

DATE

2022

ASTON UNIVERSITY

AND

[INSERT NAME]¹

**660 – NETWORK TESTERS EQUIPMENT
AGREEMENT FOR THE PURCHASE OF GOODS**

SUBJECT TO CONTRACT

Draft: []

¹ Insert the name of the other Party.

This Agreement is between:

- (1) Aston University of Aston Triangle, Birmingham, B4 7ET, England ("Aston"); and
- (2) [insert company name]² registered in England and Wales with registered number [insert company number]³ and whose registered office is situated at [insert company's registered address]⁴ ("the Supplier");

each a "Party", together the "Parties".

Agreed:

1. Introduction

The Parties have agreed that Aston will purchase the Goods (defined below) from the Supplier and the Supplier will deliver the Goods pursuant to the terms set out in this Agreement.

2. Duration

2.1 This Agreement will commence on the Commencement Date and will continue in force so long as the Parties' obligations subsist in accordance with the terms set out in this Agreement ("the Term") unless otherwise terminated in accordance with paragraphs 5.6.4, 15, 16, 26 of Schedule 1 of the Terms and Conditions.

2.2 This Agreement may be extended by the mutual agreement of the Parties no later than [6 weeks]⁵ prior to the end of the Term.

3. Goods

3.1 The Goods are defined as any goods to be delivered by the Supplier as set out in the Goods Specification.

3.2 Aston will have [20 Business Days]⁶ to inspect the Goods to ensure that the Goods correspond with the Goods Specification prior to the payment of Price (the "Inspection Period"). Aston will not be deemed to have accepted the Goods during the Inspection Period.

3.3 The Supplier agrees that Aston may mark the Goods as being Aston's property on delivery for the purposes of security. The Supplier acknowledges that by marking the Goods Aston will not be deemed to have accepted the Goods.

3.4 The Acceptance Period will commence on the Delivery Date and will lead to the Acceptance Date.

3.5 In the event the Goods fail to meet the Goods Specification, Aston will be entitled to exercise the rights and remedies as set out in the Terms and Conditions.

² Insert the name of the other party.

³ Insert the Company number.

⁴ Insert the Company's registered address.

⁵ Is this clause applicable? If not it can be deleted. Otherwise, please consider whether 6 weeks' notice period is sufficient in light of the duration.

⁶ This is Aston's standard position.

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4. Delivery

4.1 The Supplier will deliver the Goods no later than 30th August 2022 (“the Delivery Date”). The Supplier will deliver the Goods on the Delivery Date between the hours of 08:00 – 17:00 at the Delivery Address.⁷

4.2 The Delivery Address is:

[Insert delivery area/location]⁸
Aston University
Aston Triangle
Birmingham
B4 7ET
United Kingdom

5. Acceptance Tests

Aston will undertake the Acceptance Tests within the Acceptance Period in accordance with Schedule 5.

6. Spares⁹

The Supplier will make the Spares available to Aston for a period of 5 years from the Delivery Date (“Spare Supply Period”).

7. Payment

7.1 Aston will pay the Supplier the Price as set out in Schedule 3.

7.2 The Supplier shall raise its Invoice within [5] Business Days after the end of the [week/month/quarter] to which they relate.

7.3 Aston shall pay all undisputed and valid Invoices within 30 days of receipt of invoice to the bank account nominated by the Supplier.

7.4 The Price will be plus VAT unless Aston is in receipt of a VAT invoice.

7.5 The Supplier will not increase the Price without the prior written consent of Aston.

7.6 All payments payable by Aston under this Agreement are subject to the full and proper performance of the Supplier's obligations in connection with this Agreement.

7.7 [The Parties acknowledge that time is of the essence with the delivery of the Goods and Aston may reduce the Price by a rate of 2% per day that elapses between the Delivery Date and the actual date of delivery that will not exceed a total reduction of the Price of 24% which the Parties agree is a genuine pre-estimate of Aston's loss as a result of late delivery and is not a penalty.

⁷ Amend as per required.

⁸ Insert the address for the place where Goods need to be delivered, i.e. Aston Main Building etc.

⁹ Please delete as necessary.

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- 7.8 Any amount that Aston owes to the Supplier under this Agreement, whether now or at any time in the future, whether it is liquidated or not and whether it is actual or contingent, may be set off from any amount due to Aston from the Supplier under this Agreement.

8. **Change Request**

The Parties may amend the provisions of this Agreement by an amending agreement in the format set out in Schedule 6.

9. **Aston and Supplier Details**

- 9.1 Details of Aston's and the Supplier's representatives that are involved in the purchase and delivery of the Goods are set out in Schedule 4.

