

Draft	1
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Dated [DATE]

FRAMEWORK AGREEMENT

RELATING TO THE PROVISION OF [INSERT]

(1) Middlesex University

(2) []

PARTIES

- (1) **MIDDLESEX UNIVERSITY** Higher Education Corporation, whose principal place of business is at Hendon, The Burroughs, London NW4 4BT (**“University”**) (which includes any successors)
- (2) [NAME] [(Company Number [])] [of]/[whose registered office is at] [] (**“the Supplier”**)

BACKGROUND:

- (A) The University wishes to enter into this agreement with the Supplier to confirm the appointment of the Supplier following a tender process and pursuant to which a University may from time to time call upon the Supplier to undertake a supplementary selection process to provide the Services to that University.
- (B) The University wishes to appoint the Supplier on the terms and conditions set out in this agreement which the Supplier hereby accepts.

AGREED TERMS**1. INTERPRETATION**

- 1.1 Throughout this agreement the following words and phrases have the following meanings unless inconsistent with the context, as expressly indicated to the contrary or as agreed otherwise by the parties in writing.

“Charges” means the invoice value to the Supplier due from the University for the Services supplied further to this agreement

“Confidential Information” in relation to each party, means all information in respect of the business and financing of that party including any ideas, business methods, finances, prices, businesses, financial, marketing, development or manpower plans, customer lists or details, computer systems and software, know-how or other matters connected with the services marketed, provided or obtained by that party and information concerning either party's relationship with actual or potential members or customers or any other third party and the needs and requirements of such persons

“Contract” means the conditions of contract for the supply of the Supplies to the University which shall be provided by the University or referenced in any purchase order or other communication from the University to the Supplier.

“ITT” means the documents issued by the University which initiated the Tender

“Intellectual Property Rights”	means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions
“Invitation”	means a document asking the Supplier to participate in a Mini Competition, setting out the rules for that process
“Group of Suppliers”	means the group of suppliers successfully Tendering for the provision of the Supplies
“KPI”	means the key performance indicators and / or service levels set out in Schedule 2
“Law”	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, delegated or subordinate legislation or notice of any regulatory body
“Mini Competition”	means the process undertaken by the University between members of the Group of Suppliers to appoint a member of the Group of Suppliers as the provider of the Supplies to the University.
“Mini Tender”	means the response from the Supplier submitted in response to a Mini Competition
“Supplies”	means the goods and / or services more particularly described in the ITT
“Tender”	means the tender submitted by the Supplier for the provision of the Supplies together with all materials supplied to the University by the Supplier describing how the Supplier proposes to deliver the Supplies
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006

1.2 Throughout this agreement:

- 1.2.1 the masculine gender includes the feminine and neuter and vice versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 references to persons include bodies corporate, unincorporated associations and partnerships;
- 1.2.4 the schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules;
- 1.2.5 references to clauses, paragraphs and schedules are to clauses and paragraphs of and schedules to this agreement;
- 1.2.6 the headings of clauses and paragraphs are for convenience only and shall be disregarded in construing this agreement;
- 1.2.7 any reference to a statute or statutory provision includes a reference to any modification, consolidation or re-enactment of the provision for the time being in force and all and any subordinate legislation for the time being in force made under it;
- 1.2.8 any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done;
- 1.2.9 general words shall not be given a restrictive interpretation by reasons of their being preceded or followed by words indicating a particular class of acts, matters or thing.

2. APPOINTMENT AND PROVISION OF THE SUPPLIES

- 2.1 The Supplier has, following submission of the Tender, been allowed to participate in this agreement and has been appointed to the Group of Suppliers.
- 2.2 The University may from time to time send to the Supplier (in electronic or hard copy format) an Invitation to participate in a Mini Competition for appointment as a provider of Supplies to the University.
- 2.3 If the Supplier wishes to submit a Mini Tender in response to the Invitation it shall submit the Mini Tender to the University within the timescales set out in the Invitation. The Mini Tender shall contain information including, but not limited to, the Supplier's proposed Charges for the provision of the Supplies which shall be calculated in accordance with the methodology stated in the Tender.
- 2.4 Following receipt of the Supplier's Mini Tender, the University may submit clarification questions to the Supplier requesting further information and/or clarifications in respect of the Mini Tender submitted. The Supplier shall respond to such requests within the stipulated timescale.
- 2.5 Following receipt of the Supplier's Mini Tender (and any responses to clarification questions if requested) the University shall either:
 - 2.5.1 notify the Supplier that it does not wish to instruct the Supplier to provide the Supplies tendered for; or
 - 2.5.2 accept the Supplier's relevant Mini Tender
- 2.6 The submission by the Supplier of a Mini Tender pursuant to this **Clause 2** shall be entirely at the Supplier's own cost.

