

UNIVERSITY OF PLYMOUTH
STANDARD TERMS AND CONDITIONS
FOR THE PROVISION OF CONSULTANCY SERVICES

1 DEFINITIONS & INTERPRETATION

1.1 In these terms and conditions, unless the context otherwise requires, the following words and expressions shall have the meanings respectively assigned to them:

Activities	any educational or research activity, and any trading or other commercial activity, of a University Enterprise; (a) with which the Consultant shall have been concerned or involved to any material extent at any time during the Consultant's engagement by the University; or (b) which any University Enterprise shall at the Termination Date have determined to carry on in the future and in relation to which the Consultant shall at the Termination Date possess any Confidential Information;
Agreement	the agreement made between the University and the Consultant, comprising the Purchase Order and these Terms;
Business Day	a day (other than a Saturday or a Sunday) on which clearing banks are open for general banking business in the City of London;
Commencement Date	the earlier of the date of the Purchase Order or the date on which the University appoints the Contractor pursuant to this Agreement by written notice, or such other date as the parties shall agree in writing;
Confidential Information	all and any information or data (whether oral, visual, or recorded in documentary form, on computer disk, tape or in any other medium or by any other method) of or belonging or relating to a University Enterprise (including, without limitation, any information relating to a University Enterprise's educational, scientific, research and other know-how, trade secrets, software, inventions, designs, discoveries, trade secrets, technical specifications, other Intellectual Property Rights, operations, processes, business methods, management systems, services, materials, data, plans, ideas, intentions, proposals, projects, market opportunities, marketing or sales, terms of business, finances, customers, employees, students and business affairs) obtained by or disclosed to the Consultant pursuant to or in connection with this Agreement;

Consultant	the person, firm or company identified as such in the Purchase Order;
Consultant Manager	shall be as defined in clause 2.3;
Contract Manager	the person appointed by the University and notified to the Consultant to manage the relationship with, and act as first point of contact for, the Consultant for the purposes of this Agreement;
Data Protection Legislation	shall be as defined in clause 12.1;
Freedom of Information Legislation	shall be as defined in clause 13.1;
Intellectual Property Rights	shall be as defined in clause 5.1;
Key Personnel	shall be as referred to in clause 3.1;
Material Interest	<p>in a person, firm or company, means:-</p> <ul style="list-style-type: none"> (a) the holding of any position as director, officer, employee, consultant, adviser, partner, principal or agent of that person, firm or company; (b) the direct or indirect control or ownership (whether jointly or alone) of any shares (or any voting rights attached to them) or debt securities in a company (save for the ownership for investment purposes only of not more than 3 per cent of the issued ordinary shares of that company where its shares are listed on a recognised investment exchange within Part XVIII of the Financial Services and Markets Act 2000); or (c) the direct or indirect provision of any financial assistance, facility or support to that person, firm or company;
Party	a party to this Agreement; and “ parties ” shall mean either or both of them as the context may require;
Purchase Order	the electronic purchase order form committing the University to the purchase of the Services sent via the University’s Agresso finance system to the Consultant;
Services	the consultancy and other services, deliverables and materials specified in the Purchase Order or otherwise agreed in writing by the Parties;

Term	the period of this Agreement as referred to in clause 19.1;
Termination Date	the date on which this Agreement expires or is otherwise terminated pursuant to the terms of this Agreement;
Terms	these terms and conditions;
University	the University of Plymouth, (a higher education corporation established under section 121 of the Education Reform Act 1988) of Drake Circus, Plymouth, Devon, PL4 8AA, United Kingdom;
University Enterprises	the University, its faculties, departments and subsidiaries (as defined in section 1159 of the Companies Act 2006); and "University Enterprise" shall mean all or any of them as the context may require; and
VAT	shall be as defined in clause 9.1(a).

1.2 In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa; and reference to any gender includes every gender;
- (b) a reference to a statute or statutory provision includes a reference to such statute or statutory provision as amended, re-enacted, consolidated, replaced or extended, and any subordinate legislation (as defined in Section 21(1) of the Interpretation Act 1978) made under it, from time to time, whether before or after the date of this Agreement;
- (c) the headings are inserted for convenience only and shall not affect the interpretation of the Agreement; and
- (d) reference to a clause is a reference to a clause of these Terms.

2 APPOINTMENT OF THE CONSULTANT

2.1 With effect from the Commencement Date and for the duration of the Term, the University hereby engages the Consultant, and the Consultant hereby undertakes to the University, to provide the Services under, and in accordance with, the terms and conditions of this Agreement.

2.2 In discharging its obligations, and performing its Services, under this Agreement, the Consultant shall at all times:-

- (a) act properly with all due skill, care and diligence, in a proper, lawful, efficient and business-like manner, and in accordance with best practice within the Consultant's sector;
- (b) observe, comply with and perform the University's operating procedures, policies, lawful directions and requirements (as notified in writing by the University to the Consultant from time to time) which are consistent with

this Agreement, and perform the Services hereunder in such a manner as will not bring the University into disrepute; and