10. **Notices**

- 10.1 For purposes of this Agreement, the addresses for service of notice are:

Aston

Address: Aston Triangle, Birmingham, B4 7ET

For the attention of: General Counsel

The Supplier

Address: [insert address]¹⁰

For the attention of: [insert details]

11. **Terms and Conditions**

[Subject always to Clause 11,]¹¹ the Terms and Conditions will apply to this Agreement.

12. **Special Conditions**

[Insert bespoke conditions in relation to the purchase of Goods as necessary to vary the Terms and Conditions]¹².

¹⁰ Please insert the details of the Supplier.

¹¹ Retain if clause 11 is retained otherwise please delete this part and clause 11.

¹² Any bespoke conditions will need to be inserted here. Please contact the Office of the General Counsel to assist with the drafting.

Schedule 1 ¹³

Aston's Terms and Conditions for purchase of Goods

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| <p>1. Goods</p> <p>1.1 The Supplier will provide the Goods to Aston in accordance with the Goods Specification and the terms set out in this Agreement.</p> <p>1.2 The Supplier will comply with all Applicable Laws, standards, regulations and other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.</p> <p>1.3 The Supplier will ensure that the Goods are of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) and fit for purpose as expressly made known to the Supplier by Aston.</p> <p>1.4 The Supplier will ensure that it has and maintains all licences, approvals and consents that it requires to undertake its obligations set out in this Agreement.</p> <p>1.5 The Supplier will and procure that its Affiliates will comply with Aston's Policies and Regulations as required</p> | <p>Supplier within 30 days of the inspection or testing, the Supplier will take such steps as are necessary to ensure compliance with the Goods Specification and the remainder of this Agreement.</p> <p>2.3 Notwithstanding any such inspection or testing, the Supplier will remain fully responsible for the Goods and any such inspection or testing will not reduce or otherwise affect the Supplier's obligations under this Agreement.</p> |
| <p>2. Inspection period</p> <p>2.1 Aston will have the right to inspect and test the Goods at any time prior to delivery during the Inspection Period. The Supplier will not unreasonably refuse any request made by Aston to carry out such inspection and testing and will provide Aston with all facilities reasonably required.</p> <p>2.2 If, as a result of inspection or testing pursuant to paragraph 2.1 of this Schedule 1, Aston is not satisfied that the Goods will comply with the Goods Specification or the remainder of this Agreement, and Aston so informs the</p> | <p>3. Delivery</p> <p>3.1 The Supplier will deliver the Goods to the Delivery Address on the Delivery Date.</p> <p>3.2 The Supplier will offload the Goods at the Delivery Address at its own risk.</p> <p>3.3 The Supplier may not deliver the Goods by separate instalments unless mutually agreed in writing with Aston.</p> <p>3.4 The Supplier will deliver the Goods in an undamaged condition.</p> <p>3.5 The Supplier will deliver the Goods with a delivery note setting out the Delivery Address, Delivery Date and details of the Goods including special storing conditions if applicable.</p> <p>3.6 Subject to the nature of the Goods, prior to the Delivery Date, the Supplier will provide Aston with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods. Aston will rely on such information from the Supplier in order to satisfy its obligations under Applicable Law.</p> |

¹³ These are the University's standard terms. Please contact the Office of the General Counsel in the event any changes are required.

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| <p>3.7 The Supplier will provide Aston with all operating and safety instructions with the Goods.</p> <p>3.8 Aston will not be bound to pay the Supplier for any excess Goods delivered. Any excess Goods will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.</p> <p>3.9 The Supplier will remove all packaging from the Goods upon delivery unless mutually agreed otherwise in writing with Aston.</p> <p>4. Acceptance</p> <p>Aston will be deemed to have accepted the Goods on the Acceptance Date.</p> <p>5. Acceptance Tests</p> <p>5.1 The Goods may be required to satisfy the Acceptance Tests to demonstrate that the Goods meet the Goods Specification before they are accepted by Aston.</p> <p>5.2 Aston will notify the Supplier in writing as to when the Acceptance Tests will take place. The Supplier may attend and assist with conducting the Acceptance Tests.</p> <p>5.3 The Supplier will be afforded the opportunity to comment on the suitability of the Acceptance Tests.</p> <p>5.4 Aston will record the results of the Acceptance Tests.</p> <p>5.5 Aston will notify the Supplier promptly on successful completion of the Acceptance Tests as to whether the Goods satisfy the Acceptance Tests.</p> <p>5.6 If the Goods do not satisfy the Acceptance Tests, Aston will notify the Supplier of such failure and may (in its discretion and without prejudice to its other rights under this Agreement):</p> | <p>5.6.1 grant a further period of time during which the Supplier will be required to adapt, modify and/or otherwise correct the relevant Goods to comply with the Goods Specification so that the Goods can be re-submitted for further testing; or</p> <p>5.6.2 accept the Goods subject to a list of written exceptions which the Supplier will rectify within the timescales agreed by the Parties; or</p> <p>5.6.3 accept the Goods subject to receiving a refund or reduction in Price; or</p> <p>5.6.4 reject any/all of the Goods and terminate this Agreement with immediate effect by giving written notice to the Supplier in accordance with paragraph 26 of this Schedule 1 without any liability to the Supplier on the basis of a total failure of consideration including any liability to pay any outstanding payments of the Price which, at the time of (and but for) such termination, remain outstanding and are due to be paid to the Supplier. In the event Aston terminates this Agreement pursuant to paragraph 5.6.4 of this Schedule 1, the Supplier will repay Aston any amounts paid to the Supplier under this Agreement within 14 days of the date of such termination; or</p> <p>5.6.5 complete the supply of the Goods by entering into a contract with a third party and recover from the Supplier any costs incurred by Aston in obtaining substitute Goods from a third party.</p> |
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5.7 The Supplier will ensure that any modifications made as a result of failing to pass the Acceptance Test will not adversely impact on any previously successful Acceptance Test or (as applicable) the approval procedure in respect of any other Goods. To the extent that any such adverse impacts occur, the Supplier will be liable to Aston for Aston's reasonable costs in conducting further tests.

