



(1) JISC SERVICES LIMITED

AND

(2) [INSERT NAME OF SUPPLIER]

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FRAMEWORK AGREEMENT

FOR

ROUTING AND SWITCHING SERVICES

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**BETWEEN:**

- (1) **JISC SERVICES LIMITED** (formerly named Jisc Collections and Janet Ltd), Company Number 2881024, whose registered office is at One Castlepark, Tower Hill, Bristol, BS2 0JA ("JSL"); and
- (2) **[INSERT SUPPLIER NAME]**, Company Number **[INSERT]**, whose registered office is at **[INSERT]** ("the Contractor").

**BACKGROUND**

- (A) JSL announced a restricted procurement in the Supplement to the Official Journal of the European Union (OJEU Contract Notice 2015/S 029-048581JSL), seeking tenders from providers of supply and support services for routing and switching equipment interested in entering into a framework arrangement for the supply of such services to JSL and its customers.
- (B) Following such procurement process and on the basis of the Contractor's tender offer and response(s) as detailed below, JSL has selected the Contractor (together with a number of other suppliers) to enter into this framework agreement, for the services specified herein, to provide such services to JSL and its customers from time to time on a call-off basis, in accordance with the terms of this agreement.
- (C) The Contractor agrees to be engaged to provide such services (as further specified in this agreement) upon the terms of this framework agreement.

**AGREED TERMS**

**1. Definitions**

1.1 In this Agreement, the following words will have the following meanings:

- |                              |   |
|------------------------------|---|
| <b>"Agreement"</b>           | means this framework agreement, including the Schedules and the Offer;  |
| <b>"Bribery Legislation"</b> | means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time, together with any guidance or codes of practice issued by the relevant government department concerning the same; |
| <b>"Business Day"</b>        | means every day excluding Saturdays, Sundays and all national holidays throughout the United Kingdom;   |
| <b>"Change Control"</b>      | means the change control procedures set out in  |

<b>Procedures"</b>	Schedule 3;
<b>"Commercially Sensitive Information"</b>	means the subset of Confidential Information listed in Schedule 4 comprised of information: <ul style="list-style-type: none"> <li>(i) which is provided by the Contractor to the JSL in confidence; and/or</li> <li>(ii) that constitutes a trade secret;</li> </ul>
<b>"Confidential Information"</b>	means all information (in whatever format) designated as such by the disclosing Party together with such information which relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of the disclosing Party or which may reasonably be regarded as the confidential information of the disclosing Party and, in the case of information disclosed by the Contractor, includes the Commercially Sensitive Information;
<b>"Contract"</b>	means a contract for the supply of any Services to a Customer entered into pursuant to this Agreement, on the terms of the pro forma contract set out in Schedule 1, as concluded pursuant to Clause 4;
<b>"Customer"</b>	means JSL or any Organisation which enters into a Contract for the supply of the Services pursuant to Clause 4;
<b>"Effective Date"</b>	means 1 October 2015;
<b>"Equipment"</b>	means any equipment to be supplied by the Contractor as part of the Services as described or referred to in Schedule 2 and detailed specifically in the Contract;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
<b>"Group"</b>	means, in relation to a Party, the Party, its subsidiaries, its holding companies and any subsidiaries of such holding companies, "subsidiary" and "holding company" having the meanings given to them in section 1159 of the

Companies Act 2006;

<b>"Implementation Date"</b>	means 1 October 2015;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Intellectual Property Rights"</b>	means all present or future intellectual property rights, patents, patent applications, copyright, mask works, trade secrets and industrial property rights in respect of any designs, formulas, technical information and software, and any trademark, trademark applications, service marks and trade names, and other similar rights and obligations whether they are registerable or not;
<b>"Janet Network"</b>	means the network operated by JSL to serve the UK education and research communities;
<b>"Offer"</b>	has the meaning given to it in Clause 1.7;
<b>"Operational Requirement"</b>	means JSL's operational requirement document published on 15 <sup>th</sup> May 2015;
<b>"Organisation"</b>	means any Higher Education institutions, Further Education and Specialist Colleges and Research Council establishments in the UK, Regional Network Operators or any other bodies whose core purpose is the support or advancement of further or higher education or of research;
<b>"Potential Customer"</b>	means JSL and/or any Organisation;
<b>"Services"</b>	means the services described in Schedule 2 (including the provision of Equipment) which may be provided to Customers under a Contract;
<b>"Termination Date"</b>	means 30 September 2017 (subject to Clause 3.2); and
<b>"Term"</b>	means the term of this Agreement as set out in Clause 3.

- 1.2. References in this Agreement to any statute or statutory provision include, unless the context otherwise requires, references to that statute or provision as from time to time amended, extended or re-enacted.
- 1.3. References in this Agreement to a **"Party"** or the **"Parties"** mean a party or the parties to this Agreement.

- 1.4. Reference to words importing the singular only also includes the plural and vice versa where the context requires.
- 1.5. The headings in this Agreement are for reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 1.6. Unless otherwise stated, references in this Agreement to Clauses and Schedules are references to the clauses of, and schedules to, this Agreement.
- 1.7. The Contractor acknowledges that JSL has relied upon:
  - 1.7.1 the Contractor's response (dated 9<sup>th</sup> March 2015) to JSL's Prequalification Questionnaire (dated 11<sup>th</sup> February 2015); and
  - 1.7.2 the Contractor's response (dated 26<sup>th</sup> June 2015) to JSL's Operational Requirement (dated 15<sup>th</sup> May 2015)(together, the "**Offer**") in entering into this Agreement, the contents of which the Contractor warrants are true, accurate and not misleading, and the terms of which are hereby expressly incorporated into this Agreement.
- 1.8. The following order of precedence shall apply in relation to any conflict, inconsistency or contradiction between the various documents referred to in this Agreement:
  - 1.8.1. the Contract;
  - 1.8.2. the Schedules and the Appendices to the Contract;
  - 1.8.3. the terms and conditions of this Agreement;
  - 1.8.4. the Schedules to this Agreement; and
  - 1.8.5. the Offer.

## 2. **Scope**

- 2.1. This Agreement governs the overall relationship of the Parties with respect to the supply of the Services to Potential Customers and Customers. Potential Customers are entitled (but not required) at any time after the Implementation Date and during the Term to request Services and, subject to the completion of a Contract as set out in Clause 4, the Contractor shall supply such Services to the Customer in accordance with the terms and conditions of the Contract.

## 3. **Term**

- 3.1. Unless terminated earlier by either Party in accordance with the terms and conditions of this Agreement, this Agreement will commence on the Effective Date and will continue until the Termination Date ("the Initial Term").
- 3.2. JSL may, at its option, extend this Agreement for 2 further years from the Termination Date by notice in writing to the Contractor, such notice to be given at any time prior to expiry of the Initial Term (and for the avoidance of doubt, the Change Control Procedure will not need to be followed in respect thereto).

- 3.3. The term of any Contracts entered into under this Agreement is not restricted and may last longer than the Term.

#### **4 Contracts**

- 4.1. The Contractor shall ensure that the systems and equipment required for the provision of the Services are in place as at the Implementation Date and, from the Implementation Date and for the remainder of the Term:
- 4.1.1. the Contractor shall market the Services to Potential Customers; and
  - 4.1.2. the Contractor shall use reasonable endeavours promptly to conclude a Contract with any Potential Customer which requests Services from the Contractor.
- 4.2. The Contractor acknowledges that there is no commitment on the part of JSL to place with and/or refer to the Contractor a certain volume of business.
- 4.3. The call-off procedure for Potential Customers wishing to award a contract to a supplier who has entered into a framework agreement with JSL for the provision of the applicable Services shall be as set out in the Operational Requirement.
- 4.4. Each Contract shall:
- 4.4.1. subject to Clause 4.5, be on the terms of the pro-forma contract set out at Schedule 1, and shall be for the provision of all or part of the Services set out at Schedule 2;
  - 4.4.2. be to the exclusion of all other terms and conditions, including any terms and conditions which the Contractor purports to apply under any confirmation of order or other document (subject to any highlighted open areas in the proforma contract set out in Schedule 1); and
  - 4.4.3. form a separate legally binding agreement between the Contractor and the Customer (and for the avoidance of doubt JSL shall not be liable to either the Contractor or any Customer under any Contract unless JSL is the Customer under the Contract in question).
- 4.5. A Contract may only deviate from the requirements set out in Clause 4.4.1 if, and to the extent that:
- 4.5.1. the deviation is concerned only with the implementation of contract-specific terms; or
  - 4.5.2. the deviation is not material in the context of the relevant Contract; or
  - 4.5.3. the deviation does not have any adverse effects on the rights of the Customer, or enhance the rights of the Contractor in any way; or
  - 4.5.4. the Contractor, the Customer and JSL agree the terms of the deviation in writing.

