

**UNIVERSITY OF KENT TERMS AND CONDITIONS
FOR THE PROVISION OF CONSULTANCY SERVICES**

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UNIVERSITY OF KENT TERMS AND CONDITIONS FOR CONSULTANCY SERVICES

Basic Contract Information Section

1. Definition & Interpretations

In these conditions:

- 1.1. "The Authority" and "The University" means The University of Kent.
- 1.2. "The Authority's Premises" means lands and buildings which make up the University Estate.
- 1.3. "Bribery Act" means The Bribery Act 2010
- 1.4. "The Commencement Date" means the date on which the Contract shall take effect, as notified by the Authority to the Consultant in the Contract Agreement Letter.
- 1.5. "Conditions" means the entire contents of the headed paragraphs in these terms and conditions.
- 1.6. "Confidential Information" means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which is known by the receiving party to be confidential, is marked as or stated to be confidential or ought reasonably to be considered by the receiving party to be confidential.
- 1.7. "The Agreement" or "The Contract" means the agreement concluded between the Authority and the Consultant including these Conditions, the specification as set out in the Agreement letter and other documents which are referred to within the letter. In the case of any discrepancy among these documents these Conditions shall prevail.
- 1.8. "The Consultant" means the individual Consultant or Consultant Company who undertakes to render the Services for the Authority as provided for by the Contract.
- 1.9. "The Contract Period" means the period of duration of the Contract in accordance with Condition 3.
- 1.10. "The Contract Price" as described in the Contract Agreement Letter, means the price exclusive of Value Added Tax, payable to the Consultant by the Authority under the Contract for the full and proper performance by the Consultant of his part of the Contract as determined under the provisions of the Contract.
- 1.11. "Contractor Personnel" means all directors, officers, employees, agents,

consultants and contractors of the Supplier/Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.

- 1.12. "Consultant's Staff" means any person, commissioned and paid by the Consultant to either perform any part of this Contract or to provide services to the Consultant to facilitate performance of the Contract, including sub-contractors.
- 1.13. "Criminal Finance Act" means the Criminal Finance Act 2017
- 1.14. "Default" means any breach of the obligations under this Contract (including but not limited to material breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the party, its employees, agents or Sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which the party is liable to the other.
- 1.15. "Deliverables" means all documents, products and materials developed by the Consultant or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- 1.16. "Delivery Location" has the meaning of the location of delivery of the outputs/deliverables as agreed between both parties, and / or specified in any instructions.
- 1.17. "DPA" means the Data Protection Act 2018
- 1.18. "Employee of the Authority" means any member of the staff of the Authority and includes an individual who is an Employee of the Authority when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made, and, where such person has ceased to be an employee by reason of death, includes their personal representative.
- 1.19. "Freedom of Information Act" or "FOIA" means the Freedom of Information Act 2000.
- 1.20. "Goods" means the goods (or any part of them) set out in the Order.
- 1.21. "Goods Specification" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the University and the Supplier.
- 1.22. "Government Provision" means any statutory provision, warrant, order, scheme, regulations or conditions of service applicable to an Employee of the Authority providing for continuance of pay or the payment of sick pay, or any allowance to or for the benefit of Employees of the Authority, or their families or dependants, during or in respect of sickness, injury or disablement suffered

by such Employees.

- 1.23. "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.
- 1.24. "Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of the European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor / Supplier is bound to comply;
- 1.25. "Loss" includes destruction.
- 1.26. "Loss of Property" includes damage to property, loss of profits and loss of use.
- 1.27. "Modern Slavery Act" means the Modern Slavery Act 2015
- 1.28. "Month" means calendar month unless otherwise defined.
- 1.29. "Order" means the University's order for the supply of Goods and/or Services, as set out in the University's purchase order form, written instruction, or Memorandum Of Understanding.
- 1.30. "Party" means a Party to this agreement
- 1.31. "Personal Injury" includes sickness and death.
- 1.32. "Representative of the Authority" in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision.
- 1.33. "The Services" means all tasks which the Consultant is required to carry out to deliver under the Contract and / or the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
- 1.34. "Specification" means the services, including without limitation any Deliverables, to be provided by Consultant under the Contract as set out in the Service Specification
- 1.35. "Sub-contractor" means any individual (other than an employee of the Consultant), firm or company who enters into an agreement with the

Consultant or with a Sub-contractor to perform work or provide professional services in connection with the Contract and includes any other individual or individuals taken as a partner or director by such individual, firm or company during the currency of the Contract and the surviving member or members of any such firm or company.

- 1.36. "Statement of Requirements" means the document specifying the Services to be provided by the Consultant included in the invitation to tender.
- 1.37. "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 and 2006 (as amended)
- 1.38. "University" means the University of Kent registered in England and Wales by Royal Charter with company number RC000656.
- 1.39. "VAT" mean value added tax in accordance with the provisions of the Value Added Tax Act 1994.
- 1.40. "Working Day" means a day (other than a Saturday or Sunday) in England when banks in London are open for business
- 1.41. The masculine includes the feminine.
- 1.42. The singular includes the plural and vice versa.
- 1.43. Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- 1.44. Reference to a Condition is a reference to the whole of that Condition unless stated otherwise.
- 1.45. Reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise.
- 1.46. The headings of these Conditions shall not affect the interpretation thereof.
- 1.47. All communication between the parties, letters, documentation, specifications, reports etc. shall be in the English language.
- 1.48. Intellectual Property Rights means patents, trademarks, service marks, registered designs, copyrights, database rights, design rights, know-how, confidential information, applications for any of the above, and any other similar rights recognised from time to time in any country.
- 1.49. Results means all information, know-how, results, inventions and other intellectual property identified or first reduced to practice or writing during the course of the performance of the Services.