5.8 Aston will notify the Supplier within 30 days of receiving the modified Goods pursuant to paragraph 5.6.1 of this Schedule 1 confirming whether the modified Goods meet the Goods Specification.

6. Spares

6.1 Where appropriate to the Goods supplied, Aston may request the Supplier to make Spares available at reasonable prices and with reasonable dispatching conditions to Aston.

6.2 The Supplier will maintain a supply of Spares for the Spares Supply Period.

6.3 The Spares will be fully compatible with the Goods and maintain the same levels of performance as the Goods originally supplied, though they need not be identical to those items. The warranty given by the Supplier in paragraph 9 of this Schedule 1 will apply to the Spares as if they were part of the original Goods.

6.4 During the Spares Supply Period, if the Supplier intends to discontinue the manufacture of the Spares, the Supplier will notify Aston in writing of such intention setting out the details of any third party from which the Spares will be available or any third Party to which the Supplier intends to provide the Design Information.

6.5 If the Supplier breaches paragraph 6.1 of this Schedule 1 during the Spares Supply Period or becomes Insolvent, the Supplier will,

so far as it is legally entitled to do so, and if so required by Aston, as soon as practicable, deliver the Design Information to Aston or its nominated third party, free of charge. Aston, or its nominated third party, may retain the Design Information for such time only as is necessary. After such time and if the Supplier requires it, Aston will return the Design Information to the Supplier at its cost.

7. Title and Risk

The title and risk in the Goods will pass to Aston when the Goods are delivered to the Delivery Address on the Delivery Date.

8. Access

The Supplier will provide the names of any employees or persons that may require access to Aston's premises to deliver the Goods if expressly requested by Aston.

9. Warranties

9.1 The Supplier warrants and represents to Aston that the Goods will:

9.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as specified by Aston;

9.1.2 be free from defects in design, material and workmanship;

9.1.3 correspond with the Goods Specification;

9.1.4 comply with all Applicable Laws in relation to their sale and supply; and

9.1.5 be formulated, designed, constructed, finished and packaged as to be safe, durable and without any risk to any individual.

10. **Non-performance**

10.1 Without prejudice to any other rights or remedies of Aston, if the Supplier breaches any condition of the Agreement or Aston terminates this Agreement in accordance with paragraph 5.6.4, 15, 16, 25 and 26 of this Schedule 1, then Aston may, whether or not it has accepted the Goods (in whole or part):

10.1.1 where applicable, cancel any or all remaining instalments of the Goods to be delivered;

10.1.2 reject the Goods (in whole or part) and return them to the Supplier at the risk and cost of the Supplier subject to Aston receiving a full refund for the return of the Goods by the Supplier;

10.1.3 at its sole option, afford the Supplier the opportunity to remedy the defect, supply replacement Goods, or carry out necessary work to ensure that the conditions of this Agreement are met at the Supplier's cost;

10.1.4 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make without any liability to Aston;

10.1.5 recover from the Supplier any additional expenditure reasonably incurred by Aston in obtaining the Goods in substitution from another supplier;

10.1.6 claim Losses incurred by Aston which are in any way attributable to the Supplier's breach of this Agreement or failure to deliver the Goods on the Delivery Date or at all; and/or

10.1.7 for a period of 12 months from the Delivery Date, in respect of Goods which do not conform with the provisions set out in paragraph 9.1 of this Schedule 1, oblige the Supplier, at Aston's discretion, to replace or repair such Goods free of charge and any repaired or replaced Goods will be guaranteed on the terms of paragraph 10.1.7 of this Schedule 1 for the unexpired portion of the 12 month period.

