

JISC PROFESSIONAL SECURITY SERVICES GENERAL TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1. In these Terms, the following words will have the following meanings.

Additional Services	has the meaning given to it in Clause 2.4;
ASC	the additional Services confirmation provided by Jisc under Clause 2.5;
Anti-Slavery Policy	Jisc's anti-slavery policy which can be found at https://www.jisc.ac.uk/about/corporate/slavery-and-human-trafficking-statement ;
Bribery Legislation	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 Bribery Legislation;
Business Days	means every day excluding Saturdays, Sundays and any national holidays throughout the United Kingdom;
Call-Off Order	an order (in the form as set out at Schedule 3 and entered into pursuant to these Terms) placed by the Client to call-off the Services over a period of time;
Call-Off Period	means the period of time as set out in the Quote during which the Services may be called-off by the Client (via the Call-Off Order(s));
Call-Off Terms	has the meaning given to it in Clause 2.3;
Client	the purchaser of the Services as identified on the Quote;
Client Environment	the description of the Client's IT infrastructure and environment as identified in the Quote (as updated from

time to time under Clause 6.1.2);

Charges	the Charges in respect of the Services as set out in the Quote, as varied from time to time in accordance with Clause 7.6;
Confidential Information	has the meaning given in Clause 10.1;
Consultancy Services	the consultancy services described in Schedule 1;
Contract	the Quote, the Call-Off Order (where used), these Terms and any Schedules;
Deliverable	any report or other output generated in the course of the Services and made available to the Client as part of the Services;
Effective Date	The date the Client signs the Quote;
Environmental Information Regulations	the Environmental Information Regulations 2004 (or the Environmental Information (Scotland) Regulations 2004) (as the case may be);
Funding Councils	the bodies responsible for the funding of Higher and Further Education in England, Scotland, Wales and Northern Ireland as constituted from time to time and any other bodies that elect to participate in the funding of the Janet network.
FOIA	the Freedom of Information Act 2000 or the Freedom of Information Scotland Act 2002 (as the case may be) and any subordinate legislation made under that Act from time to time;
Information	has the meaning given to "information" by the FOIA or the meaning given to

	"environmental information" by the Environmental Information Regulations (as the case may be);	Special Conditions	any of the special conditions contained in the Quote;
Jisc	Jisc, a company limited by guarantee (company number 05747339) (or any successor body thereto);	Start Date	in respect of any of the Services, any specific start date identified on the Quote or an applicable Call-Off Order;
Intellectual Property Rights	any patent, trade mark, service mark, registered design, copyright, design right, database right, rights protecting confidential information, any applications for or rights to apply for any of the above and any other intellectual property right recognised in any part of the world, whether or not now existing or applied for, and all accrued rights of action in respect of any such rights;	Terms	these terms and conditions for the Services, as amended or supplemented by any Special Conditions; and
		User	any individual using the Client Environment to access or manage the internet or data.
Modern Slavery Legislation	the Modern Slavery Act 2015 and any subordinate legislation made under that Act from time to time together with all applicable anti-slavery and human trafficking laws, statutes, regulations, guidance or codes of practice issued by the relevant government department;	1.2.	In the event of any conflict, inconsistency or contradiction between any of the component documents comprising this Contract, then the following order of precedence will apply (highest to lowest): 1.2.1. The Call-Off Order 1.2.2. the Quote; 1.2.3. these Terms; and 1.2.4. the Schedules.
		2.	APPLICATION OF THESE TERMS
Quote	the Jisc quote form to which these Terms are attached and under which these Terms are incorporated by reference, as may be supplemented from time to time under Clause 2.6 which is accepted by the Client by signature; ;	2.1.	The Contract will be formed by the Client accepting and signing the Quote. Subject to Clause 2.3, these Terms contain the only conditions under which Jisc will provide any of the Services to the Client and will govern this Contract to the exclusion of all other terms and conditions (including any terms and conditions included on any purchase order provided by the Client).
		2.2.	The Quote and any applicable Call-Off Order identifies the Services to be provided by Jisc to the Client as at the Effective Date.
Services	the Consultancy Services, expressed in terms of a number of days of provision, as identified as being ordered by the Client in the Quote and called off in part by each Call-Off Order (where applicable), and/or any further services as may be subsequently included under Clause 2.6;	2.3.	Where a Call-Off Order is used, the Call-Off Order will include additional terms and provisions relating to the delivery of the Services (Call-Off Terms) and this Contract will also be subject to those Call-Off Terms.
Schedules	any schedule to this Contract;	2.4.	If, following the Effective Date, and whilst this Contract is in force, the Client requires Services from Jisc in addition to those identified in the Quote (Additional Services), then the Client may submit its request in writing to Jisc, identifying the Additional Services required, together with any necessary updates to the information contained in the Quote which relates to the Additional Services (such as the

Client Environment and any Special Conditions).

