
General Conditions of Purchase of Consultancy Services



**UNIVERSITY
OF SUSSEX**

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University of Sussex
General Conditions of Purchase of Consultancy Services

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1. **INTERPRETATION**

1.1 **Definitions:**

In these Conditions, the following definitions apply:

"Business Day"	means a day (other than a Saturday, Sunday or public holiday) in England when the University is open for business;
"Charges"	means the charges for the Services set out in the Form of Contract or as otherwise agreed in writing between the Parties;
"Commencement Date"	means the date on which the Form of Contract is signed by both Parties;
"Conditions"	means the terms and conditions set out in this document;
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and special categories of personal data within the meaning of Data Protection Legislation. Confidential Information shall not include information which: <ul style="list-style-type: none"> (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 17; (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure, or (d) is independently developed without access to the Confidential Information;
"Consultant Company"	means the company named on the Form of Contract making available the Individual to provide the Services to the University under the Contract;
"Contract"	means the these Conditions, the Form of Contract, the Specification (if any) and the Schedules to these Conditions together with any documents referred to in any of them;
Data Protection Legislation	means applicable laws relating to the protection of personal data including, but not limited to, the Data Protection Act 2018, the UK General Data Protection Regulation ("UK GDPR") as implemented by the Data Protection Act 2018, and the General Data Protection Regulation (EU) 2016/679 (" GDPR "), and all applicable regulations, domestic legislation and any successor legislation;
"Deliverables"	means all documents, products and materials developed by the Consultant Company and/or the Individual as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer

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	programs, data, specifications and reports (including drafts);
"Environmental Policy"	means the University's environmental policy as updated by the University from time to time and made available to the Supplier upon request;
"Ethics and Anti-bribery Policy"	means the University's ethics and anti-bribery policy as updated by the University from time to time and made available to the Supplier upon request;
"Form of Contract"	means the 'form of contract' attached to these Conditions;
"Freedom of Information Legislation"	means the Freedom of Information Act 2000 and 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 the same;
"Health and Safety Policies"	means the University's overarching health and safety policy and all applicable supporting policies and guidance notes as updated from time to time by the University and in each case as can be located at http://www.sussex.ac.uk/hso/healthandsafety ;
"Individual(s)"	means a person or the persons agreed in writing between the Parties as being the person identified to provide the Services on behalf of the Consultant Company, or a Substitute;
"Intellectual Property Rights"	means all patents, rights to inventions, copyright and related rights, trade marks and trade names, rights to goodwill or to sue for passing off, rights in designs, database rights, rights in confidential information (including without limitation know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Invention"	means any invention, idea, discovery, development, improvement or innovation made by the Consultant Company or by the Individual in connection with the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium;
"ITT"	means the invitation to tender or request for quotes issued by the University for the Services (if any and as applicable);
"Modern Slavery Policy"	means the University's anti-slavery and human trafficking policy in force and notified to the Consultant Company from time to time;
"Premises"	means any premises owned, operated or used by the University and at which Services are to be performed as notified to the Consultant Company;
"Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) as amended and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 77/187/EEC as amended by

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Council Directive 98/50 EEC and consolidated in Council Directive 2001/23/EEC) into English law;

"Replacement Consultant Company"	means any alternative consultant company appointed by the University to make available the Individuals to provide the Services to the University;
"Services"	means the services described in the Form of Contract or in any direction given, including, without limitation, any Deliverables, to be provided by the Consultant Company under the Contract;
"Specification"	means the description and specification for the Services as may be set out in the ITT or Tender or as otherwise as provided by the Consultant Company to the University;
"Substitute"	means a substitute for the Individual appointed under the terms of Clause 5.3 or 25.2.3;
"Tender"	means the Consultant Company's written response to the ITT and/or quotation, if applicable, including all supporting documentation and representations;
"Term"	means the duration of the Contract, from the Commencement Date until both Parties' obligations under the Contract have been performed (unless the Contract is otherwise terminated in accordance with these Conditions or it is otherwise lawfully terminated);
"University"	means the University of Sussex or any wholly owned or associated subsidiary thereof named on the Form of Contract;
"University's Code of Conduct"	means the University's code of conduct as updated by the University from time to time and made available to the Supplier upon request;
"University Materials"	has the meaning given to it in Clause 5.1.12;
"University Policies"	means the Environmental Policy, Ethics and Bribery Policy and Health and Safety Policies; and
"Works"	means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant Company or the Individual in connection with the provision of the Services.

1.2 Interpretation:

In these Conditions:

- 1.2.1 use of the singular includes the plural (and *vice versa*) and use of any gender includes the other genders;

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- 1.2.2 a reference to a Party is to a party to the Contract and shall include that party's personal representatives, successors or permitted assignees;
- 1.2.3 a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments, states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);
- 1.2.4 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.5 a reference to writing or written includes emails but not fax;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended, re-enacted or substituted from time to time and shall include any subsidiary legislation including any modification or re-enactment thereof;
- 1.2.7 the table of contents and headings are included for convenience only and will not affect the construction or interpretation of the Contract; and
- 1.2.8 a reference to a Clause or Schedule is to the relevant Clause of or Schedule to these Conditions; a reference to a paragraph is to the relevant paragraph of the Schedule in which it appears.