- (c) be available on reasonable prior notice to provide such assistance and information as the University requires in connection with the Services.
- 2.3 The Consultant shall appoint a project manager (the “**Consultant Manager**”) to be responsible for, manage and lead on, the delivery of the Services to be provided by the Consultant under this Agreement and to liaise with, and provide a point of contact for, the Contract Manager in this regard. The Consultant Manager shall have the authority to act on the Consultant’s behalf and bind it contractually in respect of all matters relating to this Agreement.
- 2.4 The Consultant shall notify the University of the name of its Consultant Manager on or before the Commencement Date and (without limitation to clause 2.5(c)) on or before the appointment of any replacement Consultant Manager provided that the Consultant shall use its reasonable endeavours to ensure the continuity of appointment of its Consultant Manager.
- 2.5 The Consultant shall ensure that each Consultant Manager:-
- (a) is one of its permanent full-time employees;
 - (b) has all the skills, qualifications, experience and authority necessary, and has such administrative, personnel and other support as he or she may require, for the discharge of his or her duties under this Agreement; and
 - (c) has been approved in writing in advance of his or her appointment by the University. For this purpose, the Consultant shall, prior to his or her appointment, provide to the University a curriculum vitae for each person proposed by the Consultant to become the Consultant Manager. The University shall consider the suitability for such role of each such person and, acting reasonably, shall be entitled to reject any person proposed by the Consultant as Consultant Manager whereupon the Consultant shall propose to the University an alternative candidate as Consultant Manager who shall be subject to the same approval process.

3 CONSULTANT’S PERSONNEL

- 3.1 Subject to clauses 3.2 and 3.3, the Services shall be performed by such staff or agents of the Consultant as shall be named in the Purchase Order as, or as shall otherwise be agreed by the parties in writing to be, “**Key Personnel**”. The Consultant shall provide the University with a list of the names, business addresses and telephone numbers of all Key Personnel. If requested to do so by the University, the Consultant shall also provide a list of the names, business addresses and telephone numbers of all other persons who may at any time be concerned with the performance of the Services or any part of them, specifying in each case the capacities in which they are so concerned, and providing other supporting evidence or information as the University may reasonably require.
- 3.2 The University reserves the right to reject Key Personnel selected by the Consultant for the performance of the Services. The University may require the removal of one or more Key Personnel from the performance of the Services on giving reasonable notice. The Consultant shall, at its own expense, comply with any such request as soon as reasonably practicable after receipt.
- 3.3 In the event that any Key Personnel become unavailable for any reason beyond the Consultant’s or their reasonable control, the Consultant may substitute for them a suitably qualified person to carry out the Services subject to the Consultant

informing the University in advance and the University being satisfied (in its absolute discretion) that the substitute has the required skill and knowledge to perform the Services to the standards required.

4 OFFICE FACILITIES

- 4.1 The University may, in its absolute discretion (but without being obliged to do so and without prejudice to the Consultant's obligations under this Agreement), make available to the Consultant such office, technical, secretarial and other facilities and services (upon such terms as the parties may agree in writing) as the University may determine in order to facilitate the performance by the Consultant of the Services.
- 4.2 If any facilities or services are made available to the Consultant under clause 4.1, the University may levy such charge as it shall specify in order to cover the cost of providing the facilities or services, such charge to be set off against the fee payable by the University to the Consultant under clause 9.

5 INTELLECTUAL PROPERTY

5.1 Definitions

The following definitions apply in this clause 5.

Consultant Inventions: any Invention which is made wholly or partially by the Consultant at any time during the course of providing the Services or otherwise discharging its obligations under this Agreement (whether or not during working hours or using the University premises or resources, and whether or not recorded in material form).

Consultant IPRs: Intellectual Property Rights created by the Consultant during the course of providing the Services or otherwise discharging its obligations under this Agreement (whether or not during working hours or using the University premises or resources).

Intellectual Property Rights: patents, rights to Inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights to use and preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or 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.

Invention: any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium.

5.2 General Provisions

- (a) The Consultant acknowledges that, except as provided by law, no further fees or compensation other than those provided for in these Terms are due

or may become due to the Consultant in respect of the performance of his obligations under this clause 5.2.

- (b) The Consultant acknowledges that, subject to the exceptions below, all Consultant IPRs, Consultant Inventions and all materials embodying them shall automatically belong to the University to the fullest extent permitted by law. To the extent that they do not vest in the University automatically, the Consultant holds them on trust for the University and/or hereby assigns the same to the University immediately on creation.
- (c) The Consultant agrees:
 - (i) to give the University full written details of all Consultant Inventions promptly on their creation;
 - (ii) at the University's request and in any event on the termination of the Consultant's engagement, to give to the University all originals and copies of correspondence, documents, papers and records on all media which record or relate to any of the Consultant IPRs;
 - (iii) not to attempt to register any Consultant IPRs nor patent any Consultant Invention; and
 - (iv) to keep confidential each Consultant Invention and Consultant IPR.
- (d) The Consultant agrees to execute all documents and do all acts both during and after the Consultant's engagement by the University as may, in the opinion of the University, be necessary or desirable to vest the Consultant IPRs and the Consultant Inventions in the University, to register them in the name of the University and to protect and maintain the Consultant IPRs and the Consultant Inventions. Such documents may, at the University's request, include waivers of all and any statutory moral rights relating to any copyright works which form part of the Consultant IPRs.
- (e) The Consultant agrees to give all necessary assistance to the University to enable it to enforce its Intellectual Property Rights against third parties, to defend claims for infringement of third party Intellectual Property Rights and to apply for registration of Intellectual Property Rights, where appropriate throughout the world, and for the full term of those rights. The University agrees to reimburse the Consultant's reasonable expenses incurred in complying with this clause 5.2.
- (f) The Consultant hereby irrevocably appoints the University to be the Consultant's attorney in the Consultant's name and on the Consultant's behalf to execute documents, use the Consultant'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 5.2. The Consultant acknowledges that a certificate in writing, signed by a duly authorised officer 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.