- 4.6. The Contractor will ensure that the charges payable by a Customer under any Contract will be competitive with market charges prevailing from time to time.

## **5 Supply of Services and Equipment**

- 5.1 The Contractor will supply the Services and Equipment to each Customer in accordance with the terms of the relevant Contract.
- 5.2 All changes to this Agreement will be agreed between the Parties and be subject to the Change Control Procedures except as set out in this Clause 5.2. If a minor change is proposed by one of the Parties and both Parties agree that the change will not be subject to the Change Control Procedures, the change will come into effect if both Parties agree to that change in writing. Changes to this Agreement will have no impact upon Contracts in force as at the date of the change.
- 5.3 Without releasing it from any of its obligations or duties hereunder, the Contractor will be entitled at any time and from time to time, and without notice, to use companies in its Group or subcontractors to perform the Services, provided the Contractor's Group companies and subcontractors comply with the confidentiality obligations of the Contractor as set out in this Agreement (together with all other obligations of the Contractor). The Contractor shall be liable for the acts and omissions of any such Group companies and/or subcontractors under or in connection with this Agreement.

## **6 Contract Managers**

- 6.1 The Contractor will appoint a contract manager for the duration of the Term for the implementation and monitoring of this Agreement and each Contract and will inform JSL at the beginning of the Term of the name of that contract manager and keep JSL updated as to any change to the identity of that contract manager.
- 6.2 JSL will appoint a contract manager for this Agreement and will inform the Contractor of the name of that contract manager and keep the Contractor updated as to any change to the identity of that contract manager.

## **7 Framework Review Meetings**

- 7.1 The Contractor and JSL agree to meet as often as is reasonably necessary, and at least quarterly, to review the operation of this Agreement, each Contract, the proper and timely delivery of the Services, and to evaluate performance in line with JSL's quality procedures, such meetings to be the forum for discussion between the Parties in connection with such operation and delivery. The Parties will arrange for employees, agents or subcontractors to attend from time to time as may be appropriate. It is expected that these meetings will take place at JSL offices.
- 7.2 Review meetings to discuss issues raised by Customers or Potential Customers, review the total value of the Contracts, the annual price review and other relevant issues will be held at intervals which in JSL's reasonable opinion are necessary for the proper and timely delivery of the Services. The Contractor will prepare in advance of each such meeting a report on the details of Contracts that are in force

(including the financial value of those Contracts) and any written reports that JSL may reasonably require. The meetings will be held at JSL's offices, or at any other location agreed between the Parties. The contract manager for the Contractor must attend all such meetings.

## **8 Management Charge**

- 8.1 The Contractor will pay JSL a Management Charge of 1.65% quarterly, in arrears, on all amounts received by the Contractor from Customers in respect of the Services (net of VAT) ("**the Services Revenue**").
- 8.2 The Management Charge may be adjusted by the Contractor to reflect changes in the Services Revenue including those caused by non-payment or late payment of invoices by Customers (provided that for the avoidance of doubt, no precautionary retention will be allowed).
- 8.3 The Contractor will send to JSL, by email or by any other method reasonably requested by JSL, within 30 days following each 3 month period (running from the Effective Date) a statement setting out the following information, to enable calculation of the Management Charge for that quarter:
  - 8.3.1 the Services Revenue applicable for the relevant calendar quarter before any deductions; and
  - 8.3.2 details of any amounts deducted by the Contractor under Clause 8.2 due to non-payment or late payment by Customers.
- 8.4 JSL will invoice the Contractor at the end of each calendar quarter for the Management Charge in respect of the preceding calendar quarter, following receipt of the statement provided by the Contractor pursuant to Clause 8.3 above.
- 8.5 The Contractor will pay each invoice within 30 days of the date of the invoice. Without prejudice to any other right or remedy that JSL may have, if the Client fails to pay JSL within such time period, JSL reserves the right to charge the Contractor interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.6 The Management Charge is payable by the Contractor to JSL for the duration of any Contract irrespective of whether this Agreement is terminated or expires.

## **9 Reporting**

- 9.1 The Contractor will promptly inform JSL (providing full details of the relevant incident) if:
  - 9.1.1 the Contractor fails to comply with any material installation or delivery date(s) set out in a Contract;



- 9.1.2 a Customer terminates or threatens to terminate a Contract as a result of the default or alleged default of the Contractor (including details of the Customer's name, the reason for the actual or threatened termination, the nature of the Contractor's failure (if applicable) and the planned course of action to rectify any default (where relevant); or
  - 9.1.3 the Contractor terminates or threatens to terminate a Contract as a result of the default or alleged default of a Customer.
- 9.2 The Contractor will provide to JSL, via email, monthly or quarterly reports (as agreed with JSL) on its fault management performance, including as a minimum the number and nature of the faults incurred during the period, and the time to fix after each fault was reported. The report will include faults reported by individual Customers. In some cases there may be a need for a fault report to be produced urgently upon request and the Contractor will provide this within 5 days of receiving such a request from JSL.
- 9.3 The Contractor agrees to supply details to JSL promptly of every support call from a Customer that becomes a hardware fix.

## **10 Warranties**

- 10.1 In performing its obligations under this Agreement, the Contractor will at all times exercise reasonable skill and care and will ensure that its obligations are performed by staff that are competent and are suitably skilled and experienced.
- 10.2 JSL warrants that:
  - 10.2.1. it has and will for the duration of this Agreement have all necessary licences, consents and authorisations or rights as may be provided for under any relevant legislation, regulations or administrative orders to perform its obligations under this Agreement;
  - 10.2.2. it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms, and such entry and performance does not and will not violate or infringe the intellectual property or other rights of any other persons.
- 10.3 The Contractor warrants that:
  - 10.3.1 it has and will for the duration of this Agreement have all necessary licences, consents and authorisations or rights as may be provided for under any relevant legislation, regulations or administrative orders to provide the Services to Customers and Potential Customers;
  - 10.3.2. the Services will meet or exceed any and all applicable industry standards;
  - 10.3.3. it will provide the Services and will carry out its obligations in this Agreement and each Contract in accordance with all applicable and relevant telecommunications, data protection and other laws, licences and regulations particular to the Services purchased by the Customer under a Contract;

- 10.3.4. it has the full right, power and authority to enter into and perform this Agreement and each Contract in accordance with its terms, and such entry and performance does not and will not violate or infringe the intellectual property or other rights of any other persons; and
  - 10.3.5. it is not engaged in, and will not during the Term engage in, any business, relationship, contract or other activity which damages or tarnishes, or is likely to damage or tarnish, the reputation of JSL;
  - 10.3.6. in relation to this Agreement and/or its subject matter, neither the Contractor nor any of its employees, sub-contractors or agents or others performing services on behalf of the Contractor has done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Parties of any Bribery Legislation;
  - 10.3.7. it has in place, and will at all times during the Term continue to have in place, adequate procedures designed to prevent any person associated with the Contractor from committing an offence under the Bribery Legislation and as a minimum such procedures comply, and will at all times during the Term comply, with the most recent guidance issued from time to time by the Secretary of State pursuant to the Bribery Act 2010;
  - 10.3.8. it will throughout the Term comply with, monitor and enforce the procedures referred to in Clause 10.3.7.
- 10.4 Without prejudice to JSL's other rights and remedies, JSL may terminate this Agreement with immediate effect by written notice to the Contractor if the Contractor commits any breach of Clause 10.3.6 above. Such a breach shall be deemed to be a material, irremediable breach of this Agreement.