2. **basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Consultant Company seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Contract commences on the Commencement Date and will continue in full force and effect for the Term.
- 2.3 In case of a conflict between these Conditions, the Form of Contract, the Specification (if any) and any Schedules, the following order of precedence shall apply:
 - 2.3.1 the Form of Contract;
 - 2.3.2 these Conditions;
 - 2.3.3 the Specification (if any);
 - 2.3.4 the Schedules; and
 - 2.3.5 any other document incorporated into these Conditions.

3. **Appointment**

- 3.1 The University shall engage the Consultant Company and the Consultant Company shall make available to the University the Individual to provide the Services for the duration of the Contract upon the terms and conditions of the Contract.

4. **CONSULTANT COMPANY'S REPRESENTATIONS AND WARRANTIES**

- 4.1 The Consultant Company represents and warrants to the University that:

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- 4.1.1 all information, statements and representations contained in the Tender, if applicable, are in all material respects, true, accurate, and not misleading; and
- 4.1.2 it is not (and will not at any time be) subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under the Contract.
- 4.2 The Consultant Company shall promptly notify the University if it becomes aware of any fact, matter or circumstance after the Commencement Date which would render the representations and warranties set out in Clause 4.1 false or misleading.
- 4.3 The Consultant Company shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract and in relation to the Individual's performance of the Services.
- 5. **Obligations of the Consultant Company**
- 5.1 In providing the Services, the Consultant Company shall (and it shall be a condition of the Agreement that the Consultant Company shall), and (where appropriate) shall procure that the Individual shall:
 - 5.1.1 provide the Services and spend as much time as is necessary:
 - (a) for the proper performance of the duties under the Contract; and
 - (b) to meet the University's requirements for the Services;
 - 5.1.2 complete any training required by the University relating to the requirements of the Contract. If the Individual does not successfully complete such training within the time period specified by the University, then the University shall be entitled to terminate the Contract by written notice with immediate effect and the University shall have no liability of any kind under the Contract except for fees for Services properly provided;
 - 5.1.3 perform the Services exercising the professional skill, care and diligence that would be expected of a professionally qualified consultant experienced in performing services substantially similar in size, scope and complexity to the Services;
 - 5.1.4 provide the University with such reports relating to the provision of the Services at such intervals and in such form as the University may from time to time require;
 - 5.1.5 co-operate fully with all of the University's personnel during the term of the Contract;
 - 5.1.6 co-operate with the University in all matters relating to the Services, including the requirements of the ITT, Tender and Form of Contract;
 - 5.1.7 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Consultant Company by the University;
 - 5.1.8 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 5.1.9 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the University, will be free from defects in workmanship, installation and design;
 - 5.1.10 comply with all applicable laws and regulations;

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- 5.1.11 notify the University as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services. The Consultant Company shall instruct the Individual to adopt any necessary associated safety measures in order to manage any such material health and safety hazards;
- 5.1.12 hold all materials, equipment and tools, drawings, specifications and data supplied by the University to the Consultant Company ("**University Materials**") in safe custody at its own risk, maintain the University Materials in good condition until returned to the University, and not dispose or use the University Materials other than in accordance with the University's written instructions or authorisation;
- 5.1.13 not do or omit to do anything which may cause the University to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Consultant Company acknowledges that the University may rely or act on the Services; and
- 5.1.14 ensure that, so far as is reasonably practicable, the performance of the Services does not hinder or interrupt the use or occupation of any room or place in the Premises by the University.
- 5.2 If the Consultant Company is unable to provide the Services due to illness or injury, the Consultant Company shall advise the University of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with Clause 8 (Payment and Invoices) in respect of any period during which the Services are not provided.
- 5.3 The Consultant Company may appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual. The Consultant Company shall continue to invoice the University in accordance with clause 8 (Payment and Invoices) and shall be responsible for the remuneration of the Substitute.
- 5.4 The Consultant Company warrants that the Individual:
 - 5.4.1 has the necessary qualifications, ability and expertise to perform the Services; and
 - 5.4.2 shall comply with all applicable laws, statutes and regulations and codes of practice during the supply of the Services, including corruption, fraud, anti-bribery and health and safety legislation.
- 5.5 The Contract is conditional upon the Consultant Company completing and passing all of the University's vetting procedures. Failure by the Consultant Company of any part of the vetting process shall deem the Contract null and void with no cost to the University. Vetting requirements can be made available on request.
- 5.6 Unless it or he has been specifically authorised to do so by the University in writing:
 - 5.6.1 neither the Consultant Company nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the University; and
 - 5.6.2 the Consultant Company shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the University.
- 5.7 The Consultant Company shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the Health and Safety Policies and the University's health and safety procedures from time to time in force at the Premises where the Services are provided and report to the University any unsafe working conditions or practices.
- 5.8 The Consultant Company may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

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- 5.8.1 the University will not be liable to bear the costs of such functions; and
- 5.8.2 at the University's request the third party shall be required to enter into direct undertakings with the University, including with regard to confidentiality.