5.3 Patents

- (a) In accordance with clause 5.2(b), all Consultant Inventions shall belong to the University.
- (b) In respect of any Consultant Invention, it shall be for the University to decide whether to apply for patent or other protection.

5.4 Copyright

- (a) The Consultant waives all the Consultant's present and future moral rights which arise under statute, and all similar rights in other jurisdictions relating to any copyright which forms part of the Consultant IPRs, and agrees not to support, maintain or permit any claim for infringement of moral rights or false attribution in such copyright works.
- (b) The Consultant acknowledges that all records, documents and other papers (including copies and summaries thereof) which relate to the finance and administration of the University and which are made or acquired by the Consultant in the course of providing the Services or otherwise discharging the Consultant's obligations under this Agreement are the property of the University.

5.5 New Appointment

- (a) When the Consultant starts to provide the Services, the Consultant should not assume that materials prepared by the Consultant or used by the Consultant previously can be used for teaching or any other purpose at the University or in the provision of the Services. The Consultant must check the position and, if necessary, obtain written permission or licences from the relevant third party.
- (b) The Consultant must not use for teaching, research or otherwise any Intellectual Property Rights owned by the University, the Consultant IPRs or the Consultant Inventions, whether created by the Consultant or not for any purpose other than the provision of the Services or the discharge of its obligations under this Agreement.

6 CONFLICTS OF INTEREST

6.1 The Consultant agrees that during the Term of this Agreement, the Consultant shall not:

- (a) without the University's prior written permission, hold any Material Interest in any person, firm or company which:
 - (i) is or shall be in competition with any of the Activities;
 - (ii) impairs or might reasonably be considered by the University to impair the Consultant's ability to act at all times in the best interests of the University; or

- (iii) requires or might reasonably be considered by the University to require the Consultant to disclose any Confidential Information in order properly to discharge the Consultant's duties to or to further his/her interests in or with such person, firm or company; or
- (b) (without limitation to clause 14) directly or indirectly receive or obtain in respect of any goods or services sold or purchased or other business transacted (whether or not by him/her) by or on behalf of any University Enterprises any discount, rebate, commission or other inducement (whether in cash or in kind) which is not authorised by the University or otherwise permitted under its rules or guidelines then in force; and if the Consultant (or any firm or company in which he/she holds any Material Interest) shall receive or obtain any such discount, rebate, commission or inducement, the Consultant shall immediately account to the University for the amount so received.

7 CONFIDENTIALITY

7.1 The Consultant acknowledges that:

- (a) each University Enterprise possesses a valuable body of Confidential Information;
- (b) where appropriate, the University will give the Consultant access to Confidential Information in order to assist the Consultant to provide the Services or discharge its obligations under this Agreement;
- (c) the duties owed by the Consultant to the University pursuant to his/her appointment include, without limitation, a duty of trust and confidence and a duty to act at all times in the best interests of the University and the other University Enterprises; and
- (d) the disclosure of any Confidential Information to any third party (including, but not limited to, any higher or further education institution or any customer, supplier or actual or potential competitor of any University Enterprise) would place the University Enterprises at a serious competitive disadvantage and would or might damage their commercial and financial interests.

7.2 The Consultant will keep confidential, and shall not disclose, any and all Confidential Information which is disclosed to or obtained by it under, as a result of or in connection with this Agreement and will not use such Confidential Information or divulge it to any third party or employee except for the purposes of providing the Services and performing its obligations under this Agreement. The Consultant shall ensure that its employees, officers and agents and any relevant third parties are aware of the confidential nature of the Confidential Information and comply with the provisions of this clause 7 as if named as a party.

- (a) The obligations of confidentiality under this clause 7 do not apply to any information or material which the Consultant can prove to the University's absolute satisfaction:-was already known to it or in its possession before it received it pursuant to this Agreement;
- (b) was disclosed to it lawfully and without restriction as to its disclosure by a third party who did not obtain it (whether directly or indirectly) from the University and did not breach any confidentiality obligations by making such

disclosure to it;

- (c) was in the public domain at the time of receiving it or has subsequently entered the public domain other than because of a breach of this clause 7 or of any obligation of confidentiality owed by the Consultant or by any of its employees or agents to the University; or
- (d) is required to be disclosed by applicable law (including, without limitation, Freedom of Information Legislation) or by order or regulation of a court or regulatory body of competent jurisdiction.

7.3 All documents, manuals, hardware and software provided for the use of the Consultant by the University, and any data or documents (including copies) produced, maintained or stored on the University's computer systems or other electronic equipment (including mobile phones if provided by the University), remain the property of the University.

7.4 The Consultant shall:-

- (a) not without the prior written consent of the University, remove from the premises of any University Enterprise, or copy or allow others to copy the contents of, any document, computer disk, tape or other tangible item which contains any Confidential Information or which belongs to any University Enterprise; and
- (b) immediately upon request and in any event immediately upon or prior to the Termination Date, return to the University all property, assets and all documents, computer or word processor disks, tapes, other reusable material and other tangible items in the possession or under the control of the Consultant which belong to any University Enterprise or which contain or refer to any Confidential Information; or, if so requested by the University, irretrievably delete all Confidential Information from any such disks, tapes, material or from any memory and destroy all other such documents and tangible items.

7.5 The Consultant shall not issue or make any public announcement, or disclose any information, regarding the Services, the Consultant's appointment, this Agreement or its existence, nature or provisions without the University's prior written approval provided that the Consultant may issue or make any such public announcement or disclose such information only to the extent required by applicable law (including, without limitation, Freedom of Information Legislation) or by order or regulation of a court or regulatory body of competent jurisdiction.

7.6 This clause 7 shall survive termination of this Agreement.

8 CONSULTANT'S FURTHER UNDERTAKINGS

8.1 Except with the University's prior written consent, the Consultant shall not, during the Term of this Agreement nor for a period of one year commencing on the Termination Date, directly or indirectly either solely or jointly with or on behalf of any other person:

- (a) solicit or entice away (or attempt to do so) any employee, officer or director of any University Enterprise, whether or not such person would commit a breach of his/her contract of employment by reason of leaving the service of their employer; or
- (b) solicit, entice away or deal with (or attempt to do so) for the purpose of a business or activity similar to or competing with any of the Activities, any

person who was a customer, client or supplier of any of the Activities at any time during the Term.

- 8.2 The Consultant shall not, without the prior written permission of the University, use the words "University of Plymouth", "Plymouth University", any derivation thereof, the name of any faculty, department or office of the University or of any other University Enterprise or the logo, brand or other Intellectual Property Rights of the University in any sales literature, advertising or other copy, material, get-up or device (irrespective of the carrier medium on which such literature, copy, material, get-up or device is recorded or printed and delivered).

9 FEES AND EXPENSES

- 9.1 In consideration of the provision by the Consultant of the Services, the University shall:-
- (a) pay to the Consultant fees of the amount, at the rate and intervals, and in respect of the periods, specified in the Purchase Order (or in the absence of being so specified, on completion of the Services) together with or exclusive of (as specified in the Purchase Order) any value added tax ("VAT"), if applicable; and
 - (b) if so specified in the Purchase Order or otherwise agreed in writing in advance by the Parties, reimburse such of the reasonable expenses necessarily incurred by the Consultant in providing the Services as shall be specified in the Purchase Order.
- 9.2 The Consultant shall submit invoices to the University on the basis specified in the Purchase Order, setting out the hours worked for the University since the date of the previous invoice (or, in the case of the first invoice, since the Commencement Date) and any VAT payable (if applicable). If no such period is specified in the Purchase Order, the Consultant shall submit their invoices for the fees on completion of the Services.
- 9.3 Unless otherwise stated in the Purchase Order, payment of fees will be made within thirty (30) days commencing on the date of the University's receipt of the relevant invoice and all relevant receipts and supporting information (as specified in the Purchase Order or otherwise reasonably requested by the University) for Services completed to the satisfaction of the University and approved in writing by the Contract Manager.
- 9.4 All payments under this Agreement shall be made in sterling and in immediately available, cleared funds on the due date to such bank account as the recipient party shall notify to the paying party from time to time. If any such payment should fall on a day which is not a Business Day, such payment shall be made on the next following Business Day. Wherever under this Agreement any sum of money is recoverable from or payable by the Consultant, that sum may be deducted from any sum then due, or which at any later time may become due, to the Consultant under this Agreement or under any other agreement or contract with the University or any University Enterprise.
- 9.5 Except to the extent that this Agreement otherwise provides, each party shall bear its own costs and expenses (including, without limitation, legal fees) incurred in relation to the negotiation, execution, amendment, operation and enforcement of this Agreement and of each document referred to in it.

10 AUDIT AND REVIEW

- 10.1 For a period of six years following the termination or expiry of this Agreement, the Consultant shall keep and maintain (to the satisfaction of the University) true and accurate records and books of account in respect of all transactions relating to the performance of the Services (including without limitation, all expenditure for which the Consultant is entitled to claim reimbursement from the University under the terms of this Agreement, the hours worked and costs incurred by the Consultant or its employees or agents in performing the Services and the costs of employees of the Consultant paid for by the University on a time charge basis). The Consultant shall on request provide to the University or its representatives such access to those records and books of account as may be required by the University in order to satisfy itself as to its entitlement to, or obligation to pay (as the case may be) the charges, fees and other amounts payable under this Agreement, and such representatives shall be entitled to take copies of or extracts from such records and books.
- 10.2 Subject as otherwise provided in the Purchase Order, on or around each anniversary of the Commencement Date (and at such other times as either party may reasonably request on not less than five Business Days' prior notice), the Contract Manager and the Consultant Manager shall meet at the University (or at such other venue or by means of video or telephone link if and as so agreed by the parties) at which any matters concerning the performance of the Services, any issues raised by either party in relation to this Agreement, and any other aspect of this Agreement (not less than three Business Days' notice of which has been given to each party) may be reviewed and discussed.

11 INDEMNITY AND INSURANCE

- 11.1 The Consultant will indemnify the University, any University Enterprise and any of their respective officers, employees or agents from and against all claims, demands, liabilities, actions, proceedings, costs, expenses, loss or damage (including without limitation, legal costs) which may arise directly or indirectly from the provision of the Services or from any breach of the terms of the Agreement by, or negligence of, the Consultant or any of its employees or agents (including any negligent or reckless act, omission or default in the provision of the Services).
- 11.2 The Consultant shall at all times and at the Consultant's expense procure and maintain with insurance companies of good repute appropriate insurance cover, including public liability, professional and other indemnity and property insurance fully protecting the University against all or any loss or damage which may arise in connection with the provision of the Services.
- 11.3 On request, the Consultant shall furnish or cause to be furnished to the University satisfactory evidence of all insurance maintained by the Consultant pursuant to clause 11.2.