- 2.7 A University may from time to time directly award a contract to any Supplier.
- 2.8 Any Supplies awarded pursuant to this agreement shall be provided in accordance with the Contract and the Supplier hereby agrees to provide the Supplies fully and faithfully in accordance with this agreement and the Contract.
- 2.9 Each agreement concluded by the Supplier and a University shall be read and construed as a separate and independent contract between the Supplier and the University.
- 2.10 This agreement shall not be an exclusive arrangement between the University and the Supplier as to any contracts which may be let under it nor shall the University be bound to offer any contract to the Supplier hereunder in preference to any other provider or at all. This agreement and the Supplier's appointment does not give rise to any expectation or entitlement on the part of the Supplier that it will be instructed to supply any Supplies and the Supplier shall have no claim at Law or otherwise against the University if the University elects not to instruct the Supplier to supply any of the Supplies, or if the University appoints any other person to undertake the supply of the Supplies that the Supplier may be qualified to perform.
- 2.11 The Supplier acknowledges and agrees that the University is entering into this agreement on the basis of the Tender and the Supplier warrants that the Tender is accurate and complete in all respects, and is not misleading and repeats that warranty every time it accepts an award of contract.
- 2.12 The Supplier shall supply the Supplies in accordance with the provisions of the following:
- 2.12.1 The Contract
 - 2.12.2 This agreement
 - 2.12.3 The Tender
- In the event of any conflict or inconsistency between the terms of the above documents they shall be interpreted in accordance with the order of precedence given in this Clause 2.12
- 2.13 The Supplier shall observe at all times the KPIs
- 2.14 The Supplier shall provide all information requested the University in order to ascertain the Supplier's observance of this agreement within 5 working days of receipt of such request.

3. COMMENCEMENT AND DURATION

- 3.1 Where instructed to provide the Supplies pursuant to **Clause 2** the Supplier shall provide the Supplies from the date stipulated by the University to the Supplier in writing.
- 3.2 This agreement shall commence from the date hereof and shall expire on [DATE] unless this agreement is extended in accordance with **Clause 3.3** or terminated in accordance with **Clause 10**.
- 3.3 The University shall have the option of applying an extension period to the agreement of [INSERT] duration. The extension may be applied from the expiry date at **Clause 3.2** and will follow notice given in writing to the Supplier of the intention to extend the agreement under this Clause.

4. PUBLICITY

- 4.1 The Supplier shall not without the prior written consent of the University advertise or publicly announce that it is undertaking work for the University nor shall it divulge any information pertaining to the award of contracts under the agreement.
- 4.2 All media and external communications (such as press releases), relating to the Supplies supplied or potentially supplied pursuant to this agreement must be approved by the University in writing prior to release, and the University reserves the right in its absolute discretion to provide material for inclusion in such communications.
- 4.3 The University shall provide the media contact and respond to all media requests regarding this agreement.
- 4.4 The arrangements and agenda for any events held as part of, as a result of or to promote this agreement must be agreed in writing by the University. The University reserves the right to provide representation at any event. The University shall, in its absolute discretion, have final approval over all materials published, broadcast or delivered.

5. CONFIDENTIALITY and FREEDOM OF INFORMATION

- 5.1 The Supplier undertakes that it shall not at any time during this agreement and for a period of three years after termination disclose to any person any Confidential Information disclosed to it by the University except as permitted by **Clause 5.3**.
- 5.2 Each party may disclose the other party's Confidential Information:
 - 5.2.1 to its employees, officers, agents, consultants or professional advisors (Representatives) who need to know such information for the purposes of carrying out the party's obligations under this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this **Clause 5** as though they were a party to this agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
 - 5.2.2 as may be required by law, court order or any governmental or regulatory authority. In particular, the Supplier acknowledges that the University may be subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 which may require such bodies to disclose details of this agreement, contract awards or the Tender itself.
- 5.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of any Confidential Information other than those expressly stated in this agreement are granted to any other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly to any Intellectual Property Right held, made, obtained or licensable by any party now or in the future.
- 5.4 The Supplier agrees at any time on request by the University to make full use of, and to provide all such information as may reasonably be required for, any reporting system(s) of any governmental agency (or the agents thereof) as the University may specify, and agrees to co-operate fully at its own expense with the University or any relevant third party provider in the management and/or operation of such system(s).
- 5.5 During the period of this agreement the Supplier shall maintaining the accuracy and completeness and providing any updates in a timely manner.

6. LIABILITY (The Supplier's attention is specifically drawn to this provision)

- 6.1 This **Clause 6** sets out the entire financial liability of the parties (including any liability for the acts or omissions of their employees, agents, consultants and subcontractors) to the other party in respect of any failure of the University to abide by applicable regulation or legislation or other legal requirement in respect of the process leading to the Tender and any contract award and the formation of this agreement; and either parties liability for any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 6.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.
- 6.3 Nothing in the agreement limits or excludes the liability of either party:
- 6.3.1 for death or personal injury resulting from that parties negligence; or
 - 6.3.2 for any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other.
- 6.4 The University's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement or in respect of any correspondence between the parties leading to the submission of the Tender or a contract award shall be limited to and shall not exceed £10,000.
- 6.5 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to and shall not exceed £10,000,000.
- 6.6 Neither party shall be liable for:
- 6.6.1 loss of profits; or
 - 6.6.2 loss of business; or
 - 5.1.3 loss of contract.

7. CHARGES

- 7.1 Subject to Clause 7.2, charges in relation to all Supplies provided to any University by the Supplier shall be calculated in accordance with each Contract.
- 7.2 The following elements as priced in the Tender remain fixed for the **[DURATION]** of the agreement:
- 7.2.1 [INSERT]
 - 7.2.2 [INSERT]

8. VARIATIONS

- 8.1 This agreement may only be varied or amended by agreement between the University and the Supplier in writing.

9. TERMINATION

- 9.1 The University may terminate this agreement at any time by giving notice to the Supplier stating that it is terminating the agreement pursuant to this **Clause 9** and that the agreement will terminate on the date falling twenty-eight (28) days after the date of receipt of the notice. For the avoidance of doubt the termination of any Contract with the University shall be dealt with in accordance with the termination provisions in the Contract.
- 9.2 Without excluding liability for fraud or fraudulent misrepresentation, the University shall not be obliged to pay any cancellation charge or other compensation to the Supplier (including, without limitation, loss of business, loss of goodwill or loss of profits) by reason of the termination of this agreement by the University.
- 9.3 Any termination of this agreement, howsoever occasioned, shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 9.4 Upon termination of this agreement (howsoever caused) the Supplier shall, at no further cost to the University by a mutually agreed date return to the University any materials incorporating any Confidential Information of the University or destroy or erase any Confidential Information of, or relating to the University contained in any materials prepared by or on behalf of the Supplier or recorded in any memory device and return all data, property materials and account for any damaged or lost property, and/or materials.

10. ASSIGNMENT AND SUB-CONTRACTING

- 10.1 The University shall be fully entitled to assign or transfer the benefit of the whole or any part of this agreement at any time without the consent of the Supplier other than where such assignment or transfer would create a conflict of interest with the Supplier.
- 10.2 The Supplier shall not assign or transfer any interest in this agreement without the prior written consent of the University.
- 10.3 The Supplier shall not be entitled to sub-contract any of its obligations under this agreement,.

11. ANTI-BRIBERY AND ANTI-CORRUPTION

- 11.1 The Supplier shall:
- 11.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ('Relevant Requirements');
 - 11.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 11.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
 - 11.1.5 immediately notify the University if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the

Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);

- 11.1.6 ensure that all persons associated with the Supplier or other persons who are performing Supplies in connection with this agreement comply with this **Clause 11**; and
 - 11.1.6 within 2 months of the date of this agreement, and annually thereafter, certify to the University in writing signed by an officer of the Supplier, compliance with this **Clause 11** by the Supplier and all persons associated with it and all other persons for whom the Supplier is responsible under **Clause 11.1.6**. The Supplier shall provide such supporting evidence of compliance as the University may reasonably request.
- 11.2 For the purpose of this **Clause 11**, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 6(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this **Clause 11** a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.
- 11.3 In the event of any breach of this **Clause 11** by the Supplier or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Supplier):
- 11.3.1 the Supplier shall immediately give the University full details of any such breach and shall co-operate fully with the University in disclosing information and documents which the University may request; and/or
 - 11.3.2 the University shall (without prejudice to any of its rights or remedies under this agreement or otherwise) be entitled by notice in writing to terminate this agreement immediately; and
 - 11.3.3 the Supplier shall be liable for and shall indemnify and keep the University indemnified in respect of any and all loss resulting from such termination.
- 11.4 In any dispute, difference or question arising in respect of:
- 11.4.1 the interpretation of this **Clause 11**; or
 - 11.4.2 the right of the University to terminate this agreement; or
 - 11.4.3 the amount or value of any gift, consideration or commission
- the decision of the University shall be final and conclusive.

12. ENTIRE AGREEMENT

- 12.1 This agreement and any documents expressed or referred to in it constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior communications, representations, warranties, stipulations, undertakings and agreements between the parties. Nothing in this **Clause 12** will exclude any liability which one party would otherwise have to the other party in respect of any statement made fraudulently.

13. RELATIONSHIP OF PARTIES

- 13.1 The Supplier is not an employee, agent, partner or representative of the University, and will not represent or otherwise hold itself out as such to any third party and has no

authority to bind the University or make the University liable in respect of, any agreement, act or statement.

14. RE-TENDERING AND HANDOVER

- 14.1 Within twenty one (21) days of being so requested by the University, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the University to issue invitations to tender for the future provision of the Supplies.
- 14.2 Where, in the opinion of the University, TUPE is likely to apply to the agreement or any Contract on the termination or expiration, the information to be provided by the Supplier under **Clause 14.1** shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to): -
- 14.2.1 the number of employees who would be transferred, but with no obligation on the Supplier to specify their names; and
 - 14.2.2 in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment; and
 - 14.2.3 the general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.
- 14.3 The Supplier shall indemnify the University against any claim made against the University at any time by any person in respect of the liability incurred by the University arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under **Clause 14.1**.
- 14.4 The Supplier shall co-operate fully with the University during the handover arising from the completion or earlier termination of the agreement. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition.

15. TUPE

- 15.1 The Supplier shall indemnify and keep indemnified the University against any loss incurred by the University connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the University in respect of any or all of the Supplier's staff or employees or any other employee of the Supplier and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.
- 15.2 The Supplier shall indemnify and keep indemnified the University against any loss incurred by the University connected with or arising from the contract of employment

or any policy applicable to, or any collective agreement in respect of any of the Supplier's staff or any other person at any time employed by (or engaged as a consultant by) the Supplier made against the University at any time for breach of such contract, policy or redundancy, pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Supplier and which results from any act, fault or omission of the Supplier while such Supplier's staff were or such other person was employed by the Supplier, save to the extent that the liability arises from any wrongful act by the University or its employees.

- 15.3 The Supplier shall indemnify and keep indemnified the University against any loss incurred from any change or proposed change to the terms and conditions of employment of any or all of the Supplier's staff or any other employee of the Supplier where such change is or is proposed to be effected following the transfer of any such person pursuant to the agreement and in respect of any loss incurred by the University arising from the employment or proposed employment of any such person otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.
- 15.4 Except with the proper written consent of the University, the Supplier shall not vary any terms and conditions of employment of any employee or any policy collective agreement applicable to any employee then assigned by the Supplier to the provisions of the Supplies (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience) after the University has served notice of the termination of the Contract or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this agreement, any Contract or the provision by it of the Supplies.

16 SERVICE IMPROVEMENT AND TECHNOLOGY REFRESH

- 16.1 The Supplier shall, at its own cost, submit a report to the University within [NUMBER] days of the end of each year of the term of this agreement which shall identify the emergence of new and evolving relevant technologies and processes which could improve the Supplies. Such report shall be provided in sufficient detail to enable the University to evaluate properly the benefits of the new technology or process.
- 16.2 If the University wishes to incorporate any improvement identified by the Supplier pursuant to **Clause 16.1**, the parties shall discuss the implementation of the associated change provided always that if the Supplier's costs in providing the Supplies as a result of any business change implemented by the University, [PERCENTAGE]% of the cost savings shall be passed on to the University by way of a consequential and immediate reduction in the Charges for the Supplies.

17. NOTICES

- 17.1 any notice required to be served under this agreement shall be in writing, served, in the case of a notice served upon the University, by personal delivery or by sending it by recorded postal delivery to University Procurement Office, Middlesex University, Hendon, The Burroughs, London NW4 4BT or such other address as shall from time to time be notified in writing by the University to the Supplier, and in the case of a notice to be served upon the Supplier by delivering or sending it to the address specified at

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the head of this agreement or such other address as shall from time to time be notified in writing by the Supplier to the University in the same manner.

17.2 Any such written notice shall (where sent by post) be deemed to have been served and received on the second business day following the day of posting and where delivered personally be deemed to have been given at the time of delivery.

18 RIGHTS CUMULATIVE

18.1 The provisions of this agreement, and the rights and remedies of the parties under this agreement, are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity.

18.2 No exercise by a party of any one right or remedy under this agreement, or at law or in equity shall (save to the extent, if any, provided expressly in this agreement or at law or in equity) operate either to hinder or prevent the exercise by it of any other such right or remedy.

18.3 The termination of this agreement, howsoever arising, shall not prejudice any accrued rights of either the University or the Supplier.

19 APPLICABLE LAW

19.1 Unless the Supplier and the University otherwise agree in writing this agreement is governed by the law of England, and the parties submit to the non-exclusive jurisdiction of the Courts of England.

20 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

20.1 This agreement is not intended to confer any rights on any other third party pursuant to the said 1999 Act.

EXECUTED (but not delivered until the
date hereof) AS A DEED by)
UNIVERSITY)
in the presence of :)

Authorised signatory

EXECUTED (but not delivered until the
date hereof) AS A DEED)
[SUPPLIER])
in the presence of :)

Director