11. **Limitation of Liability**

11.1 Neither Party limits its liability for:

11.1.1 breach of paragraphs 14 (Confidentiality), 15 (Anti-Bribery), 16 (Anti-Facilitation of Tax Evasion), and 17 (Modern Slavery);

11.1.2 breach of paragraph 13 (Intellectual Property Rights);

11.1.3 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or

11.1.4 fraud by it or its employees; or

11.1.5 breach of any obligation as to title implied by statute; or

11.1.6 any other act or omission, liability for which may not be limited under Applicable Law.

11.2 Neither Party shall be liable for any of the following (whether direct or indirect): loss of profits, loss of business, loss of anticipated savings, depletion of goodwill and/or similar losses, loss of opportunity, or any special, consequential, indirect or

	pure economic loss, damage, costs, charges or expenses.		remain the property of the Disclosing Party and the Receiving Party shall:
11.3	Subject to paragraphs 11.1 and 11.2, the total aggregate liability of each Party under this Agreement will not exceed the Price paid by Aston to the Supplier.	14.1.1	keep the Confidential Information confidential at all times;
12.	Force Majeure	14.1.2	not disclose the Confidential Information or allow it to be disclosed in whole or in part to any third party without the Disclosing Party's prior written consent save as permitted pursuant to paragraph 14.1.3;
	Force Majeure	14.1.3	only disclose the Confidential Information to any of its officers, directors, members, partners, employees, consultants, agents or professional advisers ("Authorised Persons") who need to know the Confidential Information for the purpose of discharging their obligations under this Agreement provided that the Receiving Party shall ensure that each of its Authorised Persons to whom Confidential Information is disclosed is aware of its confidential nature and complies with this paragraph 14 as if it were the Receiving Party; and
	Neither Party will be liable to the other to the extent that it is unable to perform its obligations by reason of Force Majeure provided the Party so unable to perform promptly notifies the other Party in writing of the Force Majeure, its expected duration and its causes, and uses reasonable endeavours to minimise the effects of the event of Force Majeure.	14.1.4	take and maintain proper and reasonable measures to ensure the confidentiality of the Confidential Information.
	If a Force Majeure continues for more than 3 months, a Party in receipt of a notice pursuant to paragraph 13.1 may terminate this Agreement by giving 30 days' written notice to the other. The Party serving such notice to terminate may withdraw the same if the Force Majeure ceases during the 30 day notice period. In calculating whether a Force Majeure has continued for 3 months any period or periods totalling 1 month or less during the 3 month period during which the Party serving the notice under paragraph 13.1 was able to fulfil its obligations under this Agreement will be ignored.	14.2	Confidential Information shall not include any information that:
13.	Intellectual Property Rights	14.2.1	is, or was already known or available to the Receiving Party;
	The Supplier warrants that the Goods will not infringe the Intellectual Property Rights of any person or third Party.	14.2.2	is, or becomes, in the public domain other than through
14.	Confidentiality		
14.1	All Confidential Information provided or disclosed by the Disclosing Party to the Receiving Party under or in connection with this Agreement will		

- any breach of this Agreement;
- 14.2.3 is disclosed to the Receiving Party without any obligation of confidence to the Disclosing Party by a third party that is not itself under or in breach of any obligation of confidentiality; or
- 14.2.4 the Disclosing Party agrees in writing does not constitute Confidential Information.
- 14.3 Notwithstanding the remainder of this paragraph 14, the Receiving Party may disclose any Confidential Information which it is required to disclose by Applicable Law, any court, any governmental, regulatory authority or any other authority of competent jurisdiction, or which the Disclosing Party expressly agrees in writing may be disclosed (provided that such permission is provided in advance of any disclosure by the Disclosing Party).
- 14.4 This paragraph 14 shall bind the Parties during the term of this Agreement and for a period of five years from the date of termination of this Agreement.
15. **Anti-Bribery**
- 15.1 Each Party will:
- 15.1.1 comply with Anti-Bribery Law;
- 15.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity, practice or conduct had been carried out in the UK;
- 15.1.3 have and will maintain in place, throughout the term of this Agreement, its own policies and procedures, including Adequate Procedures, to ensure compliance with Anti-Bribery Law and this paragraph 15 of Schedule 1, and will enforce them where appropriate; and
- 15.1.4 procure and ensure that all of its Associated Persons comply with this paragraph 15 of Schedule 1.
- 15.2 The Supplier will comply with Aston's Policies and Regulations relating to anti-bribery and anti-corruption.
- 15.3 If either Party breaches this paragraph 15 then, without prejudice to any other rights or remedies, the other Party may immediately terminate this Agreement on written notice to the Party in breach.
16. **Anti-Facilitation of Tax Evasion**
- 16.1 The Supplier shall:
- 16.1.1 not engage in any activity, practice or conduct which would constitute either:
- (a) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
- (b) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- 16.1.2 have and shall maintain in place throughout the Term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person

