comply with the Modern Slavery Act 2015. In addition, Supplier represents, warrants and undertakes that:
- (a) it conducts its business in a manner that is consistent with the Modern Slavery Act 2015; and
- (b) neither Supplier nor any of its officers, employees or other persons associated with it (i) has been convicted of any offence involving slavery and human trafficking; and (ii) has been or is the subject of any 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 human trafficking.
- 23.6 Supplier shall, in respect of this Agreement, implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains. In addition, in respect of this Agreement UCL permits Supplier to subcontract its obligations, Supplier shall implement an appropriate system of due diligence, audit and training designed to ensure compliance with the Modern Slavery Act 2015.
- 23.7 Supplier shall notify UCL as soon as it becomes aware of:
- (a) any breach, or potential breach, of the Modern Slavery Act 2015; and/or
- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.
- 23.8 Supplier shall:
- (a) maintain a complete set of records to trace the supply chain of all items of Equipment and/or Services (including Deliverables), as applicable, provided to UCL under or in connection with this Agreement;
- (b) implement annual supplier and subcontractor audits, either directly or through a third party auditor to monitor compliance with the Modern Slavery Act 2015;
- (c) implement a system of training for its employees to ensure compliance with the Modern Slavery Act 2015; and
- (d) keep a record of all training offered and completed by its employees to ensure compliance with the Modern Slavery Act 2015 and shall make a copy of the record available to UCL on request.
- 23.9 Supplier shall indemnify UCL against any losses, liabilities, damages, costs (including legal fees) and expenses suffered and/or incurred by, and/or awarded against, UCL as a result of any breach of the Modern Slavery Act 2015.
- 23.10 Supplier shall, comply with the Equality Act 2010, and any subordinate legislation made under that act from time to time, together with any guidance and/or codes of practice issued in relation to such legislation (including the Equality and Human Rights Commission Employment Statutory Code of Practice as amended from time to time). In addition, Supplier shall in respect of this Agreement:
- (a) create a working environment in which all of its employees, agents and sub-contractors are able to make best use of their skills free from discrimination and/or harassment;
- (b) ensure that all employees, agents and sub-contractors treat UCL's visitors, students, clients, suppliers, prospective, current and former staff members and any other persons they come into contact with while supplying any item of Equipment and/or providing Services equally and without discrimination; and
- (c) comply with such equal opportunities and non-discrimination policies of UCL as provided to Supplier from time to time.
- 23.11 Supplier shall not engage in any activity, practice, or conduct which would constitute a UK or foreign tax evasion facilitation offence under the UK Criminal Finances Act 2017 and shall immediately report to UCL any request or demand from a third party to facilitate the evasion of tax, or any concerns that such a request or demand may have been made.
- 23.12 A breach of any one or more of Clauses 23.3 to 23.11 (inclusive) by Supplier shall be deemed to be an irremediable material breach for the purposes of Clause 26.4.
- 24 **Real Living Wage**
- 24.1 In respect of this Agreement, and except in relation to volunteers or apprentices or where specifically agreed in writing with UCL (which may be by email), Supplier shall:
- (a) ensure that the Supplier Personnel who are directly employed or engaged by Supplier or one of its Associated Entities; and
- (b) use reasonable endeavours to ensure that the Supplier Personnel who are employed or engaged on any other basis (including Supplier Personnel who are employed or engaged by any of Supplier's sub-contractors),
- are paid no less than the Real Living Wage
- 24.2 For the purposes of this Clause 24, the **Real Living Wage** means, in respect of each member of Supplier Personnel engaged in the carrying out of any of Supplier's obligations under this Agreement, the higher of:
- (a) any statutory minimum wage (such as the UK's national living wage) that applies in respect of the member of Supplier Personnel pursuant to the Regulations (as amended from time to time); and
- (b) any real living wage (or similar living wage that is intended to adequately cover necessary living costs) that, by virtue of the location from which the member of the Supplier Personnel performs their role in respect of this Agreement, applies to the member Supplier Personnel (as amended from time to time). For these purposes (i) the UK's "London Living Wage" shall be a real living wage and shall apply to any member of the Supplier Personnel that spends the majority of their time working from the City of London or Greater London; and (ii) the UK's "Real Living Wage" shall be a real living wage and shall apply to any member of the Supplier Personnel that spends the majority of their time working elsewhere in the UK, as each calculated and updated by the Resolution Foundation (or any successor organisation) from time to time.