## **11 Liability**

- 11.1 Nothing in this Agreement will limit or exclude the liability of either Party for death or personal injury arising out of its negligence, or for its fraud.
- 11.2 Subject to Clause 11.1, in no circumstances will either Party be liable to the other Party for any loss of business, revenue, profits, anticipated savings or goodwill (whether direct or indirect) or for any indirect, special or consequential loss arising out of or in connection with this Agreement.
- 11.3 Subject to Clause 11.1 and without prejudice to Clause 11.2, each Party's maximum aggregate liability under or in connection with this Agreement or its subject matter will not exceed £1,000,000.
- 11.4 Except as expressly provided in this Agreement, all representations, conditions and warranties, whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by law.

## **12. Insurance**

- 12.1. The Contractor undertakes that for the duration of this Agreement, it will be adequately covered against employee misfeasance, accident, third party injury, defective products, fire and other risks normally covered by insurance by persons supplying and supporting routing and switching equipment. The Contractor will

ensure that such insurance remains in place following expiry or termination of the last Contract that remains in force for a period of at least 3 years.

- 12.2 The Contractor will produce to JSL or any other Customer, at its reasonable request, satisfactory evidence of the insurance arrangements described Clause 12.1.

### **13. Intellectual Property**

- 13.1 Any licence required by the Customer in order to fully enjoy the benefit of the Services will be set out in the Contract.

### **14 Termination**

- 14.1 Without prejudice to the rights and remedies of the Contractor and any Customer, either JSL or the Contractor may terminate this Agreement immediately by giving the other Party written notice:

14.1.1. in the event of a material breach by the other Party which is incapable of remedy;

14.1.2. in the event of a material breach by the other Party which is capable of remedy but which the other Party fails to remedy within twenty (20) Business Days of having been notified of such breach; or

14.1.3. if the other Party has a receiver, administrative receiver, administrator or other similar officer appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other Party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by section 123 of the Insolvency Act 1986 to be unable to pay its debts, or undergoes or is subject to any analogous acts or proceedings under any foreign law.

- 14.2. JSL may terminate this Agreement with immediate effect if any of the Contracts are terminated due to the Contractor's default, negligence and/or insolvency.

- 14.3. Without prejudice to Clauses 14.1.1 and 14.1.2, if either Party persistently breaches a provision of this Agreement the other Party may escalate the breach in accordance with Clause 25. Where despite having undergone and exhausted the escalation process the Party in breach continues to persistently breach the provisions, then the other Party may terminate the Agreement by giving the other Party 14 days' written notice (irrespective of whether the breach is material or remediable).

- 14.4. Termination of this Agreement will be without prejudice to the Parties' accrued rights and obligations.

- 14.5. Clauses 1 (Definitions), 8 (Management Charge), 12 (Insurance), 13 (Intellectual Property), 14.4 to 14.6 (Termination), 17 (Third Party Rights), 18 (Counterparts), 19 (No Partnership), 20 (Confidentiality), 21(Assignment), 22 (No Waiver), 23 (Notices), 24 (Entire Agreement), 25 (Dispute Resolution), 26 (Freedom of Information) and 27 (Governing Law) of this Agreement will continue notwithstanding the expiry or termination of this Agreement.
- 14.6. The expiry or termination of this Agreement shall not affect the continuance of any Contracts between the Contractor and any Customer then in force.

## **15 Severability**

- 15.1. If any provision of this Agreement, including in particular any limitation, is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Agreement will nevertheless remain legal, valid, and enforceable.

## **16 Variation**

- 16.1. This Agreement will be modified only by the written agreement of both Parties and no variation, deletion or replacement of this Agreement will be effective unless made in writing and signed by both Parties.

## **17 Third party rights**

- 17.1. A person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## **18 Counterparts**

- 18.1. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

## **19 No Partnership**

- 19.1. Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement will constitute or be deemed to constitute between the Parties a partnership, association, joint venture, or other co-operative entity.

## **20 Confidentiality**

- 20.1. Subject to the following provisions of this clause, each Party shall treat as confidential the Confidential Information of the other Party.
- 20.2. Subject to Clauses 20.3 and 20.4, each Party will:
- 20.2.1 only use Confidential Information for the purposes of this Agreement or the relevant Contract;
  - 20.2.2. only disclose Confidential Information to a third party with the prior written consent of the other Party (except that each Party may disclose Confidential Information to companies in its Group or to its professional advisors or

auditors to the extent necessary to exercise its rights or fulfil its obligations under this Agreement); and

- 20.2.3. ensure that any third party to whom Confidential Information is disclosed is subject to a confidentiality undertaking in terms no less onerous than those of this Clause 20.
- 20.3. The provisions of Clause 20.1 and 20.2 will not apply to any Confidential Information which:
  - 20.3.1. is in or comes into the public domain other than by breach of this Clause 20;  
or
  - 20.3.2. has been independently generated by the recipient Party's employees who have neither had any involvement in the performance of the recipient Party's obligations under this Agreement nor access to such Confidential Information or which was in the possession of the recipient Party prior to the date of the disclosure.
- 20.4. Each Party may disclose the Confidential Information pursuant to a statutory, legal or parliamentary obligation, an order of a court of competent jurisdiction or the requirement of a competent regulatory body including any requirements for disclosure under the FOIA or the Environmental Information Regulations 2004, provided that it notifies the other Party as soon as the requirement to notify arises and will use its reasonable endeavours to ensure that any such disclosure is made in a manner which ensures the confidentiality of the Confidential Information.
- 20.5. Subject to the above provisions of this Clause 20, the Party receiving Confidential Information will take the same precautions and exercise the same degree of care to protect Confidential Information as it takes and exercises in relation to its own confidential information. In any event, the receiving Party will take all reasonable care to protect said Confidential Information.
- 20.6. This Clause 20 will survive the expiry or termination of this Agreement and continue for 6 years thereafter (subject to any different time periods relating to certain Commercially Sensitive Information as specified in Schedule 4).

## **21. Assignment**

- 21.1. Subject to Clause 21.2 below, neither Party may assign its rights under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 21.2. Either Party may assign any of its rights under this Agreement to a member of its Group. In such cases:
  - 21.2.1. the assigning Party shall promptly inform the other Party in writing of the identity of the assignee;
  - 21.2.2. for the avoidance of doubt, the assigning Party shall remain liable for any acts and/or omissions under this Agreement and/or any of the Contracts irrespective of the assignment;

21.2.3. if the relevant assignee ceases to be a member of the assignor's Group then the assignor shall ensure that such assigned rights are promptly transferred back to the assignor and/or a member of its Group.

## 22. No Waiver

22.1. Failure by either Party to exercise or enforce any right or benefit conferred by this Agreement will not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

## 23. Notices

23.1 Any notice required or authorised to be given under this Agreement will be delivered by hand, by post, by facsimile transmission (immediately confirmed by post) or by email, to the relevant address stated in Clauses 23.2 or 23.3 as applicable or, if another address is notified, to that other address. Any notice will be deemed to have been served immediately if by hand or 48 hours after such posting if by post or immediately (provided the sender's email or fax machine confirms complete and error-free transmission to the correct email address or fax number) if by email or facsimile transmission or email.

23.2. Notices for JSL are to be sent to the postal address or email address below:

Contract Manager,  
Jisc Services Ltd  
Lumen House,  
Library Avenue,  
Harwell Science and Innovation Campus,  
Didcot, OXON, OX11 0SG

[equipmentcontracts@jisc.ac.uk](mailto:equipmentcontracts@jisc.ac.uk)

and must be copied by email to [legal@jisc.ac.uk](mailto:legal@jisc.ac.uk).