	(including without limitation Company employees) and to ensure compliance with paragraph 16.1.1; and		with Aston (on reasonable request) to enable Aston to comply with the information disclosure requirements imposed on it by the FOIA and/or the EIR as the case may be.
16.1.3	notify Aston in writing if it becomes aware of any breach of paragraph 16.1.1 or has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement.	20.	Equality
		20.1	The Supplier will comply with Aston's Policies and Regulations relating to equal opportunities for students and all Applicable Laws relating to equal opportunities.
16.2	A breach of this paragraph 16 by the Supplier shall be deemed a material breach of this Agreement and shall entitle Aston to terminate this Agreement in accordance with paragraph 26.	21.	Publicity and Announcements
		21.1	Prior to publication the Parties will jointly approve in writing the form, manner and release of any public announcements or press release in any form and any marketing or other publicity materials or releases relating to this Agreement.
17.	Modern Slavery	22.	Compliance with Applicable Laws
17.1	The Supplier will comply with the Modern Slavery Act 2015, Modern Slavery Statement and all associated regulations. The Supplier agrees not to engage in any practice or conduct which would constitute an offence under the Modern Slavery Act 2015. Breach of this paragraph 17 will be deemed a material breach of this Agreement.	22.1	The Supplier will monitor and keep Aston informed in writing of any changes in the Applicable Laws which may impact the delivery of Goods and will provide Aston with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
		22.2	The Supplier will consult Aston on the manner, form and timing of changes it proposes to make to meet any changes in Applicable Laws where they would impact the delivery of the Goods. The Supplier will not implement any change, without Aston's prior written agreement, which would have an adverse effect on the Supplier's ability to deliver the Goods in accordance with this Agreement. The Supplier will use all reasonable endeavours to minimise any disruption caused by any changes in Applicable Laws.
18.	Prevent	23.	Data Protection
18.1	The Supplier acknowledges that Aston is subject to the requirements of Prevent and the Supplier (acting reasonably) will assist and cooperate, wherever possible, with Aston to enable Aston to comply with its obligations under Prevent.		The Parties shall comply with the provisions of the Data Sharing Agreement, and a breach of the Data
19.	Freedom of Information		
19.1	The Supplier acknowledges that Aston is subject to the requirements of the FOIA and the EIR, and the Supplier will assist and co-operate		

	Sharing Agreement shall be deemed a breach of this Agreement.	24.6	If an audit identifies that the Supplier has failed to perform its obligations under this Agreement in any material manner, the Parties will agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to Aston about the charges levied under this Agreement, then the remedial plan will include a requirement for the provision of all such information.
24.	Audit		
24.1	Aston may as often as reasonably necessary during this agreement and for a period of 12 months following its termination, conduct an audit for the following purposes: to verify the accuracy of charges levied by the Supplier and review the integrity, confidentiality and security of any Confidential Information, the Supplier's compliance with the Applicable Laws, any records created and/or books of account kept pursuant to this Agreement.	24.7	If an audit identifies that Aston has overpaid any charges set out in the Price, the Supplier will pay to Aston the amount overpaid within 30 days. Aston may deduct the relevant amount from any subsequent invoices if the Supplier fails to make this payment.
24.2	Aston will use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the supplier or delay the delivery of the goods.	24.8	If an audit identifies that Aston has underpaid any charges, Aston will pay to the Supplier the amount of the underpayment less the cost of any audit incurred by Aston within 30 days if this was due to a default by the supplier in relation to invoicing.
24.3	Subject to Aston's obligations of confidentiality, the Supplier will on demand provide Aston and any Regulatory Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including all information requested by Aston within the permitted scope of the audit and reasonable access to any premises controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the delivery of the Goods.	25.	Insurance The Supplier will maintain the Insurances in force with a reputable insurance company and, on Aston's request, provide Aston with copies of such policies of Insurance.
24.4	Aston will endeavour to (but is not obliged to) provide at least 15 Business Days' notice of its intention to conduct an audit.	26.	Termination This Agreement may be terminated by either Party at any time for any reason giving at least 6 months' written notice terminating on the anniversary of the Commencement Date.
24.5	The Parties agree that they will bear their own costs and expenses incurred in respect of compliance with this paragraph 24 of Schedule 1, unless the audit identifies a material breach of the terms of the Agreement by the Supplier in which case the Supplier will reimburse Aston for all reasonable costs incurred by Aston in the course of the audit.	26.1	This Agreement may be terminated by either Party at any time for any reason giving at least 6 months' written notice terminating on the anniversary of the Commencement Date.
		26.2	Either Party may terminate this Agreement immediately by giving written notice to the other Party at any time if the other Party:
		26.2.1	commits a material breach that cannot be remedied; or
		26.2.2	commits a material breach that can be remedied but

- fails to remedy that breach within 30 days of a receipt of a written notice issued by the Party not committing the breach setting out the breach and the requirement to remedy it; or
- 26.2.3 commits a series of persistent breaches which, when taken together, amount to material breach; or
- 26.2.4 ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- 26.2.5 is subject to a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010);
- 26.2.6 ceases, or threatens to cease, to carry on all or substantially the whole of its business;
- 26.2.7 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting Party reasonably believes that to be the case;
- 26.2.8 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 26.2.9 has a resolution passed for its winding up;
- 26.2.10 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 26.2.11 has a freezing order made against it; or
- 26.2.12 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in paragraphs 26.2.5 to 26.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 26.3 Aston may terminate the delivery of one or more Goods by giving 1 months' written notice to the Supplier. The termination of the delivery of those Goods will not affect the continuity and validity of any other existing Goods to be delivered under this Agreement.
27. **Consequences of Termination**
- 27.1 Subject to paragraph 27.2.2.2, the service of notice to terminate under paragraph 26.1 will not absolve either Party of its obligations to comply fully with the terms and conditions of this Agreement until such termination is effective and will be without prejudice to the rights of each Party against the other Party which may have accrued up to the date of termination.
- 27.2 Upon termination or expiry of this Agreement for any reason:
- 27.2.1 any materials made available by Aston to the Supplier under this Agreement will be immediately returned to Aston; and

- 27.2.2 all Confidential Information and any copies thereof in the possession or control of a Receiving Party will be returned, if so requested, to the Disclosing Party.
- 27.3 Unless otherwise provided for and subject to any rights and obligations which may have accrued prior to termination or expiry, neither Party will have any further obligation to the other under this Agreement.
- 27.4 The following paragraphs will survive termination or expiry of this Agreement: paragraphs 14 (Confidentiality), 11 (Limitation of Liability), 27 (Consequences of Termination), 29 (Dispute Resolution), 30 (General Provisions), 31 (Governing Law and Jurisdiction) and 33 (Interpretation) and any other provisions that are expressly stated or impliedly understood to survive termination or expiry of this Agreement.
28. **Notices**
- 28.1 The addresses of the Parties for service of notice are set out on the first page of this Agreement.
- 28.2 A notice under this Agreement will be:
- 28.2.1 if delivered personally, at the time of delivery; or
- 28.2.2 if delivered by commercial courier; or
- 28.2.3 if sent by pre-paid United Kingdom first class post or recorded delivery.
- 28.3 If a notice has been properly sent or delivered in accordance with this paragraph 28, it will be deemed to have been received as follows:
- 28.3.1 if delivered personally, at the time of delivery; or
- 28.3.2 if delivered by commercial courier, at the time of
- signature of the courier's delivery receipt; or
- 28.3.3 if sent by pre-paid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted; or
- 28.3.4 if deemed receipt under any of sub-paragraphs 28.2.1 to 28.2.3 is not within Business Hours, receipt will be deemed on the Party's next Working Day.
- 28.4 In proving service in respect of personal delivery or delivery by post it will be sufficient to prove that the envelope containing such notice was addressed to the correct address of the relevant Party and delivered to that address.
- 28.5 A notice given under this Agreement is not validly served if sent by email.
29. **Dispute Resolution**
- Aston and the Supplier will use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement or a breach thereof.
30. **General Provisions**
- 30.1 Neither Party will have the right to assign, transfer, sub-contract, charge, or deal in any other manner with any of its rights and/or obligations under this Agreement, or any right arising under it, without the prior written consent of the other Party.
- 30.2 This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all previous discussions, agreements, arrangements and understandings between the Parties with respect thereof. Each Party acknowledges that in entering this Agreement it has not relied on, and will have no right or remedy in respect of, any statement,

- representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this paragraph 30.2 will limit or exclude any liability for fraud.
- 30.3 No variation of this Agreement will be effective, unless it is in writing and signed by authorised representatives of both Parties.
- 30.4 If there is a conflict between the clauses in the front end of this Agreement and the Terms and Conditions, the clauses in the front end of this Agreement shall prevail.
- 30.5 If any provision of this Agreement will be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Agreement which will remain in full force and effect.
- 30.6 No person who is not a Party to this Agreement will have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 30.7 The failure of either Party at any time to enforce any of the provisions of this Agreement or exercise any right under this Agreement will not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.
- 30.8 This Agreement may be entered into by the Parties on separate counterparts, each of which so executed and delivered will be an original, but all the counterparts will together constitute one and the same instrument.