- 25 **Adverse Credit Scoring**
- If UCL identifies at any time that Supplier is subject to an Adverse Credit Scoring, UCL may exercise one or both of the following options:
- (a) require that Supplier negotiate in good faith an amendment to this Agreement to the satisfaction of UCL (in its absolute discretion) that alleviates the risk presented to UCL of the Adverse Credit Scoring; and/or
- (b) if no such amendment is made to this Agreement within 30 days, or if UCL chooses not to require that Supplier negotiate, terminate this Agreement by giving Supplier not less than 14 days' prior written notice of such termination.
- 26 **Term and Termination**
- 26.1 This Agreement shall commence on the date that it is executed (i.e. the date that UCL signs it following signature by the Supplier, or vice versa) and shall remain in full force and effect until terminated in accordance with the provisions of this Agreement or otherwise in law and equity.
- 26.2 This Agreement shall automatically terminate on Initial Term End Date (the period from the date that this Agreement is executed up to the Initial Term End Date being the **Initial Term**), except that:
- (a) UCL may extend the term of this Agreement at the end of the Initial Term for a period of 12 months (**First Extension Term**) by giving notice of the extension to Supplier not less than 30 days prior to the end of the Initial Term. Where UCL extends the term of this Agreement pursuant to this Clause 26.2(a) this Agreement shall, subject to earlier termination in accordance with the provisions of this Agreement or otherwise in law or equity, remain in full force and effect until the end of the First Extension Term whereupon this Agreement shall, subject to Clause 26.2(b), terminate; and
- (b) UCL may extend the term of this Agreement at the end of the First Extension Term for a period of 12 months (**Second Extension Term**) by giving notice of the extension to Supplier not less than 30 days prior to the end of the First Extension Term. Where UCL extends the term of this Agreement pursuant to this Clause 26.2(b) this Agreement shall, subject to earlier termination in accordance with the provisions of this Agreement or otherwise in law or equity, remain in full force and effect until the end of the Second Extension Term whereupon this Agreement shall terminate.
- 26.3 UCL may immediately terminate this Agreement without cause and at any time by giving prior written notice of such termination to Supplier.
- 26.4 Either Party may terminate this Agreement by giving notice to the other Party on or at any time after the occurrence of any of the following events:
- (a) the other Party commits a material breach of any term(s) of this Agreement which breach is irremediable or (if such breach is remediable) that Party fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other Party repeatedly breaches any of the terms this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
- (c) a receiver, liquidator or administrator is appointed for the other Party or the other Party passes a resolution for the appointment of a liquidator (other than (in any such case) a voluntary winding-up of a solvent company for the purposes of amalgamation or reconstruction); an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party or notice of intention to appoint an administrator is given by the other Party or its directors/partners or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986); the other Party takes steps to enter into a company voluntary arrangement, a scheme of arrangement under Part 26 Companies Act 2006 or any analogous compromise or arrangement (whether formal or informal) with any of its creditors (other than (in any such case) a voluntary winding-up of a solvent company for the purposes of amalgamation or reconstruction); any substantial part of the assets of the other Party is the object of attachment, sequestration or other type of comparable proceeding; the other Party is unable or admits in writing its inability to pay its debts as they fall due; or the other Party suffers or takes any similar or analogous action in any jurisdiction in consequence of debt.
- 26.5 On termination of this Agreement (i) Supplier will, if required by UCL, fulfil any part of this Agreement that is unfulfilled at the date of termination; and (ii) Supplier must return to UCL all property belonging to UCL (including any UCL Assets) then in Supplier's possession.
- 26.6 The Cover Sheet and Clauses 2, 3, 5.1(e), 5.1(f), 5.2, 5.3, 5.10, 7, 13, 14, 15, 16, 18.2, 19, 20, 21, 23.9, 26.5, 26.6, 26.7, 28, 30 and 31 and the Appendix to these Terms shall survive the termination of this Agreement as will any other provision which by its nature is intended to survive termination.
- 26.7 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

