

## MAINTENANCE AND REPAIR TERMS AND CONDITIONS

### VERSION 1.0, January 2023

The Contractor shall carry out and complete the Works in accordance with these Conditions for the University of Bristol, a higher education institution incorporated in England and Wales by Royal Charter with registration number RC000648 and an exempt charity whose principal offices are at Beacon House, Queens, Road, Bristol, BS8 1QU, United Kingdom (**University**).

The Contract between the Parties (**Contract**) shall comprise these Conditions, the Works Order, the Purchase Order, the Contract Documents and (as defined and in the manner described below).

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. **All Risks Insurance** means insurance which provides cover against any physical loss or damage to the Works, and against the reasonable costs of the removal and disposal of debris and of any shoring or propping of the Works which results from such physical loss or damage, but excluding the cost necessary to repair, replace or rectify:
- (a) property which is defective due to:
    - (i) wear and tear;
    - (ii) obsolescence; or
    - (iii) deterioration, rust or mildew;
  - (b) any part of the Works lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective;
  - (c) loss or damage caused by or arising from:
    - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government de jure or de facto or public, municipal or local authority;
    - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event; or
    - (iii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
- 1.2. **CDM Regulations** means the Construction (Design and Management) Regulations 2015;
- 1.3. **Commencement Date** means the date for commencement of the Works on the Site as notified to the Contractor by the University from time to time;
- 1.4. **Conditions** means these Maintenance and Repair Terms and Conditions;
- 1.5. **Construction Industry Scheme (or CIS)** means the Construction Industry Scheme under the Finance Act 2004;
- 1.6. **Construction Period** means the period from the Commencement Date to the Date of Practical Completion;
- 1.7. **Contract Documents** means the drawings and/or specification documents referred to in a Work Order or such other drawings or specification that the University may provide to the Contractor in relation to the carrying out of the Works;
- 1.8. **Contract Sum** means the sum agreed in writing between the University and the Contractor (or in the absence of such agreement, a reasonable sum determined at the sole discretion of the University) for the carrying out of the Works, such sum to be set out in the Purchase Order or as otherwise notified to the Contractor in writing by the University.
- 1.9. **Contractor** means the contractor engaged by the University to carry out the Works under the Works Order and/or Purchase Order;
- 1.10. **Date for Completion** means the date for completion of the Works as set out in the Works Order or as otherwise notified to the Contractor by the University or such extension thereto allowed in accordance with clause 10;
- 1.11. **Date of Practical Completion** means the date on which the Contractor achieves Practical Completion of the Works;
- 1.12. **Defects Rectification Period** means 12 months commencing on the Date of Practical Completion;
- 1.13. **Existing Structure** means the existing structure and fabric of the relevant building(s) on the Site in or adjacent to which the Works are being carried out;
- 1.14. **Goods** means any goods to be supplied by the Contractor as part of the Works;
- 1.15. **Interest Rate** means the annual rate of 4% above the base lending rate from time to time of the Bank of England.
- 1.16. **Insolvent** means insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996;
- 1.17. **Joint Names Policy** means a policy of insurance which includes the University and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or recognised as an insured thereunder;
- 1.18. **Material** means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials developed by the Contractor or its agents, sub-contractors and employees as part of or in relation to the Works in any form or media, including without limitation computer programs, data, reports, plans, models, designs, products, scripts, images, drawings, recordings and specifications (including drafts and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them for any purpose relating to the Works;
- 1.19. **Party** means the University or the Contractor, and "Parties" means both of them;
- 1.20. **Practical Completion** means the completion of the Works to the satisfaction of the University and in accordance with this Contract;
- 1.21. **Purchase Order** means a purchase order(s) issued by the University in relation to the Works or part thereof and subject to these Conditions;
- 1.22. **Safety Legislation** means the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but not limited to, the General Product Safety Regulations 2005, the Control of Substances Hazardous to Health Regulations 2002, the Construction (Design Management Regulations) 2015 and all other legislation, codes of practice and guidance from time to time amended imposing legal requirements with respect to health and safety at work and/or the safety of any goods and equipment used in carrying out of the Works and the health and safety of the users of such goods and equipment.
- 1.23. **Site** means the site and buildings where the Works are to be carried out as set out in the Work Order or as notified to the Contractor by the University;
- 1.24. **Statutory Requirements** means any Act of Parliament, instrument, rule or order made under any Act of Parliament having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has any jurisdiction with regard to the Works or with whose systems or property the Works are or will be connected;
- 1.25. **Variation** means any addition to, omission from or other change in the Works or the period or order in which the Works are to be carried out;
- 1.26. **Works** means the Works referred to in the Works Order, and as may be more particularly shown, described and defined in the Contract Documents; and
- 1.27. **Works Order** means a works order issued by the University describing the Works and subject to these Conditions;

Words or expressions stated in bold shall denote defined terms used throughout these Conditions and references in these Conditions to "writing" or "written" shall include email but not fax.

Any references to clauses or sub-clauses are references to clauses or sub-clauses within these Conditions unless otherwise stipulated in these Conditions.