- 1.50. In these Conditions, unless the context otherwise requires:
- a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - b) a references to a party includes its personal representatives, successors or permitted assigns;
 - c) any obligation on any party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - d) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation, byelaw or code of practice made under that enactment;
 - e) the word 'including' shall be understood as meaning 'including without limitation;'
- 1.51. a reference to **writing** or **written** includes faxes and e-mails.

2. Entire Agreement

- 2.1 This Agreement constitutes the entire agreement between the parties for the Services. The Consultant acknowledges that in entering into this Agreement, the Consultant has not relied on any warranty, representation statement, agreement or undertaking except those expressly set out in this Agreement. The Consultant waives any claim for breach of, or any right to rescind this Agreement in respect of, any representation which is not specifically contained in this Agreement as a warranty. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.

3. Duration of the Contract

- 3.1. The Services shall be provided for a period as stated in the Agreement letter or Purchase Order, and / or to the successful delivery of the expected outputs, subject to the Authority's rights of earlier termination under the Conditions.

4. Governing Law

- 4.1. This Contract shall be governed by and interpreted in accordance with the Law of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

5. Consultant's Status

- 5.1. Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Consultant.

- 5.2. Except as expressly specified in writing, neither the Consultant nor the Consultant's Staff must not hold themselves out as agents of the University, and they do not have any authority to act on behalf of the University, to conclude any contracts or incur any obligation or liability on behalf of or binding upon the University, or to sign any document on the University's behalf.
- 5.3. The Consultant warrants that it is not and will not 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.

6. Severability

- 6.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

7. Contract Price and Payment

- 7.1. Subject to Clause 7.2 below the Contract Price shall remain fixed for the full Contract Period and will be as stated in the Contract Agreement letter and not subject to any variation.
- 7.2. In the event that the Contract Price is increased or decreased as a result of any new legislation or regulation being made after the commencement of the contract, the amount of any such increase or decrease shall be treated as a variation to the contract and will be assessed on an individual basis. Such variations will not be allowed where new legislation or regulations are enacted after the commencement of the contract, but were made public prior to the commencement of the contract. Any such variations to price which can be foreseen by the Consultant prior to commencement of the Contract will be deemed to have been included in the Contract Price.
- 7.3. The Contract Price shall be strictly net of Value Added Tax (VAT). VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge. The Authority shall pay to the Consultant, in addition to the Contract Price, a sum equal to the VAT chargeable on the value of the supply of services provided in accordance with the Contract.
- 7.4. Unless otherwise stated in the Contract, the Consultant shall submit an invoice monthly in arrears.
- 7.5. Payment shall be made as detailed in the Agreement letter or Purchase Order, or if not specified, will be within 30 days of receipt and agreement of invoices. The Representative of the Authority will have the final say as to

whether an invoice is valid.

- 7.6. A properly prepared invoice shall:
- a) be a true and accurate reflection of the Contract Price;
 - b) be referred with all appropriate Contract references and titles;
 - c) include a detailed breakdown of services provided, taking account of any due deductions, with any supporting invoices or other necessary documentation to substantiate the claim as required by the Authority
 - d) Quote the relevant Purchase Order number.
- 7.7. From August 2020, the University operates a “No PO, No Pay” policy. Details including an FAQ, are located at: <https://www.kent.ac.uk/finance/procurement/index.html?tab=no-po-no-pay-faqs>
- 7.8. The University reserves the right to reject as non-compliant any invoice that does not quote a valid and accurate purchase order number.
- 7.9. Whenever under the Contract any sum of money shall be recoverable from or payable by the Consultant, that sum may be deducted from any sum then due, or which at any time thereafter may become due to the Consultant under the Contract or under any other contract with the Authority.
- 7.10. This agreement constitutes a contract for the provision of services. The Consultant shall, performing all reasonable due diligence and accuracy, follow the requirements of any and all applicable legislation, including – but not limited to the IR35 Legislation and employment status located at: <https://www.gov.uk/guidance/check-employment-status-for-tax> In the event the engagement is deemed to be inside the applicable legislation, the Consultant shall inform The University and also comply with the necessary tax requirements.
- 7.11. Where it is deemed that the engagement falls outside of the applicable legislation, the agreement is not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the University in relation to all taxes and National Insurance and other contributions which may be payable out of, or as a result of the receipt of, any fees or other money paid or payable by the University under this Agreement.
- 7.12. The Consultant shall, if required to do so by the University, complete an assessment of its staff’s employment status by using the HMRC online Employment Status Indicator (ESI). The Consultant will provide evidence of the assessment and retain the PDF bearing the ESI reference number and the summary of status.