- 27 **Insurance**
Supplier shall maintain, and Supplier shall ensure that Supplier's sub-contractors maintain, adequate and valid public liability, professional indemnity and product liability insurance cover with a reputable insurer to cover Supplier's potential liability to UCL under this Agreement. Supplier shall, and shall procure that its employees, sub-contractors and other suppliers shall, comply with all obligations and meet all conditions of its insurance policies listed in this Clause 27 and shall not do or omit to do, nor permit or suffer to be done or omitted, anything which may or does invalidate any of those insurance policies or which may or does delay or prevent the payment of any insurance monies payable under those insurance policies. In particular, Supplier shall ensure that it pays all premiums, excesses and other sums payable in accordance with its obligations under each such policy. In addition, on UCL's request, Supplier shall promptly provide full details of such cover and proof of the payment of premiums to UCL.
- 28 **Liability**
28.1 Nothing in this Agreement shall exclude or limit (i) a Party's liability for death or personal injury arising from its negligence; (ii) a Party's liability for fraud or fraudulent misrepresentation; (iii) a Party's liability for any other liability that cannot be limited or excluded by law; and (iv) Supplier's liability under Clauses 5.2, 5.3, 7, 16, 19, 20, 23.3 to 23.12 (inclusive) and 28.4 and the Appendix to these Terms.
28.2 Subject to Clause 28.1, neither Party shall be liable to the other for any indirect or consequential loss or indirect or consequential damage under or in connection with this Agreement.
28.3 Subject to Clause 28.1, each Party's total aggregate liability to the other Party under or in connection with this Agreement (whether such liability arises under any statute or in contract, tort (including negligence) or otherwise) shall be limited to an amount equal to 200% of the total aggregate Charges paid and/or payable by UCL to Supplier for the Equipment and Services under this Agreement.
28.4 Supplier shall indemnify UCL against all costs (including the cost of defending any legal action brought against UCL), damages, losses and expenses suffered or incurred by UCL arising out of or in connection with any death, personal injury and/or loss of or damage to property: (i) caused by any default of Supplier or any Supplier Personnel in connection with the performance or purported performance of this Agreement; (ii) suffered by any Supplier Personnel in the course of carrying out the Services, supplying the Equipment and/or whilst on any UCL Premises; and/or (iii) caused by any fraud or wilful default by Supplier, its employees or sub-contractors.
- 29 **Force majeure**
29.1 Neither Party shall be liable to the other Party for any delay or failure to perform any obligation under this Agreement to the extent that and for so long as the delay or failure is caused by a Force Majeure Event with effect on and from the date that the Affected Party gives notice to the Non-Affected Party in accordance with Clause 29.2(a), provided that (i) where the Affected Party is Supplier, Supplier has and continues at all times to comply with its obligations under Clause 22; and (ii) the Affected Party complies with the provisions of Clauses 29.2(a), 29.2(b) and 29.2(c).
29.2 Where a Party affected by a Force Majeure Event seeks to rely on the provisions of Clause 29.1 (**Affected Party**), the Affected Party shall:
(a) give notice to the other Party (**Non-Affected Party**) as soon as reasonably possible of:
(i) the details of a Force Majeure Event, including the date it first occurred and its anticipated duration;
(ii) the way in which, and extent to which, the performance of the Affected Party's obligations are likely to be affected by the Force Majeure Event; and
(iii) any action that the Affected Party proposes to take to mitigate the effect of the Force Majeure Event;
(b) regularly update the information provided under Clause 29.2(a) throughout the period during which the performance of its obligations is affected;
(c) use reasonable endeavours in accordance with Good Industry Practice to continue to perform or resume the performance of its obligations under this Agreement, including (where the Affected Party is Supplier) through the proper implementation of its business continuity plan; and
(d) notify the Non-Affected Party (i) that the Force Majeure Event has ended promptly following its ending; and (ii) of the date when it resumes proper performance of the affected obligations in accordance with the provisions of this Agreement.
29.3 Where, in respect of a Force Majeure Event, the Non-Affected Party is UCL and the Force Majeure Event (i) continues for a period of 30 days or more; and (ii) materially affects the performance of this Agreement, then UCL may terminate this Agreement with immediate effect or on a specified date by giving notice of such termination to Supplier.
