

Dated

2018

Collaboration Agreement

between

London Universities Purchasing Consortium

and

Southern Universities Management Services

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This agreement is dated

2018.

Parties

- (1) London Universities Purchasing Consortium, a company incorporated by guarantee and registered in England and Wales with company number 04784719 whose registered office is at Shropshire House, 179 Tottenham Court Road, London, W1T 7NZ (**LUPC**); and
- (2) Southern Universities Management Services, a company incorporated by guarantee and registered in England and Wales with company number 02732244 (registered charity number 1042175) whose registered office is at Reading Enterprise Centre, University Of Reading, Whiteknights, Reading, England, RG6 6BU (**SUMS**);

each a **party** and together the **parties**.

Background

- (A) LUPC is a company limited by guarantee regulated by its memorandum and articles of association. LUPC's objects are to advance education in the UK and to provide a structure for HE and FE institutions, schools and like institutions, to secure value for money in matters related to the effective procurement of goods and services.
- (B) SUMS is a registered charity and is regulated by the Charity Commission for England and Wales. SUMS's charitable objects are to promote the efficiency of the administration of educational charities in direct pursuit of their objects. Southern Universities Purchasing Consortium (**SUPC**) is a business division of SUMS whose primary focus is provide collaborative procurement solutions to its members and to the wider education sector.
- (C) LUPC and SUMS operate two of the four English regional purchasing consortia in higher education. LUPC and SUMS have identified an opportunity to increase collaboration between the two organisations (**Future Collaboration Project**) in order that they are each better able to achieve their objects. This agreement sets out the basis for that collaboration.

Agreed terms

1 Definitions and Interpretation

- 1.1 The following definitions and rules of interpretation in this clause apply in this agreement.

Advisory Board: the advisory board formed by the parties pursuant to clause 2, which is subject to the Terms of Reference.

Agreed Collaboration: has the meaning given in clause 6.2.

Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Commencement Date: the date of this agreement.

Commercially Sensitive Information: information of a commercially sensitive nature relating to either party, its intellectual property rights or its business or which one party has indicated to the other would, if disclosed by the other, cause significant commercial disadvantage or material financial loss.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, members, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how (including procurement and other documents), designs, trade secrets or software of the disclosing party;
 - (b) any information developed by the parties in the course of carrying out this agreement;
 - (c) Personal Data; and
 - (d) any Commercially Sensitive Information,
- in whatever form and whatever media.

Contract Year: a period of 12 months, commencing on the Commencement Date and each anniversary of the Commencement Date.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK which apply to a party relating to the use of Personal Data including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, or any successor legislation and any other directly applicable European Union regulation relating to data protection and privacy.

Data Subject: has the meaning given in the Data Protection Legislation.

Data Subject Request: means an actual or purported request or notice or complaint from or on behalf of a Data Subject exercising rights under the Data Protection Legislation in relation to Personal Data;

Dispute Resolution Procedure: the procedure set out in clause 18.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the relevant party's workforce or the workforce of any of its subcontractors).

ICO: means the UK Information Commissioner's Office, or any successor or replacement body from time to time.

Indemnified Party: has the meaning given in clause 10.1.

Indemnifying Party: has the meaning given in clause 10.1.

Information: has the meaning given under section 84 of FOIA.

Insolvency Event: in respect of a party:

- (a) that party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) that party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over that party;
- (e) the holder of a qualifying floating charge over the assets of that party has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of that party or a receiver is appointed over the assets of that party;
- (g) a creditor or encumbrancer of that party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of that party's assets and such attachment or process is not discharged within 14 days; or
- (h) that party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972 (and any successor or related legislation following the United Kingdom's departure from the European Union), regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which a party is bound to comply.

Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

Personal Data: as defined in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by one party a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud a party;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK.

Representatives: means, in relation to a party, its employees, officers, representatives and advisors.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

SUPC: the business unit within SUMS that is known as the Southern Universities Purchasing Consortium, as more particularly described in Recital (B).

SUPC Council: the engagement and communication forum for SUPC members.

Term: the term of this agreement as described in clause 2.

Termination Date: the date of termination of this agreement.

Terms of Reference: the terms of reference of the Advisory Board, in the form set out in Schedule 1, as amended and updated from time to time in accordance with the provisions of clause 5.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules. References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to **writing** or **written** does not include e-mail or fax.
- 1.9 A reference in this agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.10 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 **Commencement and Term**

- 2.1 This agreement shall take effect on the Commencement Date and shall continue unless and until terminated by either party in accordance with the provisions of this agreement.
- 2.2 The principles of collaboration set out in this agreement shall, in relation to SUMS, apply solely to the business of SUPC, and not other business units within SUMS.