- 7.13. The Consultant agrees to indemnify the University in respect of all and any income tax and employee National Insurance contributions, any 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 it in respect of the Services, where such recovery is not prohibited by law which may be found due from the University on any payments or arrangements made under this agreement together with any interest, penalties or gross-up on such payments. The Consultant 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. The Consultant will provide such evidence as the University may reasonably require from time to time for the discharge by the Consultant of their obligations to pay tax and National Insurance as an independent contractor.
- 7.14. The University may at its option satisfy such an indemnity in whole or part by way of deductions due to the Consultant.
- 7.15. The Contract Price shall be set in Pounds Sterling and at the price/currency exchange rate applicable on the day of Order. Currency changes, fluctuations, variations, will not be accepted. For clarity the exchange rate on the date of performance(s), invoice submission, or any currency or date other than Pounds Sterling of the day the Order is not placed will be valid.
- 7.16. The Consultant acknowledges that no further remuneration or compensation other than that provided for in this agreement is or may become due to the Consultant or its staff in respect of the performance of its obligations under this clause 7.
- 7.17. In the event that the Contract Price is increased or decreased as a result of any new legislation or regulation being made after the commencement of the contract, the amount of any such increase or decrease shall be treated as a variation to the contract and will be assessed on an individual basis. Such variations will not be allowed where new legislation or regulations are enacted after the commencement of the contract, but were made public prior to the commencement of the contract. Any such variations to price which can be foreseen by the Consultant prior to commencement of the Contract will be deemed to have been included in the Contract Price.
- 7.18. Except where agreed in advance by an authorised representative of the University, normally the Head of Procurement or their nominated representative or deputy, the University will not pay in advance for any part of the goods, services or works. Payment in advance would normally only be agreed in exceptional circumstances where the initial capital outlay of any project, or the delay between expenditure and receipt by the supplier, would be excessive in terms of time or value to the extent that it would cause unnecessary duress onto the supplier, and in such circumstances would be by prior agreement only.

- 7.19. The Supplier also guarantees to adhere to the requirement of the PPN Procurement Policy Note 04/19 located at : <https://www.gov.uk/government/publications/procurement-policy-note-0419-taking-account-of-a-suppliers-approach-to-payment-in-the-procurement-of-major-contracts--2>

This also applies in relation to payment of Subcontractors.

- 7.18 The University may wish to move to electronic invoicing and will communicate so at such point that this occurs.

8. Notices and Variations

- 8.1. Any notice or other communication which is to be given by either party to the other shall be given by letter, (sent by hand or post or by registered post or by the recorded delivery service) or transmitted by electronic mail or facsimile transmission confirmed by a written letter. Such notices or communications shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.
- 8.2. The provisions of the Contract may only be amended or added to by formal amendments issued in writing in accordance with the change control procedure detailed in Appendix 1 to these Conditions. The Consultant shall not unreasonably withhold their agreement to such amendments requested by the Authority, especially those concerning the Statement of Requirements.
- 8.3. No oral agreement or written amendment, other than in accordance with the change control procedure detailed in Appendix 1, shall be binding on either of the parties to the Contract.
- 8.4. The provisions of this Condition also apply to itself.

9. Voluntary Mediation

- 9.1. 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.
- 9.2. If the dispute cannot be resolved by the parties within one month of being escalated as referred to in clause 9.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (**Mediator**) chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.
- 9.3. If the parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

10. Deliverables

10.1 The Consultant shall ensure that the Deliverables shall:

- (a) correspond with their description and any applicable Deliverables Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by The Consultant or made known to the Supplier by the University, expressly or by implication, and in this respect the University relies on the Consultant's skill and judgment;
- (c) be new (unless otherwise specified in the Goods Specification) and free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

10.2 The Consultant 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 in respect of the Goods.

10.3 The University shall have the right to inspect and test the deliverables at any time before delivery. Acceptance of goods and services may be subject to User Acceptance Testing and failure of this process may result in any delivery being rejected. Such acceptance will not be withheld unreasonably.

Contract Operation Section

11. Consultant's Personnel

11.1. The method of work of the Consultant and its staff shall not be subject to the day to day control of the Authority as to the manner in which the Services are performed. However, the Consultant and its staff will ensure that they comply with the Authority's reasonable requests and shall co-operate with any employee or agent or other contractor of the Authority in order to ensure that the standard of delivering the Services is in alignment with how the Authority conducts its business.

11.2. The Consultant undertakes to perform the Services as specified in the Agreement letter and/or Purchase Order efficiently with all due skill, care and diligence including but not limited to good industry practice.

11.3. All personnel engaged in the Consultant's performance of the Services must have appropriate qualifications and competence and in all respects be acceptable to the Authority. Where so required, full particulars of all personnel to be so engaged shall be forwarded in advance to the Authority for confirmation of acceptability.

11.4. The key personnel offered by the Consultant and accepted by the Authority to work on the Contract are as stated in the tender.

11.5. If and when instructed by the Authority the Consultant shall provide the Authority with full details of all persons who are or may be at any time concerned with the Services or any part of them, including any supporting

evidence as the Authority may reasonably require.

- 11.6. The Consultant shall not make changes to the personnel assigned to and accepted for the work under the Contract except when such changes are unavoidable or of a temporary nature caused by sickness etc. The Consultant shall give at least one Month's notice to the Authority of proposals to change key personnel and Clauses 10.1 and 10.2 shall apply to the replacement personnel.
- 11.7. The Consultant shall comply with any requirements notified to it by the Authority from time to time as reasonably required to prevent unauthorised persons being admitted by the Consultant to the Authority's Premises. If the Authority gives the Consultant notice that any person is not to be admitted to or is to be removed from its Premises or is not to become involved in (or is to be removed from) the Services, the Consultant shall take all reasonable steps to comply with such notice and shall return any security pass that has been issued.
- 11.8. The decision of the Authority as to whether any person is to be admitted to or is to be removed from involvement in the Services or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 11.9. The Consultant shall bear the cost of any notice, instruction or decision of the Authority under this Condition.
- 11.10. The Consultant shall ensure that it maintains a large enough pool of appropriate personnel to carry out its obligations under this Contract.
- 11.11. The Consultant will bear all costs relating to the employment of staff in connection with the project including, without any restriction of the generality of this clause, any liability for sickness, maternity or redundancy costs.