6. UNIVERSITY'S OBLIGATIONS

- 6.1 The University shall:
 - 6.1.1 provide the Consultant Company and/or the Individual with reasonable access at reasonable times to the Premises for the purpose of providing the Services; and
 - 6.1.2 provide such information as the Consultant Company and/or the Individual may reasonably request for the provision of the Services and the University considers reasonably necessary for the purpose of providing the Services.

7. university premises

7.1 Inspection of Premises

Save as the University may otherwise direct, the Consultant Company is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

7.2 Fire Precautions

- 7.2.1 The Consultant Company must comply with any directions given by the University in relation to fire safety at the Premises.
- 7.2.2 The Consultant Company must ensure that all flammable agents and equipment are kept away from naked flames and exposed electrical elements, are stored safely and are safely disposed of when no longer required or use.

8. PAYMENT AND INVOICES

- 8.1 In consideration of the full and proper performance of the Services, the University shall, subject to the Consultant Company complying with the remaining provisions of this Clause 8, pay the agreed Charges.
- 8.2 The Consultant Company shall invoice the University for the Services and shall comply with the remaining provisions of this Clause 8.
- 8.3 The Charges shall be inclusive of all costs, overheads and expenses of any kind (including all delivery costs) and all other charges, duties, expenses and taxes but shall be exclusive of VAT, which the Consultant Company shall add to its invoices at the appropriate rate.
- 8.4 The Consultant Company shall submit invoices in accordance with the payment schedule agreed between the Parties in writing.
- 8.5 In order to facilitate the payment process within the University's accounts payable team, the invoice shall contain the following information:
 - 8.5.1 a valid purchase order number;

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- 8.5.2 the period to which the invoice relates;
 - 8.5.3 details of the Services performed;
 - 8.5.4 a breakdown of Charges and any additional charges incurred; and
 - 8.5.5 details of the Consultant Company's nominated bank account.
- 8.6 Failure to provide the required information may result in either returned invoices or payment delays.
- 8.7 All invoices without exception are to be sent by email to the University's Accounts Payable Team at:
invoices@sussex.ac.uk
- 8.8 If the University:
- 8.8.1 requires any information in order to verify the accuracy of any invoiced amount it shall, within 10 Business Days of receiving the relevant invoice, give written notice (an "**Information Request**") to the Consultant Company specifying the information it requires. The Consultant Company shall provide all information specified in or required by an Information Request within 5 Business Days of receipt of that Information Request. If the Consultant Company fails to respond or, if following the Consultant Company's response the University considers that it is still unable to verify the relevant invoiced amount or disagrees with such amount, the matters in dispute shall be referred to a chartered accountant of not less than ten years standing (the "**Charges Expert**"). If following the Consultant Company's response the University can verify the relevant invoiced amount and agrees with it, payment of that relevant invoiced amount shall be deemed to be due on the later of: (a) the invoice payment date in respect of the relevant invoice; and (b) the date which is 10 days following the date upon which the University received all of the information specified in the relevant Information Request; or
 - 8.8.2 disagrees with any invoiced amount, it shall, within 10 Business Days of receiving the relevant invoice, give written notice (an "**Invoice Query**") to the Consultant Company specifying the amounts it disputes. If the Parties have not reached agreement in relation to any disputed amounts within 21 days following the date of the Invoice Query the matters in dispute shall be referred to the Charges Expert,
 - 8.8.3 and pending the resolution of any matter or the provision of any necessary information, the University shall be entitled to withhold payment of such part of the invoice as it relates to the matters which are the subject of the relevant Information Request or Invoice Query (as appropriate). Any failure or delay by the University in notifying the Consultant Company of any disputed amount shall not prejudice the University's right to dispute (and, where appropriate, recover) any sums that should be, or should not have been, paid by the University.
- 8.9 All undisputed sums due to the Consultant Company under the terms of the Contract shall be paid against a valid invoice. Payment of any undisputed sum shall be made within 30 days following receipt of a valid invoice.
- 8.10 If either Party fails to make payment in accordance with the Contract the other Party shall be entitled, in addition to any unpaid amount that should properly have been paid, to simple interest on that amount from the final date for payment until the date of actual payment such interest to be calculated at a daily rate of 2% above the Bank of England base rate which is current at the date the payment became overdue. It is agreed that the provisions of this Clause constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998. Payment by the University of all or any part of any invoice is without prejudice to any rights or remedies that the University may otherwise have against the Consultant Company and does not constitute any

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acceptance by the University as to the performance by the Consultant Company of all, or any part of its obligations.

