

 **DATED**

THE UNIVERSITY OF MANCHESTER (

AND

[SUPPLIER] (

**AGREEMENT FOR PROVISION OF [X] SERVICES**

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**THIS AGREEMENT** is dated (“**the Effective Date**”)

Parties

1. **THE UNIVERSITY OF MANCHESTER** (a Royal Charter corporation number RC000797, an exempt charity) whose registered office is at Oxford Road, Manchester, M13 9PL (**“the University”**)
2. **[NAME OF SUPPLIER]** (incorporated and registered in England and Wales with company number [X]) whose registered office is at [ADDRESS] (**“the** Supplier”)

Agreed terms

# Interpretation

## The definitions and rules of interpretation in this clause apply in this agreement.

“Authorised Service Recipients” any subsidiary company of the University and any third party to whom the parties agree (in accordance with clause 3.1) the Services should be supplied;

“Business Day” means a day, excluding Saturdays and Sundays and official University closure days, on which banks are generally open in London, England, for the transaction of normal banking business;

**“Change Control Procedure”** means the procedure for changing this agreement set out in Schedule 3: Change Control;

 **“Deliverables”** means any outputs of the Services, all Documents, products and materials developed by the Supplier or its agents, subcontractors and employees in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, reports and specifications and reports (including drafts);

 “Document” includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection which subsist now or in the future in any part of the world;

**“Law”** any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court, or directives or requirements of any Regulatory Body delegated or subordinate legislation or notice of any Regulatory Body;

 **“Mandatory Policies”** Anti-Corruption and Bribery Policy (<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=17994>);

 Anti-Slavery Policy

 (<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=32018>);

Data Protection Policy (<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=14914>);

Equality and Diversity Policy (<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=8361>);

Freedom of Information Policy (<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=14915>);

Information Security Policy (<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=6525>);

Policy for Socially Responsible Investment (<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=659>);

Procurement Policy and (<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=11843>);

“Services” means the services to be provided by the Supplier under this agreement, as set out in Schedule 1 and the Supplier's obligations under this agreement, together with any other services which the University agrees to take from the Supplier and which are agreed between the parties to be delivered under this agreement;

**“Statement of Work”** the detailed plan describing the Services and setting out the Services timetable (including any milestones) and responsibilities for the provision of the Services agreed between the Parties and set out in schedule 1;

 “Supplier's Manager” means the Supplier's manager for the Services appointed under clause 3.4;

“Supplier's Personnel” means all employees, staff, other workers, agents and consultants of the Supplier and of any sub-contractors who are engaged in the provision of the Services from time to time;

“Supplier's Team**”** meansthe Supplier's Manager and all employees, suppliers, agents and subcontractors which it engages in relation to the Services and who are appointed under clause 3.4;

 “University's Manager” means the University's manager for the Services, appointed in accordance with clause 4(d);

**“University Materials”** has the meaning set out in clause 3.3(i); and

“VAT” means value added tax chargeable under English Law for the time being and any similar, additional tax.

## Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

## The schedules, annexes and background form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules, annexes and background.

## Words in the singular shall include the plural and vice versa.

## A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## A reference to **writing** or **written** includes e-mail.

## Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

## Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.

# Commencement and duration

## The Supplier shall provide the Services to the University and the Authorised Service Recipients on the terms and conditions of this agreement.

## The Supplier shall provide the Services from [DATE].

## The Services shall continue to be supplied for a period of [NUMBER] years, unless this agreement is terminated in accordance with clause 15.

## The University may extend the agreement beyond the period set out clause 2.3 by a further [NUMBER] years by providing the Supplier with at least 3 months written notice prior to the expiry date to that effect.

# Supply of services

## The Supplier shall provide the Services to the University or to any Authorised Service Recipients, in accordance with this agreement and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

## The Supplier undertakes, warrants and represents that it will provide the Services in accordance with the service level agreement and KPIs set out in Schedule 4.

## Prompt and expedited performance of the Services by the Supplier is important to the University. In all cases therefore where the Supplier is obliged to take action, provide notice or complete a task under this agreement then, where there is no specific statement as to timing, there shall be implied an obligation to do so promptly and as soon as reasonably possible. This is without prejudice to any specific time limits set out in Schedule 1.

## In providing the Services, the Supplier shall:

### co-operate with the University in all matters relating to the Services, and comply with all instructions of the University;

### perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

### use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this agreement;

### notify the University in writing of the identity from time to time of the Supplier’s Manager and ensure that the Supplier’s Manager has authority to bind the Supplier on all matters relating to the Services (including by signing Change Orders);

### ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Statement of Work, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the University;

### provide all equipment, tools and vehicles and such other items as are required to provide the Services;

### use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the University, will be free from defects in workmanship, installation and design;

### obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

### observe all health and safety rules and regulations and any other security requirements that apply at any of the University's premises;

### hold all materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier (**University Materials**) in safe custody at its own risk, maintain the University Materials in good condition until returned to the University, and not dispose or use the University Materials other than in accordance with the University's written instructions or authorisation. Schedule 5 sets out the parties’ respective obligations in relation to Personal Data (as such term is defined in Schedule 5) and it is not intended that the word “data” in this clause should include Personal Data; and

### not do or omit to do anything which may cause the University to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the University may rely or act on the Services.

### 3.5 The Supplier warrants that the receipt, use and onward supply of the Services and the Deliverables by the University and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.

# University's obligations

The University shall:

### provide reasonable co-operation with the Supplier in all matters relating to the Services;

### provide such access to the University's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the University in writing in advance, for the purposes of the Services;

### provide such information as the Supplier may reasonably request for the provision of the Services and the University considers reasonably necessary for the purpose of providing the Services;

### notify the Supplier in writing of the identity from time to time of the University’s Manager; and

### inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the University's premises.

# Monitoring

## The University’s Manager and the Supplier’s Manager shall meet at least once every month or as otherwise agreed to discuss matters relating to the Services.

## The Supplier’s Manager shall provide to the University’s Manager at each of the meetings:

## a progress report detailing the Services provided to date; and

## a report detailing performance measures and monitoring.

## All meetings will be held on University’s premises.

# Change Control

## If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing using the Change Control document (Schedule 3)

## If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time (and in any event not more than 5 Business Days after receipt of the University's request), provide a written estimate to the University of:

### the likely time required to implement the change;

### any necessary variations to the Supplier's charges arising from the change; and

### any other impact of the change on this agreement.

## Unless both parties consent to a proposed change, there shall be no change to this agreement.

## If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's charges, the Services and any other relevant terms of this agreement to take account of the change that has been reached and this agreement has been varied in accordance with clause 23.6.

## If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the University shall not unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to the University's non-compliance with the University's obligations, neither the Supplier's charges or any other terms of this agreement shall vary as a result of such change.

# Intellectual property rights

## The Supplier assigns to the University, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the Deliverables, provided that the Supplier shall not transfer or assign:

### copyright in any product of the Services that may be owned by a third party and which has been identified as such;

### the Supplier’s name or trade-marks; or

### the Supplier’s copyright in its methods of work, working papers, computer programmes, methodologies, skills, experience, expertise and any associated or related information maintained by the Supplier in any form, all Intellectual Property Rights therein remaining vested in the Supplier.

## To the extent that the matters excluded in item (c) above are comprised, incorporated or required in connection with a Deliverable, the Supplier shall grant to the University a non-exclusive, world-wide, sub-licensable, royalty free licence to use the same to such extent as is necessary to enable the University to make reasonable use of the Services. For the purposes of delivering services to the University or other customers, the Supplier shall be entitled to use, develop or share knowledge, experience and skills of general application gained through performing the Services.

## The Supplier shall, promptly at the University's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the University may from time to time require for the purpose of securing for the University the full benefit of this agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the University in accordance with clause 7.1.

## The Supplier shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

## All University Materials and all other materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the University to the Supplier or not so supplied but used by the Supplier specifically under the agreement shall at all times be and remain the exclusive property of the University but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the University (or provided to the University on written request from the University) and shall not be disposed of other than in accordance with the University's written instructions, nor shall such items be used otherwise than as authorised by the University in writing.

# Price

## The charges for the Services shall be set out in Schedule 2, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the University, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

## In respect of Services, the Supplier shall invoice the University on completion of the Services or in accordance with any instalments as set out in Schedule 2. Each invoice shall include such supporting information required by the University to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.

## The Statement of Work contained in Schedule 1 shall specify whether the charges shall be on a time and materials basis, a fixed price basis or a combination of both.

## Where the Services are provided on a time and materials basis:

### the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in Schedule 2;

### the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on a Business Day;

### all charges quoted to the University shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;

### the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 8.4 (e); and

### the Supplier shall invoice the University monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in clauses 8.4 (a) and 8.4 (b). Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

## No variation in the price or extra charges shall be accepted by the University.

# Payment

## The University shall pay the price within 30 days of receipt of an undisputed invoice.

## The Supplier must quote the University’s Purchase Order number on all invoices. Failure to do so may result in a delay in payments.

## Without prejudice to any other right or remedy, the University reserves the right to set off any amount owing at any time from the Supplier to the University against any amount payable by the University to the Supplier under the agreement.

## If any undisputed sum under the agreement is not paid when due then, without prejudice to the parties' other rights under the agreement, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Barclays Bank Plc base rate from time to time. The Supplier is not entitled to suspend deliveries and/or service as a result of any sums being outstanding.

## Subject to clause 23.10 where the Supplier appoints a subcontractor then the Supplier shall pay the subcontractor in accordance with the terms set out in this clause 9 as if it were the University.

# Indemnity

## The Supplier shall indemnify the University and keep the University indemnified in full against all direct, losses, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the University as a result of or in connection with:

### any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables);

### any breach by the Supplier of its obligations under clause 14: Data Protection;

### any breach of the Modern Slavery Act 2015; and

### any breach of the Criminal Finances Act 2017.

## The Supplier shall indemnify the University and keep the University indemnified in full against all direct, losses, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the University as a result of or in connection with any claim made against the University in respect of any liability, loss, damage, injury, cost or expense sustained by the University's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this agreement by the Supplier.

## Liabilities under the indemnities at clause 10.1 and 10.2 are conditional upon the University discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the University which may reasonably be considered likely to give rise to a liability under this indemnity (**a Claim**), the University shall:

### as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

### not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

### give the Supplier and its professional adviser access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the University, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

### in the case of alleged or actual infringement, the University allows the Supplier at the Supplier’s discretion and expense to alter, replace or withdraw any product of the Services so that any offending element is removed.

## The provisions of this clause 10 shall survive termination of the agreement, however arising.

# Limitation of Liability

## Nothing in this agreement:

###  shall limit or exclude either party’s liability for:

#### death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

#### fraud or fraudulent misrepresentation;

#### any liability to the extent that it cannot be otherwise excluded or limited by Law; or

### shall limit or exclude any liability in respect of the Supplier’s indemnities in clause 10.1 (a), 10.1(c) and 10.1(d).

## Without prejudice to clause 11.1 above neither party to this agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

### loss of profit; or

### loss of goodwill; or

### loss of business; or

### loss of business opportunity; or

### loss of anticipated saving; or

### any special, indirect or consequential damage arising under or in connection with the agreement.

## Notwithstanding clause 11.2, the losses for which the Supplier assumes responsibility and which shall, (subject to clause 11.5) be recoverable by the University include:

## (a) any sums paid by the University to the Supplier pursuant to this agreement, in respect of any Services not provided in accordance with the terms of this agreement;

## (b) additional costs or procuring and implementing replacements for, or alternatives to the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials; and

## (c) losses incurred by the University arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier Personnel, regulator or customer of the University) against the University caused by the act or omission of the Supplier.

## Subject to clause 11.1, the Supplier’s total aggregate liability to the University arising under or in connection with the indemnity in clause 10.1(b) shall be limited to £20 million (TWENTY million pounds).

## The total liability of one party to the other in respect of all other losses arising under or in connection with the agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 150% of the total charges payable by the University to the Supplier under this agreement.

## The provisions of this clause 11 shall survive termination of the agreement, however arising.

# Insurance

## The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, public liability insurance and any other required insurance to cover the liabilities that may arise under or in connection with the agreement, and shall, on the University's request, produce evidence of the insurance policies and of the payment of the premiums.

# Confidentiality and Freedom of Information

## A party (“**the Receiving Party**”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature the terms of this agreement and any other information which could reasonably be considered confidential (“**the Confidential Information**”) and have been disclosed to the Receiving Party by the other party (“**the Disclosing Party**”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.

## The restriction in clause 13.1 above does not apply to:

## (a) any use or disclosure authorised by the Disclosing Party or required by law or regulation;

## (b) any information which is already in, or comes into, the public domain otherwise than through the Receiving Party’s unauthorised disclosure;

## (c) information which is known by the Receiving Party before the Confidential Information is disclosed (as can be demonstrated by the Receiving Party’s written records) and is not under any obligation of confidence;

## (d) lawfully becomes available to the Receiving Party other than from a source which is connected with the Disclosing Party (as can be demonstrated by the Receiving Party’s written records); or

## (e) information which the Disclosing Party agrees with the Receiving Party is not Confidential Information.

## The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

## The Supplier acknowledges that the University is subject to the provisions of the Freedom of Information Act 2000 (as amended from time to time) and that the University is therefore subject to legal duties which may require the disclosure of information in relation to the agreement. If the University holds information relating to the agreement on behalf of the Supplier, the Supplier agrees to assist and cooperate with the University to enable it to comply with the Freedom of Information Act 2000.

## This clause 13 shall survive termination of the agreement.

# Data protection

* 1. Each party agrees to comply with its obligations as set out in Schedule 5 (Data Protection) of this agreement.

* 1. This clause 14 shall survive the termination of the agreement, however arising.

# Termination

## Without limiting its other rights or remedies, the University may terminate the agreement:

1. by giving the Supplier written notice; and
2. where the agreement is subject to the Public Contract Regulations 2015 the University may terminate this agreement on giving 6 months’ notice in writing to the Supplier if:
3. the agreement has been subject to a substantial modification which would have a required a new procurement procedure in accordance with Regulation 72(9) of the Public Contract Regulations 2015;
4. the Supplier has, at the time of contract award, been in one of the situations referred to in Regulation 57(1) of the Public Contract Regulations 2015, including as a result of the application of Regulation 57(2) of the Public Contract Regulations 2015, and should therefore have been excluded from the procurement procedure; or
5. the agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty of the Functioning of the European Union.

## Without prejudice to any other right or remedies which the University may have, the University shall have the right at any time to terminate the agreement with immediate effect by giving written notice to the Supplier if:

* + 1. the Supplier commits a material breach of any of the terms and conditions of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing to do so, and for the avoidance of doubt the parties acknowledge and agree that a breach of clause 13 (Confidentiality), clause 14 (Data Protection) and clause 18 (Compliance with Laws) shall be considered material; or
		2. the Supplier repeatedly breaches any of the terms of the agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the agreement; or
		3. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
		4. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
		5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
		6. the Supplier (being an individual) is the subject of a bankruptcy petition or order;
		7. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
		8. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
		9. the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
		10. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
		11. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.3(c) to clause 15.3(j) (inclusive);
		12. the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
		13. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

## On termination of the agreement for any reason, the Supplier shall immediately deliver to the University:

15.3.1 all University Materials and all copies of information and data provided by the University to the Supplier for the purposes of the agreement. The Supplier shall certify to the University that it has not retained any copies of University Materials or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 13; and

15.3.2 all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the University pursuant to clause 7.1 (providing always that termination is not as a result of non-payment by the University).

## If the Supplier fails to fulfil its obligations under clause 15.3, then the University may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

## The termination of the agreement, however arising, shall be without prejudice to the rights and duties of the University accrued as at termination.

## The clauses which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

1.
2. **Force majeure**

## For the purposes of this agreement, **“Force Majeure Event”** means an event beyond the reasonable control of either party including but not limited to strikes, lock-outs or other industrial disputes (whether or not involving the workforce of either party), act of God, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, pandemic or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this agreement as a result of a Force Majeure Event.

## If the Force Majeure Event prevents either party from performing any of its obligations under the agreement for more than 12 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate this agreement immediately by giving written notice to the other party.

# Corporate and Social Responsibility and Equality

## Whilst performing the agreement the Supplier shall use (and shall ensure any third party supplier to the Supplier uses) its reasonable endeavours to conserve energy, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.

## The Supplier acknowledges that the University is subject to equal opportunities legislation and undertakes that it shall not (and shall ensure any third party supplier to the Supplier shall not) unlawfully discriminate for any reason and shall take all reasonable steps to secure the Supplier’s Personnel (or that of any third party supplier) likewise do not unlawfully discriminate.

# Compliance with laws

## In performing its obligations under the agreement, the Supplier shall and shall ensure that each of its subcontractors shall comply with:

###  all applicable laws, statutes, regulations and codes from time to time in force;

### the Mandatory Policies; and

### UK immigration legislation and to ensure full compliance with the UK Border Agency’s guidance for employers on the prevention of illegal working, in accordance with the Immigration, Asylum and Nationality Act 2006 in respect to all staff engaged by the Supplier and working at the University (the UK Border Agency’s guidance is available at (https://www.gov.uk/government/collections/employers-illegal-working-penalties#guidance-and-codes-of-practice). The University expects that proper ‘right to work checks’, including repeat checks for individuals with limited right to work in the UK, will have been carried out for staff engaged by the Supplier and working at the University, and that the Supplier complies fully with its record-keeping and reporting responsibilities for any migrant workers sponsored by the Supplier under Tier 2 or Tier 5 of the UK Border Agency’s points-based immigration system. The Supplier will, on request, provide the University with such documentation as it may require to verify that the Supplier has complied with the requirements set out above.

## The University may terminate the agreement with immediate effect by giving writing notice to the Supplier if the Supplier commits a breach of clause 18.1 above.

# Audit

## Subject to any requirements in clause 14, the Supplier shall keep and maintain until six years after the agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the agreement including:

* + 1. the Services provided under it;
		2. evidence of its compliance with Schedule 5 (Data Protection);
		3. all expenditure reimbursed by the University;
		4. all payments made by the University; and
		5. records to evidence compliance with clause 14 (Data Protection) and clause 18 (Compliance with Laws).

## The Supplier shall on request afford the University or the University's representatives such access to those records as may be required in connection with this agreement and/or to ascertain the Supplier’s compliance with its obligations in this agreement.

# Dispute Resolution

## The parties shall attempt in good faith to negotiate a settlement to any dispute arising between them out of or in connection with this agreement within 30 Business Days of the dispute arising.

## If the dispute cannot be resolved, then the parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (“**CEDR**”) Model Mediation Procedure from time-to-time in force.

## To initiate the mediation, a party to the agreement must give notice in writing (the “**ADR Notice**”) to the other party requesting a mediation in accordance with this clause 20. The mediation is to take place not later than 30 Business Days after the ADR Notice. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 14 Business Days of the ADR Notice, then CEDR shall, at the request of either party, decide the issue for the parties, having consulted with them. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

## Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

## If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the University and Supplier.

## If the parties fail to reach agreement within 60 Business Days of the initiation of the mediation, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

## The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings

# NOT USED

# Notices

## For the purposes of this clause, but subject to clause 22.8, notice includes any other communication.

## A notice given to a party under or in connection with this agreement:

### shall be in writing;

### shall be signed by or on behalf of the party giving it;

### shall be sent to the party for the attention of the contact and at the address listed in clause 22.3;

### shall be sent by a method listed in clause 22.5; and

### is deemed received as set out in clause 22.5 if prepared and sent in accordance with this clause.

## The parties' addresses and contacts are as set out in this table:

|  |  |  |  |
| --- | --- | --- | --- |
| **Party** | **Contact** | **Address** | **Email** |
| University | [insert name and position] | The University of Manchester, Oxford Road, Manchester, M13 9PL | [email address][additional email address if required] |
| Supplier | [Name and position of contact] | [address] | [email] |

## A party may change its details given in the table in clause 22.3 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

### the date, if any, specified in the notice as the effective date for the change; or

### the date five Business Days after deemed receipt of the notice.

## This table sets out:

### delivery methods for sending a notice to a party under this agreement; and

### for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 22.6:

|  |  |
| --- | --- |
| **Delivery method** | **Delivery date and time** |
| Delivery by hand. | On signature of a delivery receipt or at the time the notice is left at the address. |
| Pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery.  | 9.00 am on the second Business Day after posting or at the time recorded by the delivery service. |
| Pre-paid airmail providing proof of delivery. | at the time recorded by the delivery service. |
| Delivery by email. | At the time the email was sent on a Business Day during normal working hours or at 9.00am on the next Business Day. |

## For the purpose of clause 22.5 and calculating deemed receipt:

### all references to time are to local time in the place of deemed receipt; and

### if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

## Where the delivery method is by email, deemed delivery is conditional upon:

### Sending a copy by first class post or another specified method of service; and

### Sending the notice as a PDF email attachment; and

### Including text in the subject line of the email sufficient to identify the contents as a formal notice; and

### Sending the notice to all the e-mail addresses specified in clause 22.3.

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

# General

## Each right or remedy of the University under the agreement is without prejudice to any other right or remedy of the University whether under the agreement or not.

## If any provision or part provision of the agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the agreement and the remainder of such provision shall continue in full force and effect.

## Failure or delay by the University in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the agreement.

## Any waiver by the University of any breach of, or any default under, any provision of the agreement by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the agreement.

## The parties to the agreement do not intend that any term of the agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## No variation of the agreement shall be valid unless it is agreed in writing and signed by, or on behalf of, each of the parties.

## The agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

## Each party acknowledges that, in entering into the agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).

## Nothing in the agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

## The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement or any part of it without the prior written consent of the University.

## The University may assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

## The Supplier shall not exploit publicity in any form in connection with the agreement or the University without obtaining the prior written consent of the University.

## This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.

# Governing law and jurisdiction

## This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of England.

## The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

Signed on behalf of THE UNIVERSITY OF MANCHESTER:

Name:…………………………………………………………………………………

Signature:……………………………………………………………………………..

Date:…………………………………………………………………………………..

Signed by behalf of [NAME OF SUPPLIER]:

Name:……………………………………………………………………………….

Signature:……………………………………………………………………………

Date:…………………………………………………………………………………...

1. Services

[DESCRIPTION OF THE SERVICES TO BE PROVIDED including any relevant statement of works]

1. Charges and Payment

**OPTION 1: ONE-OFF SERVICES**

[Specify whether the Charges for the Services will be fixed price, time and materials or a mix.]

**Fixed price:**

The total charges for the Services are: £[AMOUNT].

The fixed price is calculated as follows: [Include calculation method, if appropriate].

**Time and materials:**

The daily rate for the Supplier's Team: [Set out the daily rates for the supplier's team. Ensure that if more senior members of the team (for example, project managers) have higher rates than other members of the team, this should be specified.]

**Payment terms:** [Insert the agreed timetable for payment, ensuring that Milestones and the criteria for determining whether these have been accepted or successfully met are clearly set out.]

**OPTION 2: ONGOING SERVICES**

**Time and materials:** [The daily rate for the Supplier's Team: [Set out the daily rates for the supplier's team. Ensure that if more senior members of the team (for example, project managers) have higher rates than other members of the team, this should be specified.]

**EXPENSES:**

[Specify whether expenses are to be paid or not]

For clarity the University would require all expenses to be fully supported by receipts and Supplier should only charge the *net* amount to the University. For example a hotel room costs £100 + £20 VAT. The Supplier can recover the £20 VAT from HRMC so the charge to the University should be £100 + £20 VAT (*not £120 + VAT = £144*)

1. Change Control

**Template Change Control Notification**

|  |
| --- |
| **Change Control Notification Form** |
| **Change Control Number [insert number]** |
| Title of change: |  |
| Date of request: |  |
| Reasons for change: |  |
| Impact of change (including clause reference, if applicable): |  |
| Is change permitted under Regulation 72 of the Public Contracts Regulations 2015: | Refer to Central Procurement Office for advice on this before change is accepted or rejected. |
| Timetable: |  |
| Price: |  |
| The Supplier: | Signed:……………………………... | Date:……………………………... |
| Name:………………………………. |
| The University: | ACCEPT/REJECT (*delete as appropriate*) |
| Signed:……………………………... | Date:……………………………... |
| Name:………………………………. |

This document has been takes effect on the date stated at the beginning of it

**Signed on behalf of THE UNIVERSITY OF MANCHESTER:**

Name:…………………………………………………………………………………

Signature:……………………………………………………………………………..

Date:…………………………………………………………………………………..

**Signed by behalf of [insert Name of Supplier]:**

Name:……………………………………………………………………………….

Signature:……………………………………………………………………………

Date:…………………………………………………………………………………...

1. Service Level Agreement/KPI’s
2. Data Protection

1.1 Each party shall comply with EU General Data Protection Regulation 2016/679 (“**GDPR**”) and the UK Data Protection Act 2018 (as applicable) (the “**Data Protection Laws**") In particular where a Party (“**Processor**”) is processing personal data on behalf of the other Party (“**Controller**”) it shall:

1.1.1. process it only for the purposes of complying with its obligations under this Agreement, in accordance with the Controller’s documented instructions from time to time and good industry practice;

1.1.2. ensure that appropriate technical and organisational measures shall be taken to ensure a level of security of Controller personal data appropriate to the risk (including measures taken against unauthorised or unlawful processing of Controller personal data and the accidental loss or destruction of, or damage to, such data) and promptly provide to the Controller details of those measures from time to time on receipt of Controller’s written notice;

1.1.3. not transfer, or otherwise directly or indirectly disclose, any Controller personal data to a third party or to a country or territory outside the European Economic Area without the prior written consent of the Controller which may be refused or granted subject to such conditions as Controller deems necessary; and

1.1.4 immediately and fully notify the Controller on receipt of any notices received by the Supplier relating to the processing of Controller personal data including (but not limited to) data subject requests, complaints and/or correspondence or if any Controller personal data has been disclosed in breach of this clause or if it is lost, becomes corrupted, is damaged or is deleted in error and provide the Controller with such information and assistance as the Controller may require in relation to such notice or breach (at no cost to the Controller). The Processor shall provide and implement technical and organisational measures to help the Controller fulfil its obligations in relation to such notices from or on behalf of data subjects in connection with the rights conferred on them by Data Protection Laws.  For the avoidance of doubt, in no event shall the Processor respond directly to any notice relating to any Controller personal data.

1.2 The Processor shall comply with the provisions set out in Article 28 of the GDPR (together with any provisions referenced therein) which shall have effect as obligations on the Processor as if set out in full in this clause and the expressions “controller” and “processor” used in those provisions and incorporated in this Agreement pursuant to this clause shall be deemed references to the Controller and the Processor respectively. References to “personal data”, “processing, “data subject” shall have the meanings set out in the applicable Data Protection Laws.