12. Provision of Equipment

- 12.1. Any equipment provided by the Authority for the purpose of the Contract shall remain the property of the Authority and shall only be used for the purpose of carrying out the Contract; to be returned promptly to the Authority on expiry or termination of the Contract. The Consultant will reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the actions of Consultant's Staff. Equipment supplied by the Authority shall be deemed to be in good condition when received by or on behalf of the Consultant, unless the Authority is notified otherwise in writing within seven days of such receipt.

13. Use of Authority's Premises

- 13.1. The Consultant will provide the services in such places as the Authority may reasonably specify. Any temporary accommodation made available to the

Consultant by the Authority in connection with the Contract shall be made available to the Consultant free of charge and shall be used by the Consultant solely for the purpose of performing the Contract.

- 13.2. The Consultant undertakes to exercise all reasonable precautions to protect the Authority's Premises, its assets and all those on the site from any harm that may arise from their being on site.

14. Security

- 14.1. Whilst on the Authority's Premises, the Consultant's Staff shall comply with all security measures implemented by the Authority. The Authority shall provide copies of its written security procedures to the Consultant.
- 14.2. The Consultant shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Representative of the Authority.

15. Assignment & Sub-contracting

- 15.1. The Authority 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.
- 15.2. For reasons of security, the Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Authority, with the sole exception that the Consultant may assign the debt arising under the Contract to a factor or invoice discounter without prior Approval. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract or these Conditions.
- 15.3. Where the Authority has consented to the placing of sub-contracts the Consultant shall, if requested by the Authority, provide the Authority with copies of the sub-contract.
- 15.4. The Authority is entitled to assign any or all of its rights under the Contract to any contracting authority as defined in the Public Services Contracts Regulations 2015, provided that such assignment shall not materially increase the burden of the Consultant's obligations under the Contract.
- 15.5. The Consultant shall be responsible for the acts and omissions of his Sub-contractors as though they were his own.
- 15.6. The Consultant shall not use the services of self-employed individuals without prior approval.

15.7. Where the Consultant enters into a sub-contract for the purpose of performing the Contract, or part thereof, the said consultant shall include a term which requires payment to be made to the Sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice, as defined by the sub-contracting requirement.

16. Soliciting / Recommending Additional Work / Outside Activities

16.1. To the extent the Consultant is performing an advisory service to the Authority, under the Contract, it shall be forbidden to solicit work on his own behalf or for any part of the Consultant's organisation, including partners, associate or parent companies, or to make recommendations or tender advice that directly leads to additional work for the Consultant either as a variation or extension to this Contract or by the award of a separate non-competitive contract.

16.2. Nothing in this agreement shall prevent the Consultant or its staff from being engaged, concerned or having any financial interest in any in any other business, trade, profession or occupation during the Contract provided that such activity does not cause a breach of any of the Consultant's obligations under this agreement.

16.3. The Consultant and any staff engaged for the provision of the Services shall give priority to the provision of the Services to the Client over any other business activities undertaken by it during the course of the Contract.

Liability, Indemnity & Insurance Section

17. Liability for Personal Injury & Loss of Property

17.1. Subject to the following provisions of this Condition, the Consultant shall compensate the Authority for any Loss of Property suffered by the Authority and any Personal Injury suffered by an Employee of the Authority arising in any way from the performance or purported performance of the Services by the Consultant.

17.2. If the Consultant shows that any such Personal Injury or Loss of Property was neither caused nor contributed to by its neglect or wrongful act or by that of its employees, agents or Sub-contractors or that it arose from circumstances outside its and their control, it shall be under no liability under this Condition.

17.3. If the Consultant shows that the neglect or wrongful act of any person (not being his employee, agent or Sub-contractor) was in part responsible for the Personal Injury or Loss of Property, the Consultant's liability under this Condition shall not extend to the share in the responsibility attributed to the neglect or wrongful act of that person.

17.4. Subject to the following provisions of this Condition, the Authority shall compensate the Consultant for any Loss of Property suffered by the Consultant and any Personal Injury suffered by an employee, agent or sub-contractor of the Consultant arising as a result of the performance or purported performance

of the Services by the Consultant.

- 17.5. If the Authority shows that any such Personal Injury or Loss of Property was neither caused nor contributed to by its neglect or wrongful act or by that of any Employee of the Authority or that it arose from circumstances outside the Authority's control, the Authority shall be under no liability under this Condition.
- 17.6. If the Authority shows that the neglect or wrongful act of any person (not being its employee) was in part responsible for the Personal Injury or Loss of Property, the Authority's liability under this Condition shall not extend to the share in the responsibility attributed to the neglect or wrongful act of that person.