31. **Governing Law and Jurisdiction**

The formation, construction, performance, validity and all aspects whatsoever of this Agreement (including non-contractual disputes or claims) will be governed by English Law and the Parties agree to the exclusive jurisdiction of the courts of England and Wales.

32. **Definitions**

The following expressions will have the following meanings unless the context otherwise requires:

“Acceptance Date” means the earlier of the date on which the Goods pass the Acceptance Tests or in any event no more than 30 days after the Delivery Date upon which Aston will be deemed to have accepted the Goods;

“Acceptance Period” means the period of no more than 20 Business Days that Aston will have to inspect the Goods which will lead to the Acceptance Date;

“Acceptance Tests” means the tests to be carried out by Aston in accordance with the form set out in Schedule 5 to determine whether the Goods meet the Goods Specification;

“Adequate Procedures” will be determined in accordance with section 7(2) of the Bribery Act (and any guidance issued under section 9 of that Act);

“Affiliates” means all associates, staff, employees, consultants and visiting consultants of the Supplier;

“Anti Bribery Law” means all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act;

“Applicable Laws” means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the obligations under this Agreement including Anti Bribery Law;

“Associated Persons” has the meaning ascribed to it in section 8 of the Bribery Act and

will include any employees, agents and/or subcontractors of the Parties;

“Aston’s Policies and Regulations” means the policies, procedures and regulations (including those relating to academic and quality assurance) of Aston as amended and/or updated from time to time and published on Aston’s website and made publicly available;

“Bribery Act” means the Bribery Act 2010;

“Business Hours” means 8.45am – 5.00pm on a Working Day;

“Change Request” means a change request in the form set out in Schedule 6 that will be completed by the Parties when proposing an amendment to this Agreement;

“Commencement Date” means the date of this Agreement;

“Confidential Information” means any data, know-how, trade secrets, financial, commercial, technical, tactical or strategic information and all information produced or developed in the performance of this Agreement provided or disclosed by either Party to the other Party (whether before, on or after the Commencement Date and in whatever form) that has been designated in writing as confidential, stated to be confidential, or that ought reasonably in the circumstances of disclosure to be considered as confidential;

“Data Sharing Agreement” means the data sharing agreement entered into by the Parties on or around the date of this Agreement;

“Delivery Date” has the meaning given in Clause 5;

“Disclosing Party” means the Party disclosing Confidential Information to the other Party;

“EIR” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued

by the Information Commissioner or relevant government departments in relation to such legislation;

“Force Majeure” means in relation to either Party, any circumstances beyond the reasonable control of that Party including pandemic and epidemic, war, act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or act of God;

“Goods” means the goods to be delivered by the Supplier to Aston as set out in the Goods Specification;

“Goods Specification” means the Goods to be delivered by the Supplier to Aston in accordance with Schedule 2;

“Insurance” means professional indemnity insurance, product liability insurance, employer’s liability insurance and public liability insurance cover of not less than £10,000,000 for any one or any series of claims in aggregate in each case;

“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, copyright, database rights, topography rights 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;

“Invoice” means a valid invoice setting out the payment in relation to the Goods, period relating to invoice, date on invoice and the invoice number;

“Milestone” means a key stage of delivery reached by the Supplier as set out in Schedule 3;

“Nominated Representative” means the individual authorised to legally bind the relevant Party and execute this Agreement;

“Modern Slavery Statement” means Aston’s anti-slavery transparency statement available at <https://www2.aston.ac.uk/about/management-structure/publication-scheme/modern-slavery-act>;

“Prevent” means the guidance for specified authorities in England and Wales on the duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism;

“Pre-Contractual Statement” means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether Party to this Agreement or not) other than as expressly set out in this Agreement or any documents referred to in it;

“Price” means the price of the Goods payable by Aston to the Supplier in accordance with Schedule 3;

“Project Manager” means the project manager as identified in Schedule 4;

“Receiving Party” means a Party receiving Confidential Information from the other Party;

“Regulatory Body” means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any Applicable Law to supervise, regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of Aston;

“Term” has the meaning given in Clause 2.1;

“Terms and Conditions” means the terms and conditions applicable to the Goods as set out in Schedule 1;

“VAT” means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.; and

“Working Day” means any day except Saturday or Sunday or any bank holiday in England and any other day on which the Parties are officially closed for business.