- 2.5. Following such request, Jisc will provide to the Client an Additional Service Confirmation ("ASC") (which may be by email) which will contain the following information in respect of each Additional Service:

- 2.5.1. Start Date (if any);
- 2.5.2. Charges;
- 2.5.3. any known risks of performing the Services as known by Jisc;
- 2.5.4. confirmation of any other changes to the Quote relating to the Additional Services, such as Client Environment and any Special Conditions

- 2.6. The ASC will be deemed contractually binding on the Client and incorporated into this Contract unless the Client notifies Jisc that it has any issues with the ASC within 5 Business Days (or, in the case of emergencies, within 1 Business Day) of the date of the ASC (in which case the parties shall discuss and agree any necessary changes and following agreement, the ASC will be deemed incorporated into this Contract). A copy of the ASC will be added to the Quote as an appendix.

- 2.7. If the Client requires Additional Services after the Effective Date and this Contract is not then in force, then a new Quote will be required.

3. SERVICE

- 3.1. Jisc will provide the Services to the Client as set out in the Quote and any applicable Call-Off Order and from any Start Date (where applicable). The Services will be subject to these Terms and the Call-Off Terms (where applicable).
- 3.2. Subject to earlier termination in accordance with these Terms, Jisc will provide the Services in accordance with the timescales agreed between the parties from time to time or as set out in the Quote and any Call-Off Orders.
- 3.3. Where the Call-Off Period has expired and Services set out in the Quote have not been fully utilised by the Client, Jisc may, at its discretion, permit an extension to the Call-Off Period or a substitution of the Services.
- 3.4. The Client acknowledges and agrees that:
 - 3.4.1. Jisc's ability to provide the Services depends on Jisc's knowledge of the technical and operational infrastructure used by the Client as detailed in the Client Environment; and

- 3.4.2. nothing in these Terms will oblige Jisc to provide any support in respect of the Client Environment or provide any assistance to Users.

4. USE OF SERVICES

- 4.1. The Client will not use any Services or otherwise act or refrain from acting in respect of Services so as to:
 - 4.1.1. provide or support services to third parties other than Users;
 - 4.1.2. attempt to obtain, or assist other third parties, other than Users, in obtaining access to data by means of the Services outside the scope of the express terms of this Contract, or
 - 4.1.3. transfer, license or otherwise make available temporarily or permanently any of its rights in respect of the Services under this Contract.

5. JISC WARRANTIES

- 5.1. Jisc warrants that:
 - 5.1.1. it has the legal right and authority to enter into and perform its obligations under this Contract;
 - 5.1.2. it will provide the Services using reasonable skill and care;
 - 5.1.3. it will use reasonable endeavours to ensure that the Services are provided substantially in accordance with the applicable Service description set out in Schedule 1;
- 5.2. If the Services do not conform to the warranties in Clauses 5.1.2 or 5.1.3 then (subject to Clause 8.5), Jisc will use reasonable endeavours to correct or will have corrected any such non-conformance within the timescales set out in Schedule 1, or will provide the Client with a work around. Such correction or workaround constitutes the Client's sole and exclusive remedy for any breach of the warranties in Clauses 5.1.2 or 5.1.3. Jisc will have no liability under the warranty in Clauses 5.1.2 or 5.1.3 unless:
 - 5.2.1. the issue is promptly brought to Jisc's attention and Jisc is allowed a reasonable period of time and opportunity to remedy the issue;
 - 5.2.2. the issue, where applicable, is backed up by documentary evidence or is reproducible in the live environment.
- 5.3. Jisc warrants that:

- 5.3.1. in relation to this Contract and its subject matter, neither it nor any of its employees, sub-contractors or agents or others performing services on its behalf has done (or agreed to do) or will do (or agree to do) anything which constitutes a breach of any Bribery Legislation;
- 5.3.2. it shall, at all times during the term of the Contract comply with Modern Slavery Legislation and Anti-Slavery Policy and require that each of its sub-contractors shall comply with the Modern Slavery Legislation and Anti-Slavery Policy;
- 5.3.3. it has in place, and will at all times during the term of this Contract continue to have in place, adequate procedures designed to prevent any person associated with it from committing an offence under the Bribery Legislation and as a minimum such procedures comply, and will at all times during the term of this Contract comply, with the most recent guidance issued from time to time by the Secretary of State pursuant to the Bribery Act 2010;
- 5.3.4. it will comply with, monitor and enforce the procedures referred to in Clause 5.3.3.; and
- 5.3.5. it will not engage in any activity, practice or conduct which would constitute either:
 - i. a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
 - ii. a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017.

6. CLIENT OBLIGATIONS

- 6.1. The Client will:
 - 6.1.1. provide Jisc, its subcontractors and agents with any documentation, information, co-operation and access to premises and personnel as may be reasonably requested by Jisc from time to time as necessary to provide the Services;
 - 6.1.2. promptly inform Jisc of any changes to the Client Environment;
 - 6.1.3. provide Jisc with all necessary health and safety, security, conduct and other rules, procedures and requirements in

relation to the Client's property and systems; and

- 6.1.4. ensure that any dependencies or conditions expressly set out in any Special Conditions are fulfilled within the timescales reasonable required by Jisc.
- 6.2. The Client warrants that:
 - 6.2.1. all information relating to the Client Environment or otherwise provided to Jisc is true, accurate and not misleading;
 - 6.2.2. that it has the legal right and authority to enter into and perform its obligations under this Contract;
 - 6.2.3. it has obtained all third party consents, licences and rights reasonably required in order to allow Jisc to perform the Services; and
 - 6.2.4. it has made all necessary contingency arrangements (including back-ups) to enable it and any Users to continue to use the Client Environment following any impairment or damage to the Client Environment as a result of the Services.
- 6.3. Should the Client fail to perform any of its obligations under this Contract then Jisc will not be responsible for any delay, cost increase or other consequences arising from such failure.