12 DATA PROTECTION

- 12.1 For the purposes of this clause 12, Data Protection Legislation means: (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with

regards to the Processing of Personal Data to which a party is subject, including the Data Protection Act 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1,4.5.2016 (the "GDPR") and all legislation enacted in the UK in respect of the protection of Personal Data as well as the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time.

- 12.2 The parties envisage that in carrying out the Services under this Agreement, the Consultant may undertake the processing of Personal Data as defined in the Data Protection Legislation. Where the Consultant is processing Personal Data in the provision of the Services, the Consultant warrants, represents and undertakes that it will comply with the provisions of clauses 12.4 to 12.8 (inclusive).
- 12.3 The Consultant warrants, represents and undertakes that it shall comply with, and provide reasonable assistance to the University in relation to, the Data Protection Legislation and any other applicable laws, regulations or guidance relating to the use, processing and storage of Personal Data and privacy from time to time, in so far as such legislation, regulations or guidance relates to this Agreement.
- 12.4 In this clause 12, the terms "Personal Data", "Personal Data Breach", "Data Protection Impact Assessment", "Data Subject Request" "Special Category Data", "Controller", "Process", "Processing" and "Processor", and "Data Subject" shall have the meaning given to those terms in the applicable Data Protection Legislation.
- 12.5 If the Consultant Processes Personal Data on behalf of the University, the Consultant shall:
 - (a) only act on the University's written instructions in relation to the Processing of such Personal Data;
 - (b) only Process the Personal Data for and on behalf of the University for the purposes of performing its obligations under the Agreement, and only in accordance with the terms of the Agreement;
 - (c) keep a written record of any Processing of Personal Data it carries out on behalf of the University;
 - (d) take, operate and maintain sufficient and appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of such Personal Data and against accidental loss or destruction of, or damage to, such Personal Data;
 - (e) comply with all obligations imposed on the Consultant as a data Processor under the Data Protection Legislation;
 - (f) assist the University in complying with its obligations as a data Controller under the Data Protection Legislation including:
 - (i) obligations relating to notifications required by the Data Protection Legislation to the relevant regulator and/ or any relevant Data Subjects;

- (ii) undertaking any Data Protection Impact Assessments (and, where required by the Data Protection Legislation, consulting with the relevant regulator(s) in respect of any such Data Protection Impact Assessments); and
- (g) unless prohibited by law, notify the University immediately (and in any event within twenty-four (24) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by any applicable law to act other than in accordance with the instructions of the University, including where it believes that any of the University's instructions under this Agreement infringe any of the Data Protection Legislation;
- (h) provide evidence to the University on request of the technical and organisational measures the Consultant has taken to comply with the Consultant's obligations under this clause 12;
- (i) on the University's request and in accordance with the University's instructions, and unless required by law to do otherwise, on the expiry or termination of the Agreement, or the date upon which the Processing of the Personal Data is no longer relevant or necessary (whichever is earlier) return such Personal Data to the University and/or permanently and securely destroy any copies of such Personal Data that the Consultant holds and, where requested by the University, certify that such destruction has taken place;
- (j) ensure the reliability and integrity of the Consultant's personnel having access to such Personal Data and will ensure that such Consultant personnel are fully aware of the measures to be taken when processing such data, have undertaken reasonable levels of training in Data Protection Laws and in the care and handling of Personal Data, are aware of the obligations of the Consultant under the Agreement and that the same are bound by a duty of confidentiality at least as onerous as the terms contained in the Agreement;
- (k) only disclose Personal Data to its personnel that are required by the Consultant to assist it in meeting its obligations under the Agreement and shall ensure that no other personnel shall have access to such Personal Data;
- (l) not disclose Personal Data to a third party (including a sub-contractor) in any circumstances without the University's prior written consent;
- (m) not sub-contract the performance of any of its obligations under the Agreement without the prior written consent of the University and ensure that, in relation to any sub- contractor, the Consultant:
 - (i) undertakes thorough due diligence on the proposed sub-contractor including a risk assessment of the information governance-related practices and processes of the proposed sub-contractor, which shall be used by Consultant to inform any decision on appointing the proposed sub-contractor;
 - (ii) provides the University with full details of the proposed sub-

contractor including the results of the due diligence undertaken before its appointment and the University has consented to such appointment in writing;

- (iii) shall ensure the sub-contractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in the Agreement, and the University is a named third party beneficiary to the contract; and
- (iv) shall ensure the sub-contractor's right to Process Personal Data terminates automatically on expiry or termination of the Agreement for whatever reason;
- (n) notwithstanding any consent or approval given by the University under this clause 12, the Consultant shall remain primarily liable to University for the acts, errors and omissions of any sub-contractor to whom it discloses Personal Data, and shall be responsible to the University for the acts, errors and omissions of such sub-contractor as if they were Consultant's own acts, errors and omissions to the extent that the Consultant would be liable to the University under the Agreement for those acts, errors and omissions;
- (o) if the Consultant receives any complaint, notice or communication (including from any relevant regulator(s)) or request from a third party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law or regulation, which relates directly or indirectly to the processing of the Personal Data under the Agreement or to either party's compliance with Data Protection Laws, it will immediately notify the University and it will provide the University with full co-operation and assistance in relation to any such complaint, notice or communication;
- (p) notify the University promptly (and in any event within twenty-four (24) hours) following its receipt of any Data Subject Request shall:
 - (i) not disclose any Personal Data in response to any Data Subject Request without first consulting with and obtaining the University's prior written consent; and
 - (ii) provide the University with all reasonable co-operation and assistance required by the University in relation to any such Data Subject Request;
- (q) ensure that such Personal Data is kept separate from the Consultant's personal data and from personal data belonging to other customers of the Consultant;
- (r) allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by the University (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of the Agreement and provide reasonable information, assistance and co-operation to the University, including access to relevant personnel and/ or, on the request of the University provide the University with written evidence of its compliance with the requirements of this clause 12;