- 30 **Resolution of disputes**
30.1 All disputes arising under or in connection with this Agreement shall be referred to UCL's Commercial Director and a senior representative nominated by Supplier (**Representatives**) for resolution. The Representatives shall meet to resolve the dispute as soon as reasonably practicable after referral and in any event within seven days of such referral.
30.2 If a dispute is not resolved within 20 days of the dispute first being referred to the Representatives for resolution under Clause 30.1 then the Parties shall be entitled to commence legal proceedings in connection with the dispute or to settle the dispute through any other alternative dispute resolution procedure that the Parties may agree in relation to the dispute.
30.3 The performance of the respective Parties' obligations under this Agreement shall not cease or be delayed by this dispute resolution procedure and each Party shall continue to fulfil its obligations under this Agreement.
30.4 The existence of a dispute and all negotiations connected with such dispute shall at all times be and remain confidential subject to and in accordance with Clause 20. Nothing in this Clause 30 shall prevent either Party at any time from applying for any interim remedy pursuant to Part 25 of the Civil Procedure Rules (including injunctive relief).
- 31 **General**
31.1 Supplier shall not assign or dispose of, or sub-contract, any of Supplier's rights or obligations under this Agreement without UCL's prior written consent.
31.2 Supplier will in all cases act as principal in respect of this Agreement and Supplier shall be responsible and liable to UCL for the acts and omissions of Supplier's employees, agents and sub-contractors. An obligation on Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon Supplier to procure that Supplier's employees, staff, agents and Supplier's sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.
31.3 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.
31.4 Except as otherwise expressly agreed in writing, all remedies available to Supplier or to UCL for breach of this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
31.5 Except as otherwise expressly agreed in writing, nothing in this Agreement shall be construed as giving rise to the relationship of principal and agent or partnership or joint venture.
31.6 No delay or failure by a Party in exercising or enforcing any right or remedy under this Agreement will be deemed to be a waiver of any such right or remedy, nor will that failure operate to bar the exercise or enforcement of such right or remedy at any future time.
31.7 All notices required by this Agreement shall be in writing and shall be sent to the respective Parties at their registered address, or to such other addresses as may be designated by the Parties in writing from time to time in accordance with this Clause 31.7 (i) by hand; (ii) by post, postage prepaid; (iii) by courier service, service fee prepaid; or (iv) by email (provided that a copy of the notice is also sent by post, postage prepaid). All notices shall be deemed received (i) if given by hand, immediately, (ii) if given by post, the third day following posting, (iii) if given by courier service, the third day following dispatch; or (iv) if given by email, the third day following posting of the copy of the notice. This Clause 31.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other formal method of dispute resolution.
31.8 A variation to this Agreement will only be effective if it is recorded in writing and signed by an authorised representative of each of the Parties.
31.9 If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 31.9 shall not affect the validity and enforceability of the rest of this Agreement.
31.10 This Agreement shall be made up of the Cover Sheet, these Terms and any other documents incorporated by reference in the Cover Sheet or these Terms and shall constitute the entire agreement between the Parties in respect of the Equipment and Services purchased under it, to the exclusion of all other terms and conditions which Supplier may purport to apply under any quotation, offer, confirmation of order or similar document.
31.11 This Agreement and any non-contractual obligations arising out of or in connection with the same shall be governed by and construed in accordance with the laws of England and Wales and, except as set out in Clause 31.12, UCL and Supplier hereby submit to the exclusive jurisdiction of the courts of England and Wales in respect of the same.
31.12 If Supplier breaches this Agreement, then Supplier acknowledges and agrees that UCL may bring a claim against Supplier for the breach in any jurisdiction in which Supplier or any of its assets are located.