23.3. Notices for the Contractor are to be sent to the postal address [or email address] below:

[Contract Manager - insert details for the Contractor]

23.4. Where notices are to be served by email, the email must contain the following wording in the subject matter field: "Notice served in accordance with the terms of the Framework Agreement for Routing and Switching Services between JSL and [insert Supplier's name]".

## 24. Entire Agreement

24.1. Subject to Clause 1.7, this Agreement and any Contract between the Parties, contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.

24.2. Subject to Clause 1.7, each of the Parties acknowledges and agrees that it does not enter into this Agreement on the basis of and does not rely, and has not relied

upon, and will have no remedy in respect of, any statement or representation or warranty or other provision made, given or agreed to by the other Party to this Agreement (whether negligently or innocently made) except those expressly repeated or referred to in this Agreement and the only remedy available in respect of any misrepresentation or untrue statement made to it will be a claim for breach of contract under this Agreement. Nothing in this Clause will operate to limit or exclude liability for fraud.

**25. Dispute Resolution**

- 25.1. In the event of a dispute between the Parties concerning this Agreement, each of the Parties will, in the first instance, endeavour to reach an agreement in respect of the dispute by following the escalation process set out in Clauses 25.2 to 25.6 below.
- 25.2. The aggrieved Party shall provide the other Party with written notice and the problem will initially be referred to the first level contact given in the table below (the “**First Level**”).
- 25.3. If the problem is not resolved at the First Level or a corrective plan of action has not been mutually agreed upon within 10 Business Days of giving the dispute notice then either Party shall have the option to escalate the matter to the second level contact given in the table below (the “**Second Level**”).
- 25.4. If the problem is not resolved at the Second Level or a corrective plan of action has not been mutually agreed upon within 5 Business Days of giving the dispute notice then either Party shall have the option to escalate the matter to the third level contact given in the table below (the “**Third Level**”).
- 25.5. If the problem is not resolved at the Third Level or a corrective plan of action has not been mutually agreed upon within 5 Business Days of giving the dispute notice then either party shall have the option to escalate the matter to the final level contact given in the table below (the “**Final Level**”).
- 25.6. The Final Level representatives agree to use all reasonable efforts to meet within 10 Business Days at a mutually agreeable time and place in order to resolve the dispute.

**Escalation Points**

Escalation Level	JSL Contacts	Contractor Contacts
First Level	Contract Management Team Leader	[contractor to insert]
Second Level	Network Infrastructure Group Manager	[contractor to insert]
Third Level	Head of Operations Support	[contractor to insert]
Final Level	Operations Director	[contractor to insert]

- 25.7. Without prejudice to each Party’s rights to terminate the Agreement, if the Parties are unable to reach agreement on the disputed matter through the process as specified in Clauses 25.2 to 25.6, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model

Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation the Parties will send a joint notice in writing ("ADR notice") to CEDR requesting mediation. The mediation will start not later than 30 days after the date of the ADR notice, or such later date as the mediator is available.

- 25.8. If a process for mediation is not agreed in accordance with Clause 25.7 within a period of 15 Business Days from a request by either Party or the dispute remains unresolved, or the dispute is not resolved within 30 Business Days from the date of the ADR notice, both Parties shall be entitled to pursue the matter in law.

**26. Freedom of Information**

- 26.1. JSL is not subject to the requirements of the FOIA and is not obliged to respond to requests for information thereunder. However, JSL will endeavour to respond to any request for information in the spirit of the FOIA where reasonably able to do so. JSL will at all times in providing any such response comply with its obligations of confidentiality as more particularly detailed in Clause 20. JSL and the Contractor will assist and cooperate with each other if a request for information is received by JSL.

**27. Governing Law and Jurisdiction**

- 27.1. This Agreement and all matters arising out of it (whether of a contractual or tortious nature) will be governed and construed in accordance with the laws of England and the Parties irrevocably agree to the exclusive jurisdiction of the Courts of England and Wales.

**THIS AGREEMENT** has been executed by the Parties by their authorised officers, on the date specified on page 2.

**SIGNED FOR AND ON BEHALF OF  
JISC SERVICES LIMITED**

**SIGNED FOR AND ON BEHALF OF  
[INSERT CONTRACTOR'S NAME]**

.....

.....

**Name:**

**Name:**

**Title:**

**Title:**



## TABLE OF SCHEDULES

<b>Schedule 1</b>	<b>Pro-forma Contract with Customers</b>
<b>Schedule 2</b>	<b>Services</b>
<b>Schedule 3</b>	<b>Change Control Procedure</b>
<b>Schedule 4</b>	<b>Commercially Sensitive Information</b>

**SCHEDULE 1**

**Pro-forma Contract with Customers**

(1) [insert customer name]

and

(2) [insert supplier name]

---

SERVICES CONTRACT

---

**PROFORMA CONTRACT**

**DRAFT**

**BETWEEN:**

- (1) **[INSERT NAME OF CUSTOMER]** whose **[registered office]** **[principal place of business]** is at **[insert address]** ("the Customer"); and
- (2) **[INSERT NAME OF SUPPLIER]** (Company Number [ ]) whose registered office is at **[insert address]** ("the Contractor").

**1. Definitions**

1.1. In this Contract, the following words will have the following meanings:

<b>"Applicable Law"</b>	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body;
<b>"Bribery Legislation"</b>	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time, together with any guidance or codes of practice issued by the relevant government department concerning the same;
<b>"Business Day"</b>	means any day excluding Saturdays, Sundays and any national holidays throughout the United Kingdom;
<b>"Charges"</b>	means the charges or fees payable by the Customer to the Contractor in consideration for the performance of the Services, as set out in Schedule 2;
<b>"Commercially Sensitive Information"</b>	means the subset of the Contractor's Confidential Information listed in Schedule 4 that constitutes a trade secret;
<b>"Confidential Information"</b>	means all information (in whatever format) designated as such by the disclosing Party together with such information which relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of the disclosing Party or which may reasonably be regarded as the confidential information of the disclosing Party and, in the case of information disclosed by the Contractor, includes the Commercially Sensitive

	Information;
<b>"Contract"</b>	means this contract including the Schedules;
<b>"Customer Personal Data"</b>	means any Personal Data provided by or on behalf of the Customer;
<b>"Data Controller", "Data Processor", "Data Subject" and "processing"</b>	have the respective meanings given to them in the Data Protection Act 1998;
<b>"Effective Date"</b>	means [the date of this Contract];
<b>"Environmental Information Regulations"</b>	means the Environmental Information Regulations 2004;
<b>"Equipment"</b>	means any equipment to be supplied by the Contractor as part of the Services, as specified in Appendix 1 of Schedule 1;
<b>"FOIA"</b>	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 in relation to such legislation;
<b>"Force Majeure Event"</b>	means any cause beyond a Party's reasonable control affecting the performance of its obligations under this Contract, including, but not limited to, war, acts of terrorism, governmental requirements, acts of local or central Government or other competent authorities, Acts of God and industrial disputes (other than industrial disputes by the relevant Party's employees). For the avoidance of doubt, the failure or delay of any obligations of any subcontractor will not be deemed to be beyond the reasonable control of a Party unless the delay or failure is a result of an event beyond the reasonable control of the subcontractor;
<b>"Framework Agreement"</b>	means the framework agreement between (1) Jisc Services Limited; and (2) the Contractor, dated [INSERT];
<b>"Group"</b>	means, in relation to a Party, the Party, its subsidiaries, its holding companies and any subsidiaries of such holding companies, "subsidiary" and "holding company" having the meanings given to them in section 1159 of the

Companies Act 2006;

- "Implementation Date"** means the date on or by which the Contractor must have performed the initial installation of the Equipment and/or provided access to the Services, as specified in Schedule 1;
- "Order Form"** means the Contractor's service order form relating to this Contract, which is set out in Schedule 3;
- "Personal Data"** has the meaning given to it in Section 1(1) of the Data Protection Act 1998;
- "Service Credits"** means the service credits detailed in Schedule 1;
- "Services"** means the services described in Schedule 1 which are to be provided to the Customer by the Contractor;
- "Service Levels"** means the service levels set out in Schedule 1;
- "Site"** means the location for delivery of Equipment/performance of Services, designated by the Customer and as detailed in Schedule 1; and
- "Term"** means the term of this Contract as set out in Clause 13.
- 1.2 References in this Contract to any statute or statutory provision include, unless the context otherwise requires, references to that statute or provision as from time to time amended, extended or re-enacted.
- 1.3 References in this Contract to a **"Party"** or the **"Parties"** mean a party or the parties to this Contract.
- 1.4 Reference to words importing the singular only also includes the plural and vice versa where the context requires.
- 1.5 The heading in this Contract are for reference only and shall not be taken into account in the construction or interpretation of this Contract.
- 1.6 Unless otherwise stated, references in this Contract to Clauses and Schedules are references to the clauses of, and schedules to, this Contract.
- 1.7 The following order of precedence shall apply in relation to any conflict, inconsistency or contradiction between the various documents referred to in this Contract:
- 1.7.1. the terms and conditions in the main body of this Contract; and
  - 1.7.2. the Schedules to this Contract ; and
  - 1.7.3. the Framework Agreement.