3 **Establishment of an Advisory Board**

- 3.1 LUPC and SUMS will establish the Advisory Board for the purpose of advising the boards of LUPC and SUMS on the implementation and delivery of the Future Collaboration Project.
- 3.2 The Advisory Board will comprise five (5) representatives of each of LUPC and SUMS (together with such other individuals as the parties may agree from time to time). Each of SUMS and LUPC will be entitled to replace their nominated members from time to time by notice in writing to the other party.
- 3.3 The members of the Advisory Board nominated by LUPC will comprise:
- 3.3.1 the director of LUPC;
 - 3.3.2 two (2) members of the LUPC board; and
 - 3.3.3 two (2) members of the LUPC executive committee.
- 3.4 The members of the Advisory Board nominated by SUMS will comprise:
- 3.4.1 the head of SUPC;
 - 3.4.2 two (2) members of the SUMS board; and
 - 3.4.3 two (2) members of the SUPC Council.
- 3.5 Each of LUPC and SUMS will be entitled to appoint alternates for their nominated members of the Advisory Board by notice in writing (which, for the purposes of this clause alone may be by email to the director of LUPC and the head of SUPC respectively) to the other party from time to time, such alternates to be entitled to attend and vote at meetings of the Advisory Board in place of the nominated members appointed pursuant to clauses 3.3 and 3.4.

4 Meetings of the Advisory Board

- 4.1 The parties will procure that the Advisory Board meets not less than three (3) times per year, each such meeting to be held not less than fourteen (14) days before any board meeting of LUPC and SUMS.
- 4.2 The director of LUPC and the head of SUPC shall jointly chair each meeting of the Advisory Board. The director of LUPC and the head of SUPC shall each ensure that an agenda of each meeting of the Advisory Board is circulated to each member of the Advisory Board at least five (5) days before each meeting, and that minutes of each meeting are circulated to each member of the Advisory Board not more than seven (7) days following each such meeting.
- 4.3 The quorum for a meeting of the Advisory Board will be a total of six (6) members of the Advisory Board (or their duly appointed alternates) which shall be made up of three (3) members nominated by each of LUPC and SUMS. The parties will each use reasonable endeavours to ensure that their nominated members of the Advisory Board (or their alternates) are available to attend meetings of the Advisory Board at reasonable times and on reasonable notice.
- 4.4 All recommendations shall be made on a majority basis of those members (or their duly appointed alternates) attending a quorate meeting. Where a recommendation is agreed under this clause the parties will then use their reasonable endeavours to take the recommendation to the next Board meeting of LUPC/SUMS as appropriate for review and determination by that Board (each Board acting in its sole discretion, and the provisions of clause 5.2 shall apply).
- 4.5 If the Advisory Board is unable to reach a majority decision on any recommendation, either party shall be entitled to refer that matter for discussion and agreement between the chairs of LUPC and SUMS Boards. Any joint recommendation by the chairs of LUPC and SUMS Boards will be notified to the Advisory Board, with the recommendation having the same status as if agreed by the Advisory Board under clause 4.4. The parties will then act in accordance with clause 4.4 in taking the recommendation to their Boards. If the chairs of LUPC and SUMS are unable to reach agreement on any matter, that matter shall remain deadlocked with the Advisory Board.
- 4.6 Nothing in this agreement shall be taken as a delegation of any powers by either of the parties otherwise than in accordance with their corporate governance requirements and the provisions of clause 5.2 shall apply.

5 Terms of Reference of the Advisory Board

- 5.1 The parties will procure that the Advisory Board adopts the Terms of Reference which are set out in Schedule 1, subject to such amendments as LUPC and SUMS may agree from time to time.
- 5.2 For the avoidance of doubt, LUPC and SUMS acknowledge and agree that:
- 5.2.1 the role of the Advisory Board will be advisory only, with no powers delegated to it by either LUPC or SUMS;
- 5.2.2 neither party shall have (or purport to have) any authority to enter into any contract or commitment on behalf of the other party, and each party recognises that the Advisory Board has no authority to enter into any contract or commitment on behalf of either party; and

5.2.3 any decisions to be taken in relation to the collaboration between LUPC and SUMS will be taken independently by each of LUPC and SUMS, and neither party will be under any obligation to follow any recommendations of the Advisory Board.

5.3 Each party will procure that their nominated members of the Advisory Board comply at all times with the provisions of the Terms of Reference.

6 **Agreed Collaborations**

6.1 The parties anticipate that the potential areas for collaboration will include the following:

6.1.1 co-ordination and planning in relation to future procurements of systems (including systems which will be used by the parties in providing services to their respective members), provided always that any such collaboration will be limited to identifying, specifying and sourcing the required system and that the delivery, implementation, maintenance and use of such systems will be contracted independently by each of LUPC and SUMS for the purpose of fulfilling their respective requirements;

6.1.2 co-operation to identify, specify and source services which are not covered by the procurement frameworks that LUPC and SUMS make available to their members, and co-ordination of the approach of LUPC and SUMS in those areas; the implementation and ongoing management of those services to be contracted independently by each of LUPC and SUMS for the purpose of fulfilling their respective requirements;

6.1.3 limited sharing of resources for the purpose of identifying, developing, implementing and managing procurement frameworks which are operated by each of LUPC and SUMS, where the sharing of such resources will result in a more efficient use of resources for both LUPC and SUMS;

6.1.4 promotion, by each of LUPC and SUMS with its members the use of frameworks implemented and managed by the other consortium with the intention that both LUPC and SUMS see an increase in spend routed through their respective frameworks from members of the other consortium; and

6.1.5 co-ordination in identifying, developing, planning and in the operation of joint events and conferences for the benefit of members of both LUPC and SUMS.

6.2 The parties recognise that any decision to co-operate in any of the areas set out above will be conditional on the approval of each of LUPC and SUMS, acting with the benefit of the recommendations of the Advisory Board, as to the detail of that co-operation (such approved collaboration being an **Agreed Collaboration**). Unless otherwise agreed between LUPC and SUMS, the parties agree that the principles set out in clause 7 and clause 8 will apply to all Agreed Collaborations.

6.3 Each party agrees that it will, when taking any action or performing any steps in connection with any Agreed Collaboration, take such action in accordance all applicable Laws and best practice in the industry of SUPC and LUPC, to a standard which is no lower than that which that party would apply were it taking that action or performing that step solely in connection with its own business.

7 **Equality of commitment in Collaborations**

7.1 LUPC and SUMS intend that each party will contribute to and benefit equally from each Agreed Collaboration. As such, before taking any steps in relation to any Agreed Collaboration, each of LUPC and SUMS will require to be satisfied that:

- 7.1.1 the cost and risk to each party in giving effect to the Agreed Collaboration; and
- 7.1.2 any savings or other benefits to be enjoyed by each party as a result of the Agreed Collaboration,

are equivalent to the costs, risks, savings and other benefits that will be contributed or enjoyed by the other party as a result of the Agreed Collaboration (or, where the costs, risks, savings and benefits are not equivalent, that the party bearing the greater portion of cost and risk will be reimbursed by the other party, so as to equalise the contributions of the parties to the Agreed Collaboration).

- 7.2 In order that each of LUPC and SUMS are able to determine that the requirement of clause 7.1 is satisfied, the parties will require the Advisory Board to report to LUPC and SUMS, as part of any recommendation in connection with any proposed collaboration, as to the cost, risk, savings and benefits for each of LUPC and SUMS associated with that proposed collaboration. The parties will put together a business case for each proposed collaboration which each shall put to their Board. The business case shall include, but not be limited to:

- 7.2.1 anticipated savings over the term of the collaboration project;
- 7.2.2 other anticipated benefits accruing over the term of the collaboration project;
- 7.2.3 anticipated costs and expenditure over the term of the collaboration project;
- 7.2.4 specific resources to be employed over the term of the collaboration project;
- 7.2.5 risks and mitigating actions;
- 7.2.6 collaboration project start date;
- 7.2.7 collaboration project end date; and
- 7.2.8 recommendations being made by the Advisory Board to the relevant Board.

- 7.3 Each party shall maintain records of the costs incurred and benefits enjoyed by that party in relation to any Agreed Collaboration and shall (subject to any contractual or other obligation of confidentiality which would prevent such disclosure) make such information available to the Advisory Board, and to the other party, on reasonable request from the other party.

- 7.4 Where either party is required to make a payment to the other party so as to equalise the contributions of the parties to the Agreed Collaboration pursuant to the provisions of clause 7.1, the amount of that payment (including any VAT payable thereon) and the due date for such payment shall be specified by the parties when approving the relevant Agreed Collaboration (and such payment shall be made within thirty (30) days of the date of receipt of a valid invoice by the party with the obligation to pay).

- 7.5 The parties recognise that, depending upon the nature of the Agreed Collaboration, the parties may be required to account for VAT on the value of their input into that Agreed Collaboration. The parties shall provide each other with such information as is reasonably required in order to ensure that each party is properly able to account for VAT on the arrangements described in this agreement.

- 7.6 The parties recognise that the cost, risk, savings and benefits which they each contribute to or enjoy from any Agreed Collaboration may vary over time. As such, the parties agree that they shall:

- 7.6.1 review the cost, risk, savings and benefits which they each contribute to or enjoy from any Agreed Collaboration at each meeting of the Advisory Board; and
 - 7.6.2 take such steps as are reasonably necessary from time to time to ensure that the cost, risk, savings and benefits which are contributed or enjoyed by each party at any time for any Agreed Collaboration are equivalent to the cost, risk, savings and benefits which are contributed or enjoyed by the other party at that time.
- 7.7 The parties acknowledge that the obligations of either party under any Agreed Collaboration may subsist beyond the date of termination of this agreement. As such, the parties acknowledge and agree that the obligations of the parties under this clause 7 in respect of any Agreed Collaboration will remain in full force and effect notwithstanding the termination of this agreement, until completion of the Agreed Collaboration.