18. Indemnity for Claims by Third Parties

- 18.1. Subject to the following provisions of this Condition, the Consultant shall indemnify and keep indemnified the Authority against:
 - a) all proceedings, actions or claims brought against the Authority or any Employee of the Authority; and
 - b) all payments, costs and expenses incurred by the Authority or any Employee of the Authority in respect of any Loss of Property, Personal Injury or other Loss (including financial loss arising from any advice given or omitted to be given by the Consultant) suffered by a person other than the Consultant or an employee of the Consultant (but including that suffered by an agent of the Consultant or by a Sub-contractor) arising in any way from the performance or purported performance of the Services.
- 18.2. The indemnity shall not apply to the extent that the Consultant is able to show that such Personal Injury or Loss or damage was not caused or contributed to by its negligence or wrongful act or omission or that of its employees or agents or Sub-contractors or by any circumstances within its or their control.
- 18.3. Without prejudice to the generality of Clause 18.1, the Consultant's obligation under that sub-clause includes indemnifying the Authority for any payment made under any Government Provision in connection with any Personal Injury suffered by an Employee of the Authority.
- 18.4. These clauses shall survive the termination of any contract.

19. Insurance

- 19.1. The Consultant shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Consultant, arising out of the Consultant's performance of the Contract and in respect of the liability outlined in Conditions 17 and 18 Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Consultant.
- 19.2. The terms of any insurance or the amount of cover shall not relieve the

Consultant of any liabilities under the Contract. The Consultant shall maintain a minimum insurance cover of £5 million Public Liability Insurance.

- 19.3. The Consultant shall ensure that his Sub-contractors and agents effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Sub-contractor, arising out of his involvement in the performance of the Services.
- 19.4. The Consultant shall produce to the Representative of the Authority, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 19.5. Applicable minimum insurance levels expected by the University are as follows:

Public Indemnity	£5m
Professional Indemnity	£5m
Employers Liability	£10m
Public Liability	£10m

20. Handling of Claims

- 20.1. The Authority shall notify the Consultant as soon as reasonably practicable of any claim or proceedings for which the Consultant may be liable under Condition 17 or 18.
- 20.2. Where the Consultant is or may be liable to indemnify the Authority in respect of any claim or proceeding he or, if he so wishes, his insurers, shall, subject to the rest of this Condition be responsible for dealing with or settling that claim or proceeding.
- 20.3. The Authority shall in any event deal with any such claim which involves a Government Provision or which is made by or against an Employee of the Authority, and Clause 20.2 shall not apply to any such claim.
- 20.4. Where any claim or proceeding in respect of which Condition 17 or 18 applies is settled otherwise than by the Consultant or his insurers, the Consultant shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable at law.
- 20.5. If, when the Consultant or his insurers are dealing with any claim or proceeding to which Condition 17 or 18 applies, any matter or issue arises which involves, or may involve, any privilege or special right of the Authority (including a matter relating to the discovery or production of documents) the Consultant or his insurers shall consult the Authority before taking any further action on the matter and shall act in relation thereto as may be required by the Authority; and if either the Consultant or his insurers fail to comply with this Condition, Clause 20.2 shall cease to apply.

Remedies Section

21. The Authority's Remedies in the Event of Unsatisfactory Performance

21.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the University shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the University in obtaining substitute goods and/or services from a third party;
- (d) where the University has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the University which are in any way attributable to the Supplier's failure to meet such dates.

21.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 10, then, without limiting its other rights or charge remedies, the University shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the University in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the University arising from the Supplier's failure to supply Goods in accordance with clause 10.

21.3 If the Supplier has supplied Services that do not conform to the undertakings in clause 10. then, without limiting its other rights or remedies, the University shall have one or more of the following rights:

- (a) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

- (b) recover from the Supplier any costs incurred by the University in obtaining substitute services from a third party; and/or
- (c) where the University has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier.

21.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

21.5 The University's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

21.6 In the event that through any Default of the Consultant, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable in the reasonable opinion of the Authority, the Consultant shall be liable for the necessary repairs and the costs of providing a replacement that is acceptable to the Authority.

21.7 The remedies of the Authority under this Condition may be exercised successively in respect of any one or more failures by the Consultant and shall survive the expiry or termination of the Contract.

22. The Consultant's Remedies for Non-Payment

22.1. If the Authority fails to pay the whole or part of the Contract Price when it falls due, the Consultant shall give the Authority 90 days' notice specifying the breach and requiring its remedy. In the event that the Authority fails to comply with such notice, the Consultant may terminate the Contract. The Consultant's right of termination under this clause shall not apply to non-payment of the charges where such non-payment is due to the Authority exercising its rights under Clause 7.7.

23. Remedies Cumulative

23.1. Except as otherwise expressly provided by the Contract, all remedies available to either the Authority or the Consultant for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

24. Waiver

24.1. The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

24.2. No waiver shall be effective unless it is communicated to the other party in writing.

24.3. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

Contract Expiry or Termination Section

25. Break

25.1. The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving a minimum of 30 days' written notice to the Consultant. The Authority may extend the period of notice at any time before it expires.

25.2. Without prejudice to condition 12.10, where the Authority terminates the Contract under this Condition, the Authority shall indemnify the Consultant against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Consultant by reason of the termination of the Contract, provided that the Consultant takes all reasonable steps to mitigate such loss. Where the Consultant holds insurance, the Consultant shall reduce its unavoidable costs by any insurance sums available. The Consultant shall submit a fully itemised and costed list, with supporting evidence, of such losses reasonably and actually incurred by the Consultant as a result of termination under this Condition.

25.3. The Authority shall not be liable under this Condition to pay any sum which:

- a) was claimable under insurance held by the Consultant, and the Consultant has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- b) when added to any sums paid or due to the Consultant under the Contract, exceeds the total sum that would have been payable to the Consultant if the Contract had not been terminated prior to the expiry of the initial Contract Period.