8.11 The University shall be entitled at any time to set off any liability of the Consultant Company to the University against any liability of the University to the Consultant Company (whether that liability is present or future, liquidated or unliquidated and irrespective of currency) under:

8.11.1 the Contract; or

8.11.2 any other contract between the University and the Consultant Company.

8.12 The Consultant Company shall make any payments due to the University without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Consultant Company has a valid court order requiring an amount equal to such deduction to be paid by the University to the Consultant Company.

8.13 If it reasonably considers that it is obliged by law to do so, the University may make deductions or withholdings from the Charges in respect of any liability to income tax or employee national insurance contributions arising from or in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services.

9. Expenses

The Consultant Company shall bear its own expenses incurred in the course of the Contract unless otherwise agreed in writing between the Parties.

10. Status

10.1 The relationship of the Consultant Company to the University will be that of independent contractor and nothing in this agreement shall render it (nor the Individual) an employee, worker, agent or partner of the University and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.

10.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant Company shall be fully responsible for and shall indemnify the University for and in respect of:

10.2.1 (to the extent not already deducted or withheld pursuant to clause 8.13) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services, where such recovery is not prohibited by law. The Consultant Company shall further indemnify the University against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the University in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;

10.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the University arising out of or in connection with the provision of the Services except where such claim is as a result of any act or omission of the University.

10.3 The University may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant Company.

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10.4 The Consultant Company warrants that it is not nor will it prior to the cessation of this agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

11. Independence/Outside interests

Subject to the full and proper provision of the Services and this Clause 11, the Consultant Company may provide services to any third party provided that such services do not conflict with the provision of the Services and the Parties' obligations under the Contract. The Consultant Company agrees to provide advance notification of any other commitments unless prohibited by applicable confidentiality obligations.

12. Termination

12.1 Without limiting its other rights or remedies, the University may terminate the Contract by giving the Consultant Company no less than thirty (30) days' written notice (or such other notice period as may be agreed between the Parties in writing). The University shall pay the Consultant Company's reasonable costs incurred relating to the performance of the Services at the time of termination subject to such costs being evidenced to the reasonable satisfaction of the University and mitigated.

12.2 Without limiting its other rights or remedies, the University may terminate the Contract with immediate effect by giving written notice to the Consultant Company if:

12.2.1 the Consultant Company or the Individual commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of receipt of notice in writing to do so;

12.2.2 the Consultant Company or the Individual persistently breach any of the terms of the Contract in such a manner that if taken together they amount to a material breach;

12.2.3 the Individual commits any gross misconduct affecting the business of the University;

12.2.4 the Consultant Company is in material breach of any of the University Policies or the Individual is in material non-compliance with any of the University Policies;

12.2.5 the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

12.2.6 the Consultant Company or the Individual is, in the reasonable opinion of the University, negligent or incompetent in the performance of the Services;

12.2.7 the Individual is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;

12.2.8 any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the Consultant Company or if the Consultant Company makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding up passed or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the Consultant Company or if the Consultant Company ceases or threatens to cease to carry on business;

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- 12.2.9 the Consultant Company's financial position deteriorates to such an extent that in the University's opinion the Consultant Company is unable to adequately fulfil its obligations under the Contract;
- 12.2.10 the Individual is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 28 days in any 52-week consecutive period; and/or
- 12.2.11 there is a change of control of the Consultant Company (within the meaning of section 1124 of the Corporation Tax Act 2010).

12.3 Termination of the Contract, however arising, shall not affect either Parties' rights and remedies that have accrued as at termination.

12.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. Consequences of termination

13.1 On termination of the Contract for any reason, the Consultant Company shall immediately deliver to the University all Deliverables whether or not then complete, and return all University Materials. If the Consultant Company fails to do so, then, without prejudice to any other rights and remedies, the University may:

13.1.1 enter the Consultant Company's premises and take possession of them; and/or

13.1.2 withhold payment of any amounts due under the Contract until any such Deliverable and University Materials have been returned or delivered.

13.2 Until the Deliverables and any University Materials have been returned or delivered, the Consultant Company shall be solely responsible for their safe keeping (including, but not limited to, insuring such items) and will not use them for any purpose not connected with the Contract.

13.3 The Consultant Company shall be liable for and agrees to pay the costs of repairing any damage caused to the University's property as result of decommissioning by the Consultant Company of any Goods.

14. Intellectual property rights

14.1 The Consultant Company warrants to the University that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works and the Inventions and of all materials embodying such rights and a written irrevocable waiver of all the Individual's statutory moral rights in the Works, to the fullest extent permissible by law, and that the Individual has agreed to hold on trust for the Consultant Company any such rights in which the legal title has not passed (or will not pass) to the Consultant Company. The Consultant Company agrees to provide to the University a copy of this assignment on or before the Commencement Date.

14.2 The Consultant Company hereby assigns to the University all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant Company holds legal title in these rights and inventions on trust for the University.