7. CHARGES AND PAYMENT

- 7.1. The Client will pay the Charges in accordance with the Quote without any set-off or deduction. All Charges and other amounts payable under this Contract are exclusive of any applicable value added tax.
- 7.2. The Client will pay the Charges to Jisc within 30 days of the date of issue of an invoice issued in accordance with Clause 7.1.
- 7.3. Charges must be paid by bank transfer (using such payment details as are notified by Jisc to the Client from time to time).
- 7.4. If any sum payable to Jisc by the Client is not paid by the due date, then without prejudice to any other rights and remedies it may have, Jisc may:
 - 7.4.1. suspend performance of its obligations under this Contract; and/or
 - 7.4.2. charge interest on a daily basis at the rate of 4 percent above the Bank of England base rate on any sums remaining unpaid from the date that

payment was due until the date that payment is made in full; and/or

(including negligence) and for breach of statutory duty.

- 7.4.3. where the non-payment exceeds 30 days, Jisc may give notice of termination of the Contract in accordance with Clause 13.2.2.
- 7.5. The Client will reimburse (on production of such evidence as the Client may reasonably require) all expenses properly and reasonably incurred in the course of performing the Services. Such expenses will be included in the invoices submitted to the Client by Jisc under Clause 7.1.
- 7.6. The Client acknowledges that the Charges in respect of the Consultancy Services will be the time and materials rates set out in the Quote, or as notified to the Client and/or published on Jisc's website from time to time.
- 7.7. Where a Client requests to amend an agreed Start Date for any Service the following additional Charges will apply:
 - 7.7.1. Where the Client notifies Jisc more than 10 Business Days before the Start Date, no additional charge;
 - 7.7.2. Where the Client notifies Jisc between 10 and 5 Business Days before the Start Date, 1 day to be charged at the day rate specified in the Quote;
 - 7.7.3. Where the Client notifies Jisc fewer than 5 Business Days before the Start Date, 2 days to be charged at the day rate specified in the Quote.

8. LIMITATION OF LIABILITY

- 8.1. Nothing in the Contract will:
 - 8.1.1. limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - 8.1.2. limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party; or
 - 8.1.3. limit or exclude any liability of a party in any way that is not permitted under applicable law.
- 8.2. The limitations and exclusions of liability set out in this Clause 8 and elsewhere in this Contract:
 - 8.2.1. are subject to Clause 8.1; and
 - 8.2.2. govern all liabilities arising under this Contract or in relation to the subject matter of this Contract, including liabilities arising in contract, in tort

- 8.3. Neither party will be liable:
 - 8.3.1. in respect of any loss of profits, income, revenue, use, production or anticipated savings;
 - 8.3.2. for any loss of business, contracts or commercial opportunities;
 - 8.3.3. for any loss of or damage to goodwill or reputation;
 - 8.3.4. in respect of any loss or corruption of any data, database or software; or
 - 8.3.5. in respect of any special, indirect or consequential loss or damage.
- 8.4. Jisc's liability in relation to any event or series of related events will not exceed the total amount paid and payable by the Client to Jisc under this Contract during the 12 month period immediately preceding the event or events giving rise to the claim and if the claim arises within the first 12 months following the Effective Date, then the total amount that would have been payable in such 12 month period.
- 8.5. Jisc will not be liable in any way to the Client if:
 - 8.5.1. the Client uses or interacts with the Services other than in accordance with this Contract or contrary to Jisc's instructions, documentation or reasonable expectations;
 - 8.5.2. problems are caused by errors, omissions or misinformation in any documents, information, instructions or scripts provided to Jisc by the Client, or any actions taken by Jisc at the Client's direction;
 - 8.5.3. Jisc's knowledge of the Client Infrastructure is deficient for any reason;
 - 8.5.4. problems arise from the use of hardware or software or data or services of or supplied by the Client or other third party; or
 - 8.5.5. problems arise from viruses transmitted through the Services. The Client acknowledges that the Services do not perform virus checking and that it is the Client's responsibility to ensure that any material downloaded is virus checked.
- 8.6. The Client acknowledges and agrees that:

8.6.1. no services of the kinds comprised in the Services or any of them offers 100% certainty of either problem prevention or problem detection or accurate identification of the causes of problems. Although Jisc will comply with industry practice in providing Services it will not have any liability for and will not be responsible for meeting any part of the costs of a failure by Jisc to prevent, detect or provide any causal understanding of any problem including where the Services are tasked specifically with so doing;

8.6.2. the Services may identify problems which do not exist or may misidentify problems (and Jisc shall have no liability for the same);

8.6.3. although Jisc will use reasonable care and skill, it is possible that the Services may cause harm to the Client Environment or wider IT system or the Users' IT systems and Jisc will have no liability for and will not be responsible for meeting any part of the costs of any such harm caused or any failure by Jisc to prevent, detect or limit any such harm including where the Services are tasked specifically with so doing;

8.6.4. Jisc's liability in relation to any open source software and any third party software or services used in the Services may be further limited under the terms of the relevant licence, supply contract or terms of use notified to the Client from time to time and such limitations will apply to Jisc's liability to the Client in respect of such open source software or third party services;

8.6.5. complex software is never wholly free from defects, errors and bugs, and Jisc gives no warranty or representation that the Services will be wholly free from such defects, errors and bugs.