25.4 Force majeure

25.4.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the party affected. Each party shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 30 days, either party may terminate the Contract by written notice to the other party.

25.4.2. For the avoidance of all doubt, this Force Majeure clause can be invoked by either party in event of war, terrorism, earthquake, hurricane, flood or other natural event, act of government, plague or epidemic, global health emergency, or other event reasonably outside of the control of either party including the instruction of official bodies such as an office or department of the UK Government. However, should either party fail to respond competently and appropriately to

the event, the clause may not be invoked as the relevant party may not have undertaken all reasonable endeavours to continue performance of the contract.

26. Termination on Change of Control or Bankruptcy

26.1. The Consultant shall notify the Authority immediately when any change of control occurs and the Authority reserves a right to terminate the Contract in the event of such an occurrence.

26.2. The Consultant shall notify the Authority in writing immediately upon the occurrence of any of the following events and the Authority reserves a right to terminate the Contract upon such an occurrence:

- a) where the Consultant undergoes a change of control, within the meaning of the relevant sections of the Income Tax Act 2007 and Corporation Tax Act 2010; or
- b) where the Consultant is an individual or a firm and a petition is presented for the Consultant's bankruptcy or a criminal bankruptcy order is made against the Consultant or any partner in the firm, or the Consultant or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Consultant's or firm's affairs; or
- c) where the Consultant is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the Court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- d) where the Consultant is unable to pay its debts within the meaning of the Insolvency Act 2016, or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

26.3. The Authority may only exercise its right under Clauses 26.1 and 256.2 (a) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs.

27. Recovery upon Termination and Transition of Services

27.1. Termination or expiry of the Contract shall be without prejudice to any other rights or remedies a party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination or expiry and in particular (but without limitation) the following clauses shall continue in full force and effect: 4, 7.7, 9, 10.10, 14.3 to 14.5, 15, 18, 19, 20, 25.2, 25.3, 28, 29, 30, 31, 36, 37, 37.2 and 37.3.

27.2. At the end of the Contract Period (and howsoever arising) the Consultant shall, upon request, transfer all files, records, documents, information and other materials relating to the Contract that are in its possession or under its

control or in the possession or under the control of any permitted suppliers or sub-contractors, howsoever generated, to the Authority or person or persons designated by the Authority.

- 27.3. The Consultant shall be responsible for ensuring that any computerised filing, recording, and documenting data utilised under this Contract is transferred free of any charges to the Authority or person or persons designated by the Authority in a usable format to facilitate a smooth hand-over of work at expiration or termination of the Contract.
- 27.4. In the event of the Consultant's failure to comply with Clauses 27.2 & 27.3, the Authority may nevertheless recover possession of any materials covered by this Condition and the Consultant grants license to the Authority or its appointed agents to execute recovery from any premises of the Consultant or its permitted suppliers or Sub-contractors where any such items may be held.
- 27.5. The Consultant shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Consultant shall on request afford the Authority or the Authority's Representatives such access to those records as may be required by the Authority in connection with the Contract.
- 27.6. At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Consultant shall co-operate free of charge with the Authority and any new Consultant appointed by the Authority to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress and reduce to a minimum any interruption of the Services.
- 27.7. At the discretion of the Authority, the Consultant shall be reimbursed for any reasonable cost incurred during the transition of services.
- 27.8. The provisions of this Condition shall survive the continuance of this Contract and indefinitely after its termination.

Disclosure & Confidentiality Section

28. Use and Disclosure of Documents, Information etc

- 28.1. Each Party recognises the rights of the other Party to keep copies of the work and its outputs to meet legal obligations, subject to clause 35.

29. Freedom of Information

- 29.1. The Authority reserves the right to disclose details of contractual documentation, processes, prices, performances and outcomes to meet legal, regulatory and public policy requirements, and also any other duty it may have, to provide information.
- 29.2. The University of Kent is a public authority within the meaning of the Freedom of Information Act 2000 ('FOIA') and, as such, the Consultant should be aware that all information received by the Authority may be subject to a future request under the FOIA and will be dealt with accordingly.
- 29.3. When considering a request under the FOIA, the Authority will carefully

consider releasing any information they hold, giving due protection to confidential information and any other relevant exemptions. Where the Consultant sends information it regards as confidential it must clearly identify the confidential element(s) and explain why it considers each element to be of a confidential nature. Routine marking of the documents as being confidential will not be accepted and the Consultant will always be required to provide justification for non-disclosure. The Consultant should also be aware that receipt by the Authority of information marked as confidential, or marked in any other way, does not imply that they accept any duty of confidence by virtue of that marking nor any obligation not to disclose that information when required by the FOIA.

- 29.4. Primary responsibility for decisions to disclose in response to a request under the FOIA will rest with the Authority. However, the Consultant must also be aware that decisions on disclosure under the Act are subject to the jurisdiction of the Information Commissioner, the Information Tribunal and ultimately the Courts.

30. Data Protection and Confidentiality

- 30.1. The Consultant (and any of his Sub-contractors involved in the provision of this Contract) shall be registered under the relevant parts of the Data Protection Act 2018 ('DPA') and shall ensure that the applicable provisions of the DPA and any Statutory Instrument made thereunder or other relevant Act of Parliament or Statutory Instrument are strictly adhered to.
- 30.2. The Consultant will ensure personal data is kept securely and cannot be accessed by unauthorised persons.
- 30.3. The Consultant will ensure that any disclosure of data will be in statistical form and where data is identifiable, the consent of the individual will have been obtained.
- 30.4. The Consultant will act at all times so as to preserve the confidentiality of individuals and institutions recorded in the data. In particular, the Consultant undertakes not to use or attempt to use the data alone or in combination with any other data to derive information relating specifically to an identified individual or institution, nor to claim to have done so.