14.3 The Consultant Company undertakes to the University :

14.3.1 to notify to the University in writing full details of all Inventions promptly on their creation;

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- 14.3.2 to keep confidential the details of all Inventions;
- 14.3.3 whenever requested to do so by the University and in any event on the termination of the Contract, promptly to deliver to the University all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its or the Individual's possession, custody or power;
- 14.3.4 not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the University ; and
- 14.3.5 to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the University,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

14.4 The Consultant Company warrants that:

- 14.4.1 it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
- 14.4.2 it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- 14.4.3 the use of the Works or the Intellectual Property Rights in the Works by the University will not infringe the rights of any third party,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

- 14.5 The Consultant Company agrees to indemnify the University and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the University, or for which the University may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant Company to the University during the course of providing the Services. The Consultant Company shall maintain adequate liability insurance coverage and ensure that the University's interest is noted on the policy, and shall supply a copy of the policy to the University on request. The University may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant Company.
- 14.6 The Consultant Company acknowledges that no further remuneration or compensation other than that provided for in this agreement is or may become due to the Consultant Company in respect of the performance of its obligations under this Clause 14.
- 14.7 The Consultant Company undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the University and at any time either during or after the Contract, as may, in the opinion of the University, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the University and to defend the University against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works. The Consultant Company confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

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14.8 The Consultant Company irrevocably appoints the University to be its attorney in its name and on its behalf to execute documents, use the Consultant Company's name and do all things which are necessary or desirable for the University to obtain for itself or its nominee the full benefit of this clause. A certificate in writing, signed by any director or the secretary of the University, that any instrument or act falls within the authority conferred by this agreement shall be conclusive evidence that such is the case so far as any third party is concerned.

15. REMEDIES

15.1 If any Services are not supplied in accordance with, or the Consultant Company fails to comply with, any terms of the Contract, the University shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

15.1.1 to terminate the Contract with immediate effect by giving written notice to the Consultant Company;

15.1.2 to refuse to accept the performance of any further Services by the Consultant Company and to require the immediate repayment by the Consultant Company of all sums previously paid by the University to the Consultant Company under the Contract; or

15.1.3 to require the Consultant Company, without charge to the University, to carry out such additional work as is necessary to correct the Consultant Company's failure; and

in any case, to claim such damages as it may have sustained in connection with the Consultant Company's breach (or breaches) of the Contract not otherwise covered by the provisions of this Clause 15.

16. Indemnity

16.1 The Consultant Company shall keep the University indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) incurred by the University as a result of or in connection with:

16.1.1 any claim made against the University for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Consultant Company, its employees, agents or subcontractors;

16.1.2 any claim made against the University by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods and/or the Services (as applicable), to the extent that the defects in the Goods and/or the Services (as applicable) are attributable to the acts or omissions of the Consultant Company, its employees, agents or subcontractors; and

16.1.3 any claim made against the University by a third party arising out of or in connection with the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Consultant Company, its employees, agents or subcontractors.

16.2 If an Intellectual Property Rights Claim is made or is reasonably likely to be made, the Consultant Company shall, at the University's option:

16.2.1 procure for the University the right to continue receiving the Services; and/or

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16.2.2 modify or replace the infringing part of any Deliverables so as to avoid the infringement or alleged infringement, provided that the modified or replaced deliverables are substantially similar (in all material respects) to the Deliverables.

16.3 This Clause 16 shall survive termination of the Contract.

17. LIABILITY

17.1 Nothing in the Contract shall exclude or limit the liability of the Consultant Company under Clause 16.1 or the liability of either Party for death or personal injury resulting from negligence, fraud or fraudulent misrepresentation or for any other matters which cannot be excluded or limited by law.

17.2 The Consultant Company shall have liability for and shall indemnify the University for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant Company of the terms of the Contract due to the act or omission by the Individual or from any negligent or reckless act, omission or default in each case by the Individual in the performance of the Services.

17.3 Without prejudice to Clause 17.1, the University shall not be liable to the Consultant Company, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for loss of anticipated profits, loss of revenue, loss of goodwill, or for any special, indirect or consequential damage or any special indirect or consequential loss suffered by the Consultant Company that arises under or in connection with the Contract.

17.4 Without prejudice to Clause 17.1 or Clause 17.3:

17.4.1 the University's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to twenty five percent (25%) of the total Charges (but for the avoidance of doubt this limitation shall not affect the University's obligation to pay properly invoiced sums in accordance with Clause 8.1); and

17.4.2 the Consultant Company's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the higher of the total Charges and the level of insurance that the Consultant Company is required to obtain for such loss in accordance with the provisions of Clause 18.1.