8.7. All of the parties' warranties and representations in respect of the subject matter of the Contract are expressly set out in the terms of the Contract. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Contract will be implied into the Contract.

9. INTELLECTUAL PROPERTY

9.1. All Intellectual Property Rights in respect of the Services will, as between the parties, remain owned by Jisc. Except as expressly stated in

this Contract, the Client is not granted any rights to, or in, any such Intellectual Property Rights in respect of the Services or any related software, documentation or apparatus.

9.2. Without prejudice to Clause 9.1:

9.2.1. Jisc now grants the Client a non-exclusive, perpetual, royalty-free licence to access and download the Deliverables in order to enjoy the benefit of the Services for its own internal business purposes; and

9.2.2. in respect of the Consultancy Services, the Client may be granted access to use open source or third party proprietary software tools which will be subject to their own terms of use.

10. CONFIDENTIALITY

10.1. Neither party will use for any purpose (except to carry out its obligations under this Contract) and each party will keep confidential and not divulge to any third party (except as set out in Clauses 10.3, 10.4 and 12) any and all information of the other party relating to the provision or use of the Services which is marked as confidential or which is by its very nature confidential ("Confidential Information").

10.2. The provisions of Clause 10.1 above do not apply to information which:

10.2.1. comes into the recipient's possession directly from a third party other than as a result of a breach of confidence;

10.2.2. is in or comes into the public domain other than as a result of a breach of Clause 10.1; or

10.2.3. 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 information; or

10.2.4. was in the possession of the recipient party prior to the date of the disclosure, free of any obligations of confidentiality; or

10.2.5. both parties agree in writing is not confidential.

10.3. Jisc may disclose any Confidential Information of the Client to:

10.3.1. any relevant Funding Councils and Jisc and in relation to any examination pursuant to Section 6(1) of the National Audit Act 1983 of the

economy, efficiency and effectiveness with which Jisc has used its resources; and

- 10.3.2. those officers, employees, consultants and professional advisers of Jisc, or any member of its group, who have a need to access that Confidential Information for the performance of their obligations in relation to the Services, or in a professional capacity, and who have been advised of its confidential nature and who are bound by a written agreement or professional obligation to protect the confidentiality of that Confidential Information.

- 10.4. Each party may disclose the other party's 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 pursuant to Clause 12 provided that it notifies the other party as soon as the requirement to disclose arises and will use its reasonable endeavours to ensure that any such disclosure is made in a manner which ensures the confidentiality of the other party's Confidential Information.
- 10.5. Notwithstanding Clause 10.1 the Client agrees that Jisc may disclose data derived from the performance of the Services on an aggregated or un-aggregated basis, provided such disclosure does not identify the Client.
- 10.6. Neither party will make any public disclosure relating to the Contract (including press releases, public announcements and marketing materials) without the prior written consent of the other party. With the Client's prior written consent, Jisc may use the Client as a referee, until such consent is withdrawn.

11. DATA PROTECTION

- 11.1. Both Jisc and the Client shall comply with the provisions of Schedule 2.
- 11.2. In the event of any conflict between Schedule 2 and any other provision of these Terms, the relevant provision of Schedule 2 shall take precedence.

12. FREEDOM OF INFORMATION

- 12.1. Jisc is not subject to the requirements of the FOIA and the Environmental Information Regulations. However, Jisc will endeavour to respond to any request in the spirit of the FOIA where reasonably able to do so. The parties

will assist and cooperate with each other if a request is received by Jisc.

13. TERM AND TERMINATION

- 13.1. This Contract will commence on the Effective Date and will, subject to earlier termination under this Contract, continue until the earlier of completion of all the Services or the end of the Call-Off Period.
- 13.2. Without prejudice to any other rights or remedies that may be available, either party may at any time give a written notice of termination to the other party if:
- 13.2.1. the other party is unable to pay its debts as they fall due or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if the other party ceases or threatens to cease to trade, or if the other party makes an assignment for the benefit of, or a composition with its creditors or other arrangement of similar import or has a receiver, administrative receiver, administrator or a similar officer appointed over all or a substantial part of its assets or if a petition is presented or an order is made by a court of competent jurisdiction or an effective resolution is passed for winding up of the other party otherwise than for the purpose of a bona fide reconstruction or amalgamation on terms previously approved in writing by the terminating party; or
- 13.2.2. the other party commits a material breach of any provision of this Contract which is irremediable or, in the case of a breach capable of being remedied, is not remedied within 20 Business Days after receipt of a written request to remedy the same.