8 **Contractual commitments in Agreed Collaborations**

- 8.1 Where, in relation to any Agreed Collaboration, either party enters into any contract for the benefit of both parties and such contract includes a contractual commitment of expenditure by one or both parties (and which shall for the sake of clarity exclude framework contracts entered into by either party as part of an Agreed Collaboration where such framework does not contain a commitment to expenditure by either or both parties) (whether in connection with the organisation of joint events and conferences, or otherwise) LUPC and SUMS agree that the following provisions will apply:
- 8.1.1 no such contractual commitment will be entered into by either party unless that contract has been approved in writing by both LUPC and SUMS (**Approved Contract**);
 - 8.1.2 where any element of any Approved Contract is intended solely or principally for the benefit of one of LUPC or SUMS, when authorising the entry into that Approved Contract the parties will record the fact that the cost, risk and benefit in respect of that element of the Approved Contract will rest with the party for whose benefit that element of the Approved Contract is intended; and
 - 8.1.3 save in respect of any elements of an Approved Contract as are referred to in clause 8.1.2, the cost, risk and benefits of each Approved Contract will be shared in the proportions agreed between the parties when approving the relevant Agreed Collaboration, and as such:
 - (a) the party to each Approved Contract will pay to the other of LUPC and SUMS the agreed proportion of any revenues enjoyed under that Approved Contract; and
 - (b) any costs and liabilities incurred by the party to each Approved Contract will be reimbursed by the other of LUPC and SUMS in the agreed proportion.
- 8.2 In relation to each Approved Contract, the party to that Approved Contract will manage that Approved Contract:
- 8.2.1 in cooperation with, and paying reasonable regard to, the requirements of the other of LUPC and SUMS; and
 - 8.2.2 in accordance with any limitations or parameters which have been agreed between the parties when approving the Approved Contract in accordance with clause 8.1.1.

- 8.3 For the avoidance of doubt, neither party shall have any liability to the other in respect of any contract or commitment entered into by the other party, unless the entry into that contract has first been approved in writing by the other party in accordance with clause 8.1.1.
- 8.4 The parties acknowledge that the obligations of either party under any Approved Contract may subsist beyond the date of termination of this agreement. As such, the parties acknowledge and agree that the obligations of the parties under this clause 8 in respect of any Approved Contract will remain in full force and effect notwithstanding the termination of this agreement, pending expiry or termination of the Approved Contract.

9 Confidentiality

- 9.1 Subject to clause 9.2, each party shall keep the other party's Confidential Information confidential and shall not:
- 9.1.1 use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
 - 9.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 9.
- 9.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential Information:
- 9.2.1 which the other party confirms in writing is not required to be treated as Confidential Information;
 - 9.2.2 which has been, or is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - 9.2.3 which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
 - 9.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence;
 - 9.2.5 which is in or enters the public domain other than through any disclosure prohibited by this agreement;
 - 9.2.6 which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
 - 9.2.7 which is disclosed by a party on a confidential basis to any central government or regulatory body.
- 9.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:
- 9.3.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 9.3.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement, and

9.3.3 at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 9.3.

9.4 The provisions of this clause 9 shall survive for a period of five (5) years from the Termination Date.

10 Indemnity for Third Party Claims

10.1 Subject always to the limitations and exclusions set out in clause 11 (Limitation of Liability) each party (the **Indemnifying Party**) agrees to indemnify and hold harmless the other party (the **Indemnified Party**) against all liabilities, damages, losses suffered or incurred by, or awarded against, the Indemnified Party arising out of or in connection with any claim brought against an Indemnified Party by a third party to the extent such a claim arises out of the acts or omissions of the Indemnifying Party, its employees, agents or subcontractor:

10.1.1 in performing its obligations under or in connection with the agreement; or

10.1.2 in collaborating under an Agreed Collaboration or working together in relation to an Agreed Contract,

provided always that the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any such claim;
- (b) allow the Indemnifying Party to conduct all negotiations and proceedings and provide the Indemnifying Party with such reasonable assistance as is required by the Indemnifying Party, each at the Indemnifying Party's cost, regarding the claim; and
- (c) not, without prior consultation with the Indemnifying Party, make any admission relating to the claim or attempt to settle it,

and provided always that the Indemnifying Party shall:

- (d) keep the Indemnified Party informed of progress;
- (e) consider and defend any claim diligently, using competent counsel, and
- (f) not settle or compromise the claim where such settlement or compromise includes any admission of liability by the Indemnified Party, without the Indemnified Party's express written consent.

11 Limitation of liability

11.1 Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

11.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to any indemnities in this agreement.

11.3 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

11.3.1 fraud or fraudulent misrepresentation;

- 11.3.2 death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
 - 11.3.3 breach of any obligation as to title implied by statute; or
 - 11.3.4 any other liability for which may not be limited under any applicable law.
- 11.4 Subject to clauses 11.1 to 11.3, each party's total liability to the other, which shall include liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the agreement, shall not exceed the sum of one million pounds (£1,000,000) in aggregate in every rolling twelve (12) month period.
- 11.5 The provisions of this clause 11 shall survive termination of this agreement.
- 12 **Freedom of information**
- 12.1 LUPC acknowledges that SUMS is subject to the requirements of the FOIA and the EIRs. LUPC shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by SUMS to enable SUMS to comply with its obligations under the FOIA and EIRs;
 - 12.1.2 transfer to SUMS all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 12.1.3 provide SUMS with a copy of all Information belonging to SUMS requested in the Request For Information which is in its possession or control in the form that SUMS reasonably requires, within five (5) Working Days of SUMS' request for such Information; and
 - 12.1.4 not respond directly to a Request For Information which is made of it without the written consent of SUMS.
- 12.2 LUPC acknowledges that SUMS may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from LUPC. SUMS shall take reasonable steps to notify LUPC of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) SUMS shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 12.3 Notwithstanding any other term of this agreement, each party consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 12.4 Each party shall, prior to publication, consult with the other on the manner and format of its publication of this agreement, and to inform its decision regarding any redactions. Each party shall have absolute discretion in determining the manner, format and any redactions to be made in relation to its own publication of this agreement.