18. INSURANCE

18.1 During the term of the Contract and for a period of six (6) years thereafter, the Consultant Company shall:

18.1.1 maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance in the following amounts:

- (a) public liability insurance – £10,000,000;
- (b) professional indemnity insurance - £5,000,000; and
- (c) product liability insurance - £5,000,000; and

18.1.2 on the University's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

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- 18.2 The Consultant Company shall:
- 18.2.1 do nothing to invalidate any insurance policy or to prejudice the University's entitlement under it; and
 - 18.2.2 notify the University if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 18.3 The Consultant Company's liabilities under any term of the Contract or otherwise shall not be deemed to be released or limited by the Consultant Company taking out the insurance policies referred to in Clause 18.1.

19. **INADEQUACY OF DAMAGES**

Without prejudice to any other rights or remedies that the University may have, the Consultant Company acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of the Contract by the Consultant Company. Accordingly, the University shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of the Contract.

20. **CONFIDENTIALITY**

- 20.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 20.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 20.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 20.2 Clause 20.1 shall not apply to the extent that such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Legislation pursuant to Clause 21.1.
- 20.3 Notwithstanding clause 20.1, each Party shall be entitled to disclose Confidential Information of the other Party;
- 20.3.1 to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Clause as though they were a Party to the Contract;
 - 20.3.2 to their respective insurers or legal advisers (in the case of legal advisers for the purposes of any actual or threatened dispute between the Parties); and/or
 - 20.3.3 to a third party to the extent that this is required, by any court of competent jurisdiction, or by a governmental or regulatory authority or a professional body of which the Party wishing to make the disclosure or its personnel are members and which is relevant to the Goods and/or Services, or where there is a legal right, duty or requirement to disclose, provided that (and without breaching any legal or regulatory requirement) where reasonably practicable not less than two (2) Business Days' notice in writing is first given to the other Party.
- 20.4 The Consultant Company shall procure that the Individual:

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- 20.4.1 does not use or disclose any Confidential Information other than as provided in Clause 20.3 or for the purposes of providing the Services under the Contract; and
- 20.4.2 is contractually bound to it by obligations of confidentiality no less onerous than in this Clause 20. The Consultant Company shall be primarily liable for any breach of confidentiality by an Individual.

21. PROTECTION OF PERSONAL DATA

- 21.1 The Consultant Company, as a Data Controller, undertakes that it will ensure that both it and the Individual(s) shall at all times during and in connection with the provision of the Services act in accordance with Data Protection Legislation relating to the processing of personal data to which the University is subject. The Consultant Company undertakes that it will ensure that both it and the Individual(s) are fully aware of and comply with the University's Data Protection Policy and its Information Security policies on an ongoing basis.
- 21.2 The Consultant Company undertakes that it will bind the Individual(s) with appropriate confidentiality obligations, all to the satisfaction of the University and that any Individual(s) will only access, use or otherwise process personal data in accordance with Data Protection Legislation and as necessary for the purposes of this Agreement. The Consultant Company warrants that it has appropriate policies and processes in place to ensure that the Consultant complies with all applicable Data Protection Legislation.
- 21.3 The Consultant Company will procure that the Individual(s) acknowledge and agree that the University will hold personal data relating to the Individual(s) which is necessary or reasonably required for the proper performance of this Contract and in connection with the provision of the Services, including: (i) the administration of the Services and any work to which the Services relate (both during and after the provision of the Services by the Consultant Company); (ii) the performance of the University's responsibilities in relation to health and safety management; (iii) the conduct of the University's business; or (iv) where such provision is required by law (including to comply with its obligations regarding the retention of individual records). Such data will include, but not be limited to, the Individuals' work history and experience, address, professional references, work, holiday and attendance records in relation to delivery of the Services, and other records. The Consultant Company will advise the Consultant that the Consultant's right of access to such data is as prescribed by law.
- 21.4 The Consultant Company will not transfer any Confidential Information to any third parties, unless with the prior, written authorisation of the University or where required by law.
- 21.5 The Consultant Company will not transfer any Confidential Information outside of the United Kingdom without the prior, written authorisation of the University to do so, and then only with the necessary safeguards in place in compliance with Data Protection Legislation.

22. FREEDOM OF INFORMATION

- 22.1 The Consultant Company acknowledges that the University may be required under the Freedom of Information Legislation to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Consultant Company. The University shall take reasonable steps to notify the Consultant Company of a request for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the University shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the Freedom of Information Legislation.
- 22.2 The Consultant Company acknowledges that the University is subject to the Freedom of Information Legislation and shall assist and co-operate with the University (at the Consultant Company's

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expense) to enable the University to comply with its obligations under the Freedom of Information Legislation.

22.3 The Consultant Company shall and shall procure that its sub-contractors shall:

22.3.1 transfer a request for information to the University as soon as practicable after receipt and in any event within three (3) days of receiving such request for information;

22.3.2 provide the University with a copy of all information requested which is in its possession or power in the form that the University requires within seven days (or such other period as the University may specify) of the University requesting that information; and

22.3.3 provide all necessary assistance as reasonably requested by the University to enable the University to respond to a request for information within the time for compliance set out in the Freedom of Information Legislation.

22.4 The Consultant Company shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the University to inspect such records as requested from time to time.