Statutory Requirements Section

31. Industrial Actions & the Transfer of Undertakings (Protection of Employment)

- a) The parties acknowledge that the expiry or termination of this Contract may constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- b) The Consultant shall facilitate any transfer by providing the information that the new provider of the Services needs to enable an efficient transfer to take place.

32. Discrimination

- 32.1. Neither party shall unlawfully discriminate within the meaning and scope of the provisions of or made under the Equality Act 2010 or any other legislation relating to discrimination in employment or in the provision of Services.
- 32.2. The Consultant shall take all reasonable steps to secure the observance of these provisions by the Consultant's Staff employed in the execution of the Contract.
- 32.3. Failure to comply with any part of this Condition may constitute a material breach of the Contract and the Authority may exercise its rights under Condition 21.

33. Environmental Requirements

- 33.1. The Consultant shall perform the Contract in accordance with an environmental policy that aims to conserve resources, reduce waste and minimise the release of substances damaging to health and the environment.

34. Health & Safety

- 34.1. The Consultant shall ensure they and their staff are fully aware of the legal requirements on them with regards Health and Safety and promptly notify the Authority of any health and safety hazards that may arise in connection with the performance of the Services.
- 34.2. The Authority shall promptly notify the Consultant of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Consultant in the performance of the Services.
- 34.3. Whilst on the Authority's Premises, the Consultant's Staff shall comply with any health and safety measures implemented by the Authority.
- 34.4. The Consultant shall notify the Representative of the Authority immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises where that incident causes any Personal Injury or any damage to property.

35. Intellectual Property Rights

- 35.1. It shall be a condition of the Contract that, except to the extent that materials may incorporate designs furnished by the Authority, the Consultant will not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and he shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of, or in connection with, any breach of this Condition.
- 35.2. All intellectual property rights in any specifications, instructions or other material:

a) Furnished to or made available to the Consultant by the Authority shall

remain the property of the Authority or research team.

- b) Prepared by or for the Consultant for use, or intended use, in relation to the performance of this Contract shall belong to the Authority or research team.
- 35.3. At the termination of the Contract the Consultant shall immediately return to the Authority all materials, work or records held. As per Clause 28.1, the Consultant and the Authority may keep copies of the work and its outputs, to meet any legal obligations that may apply.
- 35.4. If at any time in the performance of the Services, the Consultant should either alone or jointly make, invent or discover any Results he or she shall communicate details to the University immediately and in writing
- 35.5. All Results and all Intellectual Property Rights in Results shall belong to the University. The Consultant waives any rights in respect of Results which are or may be conferred by Chapter IV of Part I of the Copyright, Designs and Patents Act 1988 (moral rights).
- 35.6. At the request and cost of the University and either during the term of this Agreement or at any time after its termination, the Consultant will execute all reasonably necessary acts and things in connection with any Results (whether such rights belong to the Consultant jointly or solely):
- a) to vest title to those Results in the University or its nominee;
 - b) to obtain or renew any Intellectual Property Rights in any country in the name of the University or its nominee; and
 - c) to assign to the University or its nominee any rights which the Consultant may have in respect of infringement of Intellectual Property Rights in Results.
- 35.7. The University will have no liability to account to the Consultant for any revenue or profit derived or resulting from any Results and no obligation to obtain or defend any Intellectual Property Rights in Results.

36. Patents

- 36.1. All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Contract shall be deemed to have been included in the Contract Price. The Consultant shall indemnify the Authority from and against all demands, actions, claims and proceedings, which may be made or brought against the Authority, and any damages, cost and expenses incurred by the Authority in respect of such supply or use.

37. Prevention of Corruption

- 37.1 The Consultant shall not request, offer, promise, agree to receive, accept or give

a financial or other advantage to another person intended to induce a person to perform a relevant function or activity improperly, or to reward a person for the improper performance of such a function or activity, or where it is known that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity. The attention of the Consultant is drawn to the criminal offences under the Bribery Act 2010.

37.2 Where the Consultant or Consultant's employees, Sub-contractors, suppliers or agents or anyone acting on the Consultant's behalf acts in a manner which constitutes a breach of Condition 36.1 in relation to this or any other contract with the Employer, the Employer has the right to exercise any or all of the following actions:

37.2.1 terminate the Contract and recover from the Consultant the amount of any loss resulting from the termination

37.2.2 recover from the Consultant the amount of value of any such gift, consideration or commission, and

37.2.3 recover from the Consultant any other loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.

37.3 In exercising its rights or remedies under this Condition, the Employer shall;

37.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of and the identity of the person performing the prohibited act

37.3.2 give all due consideration, where appropriate, to action other than termination of the Contract.

38 Compliance with laws and policies

38.1 In performing its obligations under the Contract, the Supplier shall comply with the word and spirit of all applicable national and international law that will apply in all territories that the contract is performed in:

38.1.1 all applicable laws, statutes, regulations from time to time in force, including the Data Protection Act 2018, the Bribery Act 2010, the Modern Slavery Act 2015, TUPE Regulations, Criminal Finance Act 2017, the Social Value Act 2012, and the General Data Protection Regulations 2018; and

38.1.2 the University's policies as notified to the Supplier from time to time or any change in law as may be enacted.