## **2. The Services**

- 2.1 In consideration for the payment of the Charges, the Contractor shall provide the Services in accordance with the terms of this Contract, including but not limited to complying with the Service Levels and the timescales for performance as set out in Schedule 1.
- 2.2 In performing its obligations under this Contract, the Contractor will at all times exercise reasonable skill and care and will ensure that the Services are performed by staff that are competent and skilled and experienced in the relevant subject areas.

## **3. Equipment**

- 3.1 If any Equipment is to be provided by the Contractor as part of the Services, as specified in Appendix 1 of Schedule 1, the terms of Schedule 5 shall apply.

## **4. Intellectual Property Rights**

- 4.1 In consideration for the payment of the Charges, the Contractor grants and/or shall procure for the benefit of the Customer within the United Kingdom the licences set out in Schedule 6 to this Contract, on the terms set out in that Schedule.
- 4.2 The Contractor shall indemnify and keep indemnified the Customer on demand against any direct losses, liabilities, costs, claims, damages, awards and expenses arising out of any claims that the Services (or any part of the Services, including but not limited to the use of a deliverable and/or any Equipment) infringes the intellectual property rights of whatever nature of a third party.
- 4.3 The Customer shall notify the Contractor promptly if the Customer becomes aware of any claim being made or action being threatened or brought against the Customer, which is likely to result in an indemnity claim against the Contractor pursuant to Clause 4.2.
- 4.4 The Customer shall:
  - 4.4.1 not make any admissions or settlement of any claim of the kind referred to in Clause 4.2 without the Contractor's prior written consent (such consent not to be unreasonably withhold and/or delayed);
  - 4.4.2 give the Contractor all such reasonable assistance and information as it may reasonably require in order to respond to any claim of the kind described in Clause 4.2; and
  - 4.4.3 at the Contractor's cost and expense, allow the Contractor complete control over the defence and/or settlement of any action or claim of the kind described in Clause 4.2.
- 4.5 The Contractor shall give the Customer the earliest possible notice in writing of any actual claims against the Contractor that the Services (or any part of them) infringes the intellectual property rights of whatever nature of a third party.

- 4.6. Without prejudice to the provisions of Clause 4.2, if a third party brings a claim that the Services (or any part of them) infringe any intellectual property rights of that third party, or if the Contractor reasonably considers that such a claim may be made, the Contractor may (at its own option and expense):
- 4.6.1 modify or replace the infringing element of the Services so as to avoid the infringement, provided that such modification or replacement shall not materially affect the delivery of the Services, with the Contractor making good to the Customer any direct losses suffered by the Customer during or as a result of the modification or replacement; or
  - 4.6.2 procure for the Customer the right to retain and continue to use the affected article.
- 4.7. If the Contractor modifies or replaces the infringing element, the modified/replacement item must comply with the terms of this Contract, including but not limited to any warranties and any specifications.
- 4.8. The Contractor shall have no liability to indemnify the Customer other against any claim of the kind referred to in Clause 4.2 insofar as any such claim is in respect of: (i) any use in combination with the Services of any item not supplied by the Contractor (except where such combination, connection, operation or use is recommended, specified or approved by the Contractor) where such combined use directly gives rise to the claim; or (ii) the Customer's unreasonable refusal to use or supply modified Services provided pursuant to Clause 4.6.1.

## **5 Change Process**

- 5.1. Subject to Clause 5.2, any changes to this Contract will be agreed in writing between the Parties and must be set out in the Order Form. The Equipment and Services will be provided by the Contractor to the Customer on the terms of this Contract. If there is any conflict between the terms of the Order Form and the terms of this Contract, the terms of this Contract shall prevail unless the parties expressly state to the contrary within the Order Form.
- 5.2. If a minor change is proposed by one of the Parties, the change will come into effect if both Parties agree to that change in writing.

## **6 Charges**

- 6.1. The Charges to be paid by the Customer for the Services and the payment profile that will apply are set out in Schedule 2. For the avoidance of doubt, the Charges will be offset by any Service Credits due or payable by the Contractor to the Customer. All invoices issued by the Contractor shall be payable within 30 days of the date of receipt of a due and valid invoice.
- 6.2. .All sums payable under this Contract are stated exclusive of VAT, which shall be charged by the Contractor at the current rate and will be payable by the Customer.



## **7. Progress Meetings**

- 7.1. The Parties agree to meet as often as is reasonably necessary, and at least quarterly, to facilitate the operation of this Contract and the proper and timely delivery of the Services, such meetings to be the forum for discussion between the Parties in connection with such operation and delivery.
- 7.2. The Parties will arrange for certain of its employees, agents or subcontractors to attend from time to time as may be appropriate.
- 7.3. Progress meetings to discuss progress reports and other relevant issues will be held at intervals which, in the Customer's reasonable opinion, are necessary to ensure the proper and timely delivery of the Services.
- 7.4. The Contractor will prepare in advance of each such meeting a written progress report, the contents of which shall be as the Customer may reasonably require.
- 7.5. The meetings will be held at the Customer's offices, or at any other location agreed between the Parties.

## **8 Warranties**

- 8.1. The Contractor warrants that:
  - 8.1.1. it will at all times have adequate levels of resource to allow the performance of the Services in accordance with the terms of this Contract, including but not limited to the timescales for performance;
  - 8.1.2. the Equipment and any associated software shall be free from material defects and will materially comply with any agreed specification(s);
  - 8.1.3. it has and will for the duration of this Contract have all necessary licences, consents and authorisations or rights as may be provided for under any relevant legislation, regulations or administrative orders to provide the Services to the Customer;
  - 8.1.4. the Services will (where relevant) meet or exceed the service levels set out in Schedule 1 and any applicable industry standards;
  - 8.1.5. it will provide the Services in a timely, reliable and professional manner and will carry out its obligations in this Contract in accordance with all applicable telecommunications, data protection and other laws, licences and regulations in force from time to time;
  - 8.1.6. it has the full right, power and authority to enter into and perform this Contract in accordance with its terms, and such entry and performance does not and will not violate or infringe the intellectual property or other rights of any other persons; and
  - 8.1.7. it is not knowingly engaged in, and will not knowingly during the Term engage in, any business, relationship, contract or other activity which damages or tarnishes, or is likely to damage or tarnish, the reputation of the Customer;

- 8.1.8. in relation to this Contract and/or its subject matter, neither the Contractor nor any of its employees, sub-contractors or agents or others performing services on behalf of the Contractor has done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Parties of any Bribery Legislation;
  - 8.1.9. it has in place, and will at all times during the Term continue to have in place, adequate procedures designed to prevent any person associated with the Contractor from committing an offence under the Bribery Legislation and as a minimum such procedures comply, and will at all times during the Term comply, with the most recent guidance issued from time to time by the Secretary of State pursuant to the Bribery Act 2010; and
  - 8.1.10. it will throughout the Term comply with, monitor and enforce the procedures referred to in Clause 8.1.8.
- 8.2. The Customer warrants that:
- 8.2.1. subject to Clause 8.1.3, it has and will for the duration of this Contract have all necessary licences, consents and authorisations or rights as may be provided for under any relevant legislation, regulations or administrative orders to perform its obligations under this Contract; and
  - 8.2.2. it has the full right, power and authority to enter into and perform this Contract in accordance with its terms, and such entry and performance does not and will not violate or infringe the intellectual property or other rights of any other persons.
- 8.3. Specific warranties regarding any Equipment to be provided by the Contractor are set out in Schedule 5.
- 8.4. Specific warranties regarding any Services to be provided by the Contractor (including but not limited to in relation to any software) are set out in Schedule 5.

## **9 Confidentiality**

- 9.1. Subject to the following provisions of this clause, each Party shall treat as confidential the Confidential Information of the other Party.
- 9.2. Subject to Clauses 9.3 and 9.4, each Party will:
  - 9.2.1. only use Confidential Information for the purposes of this Contract or the Framework Agreement;
  - 9.2.2. only disclose Confidential Information to a third party with the prior written consent of the other Party (except that each Party may disclose Confidential Information to companies in its Group or to its professional advisors or auditors to the extent necessary to exercise its rights or fulfil its obligations under this Contract); and
  - 9.2.3. ensure that any third party to whom Confidential Information is disclosed is subject to a confidentiality undertaking in terms no less onerous than those of this Clause 9.

- 9.3. The provisions of Clauses 9.1 and 9.2 will not apply to any Confidential Information which:
- 9.3.1. is in or comes into the public domain other than by breach of this Clause 9; or
  - 9.3.2. a recipient Party can show (i) has been independently generated by the recipient Party's employees who have neither had any involvement in the performance of the recipient Party's obligations under this Contract nor access to such Confidential Information or (ii) was in the possession of the recipient Party prior to the date of the disclosure, free from any obligations of confidentiality.
- 9.4. Each Party may disclose the Confidential Information pursuant to a statutory, legal or parliamentary obligation, an order of a court of competent jurisdiction or the requirement of a competent regulatory body including any requirements for disclosure under the FOIA or the Environmental Information Regulations, provided that it notifies (where it is legally able to do so) the other Party as soon as the requirement to notify arises and will use its reasonable endeavours to ensure that any such disclosure is made in a manner which ensures the confidentiality of the Confidential Information.
- 9.5. Subject to the above provisions of this Clause 9, each Party receiving Confidential Information will take the same precautions and exercise the same degree of care to protect Confidential Information as it takes and exercises in relation to its own confidential information. In any event, the receiving Party will take all reasonable care to protect said Confidential Information.
- 9.6. [The Customer is not subject to the requirements of the FOIA and is not obliged to respond to requests for information thereunder. However, the Customer will endeavour to respond to any request for information in the spirit of the FOIA where reasonably able to do so. The Customer will at all times in providing any such response comply with its obligations of confidentiality as set out in this Clause 9. The Customer and the Contractor will assist and cooperate with each other if a request for information is received by the Customer.] [Amend if Customer is subject to the FOIA]

## **10. Data Protection**

- 10.1 The Contractor shall:
- 10.1.1. only carry out processing of any Customer Personal Data on the Customer's instructions;
  - 10.1.2. implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage; and
  - 10.1.3. only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the Data Subject. The Contractor shall promptly notify the Customer of the transfer and will comply with any conditions in respect of the transfer that the Customer deems necessary (acting reasonably) to protect the rights of

the Data Subject and to enable the Customer to comply with its obligations as a Data Controller.

10.2. The Contractor shall:

- 10.2.1 not subcontract any processing of the Customer Personal Data without the prior written authorisation of the Customer;
  - 10.2.2. ensure that access to the Customer Personal Data is limited to those employees or authorised subcontractors who need access to the Customer Personal Data to meet the Contractor's obligations under this Contract and that all employees and authorised subcontractors are informed of the confidential nature of the Customer Personal Data;
  - 10.2.3. comply with its data protection obligations under any Applicable Law and shall not, by act or omission, put the Customer in breach of or jeopardise any registration under the same;
  - 10.2.4. promptly and fully notify the Customer in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require;
  - 10.2.5. promptly and fully notify the Customer in writing if any Customer Personal Data has been disclosed in breach of this Clause 10;
  - 10.2.6. indemnify the Customer on demand against any loss or damage suffered by the Customer in relation to any breach by the Contractor of its obligations under this Clause 10; and
  - 10.2.7. if requested, submit to a data security audit before any Services commence and then once during any subsequent calendar year and/or if any regulator of the Customer requests or requires an audit of the Customer and/or any of its service providers.
- 10.3. Except as expressly provided otherwise, this Contract does not transfer ownership of, or create any licences (implied or otherwise), in any intellectual property rights in any data.

## 11 Liability

11.1. Nothing in this Contract will limit or exclude the liability of either Party for death or personal injury arising out of its negligence, or for its fraud.

11.2. Subject to Clause 11.1.

11.2.1. in no circumstances will either Party be liable to the other Party for any loss of business, revenue, profits, anticipated savings or goodwill (whether direct or indirect) or for any indirect, special or consequential loss arising out of or in connection with this Contract;

11.2.2. each Party's maximum aggregate liability under or in connection this Contract or its subject matter will not exceed £[ ]. [To be negotiated between the Contractor and the Customer on a contract by contract basis.]

- 11.3. The Contractor shall (where it is permitted to do so) ensure that the Customer receives the full benefit of any manufacturer's product warranty in respect of the Equipment of which the Contractor has the benefit.

## **12 Insurance**

- 12.1. The Contractor undertakes that for the duration of this Contract, it will be covered against employee misfeasance, accident, third party injury, defective products, fire and other risks normally covered by insurance by persons supplying services which are the same or similar to the Services, with the minimum levels of insurance as set out below:

- 12.1.1. [insert]

- 12.2. The Contractor will produce to the Customer, at its reasonable request, satisfactory evidence of the insurance arrangements described Clause 12.1.

## **13 Term and Termination**

- 13.1. Unless terminated earlier by either Party in accordance with the terms and conditions of this Contract, this Contract will commence on the Effective Date and will continue for the term set out in Schedule 1 ("the Initial Term"). This Contract shall continue after the Initial Term unless and until terminated by either Party giving not less than 3 months prior written notice to the other, such notice to expire at the end of the Initial Term or at any point thereafter ("the Extended Term").

- 13.2. Without prejudice to the rights and remedies of the Contractor and any Customer, either the Customer or the Contractor may terminate this Contract immediately by giving the other Party written notice:

- 13.2.1. in the event of a material breach by the other Party which is incapable of remedy;

- 13.2.2. in the event of a material breach by the other Party which is capable of remedy but which the other Party fails to remedy within 20 Business Days of having been notified of such breach; or

- 13.2.3. if the other Party has a receiver, administrative receiver, administrator or other similar officer appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other Party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by section 123 of the Insolvency Act 1986 to be unable to pay its debts, or undergoes or is subject to any analogous acts or proceedings under any foreign law.

- 13.3. Termination of this Contract will be without prejudice to the Parties' accrued rights and obligations.

- 13.4. On termination or expiry of this Contract, the Parties shall perform any and all termination obligations set out in Schedule 1. Unless otherwise stated in Schedule 1, each party shall perform its post-termination obligations at its own cost and expense.

#### **14 Severability**

- 14.1. If any provision of this Contract, including in particular any limitation, is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Contract will nevertheless remain legal, valid, and enforceable.

#### **15 Force Majeure**

- 15.1. Notwithstanding anything herein to the contrary but subject to Clause 15.2, neither Party will be liable for any delay or failure in performance of any of its obligations under this Contract, to the extent such delay or failure is attributable to a Force Majeure Event.
- 15.2. Each Party which is prevented from carrying out its obligations as a result of a Force Majeure Event will promptly notify the other Party and will agree an action plan with the other Party, at the cost of the Party prevented from carrying out its obligations as a result of the Force Majeure Event, to mitigate the effects of the Force Majeure Event.
- 15.3. If performance of the obligations of the Contractor is substantially prevented for a continuous period of 15 Business Days or more by virtue of any of the aforesaid events then the Customer may terminate this Contract, without any liability, by giving the Contractor written notice.