22.5 This Clause 21.1 shall survive termination of the Contract.

23. TUPE

23.1 Where all or part of the Services cease to be provided by the Consultant for any reason and where all or part of the Services continue to be provided by the University or a Replacement Consultant Company, if it is found or alleged that the employment of any person, or any liability relating to any person, transfers to the University or a Replacement Consultant Company pursuant to the Regulations:

23.1.1 in the case of a transfer of employment, the University or Replacement Consultant Company may, within 21 days of becoming aware of that finding or allegation, dismiss that person;

23.1.2 the Consultant Company shall indemnify and keep indemnified the University (whether for itself or for and on behalf of a Replacement Consultant Company) against all costs, liabilities and expenses (including reasonable legal expenses) which the University and the Replacement Consultant Company may suffer or incur in relation to that dismissal and/or the employment of that person up to the date of that dismissal and any other claim brought by that person;

23.1.3 in the case of a transfer of a liability, the Consultant Company shall indemnify and keep indemnified the University (whether for itself or for and on behalf of a Replacement Consultant Company) in respect of that liability; and

23.1.4 the Consultant Company shall indemnify and keep indemnified the University (whether for itself or for and on behalf of a Replacement Consultant Company) against all costs, liabilities and expenses (including reasonable legal expenses) which the University and the Replacement Consultant Company may suffer or incur in relation to any breach or alleged breach of the Regulations by the Consultant Company.

24. ENVIRONMENTAL Requirements

24.1 The Consultant Company shall not use any materials which contain CFCs (chlorofluorocarbons), halons and any other environmentally damaging substances.

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- 24.2 The Consultant Company shall, when working on the Premises, perform its obligations under the Contract in accordance with the Environmental Policy.
- 24.3 The Consultant Company shall comply with all other "Green Housekeeping" and energy conservation requirements in the Environmental Policy and other further related documents provided by the University.
- 24.4 The Consultant Company shall take measures to ensure compliance with the Environmental Protection Act 1990, Duty of Care Regulations associated with waste arising and any other acts, orders or regulations relating to the environment.
- 24.5 The Consultant Company shall take all reasonable steps to ensure that the Individual does not unlawfully discriminate within the meaning and scope of the above mentioned enactments.
25. **EQUALITY**
- 25.1 The Consultant Company shall, and shall procure that the Individual shall:
- 25.1.1 perform its obligations under the Contract (including those in relation to the Services) in accordance with:
- (a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the University's equality and diversity policy as updated by the University from time to time; and
 - (c) any other requirements and instructions which the University reasonably imposes in connection with any equality obligations imposed on the University at any time under applicable equality law; and
- 25.1.2 take all necessary steps, and inform the University of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 25.2 Without prejudice to any other rights and remedies accruing to the University under the Contract, in the event that the Consultant Company and/or any member of the Consultant Company's Team, fails to comply with its obligations pursuant to Clause 25.1, the University shall have the right to:
- 25.2.1 terminate the Contract forthwith on written notice to the Consultant Company, without liability of any kind whatsoever;
- 25.2.2 proceed with the fulfilment of the Contract, in which case the Consultant Company and the Consultant Company's Team must comply with any measures specified by the University which the University deems, at the University's sole and absolute discretion, to be appropriate and necessary to ensure compliance with Clause 25.1. Such measures to be undertaken to achieve compliance shall be undertaken at the Consultant Company's risk and expense, and, unless otherwise agreed in writing by the University before the measures are taken, without charge to the University; or
- 25.2.3 require that the Individual is replaced (at no cost to the University) with a Substitute acceptable to the University.

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26. GIFTS, INDUCEMENTS AND REWARDS

26.1 The Consultant Company shall, and where applicable shall procure that the Individual shall:

26.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

26.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

26.1.3 comply with the Ethics and Anti-bribery Policy;

26.1.4 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Ethics and Anti-bribery Policy and will enforce them where appropriate;

26.1.5 promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Consultant Company in connection with the performance of the Contract;

26.1.6 immediately notify the University (in writing) if a foreign public official becomes an officer or employee of the Consultant Company, or acquires a direct or indirect interest in the Consultant Company, and the Consultant Company warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Contract; and

26.1.7 on request, certify to the University in writing signed by an officer of the Consultant Company, compliance with this Clause 26 by the Consultant Company. The Consultant Company shall provide such supporting evidence of compliance as the University may reasonably request.

26.2 The Consultant Company shall ensure that any person associated with the Consultant Company who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant Company in this Clause 26 ("**Relevant Terms**"). The Consultant Company shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the University for any breach by such persons of any of the Relevant Terms.

26.3 The Consultant Company shall not offer, give or agree to give to any person employed by the University any gift, consideration or reward, other than items of small intrinsic value for advertisement, on the attainment or execution of the Contract.