13 **Data protection**

- 13.1 The parties acknowledge that one party, acting as Controller, may disclose Personal Data to the other, acting as Processor. In such circumstances the parties agree to be bound by the provisions of Schedule 2 (Data Protection and Processing).

14 **Termination**

- 14.1 Without affecting any other right or remedy available to it, either party may terminate this agreement at any time by giving three (3) months' written notice to the other party.

- 14.2 Either party may terminate this agreement with immediate effect by the service of written notice on the other in the following circumstances:

14.2.1 if the other party is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the notifying party may only terminate this agreement under this clause 14.2 if the other party has failed to remedy such breach within twenty eight(28) days of receipt of notice to do so; or

14.2.2 if there is an Insolvency Event in respect of the other party.

- 14.3 Either party may terminate this agreement in accordance with the provisions of clause 13, clause 15 and clause 16.

15 **Force majeure**

- 15.1 Provided it has complied with the remaining provisions of this Clause 15, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations

- 15.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

- 15.3 The Affected Party shall:

15.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

15.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

- 15.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 15.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

- 15.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than twelve (12) weeks, the party not

affected by the Force Majeure Event may terminate this agreement by giving four (4) weeks' notice to the Affected Party.

16 **Prevention of bribery**

16.1 Each party represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or contractors have at any time prior to the Commencement Date:

16.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

16.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

16.2 Neither party shall, during the Term:

16.2.1 commit a Prohibited Act; and/or

16.2.2 do or suffer anything to be done which would cause the other party or any of the other party's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

16.3 Each party shall during the Term:

16.3.1 establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

16.3.2 keep appropriate records of its compliance with its obligations under clause 16.3.1 and make such records available to the other party on request.

16.4 Each party shall immediately notify the other in writing if it becomes aware of any breach of clause 16.1 and/or clause 16.2, or has reason to believe that it has or any of its employees, consultants or contractors have:

16.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

16.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

16.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

16.5 If either party makes a notification to the other party pursuant to clause 16.4, it shall respond promptly to the other party's enquiries, co-operate with any investigation, and allow the other party to audit any relevant books, records and/or any other relevant documentation.

16.6 If either party is in breach of the provisions of clause 16.1 and/or clause 16.2, the other party may by notice:

16.6.1 require it to remove from performance of this agreement any of the defaulting party's employees, consultants or contractors whose acts or omissions have caused the default; or

16.6.2 immediately terminate this agreement.

16.7 Any notice served by either party under clause 16.6 shall specify the nature of the Prohibited Act, the identity of the party who it believes has committed the Prohibited Act and the action that it has elected to take (including, where relevant, the date on which this agreement shall terminate).

17 **Consequences of termination or expiry**

17.1 On termination of this agreement:

17.1.1 save as expressly provided for in clause 8, all sharing of resources between LUPC and SUMS will end with immediate effect;

17.1.2 any undisputed amounts which either party is required to reimburse to the other pursuant to any provisions of this agreement (including any amounts due under clause 7.4) will be paid within thirty (30) days of receipt of an invoice from the other party (supported by sufficient information to enable the paying party to verify the reimbursement) ; and

17.1.3 each party shall procure that all data and other material (including all Confidential Information) belonging to the other party (and all media of any nature containing information and data (including all Confidential Information) belonging to the other party) shall be delivered to that party forthwith.

17.2 Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including clause 11 (Limitation of Liability), clause 12 (Freedom of Information), clause 13 (Data Protection), clause 14 (Confidentiality), clause 14 (Termination) and this clause 17 (Consequences of Termination), shall remain in full force and effect.

17.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

18 **Dispute resolution**

18.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then, the parties shall follow the procedure set out in this clause:

18.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the parties shall nominate authorised representatives to attempt in good faith to resolve the Dispute;

18.1.2 if those authorised representatives are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred

to each party's chairperson of their board, who shall attempt in good faith to resolve it; and

18.1.3 if those individuals are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. The mediation will start not later than thirty (30) days after the date of the ADR notice.

18.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 31 which clause shall apply at all times.

19 **Request for Change**

19.1 The parties shall discuss any proposed change to this agreement (**Change**). Where either (or both) party(ies) wish to proceed with the Change it/they shall bring details of the proposed Change to the Advisory Board for review by the Advisory Board. If, on review of the proposed Change, the Advisory Board (acting in accordance with clause 4) recommends agreement to the proposed Change, the recommended Change shall be put to Boards of each party, in accordance with clause 4.4.