14. CONSEQUENCES OF TERMINATION

- 14.1. On any termination or expiry of this Contract for any reason:
- 14.1.1. each party will return all hardware or other equipment, software, property, materials and other items (and all copies of them) belonging to the other Party and, at the disclosing party's option, return or destroy any copies of the disclosing party's Confidential Information; and
- 14.1.2. the provision of the Services will immediately cease.

- 14.2. Subject to Clauses 14.1, 14.3 and 14.4, any expiry or termination of this Contract for any reason, will be without prejudice to any other rights or remedies of either party under this Contract or at law, and will not affect any accrued rights or liabilities of either party.
- 14.3. Where the Client has terminated the Contract pursuant to Clause 13.2.2 Jisc will reimburse the Client for any monies paid in advance and in relation to Services yet to be provided.
- 14.4. The provisions of Clause 1 (Definitions), 6.2 (Client Warranties), 8 (Limitation of Liability), 9 (Intellectual Property), 10 (Confidentiality), 12 (Freedom of Information), 14 (Consequences of Termination), 15 (Dispute Resolution) and 23 (Governing Law and Jurisdiction) will survive termination (however caused) or expiry.

15. DISPUTE RESOLUTION

- 15.1. If any dispute arises between the parties arising from or relating to this Contract, either party will refer the dispute to their respective representatives, whereupon the Jisc representative and the Client representative will promptly discuss the dispute with a view to its resolution.
- 15.2. If any dispute cannot be resolved in accordance with Clause 15.1 within 20 Business Days, Jisc may elect that the matter be referred for consultation between the Chief Executive or equivalent of the Client and the Chief Executive of Jisc. In this event, both Jisc and the Client will be represented by one or more members of their respective Boards in consultations which will be held within 15 Business Days of the requirement.
- 15.3. Without prejudice to each party's rights to terminate this Contract, if they are unable to reach such agreement on the disputed matter through the process as specified in Clauses 15.1 and 15.2, they may agree 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 alternative dispute resolution notice in writing (ADR notice) to CEDR requesting mediation.
- 15.4. 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. The commencement of mediation will not prevent the parties commencing or continuing court proceedings, unless the parties agree otherwise.

16. GENERAL VARIATION

- 16.1. Any changes to this Contract will only be effective if agreed in writing by the parties. Force Majeure.
- 16.2. Neither party will be liable for any delay or failure in performance of any part of this Contract to the extent that such delay or failure is beyond the reasonable control of that party. For the avoidance of doubt, the failure or delay of any obligations of any sub-contractor 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 sub-contractor.

17. ASSIGNMENT

- 17.1. Neither party may assign or transfer the Contract, or all or any of its rights or obligations under the Contract, whether in whole or in part, without first obtaining the written consent of the other.

18. SUB-CONTRACTORS

- 18.1. Jisc may sub-contract any of its rights or obligations under these Terms (in whole or in part) to any third party but Jisc will remain primarily liable for all acts and omissions of any such sub-contractor and will ensure that any sub-contractor complies with Jisc's confidentiality obligations in these Terms.

19. NOTICES

- 19.1. All notices which are to be given under these Terms must be in writing and must be sent to the address of the recipient set out in these Terms, or such other address in the United Kingdom as the recipient may designate by notice given in accordance with the provisions of this Clause 19.1. Any such notice may be delivered personally, or sent by first class prepaid post and will be deemed to have been served: if by hand, when delivered; if by first class post, 2 Business Days after posting. 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. In such cases, service will be upon the email reaching the recipient's server.

20. INDEPENDENT CONTRACTOR

- 20.1. The parties enter into this Contract as independent contractors and nothing in this Contract will constitute or be deemed to constitute any partnership, association, joint venture or principal/agent relationship between the parties.

21. ENTIRE CONTRACT

- 21.1. This Contract contains the entire Contract 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. 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 these Terms and the Call-Off Terms 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 Contract.

22. THIRD PARTY RIGHTS

- 22.1. Subject to Clause 22.2, nothing in these Terms confers or purports to confer on any person who is not a party to these Terms any right under the Contracts (Rights of Third parties) Act 1999 to enforce any term of these Terms.
- 22.2. Jisc may enforce any rights of Jisc under these Terms in accordance with the Contracts (Rights of Third parties) Act 1999.

23. GOVERNING LAW AND JURISDICTION

- 23.1. This Contract is governed by and will be construed in accordance with the laws of England & Wales and the parties will submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1: JISC PROFESSIONAL SECURITY SERVICES

1. GENERAL

Normal Working Hours means 9.00am to 5.00pm Monday to Friday.