APPENDIX TO PART TWO: TUPE TRANSFERS

1 Definitions

In this Agreement the additional definitions set out below shall apply:

Employee Liability Information means in respect of each of the Exit Transferring Employees:

- (a) the identity and age of the Exit Transferring Employee;
- (b) those particulars of employment that an employer is obliged to give the Exit Transferring Employee under section 1 of the Employment Rights Act 1996;
- (c) information about any disciplinary action taken against the Exit Transferring Employee and any grievances raised by the Exit Transferring Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the Exit Transferring Employee against the Supplier within the previous two years or where the Supplier has reasonable grounds to believe that such action may be brought against UCL arising out of the Exit Transferring Employee's employment with the Supplier; and
- (e) information about any collective agreement which will have effect after the Exit Transfer Date in relation to the Exit Transferring Employee pursuant to regulation 5(a) of TUPE.

Employment Liabilities means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including reasonable legal and professional costs), expenses and all other liabilities whatsoever;

Entry Transfer Date: the date that Supplier commences provision of any of the Services (or any part of the Services) under this Agreement;

Entry Transferring Employees means those employees of UCL or any Existing Supplier who transfer or purport to transfer to Supplier on the Entry Transfer Date;

Existing Supplier means any third-party service provider currently appointed by, or on behalf of, UCL to provide services the same as or similar to the Services;

Exit Transfer Date means the date at which the Services (or any part of the Services), for whatever reason transfer from Supplier to UCL or any Replacement Service Provider resulting in UCL or a Replacement Service Provider performing services that are the same as or similar to the Services;

Exit Transferring Employees means those employees included in Supplier's Final Staff List;

Replacement Service Provider means any replacement third party service provider appointed by, or on behalf of, UCL to provide services the same as or similar to any of the Services following the expiry or termination of this Agreement or cessation of any of the Services (in each case whether in whole or in part);

Supplier's Final Staff List means the list of all Supplier Personnel engaged in or wholly or mainly assigned to the provision of Services or any part of Services;

Supplier Personnel has the meaning given to that term in Clause 2 of the Terms;

Supplier's Provisional Staff List means a list in an anonymised format prepared and updated by Supplier of all Supplier Personnel engaged in, or wholly or mainly assigned to, the provision of Services or any part of Services at the date of preparation of the list;

Supplier's Staffing Information means, in relation to all persons detailed on Supplier's Provisional Staff List, such information as UCL or the Replacement Service Provider may reasonably request, but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise and the identity of their employer or relevant contracting party;
- (c) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (d) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (e) details of other employment-related benefits including medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
- (f) any outstanding contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims), to include any matters for which Supplier, any of Supplier's Associated Entities and/or any of Supplier's sub-contractors (as applicable) has received a letter before action;
- (g) details of any such individuals on long term sickness absence, maternity or other statutory leave or other long-term absence from work; and
- (h) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals);

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time (including as amended by the Collective Redundancies and Transfer of Undertakings (Protection of

Employment) (Amendment) Regulations 2014) or any other legislation enacted to give effect to Council Directive 23/2001; and

TUPE Entry Terms has the meaning given to that term in paragraph 2.1.

2 Entry provisions

2.1 This paragraph 2 and the definitions "Entry Transfer Date", "Entry Transferring Employees" and "Existing Supplier" (together, the **TUPE Entry Terms**) shall only apply where Section 3E of the Cover Sheet expressly states that the TUPE Entry Terms shall apply in respect of this Agreement.

2.2 The Parties acknowledge that, on the Entry Transfer Date, the Entry Transferring Employees will transfer from UCL and any Existing Supplier to Supplier and the Parties acknowledge and agree that they consider TUPE will apply, with the effect of transferring the contracts of employment (save for any rights and liabilities relating to occupational pension schemes which relate to benefits for old age, invalidity or survivors) of the Entry Transferring Employees to Supplier on the Entry Transfer Date (**Entry Transfer**).

2.3 The Parties agree that they will fully comply with their obligations under TUPE (including their respective obligations to inform and consult) in respect of the Entry Transfer.

2.4 UCL shall indemnify Supplier from and against any and all Employment Liabilities in relation to the Entry Transferring Employees arising as a result of any act or omission of UCL and in respect of or in relation to the period up to the Entry Transfer Date unless such failure is caused by Supplier's failure to comply with its obligations under regulation 13(4) of TUPE.

2.5 Supplier shall indemnify UCL from and against any and all Employment Liabilities:

- (a) in relation to the Entry Transferring Employees arising as a result of any act or omission by Supplier and/or any of Supplier's Associated Entities and in respect of, or in relation to, the period on or after the Entry Transfer Date;
- (b) arising from any proceeding, claim or demand in relation to any failure by Supplier and/or any of Supplier's Associated Entities to comply with its obligations under regulation 13(4) of TUPE; and
- (c) arising from any proceeding, claim or demand in the relation to the termination of employment of any employee who would otherwise have been an Entry Transferring Employee who has objected to the transfer under regulation 4(7) of TUPE in response to any change or proposed change by Supplier or any of Supplier's Associated Entities.

2.6 Supplier shall procure that its employees, agents and successors in title shall promptly:

- (a) take such action in connection with Employment Liabilities as UCL shall from time-to-time reasonably request;
- (b) provide free of charge all such assistance and information as UCL may reasonably request relating to the Employment Liabilities to enable the Employment Liabilities to be pursued;
- (c) subject to any restriction imposed by law, provide UCL, its legal and other advisers with access to all documents, records or other information held by Supplier relating to the Employment Liabilities;
- (d) provide UCL and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist UCL with the preparation of its cases in relation to the Employment Liabilities;
- (e) permit and require such employees as UCL and/or its professional advisers may reasonably request to meet with UCL and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with counsel or experts and/or to attend any court hearing or trial in connection with the Employment Liabilities for so long and as frequently as UCL and/or its legal or other professional advisers may reasonably require;
- (f) provide such other assistance as UCL may reasonably request in order to ensure the due and timely prosecution of the Employment Liabilities;
- (g) resist in connection with the Employment Liabilities any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing UCL and obtaining its agreement to any approval of the request; and
- (h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Employment Liabilities in their possession without first obtaining UCL's consent to such waiver, such consent not to be unreasonably withheld.

3 EXIT PROVISIONS

3.1 This Agreement envisages that, subsequent to the commencement of this Agreement, the identity of the provider of Services (or any part of the Services) may change (whether as a result of the termination or expiry of this Agreement or any of the Services, or any part thereof, or otherwise) resulting in UCL or a Replacement Service Provider performing services that are the same as or similar to the Services (**Exit Transfer**). If an Exit Transfer is a relevant transfer for the purposes of TUPE then, in such event, UCL or a Replacement Service Provider would inherit liabilities in respect of the Exit Transferring Employees. Accordingly, if TUPE applies on an Exit Transfer the provisions of this Appendix shall apply.

3.2 Supplier agrees that:

- (a) as soon as reasonably practicable, but in any event within 20 Business Days of receiving notice of the termination of this Agreement or any part thereof, it shall provide Supplier's Provisional Staff List and Supplier's Staffing Information to UCL or, at the direction of UCL, to a Replacement Service Provider;
- (b) at least 28 Business Days before the Exit Transfer Date or, in the event that the Supplier has less than 35 Business Days' notice of the Exit

Transfer, then as soon as reasonably practicable after receiving notice of the Exit Transfer, Supplier shall prepare and provide to UCL and/or, at the direction of UCL, to the Replacement Service Provider, Supplier's Final Staff List which shall be complete and accurate in all material respects. Supplier's Final Staff List shall identify which of Supplier Personnel named are transferring employees and their:

- (i) pay slip data for the most recent month;
 - (ii) cumulative pay for tax and pension purposes;
 - (iii) cumulative tax paid;
 - (iv) tax code;
 - (v) voluntary deductions from pay; and
 - (vi) bank or building society account details for payroll purposes.
- (c) at least 28 Business Days before the Exit Transfer Date or, in the event that the Supplier has less than 35 Business Days' notice of the Exit Transfer, then as soon as reasonably practicable after receiving notice of the Exit Transfer, the Supplier shall prepare and provide to UCL and/or, at the direction of UCL, to the Replacement Service Provider, the Employee Liability Information, as follows:
- (i) the Employee Liability Information should contain information as at a specified date not more than 14 days before the date on which the information was provided to UCL or the Replacement Service Provider; and
 - (ii) notify UCL or the Replacement Service Provider in writing of any change to the Employee Liability Information since the date on which it was provided.
- (d) UCL shall be permitted to use and disclose Supplier's Provisional Staff List, Supplier's Staffing Information, Employee Liability Information, and Supplier's Final Staff List for informing any Replacement Service Provider, any tenderer or other prospective Replacement Service Provider for any services which are substantially the same type of services (or any part thereof) as the Services; and
- (e) on reasonable request by UCL, Supplier shall provide UCL or at the request of UCL, the Replacement Service Provider, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as UCL reasonably requests.
- 3.3 Supplier warrants and undertakes that the information concerning Supplier Personnel will be true and accurate in all material respects.
- 3.4 From the date referred to in paragraph 3.2(a), Supplier agrees that it shall not without the prior written consent of UCL assign any person to the provision of Services (or the relevant part) which is the subject of an Exit Transfer who is not listed in Supplier's Provisional Staff List and shall not:
- (a) make, propose or permit any changes to the terms and conditions of employment of any employees listed on Supplier's Provisional Staff List;
 - (b) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on Supplier's Provisional Staff List;
 - (c) increase the proportion of working time spent on the Services (or the relevant part) by any of Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed with UCL; or
 - (d) replace any person listed on Supplier's Provisional Staff List or deploy any other person to perform Services (or the relevant part) or increase the number of employees or terminate (other than for gross misconduct, misconduct, poor performance, absence for longer than one month (including absence due to statutory leave)) or give notice to terminate the employment or contracts of any persons on Supplier's Provisional Staff List.
- 3.5 Supplier shall promptly notify UCL, or at the direction of UCL, the Replacement Service Provider, of any notice to terminate employment received from any persons listed on Supplier's Provisional Staff List regardless of when such notice takes effect.
- 3.6 In connection with an Exit Transfer to which TUPE applies:
- (a) Supplier shall, and shall make reasonable endeavours to procure that any of Supplier's Associated Entities shall, perform and discharge all its obligations as an employer in respect of all the Exit Transferring Employees and their representatives for its/their own account up to and including the Exit Transfer Date;
 - (b) Supplier shall indemnify UCL and any Replacement Service Provider in full for and against all Employment Liabilities whatsoever and howsoever arising as a result of any act or omission of Supplier or any of Supplier's Associated Entities and in respect of or in relation to the period up to the Exit Transfer Date unless such failure is caused by UCL or any Replacement Service Provider's failure to comply with its obligations under regulation 13(4) of TUPE;
 - (c) Supplier shall indemnify UCL and any Replacement Service Provider in respect of any claims arising from any act or omission of Supplier in

relation to any other Supplier Personnel who is not an Exit Transferring Employee during any period whether before, on or after the Exit Transfer Date; and

- (d) UCL shall indemnify Supplier from and against any and all Employment Liabilities:
- (i) in relation to the Exit Transferring Employees arising as a result of any act or omission by UCL or any Replacement Service Provider and in respect of or in relation to the period after the Exit Transfer Date;
 - (ii) arising from any proceeding, claim or demand in relation to any failure by UCL or any Replacement Service Provider to comply with its obligations under regulation 13(4) of TUPE; and
 - (iii) arising from any proceeding, claim or demand in relation to the termination of employment of any employee who would otherwise have been an Exit Transferring Employee who has objected to the transfer under regulation 4(7) of TUPE in response to any change or proposed change by UCL or any Replacement Service Provider.
- 3.7 The Parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of an Exit Transfer will be fulfilled.
- 3.8 If at any time on or following termination or expiry of this Agreement and/or the cessation of any of the Services (in each case whether in whole or part) and for whatever reason the contract of employment of any employee of Supplier or any of Supplier's Associated Entities who is not an Exit Transferring Employee has effect as if it were originally made between UCL or any Replacement Service Provider and the employee or it is claimed that such contract has effect (an **Unexpected Employee**) or any liability relating to the employment of any Unexpected Employee (the **Transferring Liability**):
- (a) either Party shall notify the other of such situation promptly upon becoming aware of it;
 - (b) UCL shall, or shall procure that the Replacement Service Provider shall, allow Supplier the opportunity to offer employment (on terms not materially different from those the Unexpected Employee benefited from immediately prior to their transfer to UCL or Replacement Service Provider) to the Unexpected Employee and the opportunity for the Unexpected Employee to accept any such offer;
 - (c) 21 days after notification has been given under paragraph 3.8(a) above or, if earlier, upon receipt of written notice from Supplier that it has withdrawn all offers of employment to the Unexpected Employee or that all such offers have been rejected or that it does not intend to make any such offer, UCL or the Replacement Service Provider (as applicable) may terminate the employment of the Unexpected Employee with immediate effect;
 - (d) subject to UCL or the Replacement Service Provider (as applicable) having complied with paragraphs 3.8(a), 3.8(b) and 3.8(c) and subject to such dismissal taking effect within three months of UCL and/or the Replacement Service Provider (as applicable) becoming aware of the transfer or alleged transfer in respect of an Unexpected Employee, Supplier shall indemnify UCL or the Replacement Service Provider (as applicable) in full on demand for all Employment Liabilities incurred or suffered by UCL or the Replacement Service Provider as a result of the dismissal of the Unexpected Employee and their employment up to the date of dismissal; and
 - (e) Supplier shall indemnify UCL and the Replacement Service Provider (as applicable) in full on demand for all Employment Liabilities arising out of or in connection with any Transferring Liability in respect of an Unexpected Employee.
- 3.9 In the event of an Exit Transfer to which TUPE does not apply, the following provisions shall apply:
- (a) UCL or the Replacement Service Provider may, at its discretion, make to any of the employees listed on Supplier's Provisional Staff List or any Supplier Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
 - (b) when the offer has been made by UCL or the Replacement Service Provider and accepted by any employee or worker, Supplier shall permit the employee or worker to leave their employment, as soon as practicable depending on the business needs of Supplier which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
 - (c) if the employee does not accept an offer of employment made by UCL or the Replacement Service Provider, the employee shall remain employed by Supplier and all claims in relation to the employee shall remain with Supplier; and
 - (d) if UCL or the Replacement Service Provider does not make an offer to any employee on Supplier's Provisional Staff List or any Supplier Personnel, then that employee and all claims in relation to that employee shall remain with Supplier.