#### **16 Third party rights**

- 16.1. A person who is not a Party to this Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

#### **17 Counterparts**

- 17.1. This Contract may be executed in counterparts, each of which will be deemed an original, but which together will constitute the same instrument.

#### **18 No Partnership**

- 18.1. Nothing in this Contract and no action taken by the Parties pursuant to this Contract will constitute or be deemed to constitute between the Parties a partnership, association, joint venture, or other co-operative entity.

## 19 Assignment

- 19.1. Subject to Clause 19.2 below, neither Party may assign its rights under this Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 19.2. Either Party may assign any of its rights under this Contract to a member of its Group. In such cases:
  - 19.2.1. the assigning Party shall promptly inform the other Party in writing of the identity of the assignee;
  - 19.2.2. the assignor shall remain liable for any acts and/or omissions under this Contract irrespective of the assignment; and
  - 19.2.3. if the relevant assignee ceases to be a member of the assignor's Group then the assignor shall ensure that such rights are promptly transferred back to the assignor and/or a member of its Group.

## 20 Export Control [optional]

- 20.1. The Customer is advised that Equipment which may include technology and software is subject to EU and US export control laws of the country where it is delivered or used. Under these laws, the Equipment may not be sold, leased or transferred to any restricted end-users or countries or used, sold, leased or transferred for restricted end-uses. The Customer agrees to abide by these laws.

## 21 No Waiver

- 21.1. Failure by either Party to exercise or enforce any right or benefit conferred by this Contract will not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

## 22 Notices

- 22.1. Any notice required or authorised to be given under this Contract will be delivered by hand, by post or by facsimile transmission (immediately confirmed by post) to the relevant address set out in Clause 22.2 below or, if another address is notified, to that other address. Any notice will be deemed to have been served immediately if by hand or 48 hours after such posting if by post or immediately (provided the sender's fax machine confirms complete and error-free transmission to the correct fax number) if by facsimile transmission. Notices may also be delivered by email, provided that the sender is able to verify that the email reached the recipient's servers without error. Service will be upon reaching the server.
- 22.2. Notices to be sent to the Customer will be addressed as follows:  
[insert details, including email address]

Notices to be sent to the Contractor will be addressed as follows:

[insert details, including email address]

- 22.3. Where notices are to be served by email, the email must contain the following wording in the subject matter field: "Notice served in accordance with the terms of the Services Contract between [the Customer's name] and [insert Contractor's name]".

## **23 Entire Agreement**

- 23.1. This Contract, contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Contract, other than as may be set out in the Framework Agreement. Each of the Parties acknowledges and agrees that it does not enter into this Contract on the basis of and does not rely, and has not relied upon, and will have no remedy in respect of, any statement or representation or warranty or other provision made, given or agreed to by the other Party to this Contract (whether negligently or innocently made) except those expressly repeated or referred to in this Contract and/or the Framework Contract. Nothing in this Clause will operate to limit or exclude liability for fraud.

## **24 Dispute Resolution**

- 24.1. In the event of a dispute between the Parties concerning this Agreement, each of the Parties will, in the first instance, endeavour to reach an agreement in respect of the dispute by following the escalation process set out in Clauses 24.2 to 24.6 below.
- 24.2. The aggrieved Party shall provide the other Party with written notice and the problem will initially be referred to the first level contact given in the table below (the "First Level").
- 24.3. If the problem is not resolved at the First Level or a corrective plan of action has not been mutually agreed upon within 10 Business Days of giving the dispute notice then either Party shall have the option to escalate the matter to the second level contact given in the table below (the "Second Level").
- 24.4. If the problem is not resolved at the Second Level or a corrective plan of action has not been mutually agreed upon within 5 Business Days of giving the dispute notice then either Party shall have the option to escalate the matter to the third level contact given in the table below (the "Third Level").
- 24.5. If the problem is not resolved at the Third Level or a corrective plan of action has not been mutually agreed upon within 5 Business Days of giving the dispute notice then either party shall have the option to escalate the matter to the final level contact given in the table below (the "Final Level").
- 24.6. The Final Level representatives agree to use all reasonable efforts to meet within 10 Business Days at a mutually agreeable time and place in order to resolve the dispute.



### Escalation Points

Escalation Level	Contractor Contacts	Customer Contacts
First Level	[insert]	[insert]
Second Level	[insert]	[insert]
Third Level	[insert]	[insert]
Final Level	[insert]	[insert]

- 24.7. Without prejudice to each Party's rights to terminate the Agreement, if the parties are unable to reach agreement on the disputed matter through the process as specified in Clauses 24.2 to 24.6, they will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation the Parties will send a joint notice in writing ("ADR notice") to CEDR requesting mediation. The mediation will start not later than 30 days after the date of the ADR notice, or such later date as the mediator is available.
- 24.8. If a process for mediation is not agreed in accordance with Clause 24.7 within a period of 15 Business Days from a request by either Party and the dispute remains unresolved, or the dispute is not resolved within 30 Business Days from the date of the ADR notice, both Parties shall be entitled to pursue the matter in law.

### 25 Governing Law and Jurisdiction

- 25.1. This Contract and all matters arising out of it (whether of a contractual or a tortious nature) will be governed and construed in accordance with the laws of England and the Parties irrevocably agree to the exclusive jurisdiction of the Courts of England and Wales.

**THIS AGREEMENT** has been executed by the Parties by their authorised officers and agreed on the date specified on page 2.

.....  
Signed for and on behalf of

**[INSERT CUSTOMER NAME]**

Name:

Position:

Date:

.....  
Signed for and on behalf of

**[INSERT SUPPLIER NAME]**

Name:

Position:

Date:

## SCHEDULE 1

### SERVICES

<b>CONTRACT TERM AND SERVICES TO BE PROVIDED</b>	
Contract Term	[To be inserted]
Services	[Details of Lots to be inserted]
<b>EQUIPMENT SUPPLY</b>	
Equipment to be supplied	Full details of the Equipment to be provided by the Contractor will be listed in Appendix 1 to this Schedule.
Locations where Equipment is to be installed	Full details of the locations where the Equipment is to be installed to be set out in Appendix 1 to this Schedule.
Contractual Delivery Date for supply of Equipment and installation (if applicable).	[Insert applicable date]
Service Credits for late delivery of Equipment.	The Service Credits for late delivery of Equipment are set out in Appendix 2 of this Schedule.
<b>EQUIPMENT SUPPORT</b>	
Inventory of Equipment to be maintained	Details of the Equipment to be maintained are set out in Appendix 3 of this Schedule.
Service Level Agreement for Equipment Support	The service level agreement for the relevant level of Equipment Support is set out in Appendix 4 (Contractor's standard SLAs).
Service Credit for missing SLA related to time-to-fix of faults	The Service Credits for failure to meeting SLA on time-to-fix of service affecting faults are set out in Appendix 5 of this Schedule
Contract Termination Obligations (only applicable to Equipment Support)	

## Appendix 1

Equipment list and location for installation if required.

[insert]

## Appendix 2

### Service Credits for Late Delivery of Equipment

[The Service Credits to be provided by the Contractor for late delivery of Equipment to be inserted here.]

The following is an example table showing Service Credits which could be offered by the Contractor.

Number of calendar days delivery of order is delayed	Service credit (as % of the total value of affected items on the order):
1-5 days	waived
6-9 days	2%
10 +	2% plus 1% for each further 10 day period or part thereof, capped at 5%

The payment of any Service Credits shall be without prejudice to any other rights and/or remedies that the Customer may have for the breach in question. The amount of any Service Credits due to the Customer shall be set off against any damages payable to the Customer in respect of that breach.

The Contractor must provide the target delivery date for Equipment Services at the quotation stage. This date must be confirmed when the Order is placed, which will be treated as the Contractual Delivery Date for calculation of the Service Credits for late delivery.

In the event of a Force Majeure event or global supply chain problem affecting delivery of a specific Order, the Contractor must immediately inform the Customer of the situation and re-set the contractually agreed delivery date as soon as possible.

**Appendix 3  
Inventory of Equipment for Maintenance Support**

[insert]

**Appendix 4  
Service Level Agreement for Equipment Support**

[The Contractor's SLAs for the relevant level of Equipment Support services to be inserted here.]

**Appendix 5  
Service Credits for failure to meet SLA for Equipment Support**

[The Service Credits to be offered by the Contractor in relation to an SLA breach on a time-to-fix basis of service affecting faults to be inserted here.]

The following is an example table showing Service Credits which might be offered by the Contractor.

<b>% of calls related to service affecting faults not being fixed within the SLA objectives over a 12 month period</b>	<b>Service Credits applicable as a % of the annual service charges payable</b>
Up to 5%	[0.5%]
5- 10%	[1%]
11-20%	[2%]
21-30%	[3%]
Above 30%	Cap at [5%]

The payment of any Service Credits shall be without prejudice to any other rights and/or remedies that the Customer may have for the breach in question. The amount of any Service Credits due to the Customer shall be set off against any damages payable to the Customer in respect of that breach.

If the number of SLA breaches exceeds 30% of the total number of fault calls over 12 months, then the Customer is encouraged to notify this to Jisc Services Ltd as a serious issue to be reviewed at the regular service review meetings between Jisc Services Ltd and the Contractor under the Framework Agreement.

**Appendix 6**  
**Contact details**

Functions	Customer Contacts	Contractor Contacts
Contract Management	[insert]	[insert]
Service Management	[insert]	[insert]

**SCHEDULE 2**

**Charges and Payment Profile**

[INSERT]

[Cross-refer to Service Credits payable under Appendices 2 and 5 of Schedule 1]

**SCHEDULE 3**  
**Contractor's Service Order Form**  
**[INSERT]**



## SCHEDULE 4

### Commercially Sensitive Information

[to be inserted by Contractor]

## SCHEDULE 5

### Equipment and Software

The Equipment shall comply with the specification set out in Appendix 1 to Schedule 1.

The Contractor will deliver the Equipment to the Site in accordance with the timescales set out in Schedule 1.

Risk of loss or damage to the Equipment passes to the Customer upon delivery to the Site.

Title to the Equipment shall pass to the Customer upon final payment of the applicable Price for that Equipment.

[The Contractor's specific warranties and indemnities in relation to the Equipment and Services including the software to be inserted]

## SCHEDULE 6

### Intellectual Property Licences

If the Contractor is a manufacturer of hardware or supplier of software being provided to the Customer pursuant to this Contract, the Contractor shall indemnify and keep indemnified the Customer against any and all losses, liabilities, costs, claims, damages, awards and expenses arising out of any claims that the Services (or any part of the Services, including but not limited to the use of a deliverable and/or any Equipment) infringes the intellectual property rights of whatever nature of a third party.

If the Contractor is a distributor or reseller of hardware or software being provided to the Customer pursuant to this Contract, the Contractor shall ensure that the benefit of any warranties and indemnities which it receives in respect of any and all hardware and software supplied to the Customer under this Contract are passed on to the Customer such that the Customer can enforce those indemnities and warranties directly against such hardware manufacturers and software suppliers.

[Specific details of the intellectual property licences to be provided by the Contractor to be inserted here].

## SCHEDULE 2

### Services

The Contractor will provide the following services under this Agreement (including the provision of equipment, as referred to below):

**[CONTRACTED LOTS TO BE INSERTED]**

## **SCHEDULE 3**

### **Change Control Procedure**

#### **1. Principles**

Where JSL or the Contractor identifies the need to change this Agreement that Party will request the change in accordance with the Change Control Procedure.

Neither the Contractor or JSL will unreasonably withhold agreement to any change.

The Contractor will continue to provide the Services as if the change request had not been made until such time as the change is made in accordance with the Change Control Procedure.

The Contractor and JSL may hold discussions in connection with a change before the authorisation of that change without prejudice to the rights of either Party.

Any work undertaken by the Contractor or JSL, their sub-contractors or agents which has not been authorised in advance by the Change Control Procedure will be undertaken entirely at the expense and risk of carrying out the work. Save to the extent that the Contractor is authorised in writing to perform or undertake any work in advance of any Change Control.

The Change Control Procedure operates through the use of a Change Control Notice which defines the change requested.

A Change Control Notice signed by both Parties will constitute an amendment to the Agreement. Any change to this Agreement shall have no impact upon the Contracts in force as at the date of the change coming into effect unless agreed by the Contractor and relevant Customer in writing.

#### **2. Procedure for JSL to Request a Change**

JSL will complete the first Section of the JSL Change Control Notice and send it to the Contractor. JSL will provide the following information:

- a Change Control Notice unique identification;
- the title of the change;
- the originator and date of the request;
- the requested date by which the change should be complete;
- the reason for the change; and
- full details of the change.

On receipt of JSL's Change Control Notice, the Contractor will determine the viability and cost of the change (if any). The Contractor may request further

information or clarification from JSL regarding the change. Once this information has been provided, the Contractor will, within ten (10) Business Days or other agreed time, complete the second Section of JSL's Change Control Notice and return it to the originator from JSL. The Contractor will provide the following information:

- the cost (if any) of implementing the change;
- a timetable for implementation of the change;
- confirmation of feasibility or otherwise;
- any other comments; and
- any consequential amendments to the provisions of the Agreement.

Before this Section 2 is finalised and signed by the account manager on behalf of the Contractor, both Parties will discuss in good faith the proposed change(s).

Once Section 2 has been so finalised and signed, JSL will determine if it wishes to continue with the change and, within five (5) Business Days or other agreed time, complete the third Section of JSL's Change Control Notice and send a copy to the Contractor. JSL will provide an indication of its intention to proceed or not with this change.

### 3. **Procedure for the Contractor to Request a Change**

The Contractor will complete the first Section of the Contractor Change Control Notice and send it to JSL. The Contractor will provide the following information:

- the title of the change;
- the originator and date of the request;
- the required date by which the change should be complete;
- the reason for the change;
- the cost (if any) of implementing the change;
- a timetable for implementation of the change;
- full details of the change; and
- any consequential amendments to the provisions of the Agreement.

Before this Section 1 is finalised and signed by the account manager on behalf of the Contractor, both Parties will discuss in good faith the proposed change(s).

On receipt of the Contractor Change Control Notice, JSL will consider the change. JSL may request further information for clarification from the Contractor. Once this

information has been provided, JSL will, within ten (10) Business Days or other agreed time, complete the second Section of the Contractor Change Control Notice and provide the following information:

- a Change Control Notice unique identification;
- authority to proceed with this change or not; and
- any other comments.

**JSL CHANGE CONTROL NOTICE**

**SECTION 1 – TO BE COMPLETED BY JSL**

This change is requested.

CCN Identifier:  Title of Change:

Originator:  Telephone:

Date:

Reason for change:

Details of change:

Requested date:

**SECTION 2 – TO BE COMPLETED BY THE CONTRACTOR**

This change will be accepted according to the following details.

Account Manager:  Telephone:

Signature:  Date:

Cost:

Timetable:

Comments:

**SECTION 3 – TO BE COMPLETED BY JSL**

Authority to proceed with this change:

Comments:

Signature:  Date:

Name:  Position:



CONTRACTOR CHANGE CONTROL NOTICE

**SECTION 1 – TO BE COMPLETED BY THE CONTRACTOR**

This change is requested.

Title of Change:

Account Manager:  Telephone:

Signature:  Date:

Reason for change:

Details of change:

Requested date:

Cost:

Timetable:

**SECTION 2 – TO BE COMPLETED BY JSL**

CCN Identifier:  Authority to proceed with this change:

Comments:

Signature:  Date:

Name:  Position:

**SCHEDULE 4**

**Commercially Sensitive Information**

[To be inserted by Contractor]