Non Critical Fault means a non-service-affecting fault

Critical Fault means a total loss of the service

The Jisc Professional Security Services team can be contacted via:

- Jisc Service Desk: 0300 300 2212
- email: help@jisc.ac.uk

Payment Information Payment to be made to Jisc **NOT** Jisc Services Limited (JSL):

Bank : HSBC UK Bank PLC **Account Name** : Jisc

Sort Code : 40-19-35 **Account Number** : 21375407

2. SERVICE DESCRIPTION

2.1. Penetration Testing Services

- 2.1.1. The Service involves one or more members of the Jisc security division carrying out an onsite or remote security assessment of one or more systems previously identified by the customer.
- 2.1.2. The Service is designed to give an institution a view of the security posture of the previously identified systems/infrastructure.
- 2.1.3. A comprehensive report of the findings will be prepared by the Jisc Professional Security Services team with sections for both management and technical level, on the threats identified with brief recommendations on how to mitigate them.
- 2.1.4. Advice given by the Jisc Professional Security Services team on how possibly to mitigate any problems identified should always be tested thoroughly by the Client before implementing it on the Client's live systems. Whilst Jisc can assist the Client with implementation of potential mitigation measures identified, it is important to note that risk assessment and decisions on the application of such measures, including any configuration changes to live systems, is the Client's responsibility.
- 2.1.5. The support of the Service is co-ordinated by the Jisc Professional Security Services team during normal working hours. Out of hours faults are logged via the Jisc Service Desk.

3. SERVICE ISSUES AND CLIENT FEEDBACK

3.1. Penetration Testing Services

- 3.1.1. In the unlikely event of a problem with the Service, the Client should contact a member of the Jisc Professional Security Services team either by telephone or email.
- 3.1.2. The Jisc Professional Security Services team will aim to respond to a reported problem within 2 working hours of the receipt of the reported issue and aim for a resolution to the problem within the following time scales:
 - Critical Fault – 1 Business Day
 - Non Critical Fault – 3 Business Days

3.2. Feedback and Complaints Procedure

- 3.2.1. Jisc encourages our members to offer feedback (both positive and negative) to enable us to improve our services and products. Please send all feedback to us via email to: help@jisc.ac.uk
- 3.2.2. The Client may raise complaints by calling Jisc Service Desk on 0300 300 2212 or by email addressed to help@jisc.ac.uk. Complaints will be logged to a database held by Jisc. The following details will be held:

Client, complaint details, date and time, contact phone number, and any other relevant information.

- 3.2.3. The assigned complaint manager will make initial contact with the Client within 1 Business Day to outline timescales to investigate and associated responses.

3.2.4. We aim to respond in full to the complaint within 20 Business Days from the point of receiving the initial request.

SCHEDULE 2: DATA PROTECTION

1. DEFINITIONS

1.1. The following definitions apply to this Data Protection Schedule

Agreement	means the agreement between Jisc and the Client for the provision of the Service;
Applicable Law	means all applicable laws, statutes, regulations, decree directives, legislative enactments, orders, binding decisions of a competent Court or Tribunal, rule, regulatory policies, guidelines, codes, other binding restriction, regulatory permits and licences applicable under law which are in force from time to time during the term of this Agreement to which a Party and/or any Processing of Personal Data is subject from time to time;
Controller, Processor and Data Subject	shall have the meaning given to those terms in the UK GDPR;
Data Protection Legislation	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject for the purposes of this Agreement, including the Data Protection Act 2018 and the General Data Protection Regulation 2016/679 (EU GDPR) as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, as amended to be referred to as DPA 2018 and the UK GDPR respectively; and (b) any code of practice or guidance published by the ICO or European Data Protection Board from time to time;
Data Protection Particulars	means, in relation to any Processing under this Agreement: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects.
Data Subject Request	means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation;
Data Transfer	means transferring the Personal Data to, and / or accessing the Personal Data from and / or Processing the Personal Data within, a jurisdiction or territory that is not a Permitted Country;
ICO	means the UK Information Commissioner (including any successor or replacement);
Permitted Country	means a country, territory or jurisdiction that is either: (a) within the UK or the European Economic Area; or (b) outside of the UK or European Economic Area but which is the subject of an adequacy determination by the UK Secretary of State or the European Commission (as applicable);
Permitted Purpose	means the purpose of the Processing as specified in the Data Processing Particulars;
Personal Data	has the meaning given to it in the UK GDPR and for the purposes of this Agreement includes Sensitive Personal Data;
Personal Data Breach	has the meaning given to it in the UK GDPR and, for the avoidance of doubt, includes a breach of Clause 4.1.3;
Personnel	means all persons engaged or employed from time to time by Jisc in connection with this Agreement, including employees, consultants, contractors and permitted agents;

Processing	has the meaning given to it in the UK GDPR (and Process and Processed shall be construed accordingly);
Regulator	means the ICO and any other independent public authority which has jurisdiction over a Party, including any regulator or supervisory authority which is responsible for the monitoring and application of the Data Protection Legislation;
Regulator Correspondence	means any correspondence from a Regulator in relation to the Processing of Jisc Data under or in connection with this Agreement;
Security Requirements	means the requirements regarding the security of the Personal Data, as set out in the Data Protection Legislation (including, in particular, the measures set out in Article 32(1) of the UK GDPR (taking due account of the matters described in Article 32(2) of the UK GDPR));
Sensitive Personal Data	means Personal Data that reveals such categories of data as are listed in Article 9(1) of the UK GDPR and Personal Data relating to criminal convictions and offences;
Service	means the Penetration Testing Service provided by Jisc;
Schedule	means this schedule which forms part of the Agreement; and
Third Party Request	means a written request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulation;