33. Interpretation

33.1 In this Agreement:

33.1.1 the headings in this Agreement are inserted for convenience only and will not affect its construction;

33.1.2 a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;

33.1.3 unless the context otherwise requires, a reference to one gender will include a reference to the other gender;

33.1.4 unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;

33.1.5 a person includes a corporate or unincorporated body (whether or not having separate legal personality);

33.1.6 any phrase introduced by the words “including”, “includes”, “in particular” or “for example” or similar will be construed as illustrative and will not limit the generality of the related general words;

33.1.7 a reference to ‘writing’ or ‘written’ includes any method of reproducing words in a legible and non-transitory form including fax and email;

33.1.8 unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by

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|--------|---|---|
| | a Party is without prejudice to that Party's other rights and remedies; and | prevailing at the relevant tax point; and |
| 33.1.9 | all sums are exclusive of VAT which will be payable in addition where appropriate and at the rate | 33.1.10 any schedules and appendices to this Agreement form part of (and are incorporated into) this Agreement. |

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Schedule 2

Goods Specification

[Insert details of the Goods to be delivered by the Supplier]

Template

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Schedule 3

Price

1. Aston will pay the Supplier £ [XXXXX] plus VAT.
2. VAT is payable on all amounts stated in this Agreement.
3. The payment of the Price will be divided into the following instalments corresponding to the Milestones set out in the table below:

Descriptions of Goods / Milestone	Acceptance Criteria	Date required for delivery of Goods	Price plus VAT

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Schedule 4

Aston and Supplier Details

	Aston's Details	Supplier's Details
Nominated Representative		
Contact Address		
Email Address		
Telephone Number		
Work Mobile Number (if applicable)		
[insert other details]		
[insert other details]		
[insert other details]		

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Schedule 5

Form of Acceptance Test

1. Aston will undertake the Acceptance Tests and complete the form below.
2. This form will be signed by each Parties' Nominated Representative.
3. The Acceptance Tests will be completed within [30] days of the Supplier delivering the Goods at Aston. Signature of this completed Acceptance Test confirms that Aston is satisfied that the Goods meet the Goods Specification and not does deem acceptance of the Goods.

Acceptance Criteria		
	Supplier	
	Contract Number	
	Date	
	Testable Milestone	Acceptance Criteria
Signature		
Signed for and on behalf of Aston:		Signed for and on behalf of the Supplier:
Signed.....		Signed.....
Name.....		Name.....
Position.....		Position.....
Date.....		Date.....

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Schedule 6

Form of Change Request

If either Party wishes to amend this Agreement, it will enter into an amending agreement in the form set out in this Schedule 6.

This Amending Agreement is between

- (1) Aston University of Aston Triangle, Birmingham, B4 7ET, England (“Aston”); and
 - (2) [insert name]¹⁴ with company number [insert number]¹⁵ of [insert address]¹⁶ (“the Supplier”);
- each a “Party” and together the “Parties”.

Background

- (A) The Parties entered into an agreement entitled “[insert title]¹⁷” dated [insert date]¹⁸ (“the Agreement”).
- (B) The Parties have agreed to amend the Agreement based on the terms set out this Amending Agreement.

Agreed

1. Unless the context otherwise requires, the terms and expressions defined in the Agreement will have the same meanings, interpretations or constructions when used in this Amending Agreement.
2. With effect from the date of this Amending Agreement, [insert details of changes]¹⁹.
3. For the avoidance of doubt, the above amendments will be without prejudice to any rights of the Parties under or in respect of the Agreement which may have accrued as at the time and date of such amendments.
4. This Amending Agreement and the Agreement will be read and construed as one document and references in the Agreement (howsoever expressed) will be read and construed as references to the Agreement as amended by this Amending Agreement and any other agreement amending the same from time to time.
5. This Amending Agreement may be entered into by the Parties on separate counterparts, each of which so executed and delivered will be an original, but all the counterparts will together constitute one and the same instrument.
6. This Amending Agreement will be governed by English Law the provisions of the Agreement will apply mutatis mutandis.

¹⁴ Insert the full name of the Supplier.

¹⁵ Insert the company number if applicable.

¹⁶ Insert the registered address of the Supplier.

¹⁷ Insert the title of the original agreement.

¹⁸ Insert the date on which the original agreement was dated.

¹⁹ You will need to insert the details of the amendments to the original agreement here. This may be inserting, removing or amending a clause.

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

Signed on behalf of **Aston University**²⁰

Signature:

Date:

Name:

Position:

Signed on behalf of **Aston University**

Signature:

Date:

Name:

Position:

²⁰ Contracts must be authorised in accordance with the University's policy on approval, monitoring and signature of contracts. Please ensure that you obtain the relevant number of signatories at an appropriate level.

Signed for and on behalf of **[insert Supplier]**

Signature:

Date:

Name:

Position:

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

Signed on behalf of **Aston University**²¹

Signature:

Date:

Name:

Position:

Signed on behalf of **Aston University**

Signature:

Date:

Name:

Position:

²¹ Contracts must be authorised in accordance with the University's policy on approval, monitoring and signature of contracts. Please ensure that you obtain the relevant number of signatories at an appropriate level.

Signed for and on behalf of **[insert name]**²²

Signature:

Date:

Name:

Position:

²² Insert the name of the other Party.