38.2 The Supplier shall promptly notify the University immediately in the event of any incident occurring in the performance of its obligations under the Contract which may amount to a breach of this clause.

38.3 Full details of the relevant DPA Clauses are listed at Annex A, A 1 – PART 2, and ANNEX B. The Supplier will adhere with the requirements of these clauses.

38.4 The Supplier also agrees to honour best practice and guidance, including any legally binding clauses in any contracts or agreements they may have signed with any other bodies, including, but not limited to non-competition clauses.

- 38.5 A list of many applicable pieces of legislation and regulation is at the below link:
<https://www.kent.ac.uk/finance/procurement/index.html?tab=legislation>
- 38.6 The Supplier guarantees to abide with, and honour the word and spirit of the relevant University policies, including those relating to the standards of conduct and behaviour the University expects of Suppliers. These documents are located at:
- i) <https://www.kent.ac.uk/finance/procurement/index.html?tab=policies-and-procedures>
- ii) <https://www.kent.ac.uk/governance/policies-and-procedures/index.html>
- 38.7 Specifically Suppliers agree to adhere to the University policies regarding Anti-Bribery, Data, Whistle-Blowing, Alcohol, Drugs & Substances, and Declaration of Interests.
- 38.8 Suppliers also agrees to adhere to the Supplier Code of Conduct which is linked to from:
<https://www.kent.ac.uk/finance/procurement/index.html?tab=policies-and-procedures>
- 38.8 Suppliers have a responsibility to declare to the University any potential conflicts of interest to the University, including but not limited to hospitality of staff, personal relationships, and similar, to ensure that decisions are made fairly and transparently with no possibility of any collusion or conspiracy. Further information on our policies and procedures relating to Business Practices and Behaviours can be found online:
- Anti Bribery & Corruption policy:
<https://www.kent.ac.uk/governance/policies-and-procedures/bribery.html>
 - Declaration of Interests policy:
<https://www.kent.ac.uk/governance/register-of-interests/Declaration-of-InterestsPolicy.html>
 - Whistleblowing & Fraud policy:
<https://www.kent.ac.uk/governance/policies-and-procedures/whistleblowing.html>
- 38.9 The University publishes a Modern Slavery Act statement and it is the expectation of the University that all suppliers comply to the requirements of the act and the contents of the statement:
<https://www.kent.ac.uk/governance/modern-slavery-statement.html>
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Appendix 1 - Change Control Following the Award of Contract

1. Introduction

- 1.1. Where the Authority or the Consultant see a need to change either the Services or the Conditions of the Contract, the Authority may at any time request, and the Consultant may at any time recommend, such change only in accordance with the Change Control Procedure as set out at paragraph 2.
- 1.2. Until such time as a change is made in accordance with the Change Control Procedures, the Consultant shall, unless otherwise agreed in writing, continue to provide the Services as if the request or recommendation had not been made.
- 1.3. Any discussions which may take place between the Authority and the Consultant in connection with a request for change shall be without prejudice to the rights of either party.
- 1.4. In the event of any variation of the Contract, the Contract Price shall be subject to fair and reasonable adjustment to be agreed between the Authority and the Consultant.
- 1.5. Any work undertaken by the Consultant's Staff which has not been authorised in advance by a change to the Contract or otherwise agreed according to paragraph 1 shall be undertaken entirely at the expense and liability of the Consultant.

2. Procedure

- 2.1. Where a request for an amendment is received from the Authority, the Consultant shall, unless otherwise agreed, submit to the Authority two copies of a Change Control Note (CCN) signed by the Consultant within three weeks of the date of the request.
- 2.2. If the Consultant considers that the preparation of a CCN requested by the Authority would necessitate significant additional allocation of resources, the Consultant will notify the Authority accordingly and, on agreement by the Authority, the Consultant will make a proposal for a paid study of the cost and implications of producing the required CCN. Pending the Authority's acceptance of that proposal the Consultant will be relieved of the obligation to produce the CCN.
- 2.3. A request to amend by the Consultant shall be submitted direct to the Authority in the form of two copies of a CCN signed by the Consultant at the time of such recommendation.
- 2.4. The CCN must include:

- a) Provision for a CCN number
 - b) The title of the change
 - c) The originator and date of the request for the change
 - d) The reason for the change
 - e) Full details of the change including any specifications
 - f) The price, if any, of the change
 - g) A timetable for implementation
 - h) A schedule of payments if appropriate
 - i) Details of the likely impact, if any, of the change on other aspects of the existing contract, including but not limited to:
 - The term of this contract
 - The personnel to be provided
 - The charges
 - The payment profile
 - The documentation to be provided
 - The training to be provided
 - Service Levels
 - Working arrangements
 - Other contractual issues
 - j) The date of expiry of the validity of the CCN, which shall usually be at least 10 working days from the date of submission;
 - k) Provision for signature by the Authority and the Consultant
- 2.5. For each CCN submitted the Authority shall allocate a sequential number to the CCN, evaluate the CCN, requesting further information if necessary, and before the expiry of the CCN shall either:
- a) Arrange for two copies of the CCN to be signed by or on behalf of the Authority and return one of the copies to the Consultant; or
 - b) Notify the Consultant of the rejection of the CCN.
- 2.6. A CCN signed by both parties shall constitute an amendment to the Contract.