2. ARRANGEMENT BETWEEN THE PARTIES

- 2.1. The Parties shall each Process the Personal Data in accordance with the terms of this Schedule. The Parties acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate and agree that the Client shall act as Controller and Jisc shall act as Processor, as follows:
- 2.1.1 The Client shall be a Controller where it is Processing the Personal Data in relation to the services being supplied by Jisc; and
 - 2.1.2 Jisc shall be a Processor where it is Processing the Personal Data in relation to the Permitted Purpose in connection with the performance of its obligations under these service terms.
- 2.2. Each of the Parties acknowledges and agrees that the following table sets out an accurate description of the Data Protection Particulars:

The subject matter and duration of the Processing	Jisc's penetration testing service allows the Client to have the security of key systems tested using techniques likely to be used by hostile attackers. By fixing the vulnerabilities found by testers, organisations can reduce the likelihood of them being used by attackers to gain access to those systems and the personal data they hold and have access to. The service is designed for systems that process large amounts of personal data about all, or many, of the Client's staff and students. A penetration test may involve processing personal data in two ways. If the customer has requested a social engineering component, then a small number of individuals will be contacted to attempt to persuade them to disclose passwords or other information that would help an attacker. This may result in the tester gaining access to personal data held by the vulnerable system. Targets of social engineering tests clearly cannot be informed in advance, as this would defeat the purpose of the processing. Data about them will
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	only be taken from public sources, or information generally available within their organisation. No special category data is used. Where individuals were victims of the social engineering activity, their names, the technique and the information they disclosed will be provided to the Client in confidence. If access to personal data is achieved by the tester, the Client is immediately informed to enable it to secure the data against unauthorised access by others. The data are saved to a password-protected, encrypted device in case the Client needs them either as evidence or for further internal investigation. Once the Client has accepted the final report – which contains only a summary of the types of data found – the data are securely deleted. The duration of the Processing will be for the term of the Service agreement between the Client and Jisc.
The nature and purpose of the Processing	The Personal Data will be Processed in order to provide the Service ordered by the Client.
The type of Personal Data being Processed	Any Personal Data held in the Clients systems that are tested for vulnerability and any Personal Data obtained by the testers from individuals subject to the testing.
The categories of Data Subjects	The Data Subjects are users of the Penetration Testing Service and staff or students of the Client

3. CONTROLLER OBLIGATIONS

- 3.1 As the Controller in respect of the Processing of the Personal Data, the Client shall ensure that:
- 3.1.1 it is not subject to any prohibition or restriction which would prevent or restrict it from disclosing or transferring the Personal Data to Jisc in accordance with the terms of this Schedule; and
 - 3.1.2 all fair processing notices have been given (and/ or, as applicable, consents obtained) and are sufficient in scope to allow the Client to disclose the Personal Data (including any Sensitive Personal Data) to Jisc for the delivery of the Service in accordance with the Data Protection Legislation.

4. PROCESSOR OBLIGATIONS

- 4.1 Jisc (as a Processor in relation to any Personal Data Processed by (or on behalf of) the Client pursuant to the Agreement) undertakes to the Client that it shall:
- 4.1.1 Process the Personal Data for and on behalf of the Client in connection with the performance of the Service only and for no other purpose in accordance with the terms of this Agreement and any instructions from the Client;
 - 4.1.2 unless prohibited by law, promptly notify the Client (and in any event within forty-eight (48) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by Applicable Law to act other than in accordance with the instructions of the Client, including where it believes that any of the Client's instructions under Clause 4.1.1 infringes any of the Data Protection Legislation;
 - 4.1.3 implement and maintain appropriate technical and organisational security measures to comply with at least the obligations imposed on a Controller by the Security