27. Anti-slavery

27.1 The Consultant Company undertakes, warrants and represents that:

27.1.1 neither the Consultant Company nor the Individual(s) has:

(a) committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**");
or

(b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

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- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 27.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
- 27.1.3 it shall notify the University immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Consultant Company's obligations under Clause 27.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Consultant Company's obligations.
- 27.2 Any breach of Clause 27.1 by the Consultant Company shall be deemed a material breach of the Contract incapable of remedy and shall entitle the University to terminate the Contract with immediate effect.
- 28. **aNTI-FACILITATION OF TAX EVASION**
- 28.1 The Consultant Company shall:
 - 28.1.1 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;
 - 28.1.2 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 employees of the Consultant Company.) and to ensure compliance with Clause 28.1.1;
 - 28.1.3 promptly report to the University any 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;
 - 28.1.4 within three months of the date of this agreement, and annually thereafter, certify to the University in writing signed by an officer of the Consultant Company, compliance with this Clause 28 by the Consultant Company and all persons associated with it under Clause 28.2. The Consultant Company shall provide such supporting evidence of compliance as the University may reasonably request.
- 28.2 The Consultant Company shall ensure that any person associated with the Consultant Company who is performing Services and/or providing Goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant Company in this Clause 28 ("**Relevant Terms**"). The Consultant Company shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the University for any breach by such persons of any of the Relevant Terms.
- 28.3 Any breach of this Clause 28 shall be deemed a material breach of the Contract incapable of remedy and shall entitle the University to terminate the Contract with immediate effect.
- 28.4 For the purposes of this Clause 28, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act

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2017 and a person associated with the Consultant Company includes but is not limited to any subcontractor of the Consultant Company.

29. DISPUTE RESOLUTION

29.1 Without prejudice to Clause 8.7, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

29.2 If the Parties are unable to resolve the dispute within 28 days of being escalated in accordance with Clause 29.1, the parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR Notice**") to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice.

29.3 The commencement of mediation shall not prevent the Parties seeking an injunction in relation to the dispute.

29.4 If the dispute is not resolved within 60 days after service of the ADR Notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, either Party shall be entitled to issue proceedings.

30. Announcements

30.1 Notwithstanding any other provision of these Conditions, the Consultant Company shall not make any announcement relating to the Contract or its subject matter or its appointment hereunder except to the extent required by law or by any governmental or regulatory authority (and then subject to the notification obligations in Clause 20.3.3) without the prior written agreement of the University.

31. GENERAL

31.1 Entire Agreement

31.1.1 The Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

31.1.2 Each of the Parties represents and agrees that in entering the Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether Party to the Contract or not) other than as expressly set out in the Contract.

31.2 Force Majeure

The University reserves the right to defer the date for performance of, or payment for, the Services, or to terminate the Contract, if it is prevented from, or delayed in, carrying on its business by act of God including but not limited to fire, flood, earthquake, windstorm or other natural disaster; epidemic, pandemic or other civil emergency; act of any sovereign including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition

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of government sanction embargo or similar action; law, judgment, order, decree, embargo, blockade, labour dispute including but not limited to strike, lockout or boycott; interruption or failure of utility service including but not limited to electric power, gas, water or telephone service; failure of the transportation of any personnel equipment, machinery supply or material required by the University for performance of the Contract; breach of Contract by any essential personnel; any other matter or cause beyond the control of the University.

31.3 Assignment and other Dealings

- 31.3.1 The University may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract, provided that the University gives prior written notice to the Consultant Company.
- 31.3.2 The Consultant Company may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the University.
- 31.3.3 The Consultant Company will be responsible for all acts and omissions of its sub-contractors (including without limitation any sub-sub-contractors) as though they were its own.
- 31.3.4 Notwithstanding Clause 17, if the University is assigning any or all of its rights under the Contract it may disclose to a proposed assignee any information in its possession that relates to the Contract or its subject matter, the negotiations relating to it and the Consultant Company which it is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this Clause 31.3 shall be made until notice of the identity of the proposed assignee has been given to the Consultant Company.

31.4 Notices

- 31.4.1 Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this Clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, commercial courier, or e-mail.
- 31.4.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address set out in the Form of Contract for the respective Party; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one business day after transmission.
- 31.4.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

31.5 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.

31.6 Waiver

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A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

31.7 **Third Parties**

A person who is not a Party to the Contract will have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

31.8 **No Partnership or Agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, nor constitute either Party the agent of the other for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other party in any way.

31.9 **Further Assurance**

Each Party to the Contract shall at the request and expense of the other or any of them execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

31.10 **Variations to the Contract**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the University.

31.11 **Time of the Essence**

Except as regards to payment of sums due, time is of the essence for the performance of the Consultant Company's obligations under the Contract, both as regards times, dates and periods specified in the Contract and as to any times, dates or periods that may by agreement between the Parties be substituted for any of them.

31.12 **Governing Law and Jurisdiction**

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

31.12.2 Each Party irrevocably agrees, for the sole benefit of the University that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this Clause shall limit the right of the University to take proceedings against the Consultant Company in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.