19.2 In all circumstances, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20 **Sub-contracting and assignment**

20.1 Neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, Liability.

21 **Non-solicitation**

21.1 In order to protect each other's legitimate business interest, neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged or employed in connection with the Future Collaboration Project or the management of this agreement or any significant part thereof other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

22 **Waiver**

22.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23 **Rights and remedies**

23.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

24 **Severability**

- 24.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 24.2 If any provision or part-provision of this agreement is deemed deleted under clause 24.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

25 **Partnership or agency**

- 25.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26 **Third party rights**

- 26.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

27 **Publicity**

- 27.1 Neither party shall:
- 27.1.1 make any press announcements or publicise this agreement or its contents in any way; or
 - 27.1.2 use the other party's name or logo in any promotion or marketing or announcement of orders,
- except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

28 **Notices**

- 28.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the chairperson of the party's board, and shall (save in relation to notice under clause 3.5) be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 28.2 Any notice shall be deemed to have been received:
- 28.2.1 if delivered by hand, on signature of a delivery receipt;
 - 28.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- 28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29 **Entire agreement**

29.1 This agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

29.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

30 **Counterparts**

30.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

31 **Governing law**

31.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

32 **Jurisdiction**

32.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by _____ for and _____
on behalf of _____ Director and Chair of LUPC Board
London Universities Purchasing Consortium

Signed by _____ for and _____
on behalf of _____ Trustee and Chair of SUMS Board
Southern Universities Management Services

Schedule 1 Advisory Board Terms of Reference

Strategic Partnering Advisory Board

Terms of Reference Document

1) Purpose of the Strategic Partnering Advisory Board

These Terms of Reference have been agreed and adopted by Southern Universities Management Services ("**SUMS**") and London Universities Purchasing Consortium ("**LUPC**") pursuant to a collaboration agreement dated [•] 2018 and made between LUPC and SUMS (the "**Collaboration Agreement**").

SUMS and LUPC wish to establish governance arrangements which will best support the implementation and delivery of the Future Collaboration Project (as defined in the Collaboration Agreement) and potential opportunities beyond this. This will require a high degree of operational collaboration between LUPC and SUMS, requiring that LUPC and SUMS establish an Advisory Board.

The Future Collaboration Project relates to the respective procurement and purchasing activities operated by LUPC and by SUMS under the name "Southern Universities Purchasing Consortium" (or "**SUPC**"). References in these Terms of Reference to "SUPC" are to SUMS acting in its capacity as the operator of SUPC.

2) Scope of the Advisory Board

The scope of the Advisory Board is focused on the implementation and delivery of the collaboration activities envisaged by the Future Collaboration Project and potential opportunities beyond this. The Advisory Board will not advise on areas outside the collaboration activity between LUPC and SUPC, with the ongoing management responsibilities of LUPC and SUPC retained within their current governance structures. The board will be advisory only, with no delegated powers and no authority to incur any liability or otherwise act on behalf of LUPC and/or SUMS. Decision making authority relating to all collaboration activity is retained by the LUPC board of directors ("the **LUPC Board**") and SUMS board of trustees (the "**SUMS Board**") (each a "**Board**"), with no obligation to act on or in accordance with any advice or recommendations the Advisory Board may provide.

3) Advisory Board Term

The Advisory Board will be initiated once the implementation phase of the Future Collaboration Project is launched. The Advisory Board will continue until either the LUPC Board or the SUMS Board provides written notice to the other Board of their intention to terminate further collaboration activity. The process for termination is set out in the Collaboration Agreement.

4) Membership

The Advisory Board will be made up of representatives of each of LUPC, SUPC and SUMS (together with such other individuals as LUPC and SUMS may agree from time to time), to provide advice and guidance to the LUPC and SUMS Boards. The membership will be structured so that LUPC and SUMS have equal representation.

The Advisory Board membership is as follows:

- Director of LUPC
- Head of SUPC

- Two named members of the LUPC Board
- Two named members of the SUMS Board
- Two named members of the LUPC Executive Committee
- Two named members of the SUPC Council

LUPC and SUMS may from time to time agree to increase the number of members of the Advisory Board and will agree to amend these Terms of Reference to make any changes which are required as a consequence.

The LUPC members will be nominated by the LUPC Board and the SUMS and SUPC members will be nominated by the SUMS Board. Each member of the Advisory Board will serve until:

- they give three months' written notice of their resignation to the organisation by which they were nominated and the Advisory Board (in order to provide sufficient time to nominate a replacement member); or (if earlier)
- they die or are incapable or unwilling to continue to act; or (if earlier)
- they are removed by written notice given to them by the organisation by which they were nominated.

Each of LUPC and SUMS will be entitled to appoint an alternate for each of the eight (8) named members of the LUPC and SUMS Boards and the LUPC Executive Committee and SUPC Council by giving notice thereof to the Advisory Board and the other party. Any alternate shall be entitled to attend and vote at meetings of the Advisory Board in place of the nominated members referred to above.

5) Advisory Board Role

The Advisory Board's primary role is to advise the LUPC and SUMS Boards on the implementation and delivery of the Future Collaboration Project and joint collaboration opportunities beyond this.

The Advisory Board will therefore advise on the following:

- Primary areas of collaboration opportunity to be considered by the LUPC and SUMS Boards, following prioritisation by the Advisory Board.

32.2 Costs, risks, savings and benefits associated with these opportunities such that the LUPC and SUMS Boards can make informed decisions as to whether to progress these opportunities to project status. In doing so the Advisory Board will review the business case prepared by the parties which shall include, but not be limited to:

- anticipated savings over the term of the collaboration project,
- other anticipated benefits accruing over the term of the collaboration project,
- anticipated costs and expenditure over the term of the collaboration project,
- specific resources to be employed over the term of the collaboration project,
- risks and mitigating actions,
- collaboration project start date,
- collaboration project end date, and
- recommendations being made by the Advisory Board to the relevant Board

- Progress on the implementation of the live collaboration projects including contributions to date by each of LUPC and SUMS and proposed actions required by the LUPC and SUMS Boards, to ensure that benefits are delivered on time and in full and in accordance with the terms of any Agreed Collaboration (as defined in the Collaboration Agreement).
- Any appropriate and necessary steps to ensure that implementation accords with the terms of any Agreed Collaboration.
- Collaborative benefits realised and costs incurred such that the LUPC and SUMS Boards are aware of the overall financial performance of the collaboration activity and can make informed decisions as to the ongoing support of the collaboration activity.
- Interdependencies outside the scope of the collaboration activity or outside the scope of the Advisory Board, that have an impact on the collaboration activity and require the LUPC and/or SUMS Boards to resolve.
- Risks associated with the implementation and delivery of the Future Collaboration Project and proposed mitigating actions for the consideration of the LUPC and SUMS Boards.
- Communication and engagement activity to maintain key stakeholder support for the collaboration activity for the consideration of the LUPC and SUMS Boards.
- Opportunities for national collaboration and the benefits, costs, risks, savings and benefits associated with these opportunities, such that the LUPC and SUMS Boards can make informed decisions as to whether to progress these opportunities to project status.

6) Reporting

The Advisory Board will report to both the LUPC and SUMS Boards. A Future Collaboration Project status paper prepared and approved by the Advisory Board will be submitted to each Board in advance of their meetings and the Director of LUPC or Head of SUPC will attend the relevant LUPC or SUMS Board meeting as required.

7) Advisory Board Meetings

All meetings of the Advisory Board will be chaired jointly by the Director of LUPC and the Head of SUPC.

A minimum of three (3) Advisory Board meetings will be held per year and these will be scheduled so that they occur at least two (2) weeks prior to the LUPC and SUMS Board meetings. The joint chairs shall be responsible for giving notice of each meeting, and they will also ensure that a notice and meeting agenda is issued to the members of the Advisory Board no later than five (5) working days before the meeting.

Given the importance of the Future Collaboration Project and the need to have a balanced representation at the Advisory Board meetings, the quorum will be six (6) members of the Advisory Board (or their alternates, attending in their place) which shall include at least three (3) members nominated by each of LUPC and SUMS. Members of the Advisory Board shall be entitled to attend meetings via conference call, skype or any other electronic means which means that all members of the Advisory Board can hear each other.

If a quorum of six members, including alternates, (to include at least three (3) nominated by each of LUPC and SUMS) cannot be achieved then an alternative meeting date should be sought.

Decisions of the Advisory Board shall be passed by a majority vote. The joint chairs shall not have a casting vote.

The joint chairs shall ensure that accurate minutes of all meetings are maintained and issued within seven (7) days of the meeting taking place. Copies of the minutes will be supplied to the LUPC and SUMS Boards.

Any conflicts of interest shall be declared at the beginning of every meeting and the steps taken to manage any such conflict shall be minuted.

8) Disputes and Disagreements

Should the Advisory Board be unable to agree a recommendation on an issue which any member of the Advisory Board considers to be of sufficient of importance (a **Dispute**), then the Dispute will be dealt with in accordance with the provisions of clause 18 of the Collaboration Agreement. Any recommendation which is agreed by the parties in accordance with the Dispute Resolution procedure under the Collaboration Agreement will be communicated back to the Advisory Board via the Director of LUPC and the Head of SUPC with the recommendation having the same status as if agreed by the Advisory Board in accordance with its terms.

9) Amendments, Modifications or Variations

These Terms of Reference may only be amended or modified by and with the agreement of the LUPC and SUMS Boards.

The members of the Advisory Board will review these Terms of Reference annually and propose any changes to the LUPC and SUMS Boards which they consider should be made in order to ensure that they are fit for purpose and the Advisory Board is operating as effectively as possible.

This document will be version controlled to ensure changes and updates are tracked and managed in a transparent way.