- Requirements. If requested by the Client, Jisc will provide a description of the technical and organisational security measures that Jisc will implement and maintain;
- 4.1.4 take all reasonable steps to ensure the reliability and integrity of any of the Personnel who shall have access to the Personal Data, and ensure that each member of Personnel shall have entered into appropriate contractually-binding confidentiality undertakings;
- 4.1.5 notify the Client promptly, and in any event within forty-eight (48) hours, upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach, and:
- (a) implement any measures necessary to restore the security of compromised Personal Data;
 - (b) assist the Client to make any notifications to the Regulator and affected Data Subjects;
- 4.1.6 notify the Client promptly (and in any event within ninety-six (96) hours) following its receipt of any Data Subject Request or Regulator Correspondence and shall:
- (a) not disclose any Personal Data in response to any Data Subject Request or Regulator Correspondence without the Client's prior written consent; and
 - (b) provide the Client with all reasonable co-operation and assistance required by the Client in relation to any such Data Subject Request or Regulator Correspondence;
- 4.1.7 not disclose Personal Data to a third party in any circumstances without the Client's prior written consent, other than:
- (a) in relation to Third Party Requests where Jisc is required by law to make such a disclosure, in which case it shall use reasonable endeavours to advise the Client in advance of such disclosure and in any event as soon as practicable thereafter, unless prohibited by law or regulation from notifying the Client;
 - (b) to Jisc's employees, officers, representatives and advisers who need to know such information for the purposes of Jisc performing its obligations under this Agreement and in this respect Jisc shall ensure that its employees, officers, representatives and advisers to whom it discloses the Personal Data are made aware of their obligations with regard to the use and security of Personal Data under this Agreement; and
 - (c) to a sub-contractor appointed in accordance with Clause 5.
- 4.1.8 not make (nor instruct or permit a third party to make) a Data Transfer without putting in place measures to ensure the Client's compliance with Data Protection Legislation;
- 4.1.9 on the written request of the Client, and with reasonable notice, allow representatives of the Client to audit Jisc in order to ascertain compliance with the terms of this Clause 4 and/ or to provide the Client with reasonable information to demonstrate compliance with the requirements of this Clause 4, provided that:
- (a) the Client shall only be permitted to exercise its rights under this Clause 4.1.9 no more frequently than once per year (other than where an audit is being undertaken by a Client in connection with an actual or 'near miss' Personal Data Breach, in which case, an additional audit may be undertaken each year by the Client within thirty (30) days of the Client having been notified of actual or 'near miss' Personal Data Breach);
 - (b) each such audit shall be performed at the sole expense of the Client;
 - (c) the Client shall not, in its performance of each such audit, unreasonably disrupt the business operations of Jisc;
 - (d) the Client shall comply with Jisc's health and safety, security, conduct and other rules, procedures and requirements in relation to Jisc's property and systems which have been notified by Jisc to the Client in advance; and
 - (e) in no case shall the Client be permitted to access any data, information or records relating to any other Client of Jisc.
- 4.1.10 except to the extent required by Applicable Law, on the earlier of:
- (a) the date of termination or expiry of the Agreement (as applicable); and/or
 - (b) the date on which the Personal Data is no longer relevant to, or necessary for, the performance of the Service,

cease Processing any of the Personal Data and, within sixty (60) days of the date being applicable under this Clause 4.1.10, return or destroy (as directed, in writing, by the Client) the Personal Data belonging to, or under the control of, the Client and ensure that all such data is securely and permanently deleted from its systems, provided that Jisc shall be entitled to retain copies of the Personal Data for evidential purposes and to comply with legal and/or regulatory requirements;

- 4.1.11 comply with the obligations imposed upon a Processor under the Data Protection Legislation; and
 - 4.1.12 assist the Client in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the UK GDPR taking into account the nature of Processing and the information available to Jisc, provided that Jisc shall be entitled to charge a fee to the Client (on a time and materials basis and at such rate notified by Jisc to the Client from time to time) in respect of providing any such assistance to the Client.
- 4.2 Notwithstanding anything in this Agreement to the contrary, this Clause 4 shall continue in full force and effect for so long as Jisc Processes any Personal Data on behalf of the Client.

5. SUB-CONTRACTORS

- 5.1 Jisc may from time to time use sub-contractors to perform all or any part of its obligations under this schedule. Jisc shall notify the Client prior to appointing a sub-contractor. The Client may object to the appointment of any sub-contractor and Jisc shall reasonably take into account the views of the Client in appointing any such sub-contractor, but for the avoidance of doubt the appointment of any sub-contractor shall be at Jisc's absolute discretion and Jisc shall have no obligation to act in accordance with any objection raised by the Client. Information regarding the sub-contractors Jisc uses from time to time in connection with the performance of the Service can be found on the Service website.
- 5.2 Jisc may from time to time disclose Personal Data to its sub-contractors (or allow its sub-contractors to access Personal Data) for Processing solely in connection with the fulfilment of the Permitted Purpose.
- 5.3 Where Jisc uses a sub-contractor to Process Personal Data for or on its behalf, it will ensure that the sub-contractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in Clause 4 of this schedule.
- 5.4 Jisc shall remain liable to the Client for the acts, errors and omissions of any of its sub-contractors to whom it discloses Personal Data, and shall be responsible to the Client for the acts, errors and omissions of such sub-contractor as if they were Jisc's own acts, errors and omissions to the extent that Jisc would be liable to the Client under this Agreement for those acts and omissions.

SCHEDULE 3: CALL-OFF ORDER TEMPLATE

This Call-Off Order captures the call-off requirements under the Contract and is subject to the Call-Off Terms as set out below.

Please complete, sign and send to professional.cyberservices@jisc.ac.uk

Client Name:	
Quote Reference:	
Call-Off Order Date:	
Client Contact Details:	
Name	
Email:	
Telephone:	
SERVICES	
Number of Call-Off Days:	
Preferred Start Date:	
ADDITIONAL REQUIREMENTS	
[insert if any]	

Call-Off Terms

This Call-Off Order is subject to our Jisc Professional Security Services General Terms and Conditions as provided to the Client and relates to the Services set out in the Quote as referred to above and agreed by the Client.

- The Client must allow at least 4 weeks from the Call-Off Order Date for Services under this Call-Off Order to be provided. Jisc will confirm the Start Date with the Client and will use reasonable endeavours to schedule the Services to commence on the Clients preferred Start Date.
- Services under a Call-Off Order shall not exceed 30% of the total Services to be provided under the Contract during the Call-Off Period unless otherwise agreed by Jisc.

Signed for and on behalf of the Client

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Name:

Title: