

CARDIFF UNIVERSITY PROCUREMENT SERVICES

STANDARD TERMS AND CONDITIONS OF BUSINESS FOR ENGAGEMENT OF CONSULTANTS

1. DEFINITIONS

1.1 In these Terms and Conditions the following definitions apply:

"Agreement"	means the Purchase Order, these Terms and Conditions and any Statement of Work;
"Appointment"	means the engagement of the Consultant on the terms of the Agreement;
"Cardiff University"	means Cardiff University, a higher education institution and charity registered in England and Wales under charity number 1136855 established under Royal Charter (RC000089) whose address is Park Place, Cardiff CF10 3AT;
"the Consultant"	means the individual, firm, company or PSC to whom the Purchase Order is addressed and any employees, sub-contractors or agents of said firm or company (where applicable) as detailed in the Statement of Work;
"Data Protection Legislation"	means the Data Protection Act 2018, and all applicable regulations, domestic legislation and any successor legislation with regards to the processing of personal data to which Cardiff University is subject;
"EIR"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"Fee"	means the fee to be paid by Cardiff University to the Consultant for the provision of the Services as set out in the Statement of Work and paid in accordance with Clause 5;
"FOIA"	means the Freedom of Information Act 2000 and any Subordinate Legislation made under the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"FOIA Code"	means the Ministry of Justice's Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA or any revision or replacement of such code;
"Force Majeure Event"	means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations under the Agreement including but not limited to include, at your preference, a list of indicative events such as pandemic or

government restrictions etc but excluding any labour or trade dispute, strike, industrial action or lockout confined to the Consultant's workforce or the workforce of any of its sub-contractors (if applicable);

"GDPR" means the General Data Protection Regulation 2016/679 and its UK equivalent;

"Individual" means, in the case of the Consultant being a firm, company or PSC, such individual person supplied by the Consultant to provide the Services as detailed in the Statement of Work;

"Information" means, for the purposes of Clause 19, information as that term is defined in section 84 of the FOIA and which relates to the Agreement (or any preceding tender process leading up to it), the Consultant or the Services;

"Intellectual Property Rights" means patents, rights to Inventions, copyright and related rights (including rights in computer software), moral rights, trade names and internet domain names, rights in get-up and trade dress, rights in goodwill, rights to sue for passing off, unfair competition rights, rights in designs, rights of whatsoever nature in computer software (including without limitation rights in source code and object code), database rights, rights to data (including without limitation data held in clouds), topography rights, rights in confidential information (including know-how and Trade Secrets) trade marks, service marks, logos, database rights, semi-conductor topography rights, utility models and any other intellectual property rights and all other intangible rights and privileges of a nature similar and/or allied to any of the foregoing, in each case whether registered or unregistered and including all applications for registration (or rights to apply) for, renewals or extensions of and amendments to, 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;

"Interest Rate" means 2% a year above the base lending rate of the Bank of England from time to time;

"Invention" means any invention, discovery, enhancement or improvement including (without limitation) any know-how, design, image, process, plan, drawing, formula, computer programme, software (including source code and object code), system or specification which in any way affects or relates to the business of Cardiff University (including without limitation any current, potential or future product, service, process, equipment, system or activity of Cardiff University) whether or not now, or at any future time, capable of forming the subject-matter of a patent or otherwise being subject to patent protection (whether in the United Kingdom or in any other territory in the world);

"Material"	means any and all written, audio and/or visual work, any know-how, show-how, information, technique, Invention, design, drawing, specification, component list, manual, instruction, catalogue, image, photograph, plan, formula, computer program, software or system, record, document, compilation or database which in any way affects or relates to the business of Cardiff University (including without limitation any current, potential or future product, service, process, equipment, system or activity of Cardiff University);
"Parties"	means Cardiff University and the Consultant, and Party will mean either one of them;
"Prevent"	means the guidance for specified authorities in England and Wales on the duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism;
"PSC"	means a limited company or partnership which meets the conditions specified in s61O or 61P of the Income Tax (Earnings and Pensions) Act 2003;
"Purchase Order"	means Cardiff University's purchase order to which these Terms and Conditions refer to;
"Request for Information"	means a request for Information within the meaning given in section 1 of the FOIA, or any request for Information under the EIR;
"Services"	means the services set out in the relevant Statement of Work to be provided by the Consultant to Cardiff University in accordance with terms of the Agreement;
"Subordinate Legislation"	has for the purposes of Clause 19 the meaning given in section 84 of the FOIA;
"Statement of Work"	means the statement of work detailing the Services, agreed between the Parties and in substantially the same form as the template set out in Schedule 1;
"Terms and Conditions"	means these terms and conditions, including its Schedules;
"Trade Secrets"	means information which meets all the requirements for a 'trade secret' set out in Article 2 of the Directive (EU) 2016/943 of the European Parliament, to the extent that Article 2 is implemented in countries and/or areas within the United Kingdom or any other territory in the world;
"Working Day"	means Monday to Friday, excluding any public holidays in England and Wales or any other day that Cardiff University is closed for business; and
"Works"	means any and all works, Material, information, data, designs, discoveries, Inventions, developments, improvements, products, processes, methods,

formulas or programs which are made, created, devised, developed or discovered by the Consultant or the Individual (if applicable) or by any person engaged by the Consultant pursuant to Clause 4.6 (whether alone or with any other person, and whether before on or after entry into the Agreement) during the course of the provision of the Services in connection with or in any way affecting or relating to the business of Cardiff University or capable of being used or adapted for use therein or in connection therewith.

- 1.2 Any reference in these Terms and Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 A reference to these Terms and Conditions includes its Schedules.
- 1.4 The headings in these Terms Conditions are for ease of reference only and shall not affect the interpretation or construction of these conditions.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 If there is any conflict or inconsistency between the provisions in the Purchase Order, these Terms and Conditions and a Statement of Work, such conflict or inconsistency shall be resolved according to the following order of priority:-
 - 1.6.1 these Terms and Conditions;
 - 1.6.2 the Purchase Order; and
 - 1.6.3 any Statement of Work.

2. **APPLICATION OF THESE TERMS AND CONDITIONS**

- 2.1 These Terms and Conditions apply to and form part of the Agreement between the Consultant and Cardiff University. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 Each Purchase Order issued by Cardiff University to the Consultant shall be an offer to purchase Services subject to these Terms and Conditions.
- 2.3 A Purchase Order may be withdrawn or amended by Cardiff University at any time before acceptance by the Consultant. The Purchase Order will be deemed to be accepted unconditionally by the Consultant if (i) no detailed counter-offer is received within 14 days of its date, or (ii) upon commencement of the Services by the Consultant, whichever is the sooner. If the Consultant is unable to accept a Purchase Order, it shall notify Cardiff University in writing promptly.

3. **ENGAGEMENT**

- 3.1 Cardiff University shall engage the Consultant and the Consultant shall, and shall procure that the Individual (where applicable) shall, provide the Services to Cardiff University on the terms of the Agreement.
- 3.2 The Consultant warrants that by entering into the Agreement it will not, and the Individual (where applicable) will not, be in breach of any obligations to or agreements with any third party.

4. **CONSULTANT'S OBLIGATIONS**

- 4.1 The Consultant shall, and shall procure that the Individual (where applicable) shall, devote such time to the provision of the Services as may be necessary to meet the project timescales set out in the Statement of Work.
- 4.2 The Consultant shall, and shall procure that the Individual (where applicable) shall, provide the Services at such location(s) as detailed in the Statement of Work.
- 4.3 In providing the Services, the Consultant shall, and shall procure that the Individual (where applicable) shall, at all times:-
- 4.3.1 provide the Services diligently, using all reasonable skill, expertise and care although it is acknowledged that the Consultant's, and/or the Individual's (where applicable), method(s) of work are its/ their own;
 - 4.3.2 comply with the reasonable requests and instructions of Cardiff University, (including for the avoidance of doubt, Cardiff University's requirement that the Consultant and Individual (where applicable) at all times comply with the provisions of the Bribery Act 2010 and Cardiff University's Counter-Fraud and Anti-Bribery Policy (available at <https://www.cardiff.ac.uk/public-information/policies-and-procedures/counter-fraud-anti-bribery-policy>) and that the Consultant has in place adequate procedures in terms of the Bribery Act 2010) provided that the Consultant and/or the Individual (where applicable) shall not be subject to the direction of Cardiff University as to the manner in which the Services are to be provided but must comply with the Dignity at Work and Study Policy;
 - 4.3.3 use best endeavours to promote the interests of Cardiff University;
 - 4.3.4 keep Cardiff University informed of progress in the provision of the Services and produce such written reports in the form and frequency as may be required in the Statement of Work;
 - 4.3.5 attend such meetings and reviews in relation to the provision of the Services as Cardiff University reasonably requires;
 - 4.3.6 if the Consultant is engaged on a daily/hourly rate basis, provide to Cardiff University a weekly timesheet detailing the number of hours or days during which the Services were provided each day that week and the tasks performed;
 - 4.3.7 comply with all relevant laws and regulations, codes and other similar provisions so far as they affect the Services; and
 - 4.3.8 comply with Cardiff University's health and safety; security and information security policies and procedures.
- 4.4 If the Consultant is, or the Individual (where applicable) is, prevented by illness or injury or any other reason from providing the Services, the Consultant shall report that fact to Cardiff University as soon as reasonably practicable, and if the absence continues, the Consultant shall keep Cardiff University informed of the reason for it and its expected duration. No Fee shall be payable in respect of any period during which the Services are not provided.
- 4.5 Where applicable, the Consultant agrees that any breach or non-performance by the Individual of the obligations under the Agreement will constitute a breach or non-performance by the Consultant.

- 4.6 The Consultant may, where permitted in the Statement of Work, appoint a substitute with equivalent skill and expertise to perform the Services instead (the "**Substitute**"). The Consultant will continue to invoice Cardiff University in accordance with Clause 5 and will be responsible for the remuneration of the Substitute. The Consultant will provide an appropriate overlap period during which time the Consultant will ensure that the Substitute fully understands the requirements of Cardiff University and the work involved in the provision of the Services. The Consultant will not charge Cardiff University any extra Fee for this overlap period.
- 4.7 The Consultant may use another person, firm or company to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that the Consultant accepts all liability for their terms of engagement and shall indemnify and hold Cardiff University harmless from any claims, costs, losses or liability of whatever nature in respect thereof.
- 4.8 Unless provided otherwise in the Statement of Work, the Consultant is obliged to provide at its own expense all personal instruments and/or equipment and/or computer equipment necessary for the provision of the Services and will be liable, at its own cost, to keep any such personal instruments and/or equipment and/or computer equipment in a safe and proper operating condition (including, ensuring that such computer equipment and storage devices and/or media, are free from any virus or malware.

5. **FEES AND PAYMENT**

- 5.1 In consideration of the provision of the Services, Cardiff University shall pay to the Consultant the Fee for the Services. The Fee is presumed to be exclusive of VAT (where the Consultant is VAT registered) payable in accordance with the payment terms detailed in the Statement of Work, subject to delivery of a VAT invoice by the Consultant. In the event that the Consultant is either not legally required nor has voluntarily elected to be registered for VAT purposes, the Fee shall constitute the entire payment for the Services.
- 5.2 The Consultant shall issue invoices at the frequency detailed in the Statement of Work. The Consultant's invoices shall detail the Services provided plus any disbursements payable by Cardiff University.
- 5.3 Where Cardiff University disputes in good faith upon reasonable grounds any sum invoiced by the Consultant, Cardiff University may withhold payment in respect of the amount under dispute, pending resolution of the dispute.
- 5.4 If any invoice (or any part of an invoice) remains unpaid at the due date for payment, such invoice will bear interest at the Interest Rate from the day after the due date for payment up to (and including) the date of payment of the invoice in full. If (i) any sum invoiced by the Consultant is disputed by Cardiff University in accordance with Clause 5.3 and (ii) the Parties agree that such sum will not be payable by Cardiff University to the Consultant, then interest will be deemed not to have accrued in respect of that sum.
- 5.5 Payment by Cardiff University will be without prejudice to any claims or rights which Cardiff University may have against the Consultant and/or the Individual (where applicable) and will not constitute any admission by Cardiff University as to the provision of the Services by the Consultant and/or the Individual (where applicable) under the Agreement.
- 5.6 The Fee is only payable in respect of Services actually provided. Nothing in these Terms and Conditions entitles the Consultant to be paid a retainer when there are no Services to be provided. For the avoidance of doubt, in the event that no Services are required, or if the Consultant fails to provide the Services via the provision of the

Individual (where applicable) (whether by reason of illness, accident or other incapacity, or for any other reason), no Fee will be payable.

5.7 Cardiff University shall be entitled to deduct from the Fee (and any other sums) due to the Consultant any sums owed by the Consultant to Cardiff University at any time.

6. TAX AND IR35 COMPLIANCE

6.1 Where the Consultant is a PSC providing services directly to Cardiff University the terms of this Clause 6.1 shall apply:

6.1.1 Cardiff University is required to undertake an assessment in respect of the Consultant to determine whether if the Services were provided directly by the Individual to Cardiff University, the Individual would be regarded for income tax purposes as an employee of Cardiff University or the holder of an office under Cardiff University (in each case "**Deemed Employment**").

6.1.2 Prior to the first payment to or in respect of the Consultant, Cardiff University shall prepare and provide to the Individual a statement in accordance with the requirements of section 61NA Income Tax (Earnings and Pensions) Act 2003 ("**ITEPA**") (the "**Status Determination Statement**").

6.1.3 The Status Determination Statement ("**SDS**") will specify:-

- (a) whether the Appointment is considered to be one of Deemed Employment;
- (b) the basis on which Cardiff University has reached the determination; and
- (c) that Cardiff University has taken reasonable care in making the determination.

6.1.4 The Parties agree that Cardiff University may use such means of reaching the determination detailed in the SDS as it shall decide is reasonable from time to time. For the avoidance of doubt, this may include (but is not limited to) using HM Revenue & Customs' ("**HMRC**") 'Check Employment Status for Tax' tool.

6.1.5 The Consultant shall, or shall procure that the Individual shall, promptly provide to Cardiff University all such information and documentation as it may reasonably require from time to time in order for Cardiff University to determine whether the Appointment is or will be Deemed Employment and, if Cardiff University does so determine, in order to comply with any legal obligation on Cardiff University to deduct income tax or national insurance contributions (NICs) from the fees due in accordance with Clause 6.1.8 below.

6.1.6 The Consultant shall, and shall procure that the Individual shall, promptly inform Cardiff University of any material change to any information or documentation previously provided in compliance with this Clause and shall also promptly provide any other information or documentation that it considers (or ought reasonably to consider) to be materially relevant to determining whether the Appointment is, remains or has become Deemed Employment.

6.1.7 If at any time Cardiff University finds that its initial determination in the SDS was incorrect or determines that there has been a material change in the circumstances of the Appointment such that the determination in the SDS needs to be revised, it will issue a revised SDS to the Individual.

- 6.1.8 For the avoidance of doubt, Cardiff University shall be entitled to make deductions from payments made to the Consultant under these Terms and Conditions in respect of income tax and NICs under Pay As You Earn ("**PAYE**") if it reasonably considers that it is required by law to do so.
- 6.1.9 The Consultant shall indemnify and keep indemnified and hold harmless Cardiff University on demand from and against any and all income tax, NICs, including secondary contributions to the extent permitted by law, (and including any interest, penalties, fine, expenses or gross-up thereon other than where such interest or penalties arise from Cardiff University negligence or wilful default) and any other liability, deduction, contribution, assessment or claim ("**Tax Liabilities**") which Cardiff University is required to pay or account for to the relevant taxing authority, arising from or made in connection with either the performance of the Services or any payment or benefit received by the Consultant or the Individual in relation to the provision of the Services, where such recovery is not prohibited by law. Provided that this indemnity shall not extend to any Tax Liabilities to the extent that Cardiff University has made deductions from the fees due under Clause 6.1.8 in respect of such Tax Liabilities prior to payment to the Consultant. In this regard Cardiff University shall be deemed to be obliged to pay any such amount if it receives a written demand from HMRC. If for any reason Cardiff University becomes liable to pay any such Tax Liabilities, Cardiff University shall be entitled to deduct from any amounts payable to the Consultant pursuant to these Terms and Conditions all amounts so required to be paid by Cardiff University.
- 6.1.10 The Consultant warrants that it is not nor will it prior to the cessation of these Terms and Conditions, become a managed service company ("**MSC**"), within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

6.2 Where the Consultant is an individual providing services directly to Cardiff University the terms of this Clause 6.2 shall apply:

- 6.2.1 The Consultant shall be exclusively responsible for the payment of income tax, national insurance contributions and any Value Added Tax payable in respect of the Fees and shall promptly pay any such contributions and taxes to the relevant taxing authority.
- 6.2.2 Notwithstanding Clause 6.2.1 above, prior to payment of the Fees, Cardiff University shall be entitled to make deductions in respect of income tax and national insurance contributions if it reasonably considers that it is required by law to do so, by virtue of a legal requirement on Cardiff University.

6.3 Where an Individual and/or PSC is supplied to provide services to Cardiff University via a Consultant (being for the purposes of this Clause 6.3 a 'company' or 'firm' falling within the above definition of "Consultant"), the terms of this Clause 6.3 shall apply:

- 6.3.1 The following definitions shall apply for the purposes of this Clause 6.3:
- (a) "**Deemed Employment**" means an engagement in respect of which, if the Services were provided under a contract directly between a PSC and Cardiff University, the Individual supplied by that PSC would be regarded for income tax purposes as an employee of Cardiff University or the holder of an office under Cardiff University

- (b) **"Intermediary"** means any entity through which an Individual and/or PSC is contracted, other than the Consultant. For the avoidance of doubt, this shall include any Umbrella Company.
 - (c) **"Umbrella Company"** means an entity which supplies the services of an Individual to Cardiff University and which (i) engages such Individual as an employee, (ii) is not a company in which the Individual holds a material interest in accordance with section 610 of ITEPA, (iii) does not make any chain payments to the Individual (as defined in Chapter 10, Part 2 of ITEPA) other than those which are fully taxable on the Individual as employment income and (iv) is FCSA-accredited
- 6.3.2 The Consultant will comply with all of its obligations under the Income Tax (Earnings and Pensions) Act 2003 ("**ITEPA**").
- 6.3.3 The Consultant will not supply a PSC in the undertaking of any Appointment to provide Services to Cardiff University, unless Cardiff University has first confirmed in writing to the Consultant that it is willing to accept that PSC to carry out the relevant Appointment ("**Acceptance**").
- 6.3.4 The Consultant will not and will procure that no Intermediary through which an Individual and/or PSC is engaged will make any payment to or in respect of an Individual and/or PSC through a company, organisation, institution, legal entity, person or bank account located outside the United Kingdom, other than where the making of such payment has been approved in writing in advance by Cardiff University
- 6.3.5 In the event Acceptance occurs, prior to the first payment to or in respect of any PSC, Cardiff University will prepare and provide to the PSC and the Consultant a statement in accordance with the requirements of section 61NA ITEPA (the "**Status Determination Statement**").
- 6.3.6 The Status Determination Statement ("**SDS**") will specify:-
- (a) whether the engagement of the PSC is considered to be Deemed Employment;
 - (b) the basis on which Cardiff University has reached the determination; and
 - (c) that Cardiff University has taken reasonable care in making the determination.
- 6.3.7 The parties agree that Cardiff University may use such means of reaching the determination detailed in the SDS as it shall decide is reasonable from time to time. For the avoidance of doubt, this may include (but is not limited to) using HM Revenue & Customs' 'Check Employment Status for Tax' tool.
- 6.3.8 The Consultant will or will procure that the PSC will promptly give to Cardiff University all such information and documentation as it may reasonably require from time to time in order for Cardiff University to determine whether the engagement of the PSC is or will be Deemed Employment.
- 6.3.9 As soon as reasonably practicable after the Consultant receives a copy of an SDS from Cardiff University, the Consultant will ensure that a copy of that SDS is provided to any Intermediary. If the SDS provides that the engagement of a PSC is Deemed Employment, the Consultant will (or will procure that the relevant Intermediary will) make such deductions of income tax and national insurance contributions from any payment made to that

PSC in connection with the provision of any services to Cardiff University, and will make such payment of employer national insurance contributions and apprenticeship levy in respect of such payment, as is required by law.

- 6.3.10 The Consultant will, and will procure that the PSC and/or the Individual will, promptly inform Cardiff University of any material change to any information or documentation previously provided in compliance with this Clause and shall also promptly provide any other information or documentation that it considers (or ought reasonably to consider) to be materially relevant to determining whether the engagement of the PSC has become Deemed Employment.
- 6.3.11 In the event that the Consultant and/or the PSC makes representations to Cardiff University disputing the determination in the SDS, Cardiff University will inform the Consultant and the PSC of the outcome of the consideration of the representations within 45 days of receipt of those representations. For the avoidance of doubt, the Consultant is only entitled to make representations under this Clause 6.3.11 if it is considered to be the 'deemed employer' for the purposes of s.61T ITEPA.
- 6.3.12 If at any time Cardiff University finds that its initial determination in the SDS was incorrect or determines that there has been a material change in the circumstances of the engagement of the PSC such that the determination in the SDS needs to be revised, it will issue a revised SDS to the Consultant and the PSC.
- 6.3.13 The obligations on the Consultant under this Clause 6.3 will apply to any revised SDS in the same way as they apply to the initial SDS.
- 6.3.14 Where Acceptance has not been given, the Consultant shall procure that all payments made by the Consultant to an Individual or by any Intermediary to or in respect of an Individual are fully taxable (and taxed) either as earnings from employment with an Umbrella Company or under Chapter 7, Part 2 of ITEPA.
- 6.3.15 Upon written request by Cardiff University, the Consultant shall provide details of sums in respect of income tax and national insurance contributions deducted and/or paid by the Consultant or any Intermediary pursuant to this Clause 6.3, within 7 days of such request.
- 6.3.16 For the avoidance of doubt, Cardiff University will be entitled to make deductions from payments made to the Consultant in respect of income tax and national insurance contributions if it reasonably considers that it is required to do so by law, including in the event that changes are made to legislation applying to engagements through intermediaries which make Cardiff University responsible for the application of income tax and national insurance contributions in respect of PSCs.
- 6.3.17 The Consultant shall indemnify and keep indemnified and hold harmless Cardiff University and any of its subsidiaries or holding companies (each a "**Group Company**") on demand from and against any and all income tax, national insurance contributions (including secondary contributions), and apprenticeship levy (including any interest, fines, penalties or expenses in relation thereto) ("**Tax Liabilities**") which Cardiff University and/or any Group Company is required to pay or account for to the relevant taxing authority in relation to the undertaking of any Appointment pursuant to this Agreement where such recovery is not prohibited by law. Provided that this indemnity shall not extend to any Tax Liabilities to the extent that Cardiff University has made deductions under Clause 6.3.16 in respect of such Tax Liabilities prior to payment to the Consultant or to the extent that the Tax Liability arises in

consequence of a failure by Cardiff University to exercise reasonable care in preparing a Status Determination Statement.

- 6.3.18 The Consultant warrants that it will not engage a managed service company (within the meaning of S61B ITEPA) in the provision of any services pursuant to this Agreement.
- 6.3.19 The Consultant acknowledges and agrees that Cardiff University does not wish to engage the services of any worker or workers via a managed service company and, in the event that any PSC is held by a relevant statutory authority to have the status of a managed service company, Cardiff University has neither encouraged nor been actively involved in the provision of a worker through a managed service company.
- 6.3.20 In the event that a PSC is held by a relevant statutory authority to be a managed service company and there is a transfer of debt to Cardiff University under Schedule 3 to the Finance Act 2007, the Consultant agrees, covenants and undertakes to defend, indemnify and hold harmless Cardiff University from any claims, suits, costs (including legal costs), expenses, liabilities, judgements, fines, penalties and demands arising in connection with the performance of any services under this Agreement.

7. TAX EVASION FACILITATION PREVENTION

7.1 The Consultant hereby warrants and confirms to Cardiff University that:

- 7.1.1 it and its associated persons have not and will not engage in any activity, practice, conduct or thing which would (or the omission of which would) contravene Part 3 of the Criminal Finances Act 2017 ("**CFA 2017**");
- 7.1.2 it and (where applicable) its associated persons have maintained at all times and will continue to maintain at all times, reasonable prevention procedures designed to ensure continued compliance with the CFA 2017 by the Consultant and its associated persons and it has taken steps, so far as it is reasonably practicable to do so, to ensure that its associated persons have adhered to such procedures;
- 7.1.3 it and its associated persons have not been investigated in connection with, or charged with having committed an offence under the CFA 2017; and
- 7.1.4 it and its associated persons have not received any court orders, warrants or oral or written notices from a government prosecuting authority concerning any actual or alleged violation by it of an offence under the CFA 2017.

7.2 The Consultant shall:

- 7.2.1 comply with any of Cardiff University's tax compliance policies (as may be notified in writing to the Consultant) and all applicable laws, statutes, regulations, guidance, relevant industry code, or accepted practice relating to tax, the prevention of tax evasion, or an offence under the CFA 2017, as may be updated from time to time;
- 7.2.2 immediately notify Cardiff University in writing on becoming aware of, or suspecting, any failure to comply with any provision of this Clause 7;
- 7.2.3 upon the written request of Cardiff University certify to Cardiff University in writing signed by an officer of the Consultant, compliance with this Clause 7, in such form as Cardiff University may require; and

- 7.2.4 promptly provide such supporting evidence of compliance with this Clause 7 as Cardiff University may request at any time.
- 7.3 The Consultant shall ensure that any of its associated persons who are performing services for or on behalf of the Consultant in connection with the Agreement do so only on the basis of written terms (including warranties) equivalent to those applying to or given by the Consultant in this Clause. The Consultant shall be directly liable to Cardiff University for any breach by such persons of those terms (including warranties).
- 7.4 For the purpose of this Clause 7, the meaning of prevention procedures and whether a person is associated with another person shall be determined in accordance with sections 44(4), 44(5), 45(3) and 46(4), as applicable of the CFA 2017 (and any guidance issued under section 47 of that Act).
- 7.5 The Consultant hereby agrees to fully indemnify Cardiff University in respect of any losses, damages, fines, penalties, charges or other costs which Cardiff University or any associated person(s) suffers in the event that the Consultant is in breach of this Clause 7.
- 7.6 Breach of this Clause 7 shall be deemed a material breach of the Agreement.

8. **EXPENSES**

- 8.1 Unless stated otherwise in the Statement of Work, the Consultant shall be responsible for all travelling and other out of pocket expenses incurred by the Consultant and/or the Individual (where applicable) in providing the Services. For the avoidance of doubt the Consultant will not be reimbursed separately for these expenses unless stated otherwise in the Statement of Work.

9. **STATUS AND AUTHORITY**

- 9.1 The Consultant represents and warrants (and shall procure that the Individual represents and warrants (where applicable)) that its/their relationship to Cardiff University is that of an independent contractor. Nothing in these Terms and Conditions shall render the Consultant or the Individual (where applicable) an employee, worker, officer, agent or partner of Cardiff University, and the Consultant shall not hold itself out (and shall procure that the Individual (where applicable) does not hold himself out) as such.
- 9.2 For the avoidance of doubt, as an independent contractor the Consultant and/or the Individual (where applicable) will not be entitled to any pension, bonus, holiday, maternity/paternity/parental leave or associated payments, sickness or other fringe benefits from Cardiff University.
- 9.3 The Parties acknowledge that neither the Consultant nor the Individual (where applicable) is an agency worker for the purposes of the Agency Workers Regulations 2010 and, therefore, the Agency Workers Regulations do not apply to the Agreement.
- 9.4 Cardiff University shall not be vicariously liable for the acts and/ or omissions of the Consultant and/or the Individual (where applicable) and Cardiff University shall have no liability (save for death of personal injury caused by Cardiff University) to the Consultant and/ or the Individual (where applicable) in respect of any damage or injury suffered by the Consultant and/or the Individual (where applicable) in connection with the provision of the Services.
- 9.5 The Consultant shall not, and shall procure that the Individual (where applicable) shall not, be entitled by virtue of the Agreement to bind Cardiff University or to contract in the name of or create liability against Cardiff University in any way and for any purpose except as expressly authorised in writing by Cardiff University.

9.6 The Consultant will be fully responsible for, and will indemnify Cardiff University for and in respect of any liability for any employment-related claim or any claim based on worker status or any claim of rights as an agency worker (including reasonable costs and expenses) brought by it or anyone engaged by it or the Individual (where applicable) against Cardiff University arising out of or in connection with the provision of the Services.

10. **OTHER ACTIVITIES AND EXCLUSIVITY**

10.1 During the Appointment, the Consultant (and/or the Individual (where applicable)) may accept engagements from or be employed by or concerned in other companies, firms or persons but only insofar as such engagements, employments or concerns do not (in the opinion of Cardiff University) impinge upon the Consultant's (or the Individual's) ability to provide the Services or comply with any obligations under these Terms and Conditions or lead to any material conflict of interest between the Consultant (and/or the Individual (where applicable)) and the best interests of Cardiff University.

10.2 The Consultant shall (and shall procure that the Individual (where applicable) shall) immediately disclose to Cardiff University any conflict of interest which arises in relation to the provision of the Services as a result of any present or future engagement, employment or other interest or concern.

10.3 Nothing in these Terms and Conditions shall preclude Cardiff University from engaging any other person whether as a consultant or in any other capacity to provide services that are the same or similar to the Services.

11. **LIABILITY AND INDEMNITIES**

11.1 Neither Party shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Agreement.

11.2 Subject to Clause 11.1 and Clause 11.4, the Consultant's aggregate liability:

11.2.1 is unlimited in respect of:

- (a) any indemnity set out in the Agreement;
- (b) any breach of Clause 7 and Clause 18; and

11.2.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with this Agreement, shall be limited in respect of all liabilities arising under the Agreement, to an amount equal to one hundred and twenty five percent (125%) of the Fees paid or payable by Cardiff University to the Consultant.

11.3 Subject to Clause 11.1 and Clause 11.4, Cardiff University's aggregate liability to the Consultant for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement (other than a failure to pay any of the Fees that are properly due and payable and for which Cardiff University shall remain fully liable), shall be limited in respect of all liabilities arising under the Agreement, to an amount equal to the Fees paid or payable by Cardiff University to the Consultant.

11.4 Notwithstanding any other provision of the Agreement, neither Party limits or excludes its liability for:

11.4.1 fraud or fraudulent misrepresentation;

- 11.4.2 death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
 - 11.4.3 any other liability for which may not be limited under any applicable law.
- 11.5 The Consultant shall indemnify (and shall procure that the Individual (where applicable) shall indemnify) Cardiff University on demand and keep it/ them indemnified at all times against any liability, loss, damage, costs (including legal costs on an indemnity basis) and expense of whatsoever nature incurred or suffered by Cardiff University arising from the Consultant's performance of and/or breach of its obligations or warranties under these Terms and Conditions including, without limitation:
- 11.5.1 any act, neglect or default of the Consultant, or the Individual (where applicable), and any claim that Cardiff University is vicariously liable for any act of the Consultant or the Individual (where applicable);
 - 11.5.2 any liability for any employment-related claim or any claim based on worker status brought by the Consultant and/or the Individual (where applicable) against Cardiff University arising out of or in connection with the provision of Services;
 - 11.5.3 any breach of the Data Protection Act 2018 or associated data protection obligations, including breach of Cardiff University's policies that the Individual (where applicable) or the Consultant are required to observe under these Terms and Conditions; and/or
 - 11.5.4 any breach resulting in a successful claim by a third party.

12. **INSURANCE**

- 12.1 The Consultant shall at its own cost effect and maintain appropriate insurance cover with a reputable insurance company against all liabilities and indemnities that may arise under the Agreement and any such policy or policies shall have a limit as set out in the Statement of Work (if any).
- 12.2 The Consultant shall give Cardiff University, on request, copies of all insurance policies or a broker's verification of insurance to demonstrate that the appropriate insurance cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 12.3 The terms of any insurance or the amount of cover shall not relieve the Consultant of any liabilities under the Agreement.
- 12.4 The Consultant shall hold and maintain the appropriate insurance cover for a minimum of six years following the expiration or earlier termination of the Agreement.

13. **TERMINATION OF THE AGREEMENT**

- 13.1 This Agreement may be terminated by either Party at any time by giving not less than 14 days' notice in writing to the other Party (unless such other time period is specified in the Statement of Work).
- 13.2 Without limitation, Cardiff University may by notice in writing to the Consultant immediately terminate the Agreement without compensation being payable (but without prejudice to the Parties accrued rights under the Agreement) if:
 - 13.2.1 except in the circumstances set out in Clause 13.2.6, the Consultant and/or the Individual (where applicable) commits any serious or repeated breach or non-observance of any of the terms or conditions of the Agreement;

- 13.2.2 the Consultant and/or the Individual (where applicable) fails to provide the Services to Cardiff University's reasonable satisfaction or is negligent or incompetent in the provision of the Services;
 - 13.2.3 the Consultant and/or the Individual (where applicable) is guilty of any fraud or dishonesty or conduct (whether or not in breach of the Agreement) which, in the reasonable opinion of Cardiff University, has brought or is likely to bring either the Consultant, the Individual (where applicable) or Cardiff University into disrepute or is materially adverse to the interests of Cardiff University;
 - 13.2.4 where applicable, the Consultant makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultant;
 - 13.2.5 where applicable, a bankruptcy order is made against the Consultant, Individual or the Consultant or Individual compounds with or enters into any formal voluntary arrangement with creditors such that in the reasonable opinion of Cardiff University the Consultant is no longer able to provide the Services;
 - 13.2.6 the Consultant or Individual (where applicable) is unable properly to provide the Services by reason of ill-health, accident or other absence for a period or periods aggregating at least 20 Working Days in any period of 12 months; and/or
 - 13.2.7 the Consultant and/or the Individual (where applicable) is convicted of any criminal offence (other than a road traffic offence for which a non custodial penalty is imposed).
- 13.3 The rights of Cardiff University under Clause 13.1 and Clause 13.2 are without prejudice to any other rights that it might have at law to terminate the Agreement or to accept any breach of the Agreement by the Consultant as having brought the Agreement to an end. Any delay by Cardiff University in exercising its rights to terminate shall not constitute a waiver thereof.
- 13.4 The Consultant may terminate the Agreement with immediate effect without liability to pay any compensation or damages by written notice to Cardiff University if, at any time:
- 13.4.1 Cardiff University commits any serious or repeated breach or non-observance of any of the terms or conditions of these Terms and Conditions, and for the avoidance of doubt, subject to Clause 5.3, a failure to pay the Fee on the due date will be treated as a serious breach; or
 - 13.4.2 Cardiff University makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding up order is made or an administrator or receiver is appointed in relation to Cardiff University.
- 13.5 Any Clauses in these Terms and Conditions that are expressly, or by implication intended, to apply after expiry or termination of the Agreement shall continue in full force and effect after such expiry or termination.

14. OBLIGATIONS ON TERMINATION

- 14.1 The Consultant will, and will procure that the Individual (where applicable) will, immediately on the termination of the Agreement for any reason and at the request of Cardiff University at any time whilst the Consultant is providing the Services under a Statement of Work, surrender to a person duly authorised by Cardiff University all equipment, tools, computer programs, reports, manuals, files, notes, accounts, documents, correspondence, books, materials, papers and information (on whatever media and wherever located) any keys and any other property of Cardiff University or its or their business contacts that have been made or received by the Consultant and/or the Individual (where applicable) during the course of providing the Services (whether under the terms of these Terms and Conditions or any other agreement or arrangement between Cardiff University and the Consultant) and which are in the Consultant's and/or the Individual's possession (where applicable) or under the Consultant's and/or the Individual's control (where applicable) and which are the property of Cardiff University.
- 14.2 Immediately on the termination of the Agreement for any reason the Consultant will, and will procure that the Individual (where applicable) will, having first returned the information to Cardiff University as required by Clause 14.1, irrevocably delete any remaining information relating to the business of Cardiff University stored in any magnetic or optical drive or memory and all matter derived from such sources which is in its or their possession or under its or their control and is outside the premises of Cardiff University.
- 14.3 On the termination of the Agreement, the Consultant will, and will procure that the Individual (where applicable) will, at Cardiff University's request, provide a signed statement that it has and the Individual has fully complied with this Clause 14 and make any optical disc or memory available to Cardiff University in order to verify the Consultant's and the Individual's (where applicable) compliance with Clause 14.2.
- 14.4 If, during such time as the Consultant is providing the Services or on or after termination or expiry, or partial termination or expiry, of the Agreement, any contract of employment or engagement of any Person will have effect, or is claimed to have effect, as if originally made between (i) Cardiff University and such Person or (ii) any Replacement Consultant and such Person, by operation of TUPE, then:
- 14.4.1 the Consultant will indemnify and keep indemnified Cardiff University and any Replacement Consultant against all Losses suffered or incurred by Cardiff University and/or any Replacement Consultant in connection with the employment or engagement (whether deemed or alleged) of any Person or the termination of the employment or engagement (whether deemed or alleged) of any Person, in respect of any period before or after the Relevant Date; and
- 14.4.2 the Consultant will, if so requested by Cardiff University, promptly enter into an appropriate deed of indemnity with any Replacement Consultant on the same terms as those which appear in this Clause 14.4 in order to give effect to the indemnity contained in Clause 14.4.1 and will indemnify and keep indemnified Cardiff University against any Losses which arise from a failure to do so, including for the avoidance of doubt, any Losses which may arise under any back-to-back indemnity provided by Cardiff University to any Replacement Consultant to confer the benefit of the indemnity in Clause 14.4.1 on such Party.
- 14.5 For the purposes of Clause 14.4, unless the context otherwise requires, the following words and phrases have the meanings set opposite them:
- "Losses"** all and any losses, costs, fines, penalties, awards, charges, damages, liabilities, expenses (including reasonable legal

expenses), actions, proceedings, claims or demands on a full indemnity basis;

"Person"	any individual employed or engaged by or formerly employed or engaged by the Consultant in connection with the provision of the Services under the Agreement including for the avoidance of doubt the Individual (where applicable);
"Relevant Date"	in respect of any Person the date of a Relevant Transfer from the Consultant to Cardiff University or any Replacement Consultant;
"Relevant Transfer"	a relevant transfer for the purposes of TUPE;
"Replacement Consultant"	any person, firm, company or other entity which may, either during, or on or after the termination or partial termination of the Agreement be engaged by Cardiff University to provide the Services or any part of the Services (or services which formerly comprised part of the Services or any part of such services); and
"TUPE"	Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, re-enacted or extended from time to time.

15. CONFIDENTIAL INFORMATION

- 15.1 The Consultant acknowledges that in the course of the provision of the Services both it and the Individual (where applicable) will have access to Confidential Information belonging to Cardiff University and the Group Companies. The Consultant also acknowledges that the disclosure of Trade Secrets or Confidential Information to an actual or potential competitor of Cardiff University is likely to cause serious damage to its business and cause immeasurable harm.
- 15.2 Accordingly, the Consultant agrees that it shall (and shall procure that the Individual (where applicable) shall) keep secret and confidential all Confidential Information and shall not at any time whether during the course of the provision of the Services or after the termination of the Agreement except in the proper provision of the Services or with the express written consent of Cardiff University for any reason whatsoever disclose such information or permit it to be disclosed to any third party or otherwise use such information or permit it to be used.
- 15.3 The obligations of confidence set out in this Clause shall not apply to:
- 15.3.1 any Confidential Information which is already in or (otherwise than through the Consultant's or the Individual's unauthorised disclosure (where applicable)) becomes available to, or within the knowledge of, the public generally; and
 - 15.3.2 any use or disclosure of Confidential Information authorised by Cardiff University or required by law.
- 15.4 For the purposes of this Clause, "**Confidential Information**" means:-
- 15.4.1 all information which relates to the business, finances, transactions, affairs, products, services, processes, equipment or activities of Cardiff University which is designated by Cardiff University as confidential; and
 - 15.4.2 all information relating to the matters set out in Clause 15.4.1 which comes to the knowledge of the Consultant and/or the Individual (where applicable) in the course of the provision of the Services and which, by reason of its

character and/or the manner of its coming to its/their knowledge, is evidently confidential;

- 15.4.3 any and all information relating to Material or Inventions; and
- 15.4.4 all information which relates to the business, finances, transactions, affairs, products, processes, equipment or activities of actual or potential clients, customers, suppliers or other persons which has been given to Cardiff University in confidence,
- 15.5 and shall include without limitation information as to any of the following subjects business plans, business methods, corporate plans, management systems, finances, maturing new business opportunities, the Works, research and development projects, concepts, ideas, new products or services, product formulae, source code, software, software designs, graphic designs, artwork, processes, Inventions, discoveries or know-how, sales statistics, sales techniques, marketing surveys and plans, costs, profit or loss, prices and discount structures, the names, addresses and contact details of customers and suppliers or potential customers and suppliers.
- 15.6 The Consultant shall (and shall procure that the Individual (where applicable) shall) at any time if so required by Cardiff University and in any event on the termination of the Agreement (whether lawful or otherwise):
 - 15.6.1 immediately deliver to Cardiff University without keeping any copies all documents, books, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of Cardiff University or its or their Clients, customers or suppliers or containing Confidential Information, any keys, and any other property of Cardiff University which is in the possession or under the control of the Consultant or the Individual (where applicable);
 - 15.6.2 irretrievably delete any information relating to the business or affairs of Cardiff University stored on any magnetic or optical disk or memory and all matter derived from such sources which is in the possession or under the control of the Consultant and/or the Individual (where applicable) outside the premises of Cardiff University; and
 - 15.6.3 provide a signed statement that the obligations under this Clause 14 have been fully complied with.

16. **INTELLECTUAL PROPERTY**

- 16.1 Where applicable, the Consultant warrants to Cardiff University that it:
 - 16.1.1 has obtained from the Individual a written and valid transfer in favour of the Consultant by way of present and future assignment with full title guarantee of all the Intellectual Property Rights in the Works:
 - (a) existing anywhere in the world;
 - (b) relating to their use in any sector and for any purpose;
 - (c) for the full term of such rights and any renewals;
 - (d) including (with effect from their creation) all Intellectual Property Rights in Works created or developed in future by the Individual in respect of the Services.
 - 16.1.2 has obtained from the Individual a written waiver in favour of the Consultant of their moral rights in the Works under the Copyright Designs and Patents

Act 1988 (and all analogous legislation worldwide) to the extent permitted by law;

- 16.1.3 and the Consultant agrees to provide to Cardiff University a copy of the above transfer(s) and waiver(s) on or before the Commencement Date or, if later, the date on which the relevant individual starts to provide the Services.
- 16.2 The parties foresee that the Consultant may make, conceive, develop and/or create Material in the course of the provision of the Services.
- 16.3 Where applicable, the Consultant procures that any Intellectual Property Rights relating to Material conceived, developed and/or created in the course of the Services by the Individual or any third party is hereby assigned to Cardiff University on creation.
- 16.4 If the Consultant alone or with others (including without limitation those others who are under its direction) makes, discovers, develops, or directs the discovery of any Invention in the course of providing the Services or in the course of any project for or on behalf of Cardiff University outside the scope of the Services it shall promptly disclose it to Cardiff University giving full particulars of it including all necessary drawings, know how, models, specifications or other Material related to the Invention, and the Consultant agrees and acknowledges that:-
- 16.4.1 all Inventions made, discovered, developed, or directed by the Consultant in the performance or provision of the Services or as a result of any project for or on behalf of Cardiff University outside the scope of the Services and all rights in such Inventions shall belong to Cardiff University; and
- 16.4.2 the provisions of this Clause 16 shall not entitle the Consultant to any compensation beyond the Fee to which it is entitled under Clause 5 of these Terms and Conditions.
- 16.5 The Consultant shall promptly disclose to Cardiff University (and promptly hand over on demand by Cardiff University and/or in any event, on expiry or termination of the Agreement for any reason) any and all Material written, originated, produced, devised, conceived, created, developed or directed by the Consultant during the course of providing the Services (whether alone or with others (including without limitation those others who are under its direction) and whether in the performance or provision of the Services or as a result of any project for or on behalf of Cardiff University outside the scope of the Services) and hereby acknowledges that by virtue of these Terms and Conditions and its position in relation to Cardiff University the Intellectual Property Rights in such Material vest automatically and forthwith in Cardiff University.
- 16.6 The Consultant hereby assigns to Cardiff University any and all Intellectual Property Rights (including without limitation any and all Inventions) created or owned by the Consultant which in any way relate to Cardiff University, and all Material embodying or reflecting such rights to the fullest extent permitted by law. Further, the Consultant shall record in writing any and all know-how and disclose the same to Cardiff University immediately upon creation. The Consultant undertakes to Cardiff University not to patent any Inventions or any other Intellectual Property Rights created and/or developed as a result of and/or in connection with the Agreement.
- 16.7 To the extent that the Consultant is not permitted by law to assign the Intellectual Property Rights the Consultant hereby grants to Cardiff University an exclusive, royalty-free licence for Cardiff University to use such Intellectual Property Rights for any purpose.
- 16.8 The Consultant hereby waives all and any moral rights (as defined in Chapter IV of the Copyright Designs and Patents Act 1988).

- 16.9 The Consultant shall, at the cost of Cardiff University and on demand, execute all such documents and do all such other acts as Cardiff University shall require to enable Cardiff University or its nominee to obtain the full benefit of any Invention (and all the rights therein) or Intellectual Property Rights in any Material to which Cardiff University is entitled and to secure (in the case of all registered Intellectual Property Rights) such registration or similar protection in any part of the world as Cardiff University may consider appropriate.
- 16.10 The Consultant shall give to Cardiff University, or any successor in title therefrom, such assistance as Cardiff University may require (in its absolute discretion) in connection with any dispute or threatened dispute directly or indirectly relating to any Invention or Intellectual Property Right in any Material or any associated right or registration or other protection in respect thereof (including but not limited to the execution of documents, the swearing of any declarations or oaths, the providing of information and the participation in any proceedings before any Court or tribunal).
- 16.11 The Consultant shall not disclose to any other person without the consent of Cardiff University being previously obtained (which if given may be subject to conditions) the details of any Invention or Material.
- 16.12 The Consultant shall seek Client approval (which may be withheld) for any and all licences, assignments, transfers or other disposals of any and all of Cardiff University's Intellectual Property Rights.
- 16.13 The Consultant hereby irrevocably authorises any director of Cardiff University for the time being in his name and on his behalf to execute any documents and to do everything necessary to give effect to this Clause 16.

17. **RESTRAINT ON ACTIVITIES**

- 17.1 The Consultant shall not (and shall procure that the Individual shall not (where applicable)) assign, transfer or subcontract any of its rights or obligations under these Terms and Conditions save to the extent necessary to appoint any Substitute.
- 17.2 The Consultant undertakes that it shall not (and shall procure that the Individual shall not (where applicable)) at any time after the termination of the Agreement for whatever reason represent itself (or themselves) as being in any way connected with the business or activities of Cardiff University.
- 17.3 The Consultant shall not (and shall procure that the Individual shall not (where applicable)) enter into any publicity or make any announcement with regard to the Agreement unless permitted in writing by Cardiff University.

18. **DATA PROTECTION**

- 18.1 The Consultant undertakes that it will ensure that both it and the Individual (where applicable) at all times during and in connection with the provision of the Services act in accordance with the GDPR, the Data Protection Legislation, and all applicable regulations, domestic legislation and any successor legislation relating to the protection of individuals with regards to the processing of personal data to which Cardiff University is subject. The Consultant warrants that it is fully aware of and will comply with (and will procure that the Individual (where applicable) is fully aware of and will comply with) Cardiff University's policy related to data protection and data security (available at <https://www.cardiff.ac.uk/public-information/policies-and-procedures/data-protection>) and that it will ensure that itself and the Individual (where applicable) comply with these policies on an ongoing basis.
- 18.2 Where applicable, the Consultant undertakes that it will bind the Individual with appropriate confidentiality obligations, all to the satisfaction of Cardiff University. The

Consultant warrants that it has appropriate policies and processes in place to ensure that the Individual complies with all applicable data protection rules.

- 18.3 Where applicable, the Consultant will procure that the Individual acknowledges and agrees that Cardiff University will hold personal data relating to the Individual which is necessary or reasonably required for the proper performance of the Agreement and in connection with the provision of the Services, including: (i) the administration of the Services and any work to which the Services relate (both during and after the provision of the Services by the Consultant); (ii) the performance of Cardiff University's responsibilities in relation to health and safety management; (iii) the conduct of Cardiff University's business; or (iv) where such provision is required by law (including to comply with its obligations regarding the retention of individual records). Such data will include, but not be limited to, the Individual's work history and experience, address, professional references, work, holiday and attendance records in relation to delivery of the Services, and other records. The Consultant will advise the Individual that the Individual's right of access to such data is as prescribed by law.

19. **FREEDOM OF INFORMATION**

- 19.1 The Consultant acknowledges that, in order to be compliant with the FOIA and the EIR, Cardiff University may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this Clause 19, the Consultant shall assist and co-operate with Cardiff University (at the Consultant's expense) to facilitate Cardiff University's compliance with the FOIA and/or EIR in that regard.

- 19.2 Without prejudice to the generality of its obligations under Clause 19.1, the Consultant shall:

19.2.1 transfer any request for Information, as defined by the FOIA, that it receives, to Cardiff University as soon as practicable after receipt and in any event within two (2) Working Days of receiving that Request for Information; and

19.2.2 provide Cardiff University with a copy of all Information in its possession or power that Cardiff University reasonably considers is relevant to the Request in the form that Cardiff University requires as soon as practicable and in any event within five (5) Working Days of Cardiff University requesting that Information (and any follow-up Information required by Cardiff University thereafter within two (2) Working Days of Cardiff University's follow-up request).

- 19.3 The Consultant further acknowledges that, notwithstanding the provisions of Clause 19.1, Cardiff University may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR to disclose Information that is or may be Confidential Information:

19.3.1 in certain circumstances without consulting with the Consultant; or

19.3.2 following consultation with the Consultant and having taken the Consultant's views into account;

19.3.3 provided always that where Clause 19.3.1 applies, Cardiff University shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Consultant prior to any disclosure.

- 19.4 Subject to Cardiff University complying with its obligations under this Clause 19, Cardiff University shall not be liable for any loss, damage, harm or other detriment suffered by the Consultant arising from the disclosure of any Information, whether or

not such Information is Confidential Information, falling within the scope of the FOIA or EIR.

19.5 The Consultant shall indemnify Cardiff University against all claims, demands, actions, costs, proceedings and liabilities that Cardiff University incurs due to the Consultant's breach of this Clause 19.

19.6 For the purposes of this Clause 19 only "Working Day" has the meaning given in section 10 of the FOIA.

20. **AUDIT**

20.1 The Consultant shall keep full and proper records in relation to the performance of its obligations under the Agreement and provide Cardiff University with any information regarding such records as may be reasonably requested in writing by Cardiff University and/or its internal or external auditors having regard to Cardiff University's duties and responsibilities as a public authority.

20.2 Any information requested in writing under Clause 20.1 shall be provided by the Consultant within a reasonable time being no longer than three (3) Working Days from the date of such written request and shall be provided in hard copy and, where available, also electronically. Cardiff University shall be entitled to have the originals of any document so requested.

20.3 Without prejudice to the Consultant's obligations under Clauses 20.1 and 20.2, Cardiff University shall be entitled to request, and the Consultant shall provide within a reasonable time, employment and relevant personal information in relation to the Consultant's personnel engaged upon or in connection with the provision of the Services for the purposes of anti-fraud measures such as data matching. The Consultant shall ensure that it takes any measures necessary pursuant to the Data Protection Act 2018 and any other relevant legislation to facilitate such disclosure lawfully and fairly.

21. **DISPUTE RESOLUTION**

21.1 If any dispute arises between the Parties out of or in connection with the Agreement, the matter shall be referred to senior representatives of each Party who shall use their reasonable endeavours to resolve it.

21.2 If the dispute is not resolved within 14 days of the referral being made under Clause 21.1, the Parties shall resolve the matter through mediation in accordance with the Centre for Effective Dispute Resolution's Model Mediation Procedure.

21.3 Until the Parties have completed the steps referred to in Clauses 21.1 and 21.2, and have failed to resolve the dispute, neither Party shall commence formal legal proceedings or arbitration except that either Party may at any time seek urgent interim relief.

22. **ASSIGNMENT AND SUB-CONTRACTING**

22.1 The Agreement is personal to the Consultant and, except in respect of any substitution permitted in accordance with Clause 4.6, the Consultant shall not assign or transfer or purport to assign or transfer to any other person any of your rights or sub-contract any of your obligations under the Agreement without Cardiff University's prior written consent (not to be unreasonably withheld). This restriction shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the Agreement.

22.2 In the event that the Consultant enters into any sub-contract in connection with the Agreement, the Consultant shall remain responsible to Cardiff University for the

performance of its obligations under the Agreement notwithstanding the appointment of any sub-Contractor and be liable for the acts and omissions of such sub-contractors.

23. **FORCE MAJEURE**

Neither Party shall have any liability for any failure or delay in performance of the Agreement to the extent the same results from a Force Majeure Event. The Party affected by such Force Majeure Event shall promptly notify the other Party in writing when such Force Majeure causes a delay or failure in performance and when it ceases to do so. If such Force Majeure Event continues for a continuous period of more than three months, the Party not affected may terminate the Agreement by written notice to the other Party.

24. **PREVENT**

The Consultant acknowledges that Cardiff University is subject to the requirements of Prevent and the Consultant (acting reasonably) will assist and cooperate, wherever possible, to enable Cardiff University to comply with its obligations under Prevent.

25. **NOTICES**

All notices and communications required to be sent to the Consultant by Cardiff University with respect to the Agreement shall be made in writing and sent by either first class mail or email to the Consultant's registered or head office address and if sent by the Consultant to Cardiff University sent by email to procurement@cardiff.ac.uk. Provided the relevant communication is not returned as undelivered, it shall be deemed to have reached the Party to whom it is addressed on the next Working Day following the date of transmission or posting.

26. **WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27. **SEVERABILITY**

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

27.2 If one Party gives notice to the other of the possibility that any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

28. **THIRD PARTY RIGHTS**

28.1 Unless it expressly states otherwise, the Agreement does not give any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

28.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any other person.

29. **VARIATION**

No addition, alteration or substitution of any of the terms and conditions contained within the Agreement will be binding or form part of the Agreement unless agreed in writing by the Parties.

30. **ENTIRE AGREEMENT**

The Agreement and the documents referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

31. **GOVERNING LAW AND JURISDICTION**

31.1 The 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 law of England and Wales.

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).



Statement of Work

32.

Version 0.1
October 2021

Document Purpose:
This document is to be used in support of engaging external service provision for any activities which will be provided to a Cardiff University Student, Employee, Team, Department, School or other business area.

- Engagement Overview**

Engagement duration	
Start date	
End date	
Where will the work be carried out?	
<i>Why is the identified Service Provider required/Could the role be carried out by an existing employee (or by recruiting a new employee)?</i>	

- **Statement of work**

- **Expected Deliverables / outcomes**
- **Assumptions/Specifications**
- **Acceptance Criteria of Delivery**
- **Engagement related expenses**
- **Professional services agreement**

The Terms and Conditions underpinning this agreement are Cardiff University – Terms and Conditions for the Engagement of Consultants

- **Insurance**
- **Schedule of rates**

Item description	Delivery schedule (Business days)	Cost (estimate)

- **Payment terms**

Phase	Completion date	Payments due

- **Acceptance and authorization**

The terms and conditions of the **Consultancy Agreement** apply in full to the services and products provided under this Statement of Work.

Signed by:

Cardiff University _____
Full name

_____ _____
Full name

Title

Title

Signature

Signature

Date

Date