Schedule 2 Data Protection and Processing

1 Data Protection

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this paragraph 1, **Applicable Laws** means (for so long as and to the extent that they apply to the parties) the law of the European Union, the law of any member state of the European Union and any data protection legislation from time to time in force in the UK and any other law that applies in the UK.
- 1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, each party may act as Controller and disclose to the other (acting as Processor) Personal Data, and the provisions of this Schedule 2 would apply to the parties in their respective capacities.
- 1.3 Appendix 1 to this Schedule 2 (Data Processing Particulars) sets out the subject matter and scope, nature and purpose of processing by the parties, the duration of the processing and the types of Personal Data and categories of Data Subject (**Data Processing Particulars**). Both parties agree that Schedule I (Data Processing Particulars) is an accurate description of the Data Processing Particulars.
- 1.4 Without prejudice to the generality of paragraph 1.1, each party shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the other for the duration and purposes of this agreement.

2 Processor's Obligations

- 2.1 Without prejudice to the generality of paragraph 1.1, the Processor shall, in relation to any Personal Data processed in connection with the performance by the Processor of its obligations under this agreement:
 - (a) process that Personal Data only on the written instructions of the Controller for the purposes of performing its obligations under the agreement unless the Processor is required by Applicable Laws to otherwise process that Personal Data. If the Processor reasonably believes that the written instructions from the Controller infringe any Applicable Law, it shall notify promptly the Controller accordingly. Where the Processor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Processor shall promptly notify the Controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Processor from so notifying the Controller;
 - (b) keep a record of any processing that it carries out on behalf of the Controller;
 - (c) comply with its data protection policy;
 - (d) promptly comply with any request from the Controller to amend transfer or delete any Personal Data;
 - (e) not disclose Personal Data to a third party (including any subcontractor) without the prior written consent of the Controller (save where the Processor is prevented by Applicable Law from notifying the Controller in

advance of disclosure, in which case it shall use reasonable endeavours to notify the Controller as soon as reasonably practicable);

- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Controller, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (g) ensure that access to Personal Data is limited to those employees who need access to Personal Data to meet the Processor's obligations under this Agreement and that all employees are informed of the confidential nature of Personal Data and are obliged to keep it confidential;
- (h) promptly following a request from the Controller, allow its data processing facilities, procedures and documentation to be reviewed and audited by the Controller (and/or its representatives, including auditors) and promptly respond to requests to provide, and so provide, such assistance, and co-operation to the Controller as it may reasonably request to enable it to review, confirm and audit the Processor's compliance with paragraphs 1 and 2 of this Schedule 2;
- (i) not transfer any Personal Data outside of the European Economic Area;
- (j) in relation to the Personal Data processed by the Processor on behalf of the Controller, assist the Controller, at the Controller's cost, in responding to any Data Subject Request and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (k) notify the Controller without undue delay on becoming aware of a Personal Data breach;
- (l) notify the Controller promptly on receipt of a Data Subject Request or correspondence from the ICO and not disclose any Personal Data in response to any Data Subject Request or ICO correspondence without first consulting with and obtaining the Controller's prior written consent;
- (m) at the written direction of the Controller, delete or return Personal Data and copies thereof to the Controller (whether during the agreement or on termination of the agreement unless required by Applicable Law to store the Personal Data).

2.2 The Controller does not transfer ownership of or create or grant any licence to the intellectual property rights in any Personal Data.

2.3 The Processor shall

- (a) provide regular training to its staff on the Data Protection Legislation and these paragraphs 1 and 2 of Schedule 2; and
- (b) ensure that its staff operate within the requirements of the Data Protection Legislation these paragraphs 1 and 2 of Schedule 2.

3 **Indemnity**

- 3.1 Subject always to the limitations and exclusions set out in clause 11 (Limitation of Liability) the Processor shall indemnify on demand, and keep indemnified the Controller, against all liabilities, costs, expenses, damages and losses, including reasonable professional costs and expenses, suffered or incurred by the Controller arising out of or in connection with the breach of the Data Protection Legislation by the Processor, its employees or agents, provided that the Controller gives to the Processor prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

Appendix 1 Data Processing Particulars

<p>The subject matter and duration of the Processing</p>	<ul style="list-style-type: none"> • Primary contact name, job title, address and contact details. • Professional knowledge / experience / background. <p>Except to the extent that such Personal Data is required to be retained for legal or governance purposes, to be processed until the earlier of</p> <ul style="list-style-type: none"> • The Data Subject leaving the party, member or supplier organisation. • The member ceasing to be a member. • The supplier ceasing to be a supplier. • The termination of the agreement.
<p>The nature and purpose of the Processing</p>	<ul style="list-style-type: none"> • For staff members – to facilitate joint working and effective resource allocation. • For Members - to facilitate joint working. • For Suppliers – to facilitate joint working and new and ongoing tender and contract management.
<p>The type of Personal Data being Processed</p>	<ul style="list-style-type: none"> • Staff member professional knowledge/experience/background. • Staff member costs to the consortia. • Member institutions’ primary contact name, job title, address and contact details. • Potential or contracted suppliers’ primary contact name, job title, address and contact details.
<p>The categories of Data Subjects</p>	<ul style="list-style-type: none"> • Staff Members. • Employees and contacts within Member Organisations. • Employees and contacts within Suppliers.