- (s) notify the University promptly (and in any event within twenty-four (24) hours) upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach in relation to the Personal Data (and follow-up in writing) and shall:
 - (i) conduct or support the University in conducting such investigations and analysis that the University reasonably requires in respect of such Personal Data Breach;
 - (ii) implement any actions or remedial measures necessary to restore the security of compromised Personal Data; and
 - (iii) assist the University to make any notifications to the relevant regulator and affected Data Subjects; and
 - (t) not export such Personal Data to any country outside the European Economic Area, without the University's prior written consent.
- 12.6 Nothing within the Agreement relieves the Consultant of their own direct responsibilities and liabilities under the Data Protection Legislation.
- 12.7 The Consultant shall prepare and seek the University's agreement to the relevant Data Processing Particulars in relation to the Processing taking place under this Agreement on or prior to the date of this Agreement and warrants that such Data Processing Particulars are an accurate description of the Processing of Personal Data to take place under the Agreement.
- 12.8 The Consultant consents to the University holding and processing data relating to the Consultant for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" as defined in the Data Protection Legislation relating to the Consultant including, as appropriate:
- (a) information about the Consultant's physical or mental health or condition in order to monitor sick leave and take decisions as to its fitness for work;
 - (b) the Consultant's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation; and
 - (c) information relating to any criminal proceedings in which the Consultant has been involved for insurance purposes and in order to comply with legal requirements and obligations to third parties.
- 12.9 The Consultant consents to the University making such information available to other University Enterprises, those who provide products or services to University Enterprises (such as advisers), regulatory authorities, governmental or quasi-governmental organisations and potential students, clients or suppliers of the University Enterprises.
- 12.10 The Consultant consents to the transfer of such information to the University's contacts outside the European Economic Area in order to further its interests.
- 12.11 The Consultant will comply with the University's data protection policies when processing Personal Data relating to any employee, worker, customer, client, supplier or agent of a University Enterprise.

13 FREEDOM OF INFORMATION

- 13.1 The Consultant acknowledges that the University is subject to the requirements of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (“Freedom of Information Legislation”), and the Consultant shall assist and co- operate with the University (on request and at its own expense) to enable the University to comply with its information disclosure requirements (if any) under the Freedom of Information Legislation and/or any other similar legislation, regulations or guidance controlling, regulating or giving access to information and data from time to time in so far as the same relates to this Agreement.
- 13.2 If either party (the “**Requested Party**”) receives a request for information under the Freedom of Information Legislation concerning any information relating to the other party (the “**Subject Party**”), it shall, as soon as reasonably practicable notify the Subject Party of the request and consult the Subject Party as to whether it considers any of such information to be exempt from disclosure under the Freedom of Information Legislation. The Subject Party shall use all reasonable endeavours to respond within five Business Days to such notice.
- 13.3 If the Subject Party is of the opinion that such information which is the subject of the request should not be disclosed because an exemption under the Freedom of Information Legislation applies, it shall provide the Requested Party with reasons to support its opinion, including (where relevant) the harm or prejudice that the Subject Party believes its operations would suffer if the said information were to be disclosed.
- 13.4 The Requested Party undertakes not to disclose the information referred to in this clause 13 until eight full Business Days (starting from the day after receipt of such notice) have expired and shall have due regard to the Subject Party’s response pursuant to this clause 13 before, if it deems appropriate, disclosing the information identified by the Subject Party in its response.

14 ANTI-CORRUPTION

- 14.1 The Consultant shall (and shall procure that any person associated with the Consultant in performing services under this Agreement shall):-
- (a) comply with the Bribery Act 2010 and all other applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption (“**Relevant Requirements**”);
 - (b) 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 United Kingdom;
 - (c) have, maintain, comply with and enforce its own ethics, anti-bribery and anti- corruption policies from time to time (including, without limitation, “**Adequate Procedures**” as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of that Act) to ensure compliance with the Relevant Requirements; and in particular but without limitation, the Consultant shall comply with the University’s ethics and anti- bribery policy, as notified by the University to the Consultant from time to time; and

- (d) ensure that all its employees, contractors and agents who are performing services in connection with this Agreement shall comply with the obligations in this clause 14.1 and shall be responsible to the University for any non-compliance by any such persons.

14.2 The Consultant shall immediately notify the University in writing:-

- (a) of any request or demand for any undue financial or other advantage of any kind received by the Consultant (and/or any persons associated with it) in connection with the performance of the Services under this Agreement;
- (b) of any payment suspected to have been received or made for any undue financial or other advantage by the Consultant or any of its employees or any other persons in connection with the Services;
- (c) if a foreign public official becomes an officer or employee of the Consultant or acquires a direct or indirect interest in the Consultant, and the Consultant warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement; and/or of any breach whatsoever of this clause 14 by the Consultant and/or any persons associated with it under clause 14.1.(d) and, forthwith upon request, provide to the University such further information in respect of such breach as the University may request.

14.3 Any breach of this clause 14 by the Consultant (or by any of its employees, agents, consultants or assignees in all cases, whether or not acting with the Consultant's knowledge) shall entitle the University to terminate this Agreement with immediate effect.

14.4 Any termination of this Agreement under clause 14.3 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the terminating party.

15 DISCRIMINATION AND GENERAL LEGAL COMPLIANCE

15.1 The Consultant shall comply in all respects with the requirements of the Equality Act 2010 and the general law relating to equality and diversity and shall not unlawfully discriminate against any person on the grounds of race, ethnic or national origin, colour, creed, disability, political belief, membership of or activities as part of a trade union, social or economic class, sex or gender, sexual orientation, marital or parental status or other family circumstance or any other ground whatsoever. The Consultant shall take all reasonable steps to ensure the observance of these provisions by its employees or agents and all sub-contractors engaged in the performance of its obligations under this Agreement.

15.2 Without prejudice to the generality of Clause 15.5, in performing its obligations under the Agreement, the Consultant shall comply with all applicable laws, statutes, regulations and codes from time to time in force in relation to anti-slavery and human trafficking including the Modern Slavery Act 2015.

15.3 The Consultant represents and warrants that at the Commencement Date neither the Consultant nor any of its officers, personnel or other persons associated with it:

- (a) has been convicted of any offence involving slavery and human trafficking; and
 - (b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 15.4 The Consultant shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 15.5 Without limitation to clauses 12 – 15.4, each party shall (and shall procure that all its employees, contractors and agents engaged in performing services under this Agreement shall) observe and comply with all other applicable laws, statutes, rules, regulations, secondary legislation, bye-laws, common law, directives, judgements, decisions or orders of any court or tribunal of competent jurisdiction, codes of practice and guidance and other requirements, each having the force of law for the time being.

16 NATURE OF CONSULTANCY

- 16.1 The Consultant is an independent contractor and nothing in this Agreement will constitute or be deemed to constitute a partnership or employment relationship between the parties or render the Consultant an employee, agent or partner of the University (or of any University Enterprise) and the Consultant shall not hold him/herself out as such (whether by any oral or written representation or by any other conduct). Except to the extent expressly permitted in this Agreement or otherwise by the University in writing, the Consultant shall not have, nor represent that it has, any authority to bind in any way, or make any commitments, representations or warranties, assume any obligations or liabilities, pledge the credit, or exercise any rights or powers, on behalf of, any University Enterprise (or purport to do so) and (except as aforesaid) the University shall not be liable for any of the acts or omissions of the Consultant. The Consultant shall indemnify the University and the other University Enterprises against all claims, demands, proceedings, losses, liabilities, damages, costs, charges and expenses incurred or sustained by any of them as a result of, or in connection with, any unauthorised act or omission of such party or breach by it of this clause 16.1.
- 16.2 The Consultant is fully responsible for, and shall indemnify the University against, any liability, assessment or claim for:-
- (a) any taxation whatsoever (including, without limitation, income tax, value added tax, national insurance contributions and social security contributions) arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law; and
 - (b) any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any substitute against the University arising out of or in connection with the provision of the Services,

and the University may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Consultant under this Agreement or any other agreement with the Consultant and a University Enterprise.

16.3 Subject as to the restrictions on, and the obligations of, the Consultant contained in this Agreement, the Consultant shall be entitled to engage in consultancy activities or in part-time employment for third parties.

17 GENERAL

17.1 **Entire agreement and conflicts:** This Agreement and the documents referred to in it set out the entire agreement and understanding between the parties in respect of its subject matter and supersede all prior agreements, arrangements and understandings (whether written or oral) in relation thereto. The parties acknowledge and agree that, in entering into this Agreement, they have not relied on any representations, warranties, undertakings, agreements or statements other than those set out in this Agreement and that, in the absence of fraud, will not have any right or remedy arising out of any such representation, warranty, undertaking, agreement or statement. All other terms, conditions or warranties otherwise implied by law are excluded from this Agreement to the extent permitted by law.

17.2 **Assignment:** Subject to clause 17.3, this Agreement is personal to each party and neither party may assign, transfer, charge or deal in any way with (or purport to do so) this Agreement or any of its rights or duties hereunder without the consent of the other party or, in the case of assignments, transfers and other dealings by the University, except to another University Enterprise.

17.3 **Sub-contracting:** The Consultant shall not sub-contract any part of this Agreement without the prior written consent of the University provided that no such sub-contract shall relieve the Consultant of any of its obligations, responsibilities or liabilities under this Agreement.

17.4 **Variation:** Any variation of this Agreement shall be in writing and signed by or on behalf of each of the parties.

17.5 **Effect of Completion:** Except to the extent already performed, all the provisions of this Agreement shall, so far as they are capable of being performed or observed, continue in full force and effect notwithstanding their partial performance.

17.6 **Invalidity:** To the extent that any provision of this Agreement is held by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of the Agreement and shall not affect the enforceability of the remainder of the Agreement nor the validity, lawfulness or enforceability of that provision in any other jurisdiction. If the foregoing applies, the parties shall use all reasonable endeavours to agree any lawful and reasonable variations to this Agreement which may be necessary in order to achieve, to the extent possible, the same effect as would have been achieved by the provision in question.

17.7 Releases and waivers:

(a) The rights, powers and remedies conferred on either party by this Agreement and remedies available to either party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

(b) Either party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right

granted to it under this Agreement by the other party without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

- (c) No single or partial exercise, or failure or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any other right, power or remedy arising under the Agreement or otherwise.

17.8 **Third Party Rights:** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 and the parties do not intend that any third party rights are created by this Agreement.

17.9 **Time of the Essence:** Time is of the essence of this Agreement both as regards dates or periods mentioned in this Agreement for the performance of any obligation by the Consultant party and as regards any dates and periods which may be substituted for them in accordance with this Agreement or by written agreement between the parties.

18 NOTICES

18.1 Any notice to a party under this Agreement shall be in writing signed by or on behalf of the party giving it and shall be delivered personally, left at, or sent by prepaid first class post, prepaid recorded delivery post (or in the case of notices sent to or from the United Kingdom, by pre-paid airmail or pre-paid international recorded delivery airmail) to the address of the party as set out in the Purchase Order or as otherwise notified in writing from time to time in accordance with this clause 18.

18.2 The University's address for receipt of notices is: University of Plymouth, Drake Circus, Plymouth, Devon PL4 8AA, with a copy sent to legalservices@plymouth.ac.uk. Notices sent by email alone will not be deemed validly served. Service of any proceedings or other documents in any legal action shall not be accepted by email.

18.3 A notice shall be deemed to have been served:

- (a) if delivered personally or sent by pre-paid international recorded delivery airmail, at the time of delivery; or
- (b) if sent by post, 48 hours after posting (or seven days if sent by pre-paid airmail (other than by pre-paid international recorded delivery airmail) to or from an address outside the United Kingdom).

18.4 In proving service it will be sufficient to prove:

- (a) in the case of personal service, that it was handed to the recipient or its representative or delivered to or left at its address; and
- (b) in the case of a letter sent by post, that the letter was properly addressed, stamped and posted.

18.5 A party shall not attempt to prevent or delay the service on it of a notice pursuant to this clause 18.

19 TERM AND TERMINATION

- 19.1 This Agreement shall commence on and from the Commencement Date and shall continue in full force and effect for the period specified in the Purchase Order unless and until it is terminated earlier in accordance with the provisions of this Agreement. If no such period is specified in the Purchase Order, this Agreement shall automatically expire on the completion of the obligations of the Parties under this Agreement.
- 19.2 The University shall be entitled to terminate this Agreement for any reason by giving to the Consultant not less than thirty days' notice to that effect.
- 19.3 Each party may terminate this Agreement with immediate effect by written notice to the other party ("**Other Party**") on or at any time after the Other Party:-
- (a) is in material or persistent breach of any obligation under this Agreement which is either incapable of remedy or, if capable of remedy, is not remedied by the Other Party within fourteen days after being required to do so in writing by the terminating party;
 - (b) becomes insolvent or is unable to pay its debts as they fall due for payment, or if an order is made, a resolution is passed, a petition is presented or other proceedings are taken (which, in the case of such petition or other proceedings are not dismissed within seven days) for the winding up of the Other Party (other than voluntarily for the purpose of a solvent amalgamation or reconstruction upon such terms as may have been approved by the terminating party, such approval not to be unreasonably withheld or delayed), or if an administrator, administrative receiver, receiver or similar officer is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with, or a general assignment for the benefit of, its creditors, or if the Other Party's assets are possessed by a creditor or encumbrancer or become subject to a distress, execution, sequestration or other such process, or if the Other Party (being an individual), is the subject of a bankruptcy petition or order, or if the Other Party takes or suffers any similar or analogous action in consequence of debt;
 - (c) (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; and/or
 - (d) ceases to carry on its business or activities as conducted on the Commencement Date.
- 19.4 The expiry or termination of this Agreement for any reason shall not prejudice or affect any provisions of the Agreement which are expressed to continue in effect thereafter nor any accrued rights or remedies of the parties.

20 DISPUTE RESOLUTION

- 20.1 All disputes, issues or questions arising out of or relating to the Agreement (other than a matter on which the decision of the University is final and conclusive as provided in this Agreement) shall be referred to the Contract Manager and the Consultant Manager (or their respective nominees) who shall use their respective reasonable endeavours in good faith to resolve the matter in dispute.

- 20.2 If such matter is not resolved within ten Business Days of such matter arising in accordance with clause 20.1, the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure (or any other mediation procedure that the parties may agree). To initiate a mediation, a party shall give notice in writing to the other party requesting mediation of the dispute and shall send a copy thereof to CEDR (or any other mediation body that the parties may agree), requesting that body to nominate a mediator if the parties shall not be able to agree such appointment by negotiation. The mediation shall commence within 28 days after such request for mediation is served. Neither party will terminate such mediation until each party has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter the Model Procedure will apply.
- 20.3 Should the parties fail to resolve their dispute through mediation under clause 20.2, then the dispute or difference shall be referred to and finally resolved by the English courts (or any other body or tribunal which has jurisdiction over such matters).
- 20.4 During any dispute (including a dispute as to the validity of any aspect of this Agreement), the parties shall continue their respective performance of the provisions of this Agreement.

21 GOVERNING LAW AND JURISDICTION

- 21.1 The Agreement, and any disputes or claims arising out of or in connection with its subject matter, shall be governed by, and construed in accordance with, English law.
- 21.2 Each of the parties irrevocably agrees that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.
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