## **2. BASIS OF CONTRACT**

- 2.1. The Works Order shall constitute an offer and shall be deemed to be accepted on the earlier of:
- (a) the Contractor issuing a written acceptance of the Works Order; or
  - (b) the Contractor doing any act consistent with fulfilling the Works Order, at which point a contract subject to these Conditions shall come into existence.
- 2.2. Performance by the Contractor of its obligations under this Contract shall not entitle the Contractor to claim any payment for Works carried out where a Purchase Order and/or Works Order has not been issued by the University.
- 2.3. Only Work Orders and Purchase Orders sent by email from an email address ending "@bristol.ac.uk" or "@bris.ac.uk" shall be valid unless the University notifies the Contractor in writing otherwise.
- 2.4. These Conditions shall apply to the exclusion of any other terms or conditions that the Contractor seeks to impose or incorporate or which are implied by trade, custom, practice or any course of dealing between the parties.

## **3. GENERAL OBLIGATIONS**

- 3.1. The Contractor shall carry out and complete the Works in accordance with this Contract.
- 3.2. Insofar as the Contractor is obliged to design the Works or any part of the Works, the Contractor shall exercise his design obligation with the standard of skill, care and diligence which a competent and suitably qualified person performing such design obligations could reasonably be expected to exercise.
- 3.3. Each Party acknowledges that they are aware of and undertake to the other that in relation to the Works and Site they will duly comply with the CDM Regulations and more particularly, the Contractor shall perform the dutyholder roles of "Principal Designer" and "Principal Contractor" in compliance with the CDM Regulations from the earliest date possible in relation to the Works.
- 3.4. The Contractor shall carry out its duties under this Contract in compliance with all relevant planning agreements, permissions, conditions, Statutory Requirements and regulations and with regard to all deeds and documents relating to the Works which the University has brought to the attention of the Contractor.
- 3.5. The Contractor shall use reasonable skill and care not use, permit to be used or specify for use, and will use reasonable skill and care to ensure that others do not use, permit to be used or specify for use in the design and / or construction of the Works any materials which are not (or which incorporate substances which are not) in conformity with relevant British or European standards or Codes of Practice or generally known within the construction industry at the time of specification and / or use to be dangerous or hazardous to health and safety or deleterious to the integrity or durability of the Works (or any part(s) thereof) in the particular circumstances in which they are used or which are otherwise not in accordance with legal and regulatory requirements and/or the guidelines contained in the edition of the publication 'Good Practice in the Selection of Construction Materials' published by The British Council for Offices current at the date of this Contract. If, in the performance of its duties under this Contract the Contractor becomes aware that it or any other person has specified or used any such products or materials, the Contractor shall notify the University in writing immediately and propose alternative materials for use, provided always that the Contractor shall not be entitled to any additional monies or to any extension of time under this Contract as a result of the subsequent specification and / or use of such alternative materials.
- 3.6. The Contractor shall maintain at all times and shall not do or omit to do anything which may cause the University to lose all or any of the licences, permissions, authorisations, consents and permits that the Contractor may need to carry out the Works, or upon which the University relies (as the case might be) in connection with this Contract.

- 3.7. The Contractor shall cooperate with the University in all matters relating to the Works and shall comply with the University's reasonable instructions and mandatory policies communicated to the Contractor and/or published within the University's website from time to time.
- 3.8. The University expects the Contractor to notify it of any assumptions and/or dependencies which must be met for the fulfilment of its obligations and the University shall not be liable for the Contractor's failure to identify the same nor shall the Contractor be relieved from performing its obligations as result of such failure.
- 3.9. The Contractor warrants that it has full capability, capacity, authority and all necessary consents to perform this Contract.
- 3.10. No inspection or approval or review by the University or its agents, and no omission to inspect or review or to disapprove, shall negate or diminish any duty or liability of the Contractor under or in connection with this Contract.
- 3.11. The Contractor shall procure that all product guarantees relating to the Works are delivered to the University (or assigned to the University as necessary) by the Date of Practical Completion.
- 3.12. The Contractor shall:
- (a) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that it fulfils its obligations under this Contract; and
  - (b) observe and fully comply with and ensure that all people employed or otherwise engaged by it (including but not limited to sub-contractors) shall throughout the Construction Period observe and comply fully with: i) the requirements of all Safety Legislation; ii) any reasonable security requirements that apply on Site; iii) the University's Group Health and Safety Policy (as updated from time to time) which can be accessed at <https://www.bristol.ac.uk/safety/media/po/group-health-safety-policy.pdf>; and iv) any additional policies, rules or instructions of the University made known to the Contractor (or its sub-contractors) by the University.
- 3.13. The University warrants that the Site is free from hazardous materials, including, without limitation, asbestos and other toxic materials requiring specialist attention. If hazardous materials are found by the Contractor the Contractor shall advise the University accordingly and the University shall issue instructions to the Contractor (or to specialist contractors) to procure the removal of such materials. Where the University instructs the Contractor to undertake or procure the removal of such materials such an instruction shall be an instruction requiring a Variation and the provisions of clause 4 shall apply.
- 3.14. Conditions relating to Goods:
- (a) A delivery note must accompany the Goods and specify the type and quantity of Goods delivered and the Works Order and/or Purchase Order number.
  - (b) Goods shall not be delivered by instalments without the University's written consent or as specified on the Works Order and/or Purchase Order.
  - (c) Delivery of the Goods shall be completed once all of the Goods have been unloaded at the Site or agreed location (**Delivery**).
  - (d) The Contractor must comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods. The Goods must be UKCA marked and must conform with all relevant standards applicable in Great Britain at the date of Delivery;
  - (e) The University may reject Goods which are above or under the quantity ordered and if the University accepts such Delivery a pro rata adjustment shall be made to the invoice of the Goods. The University's signature on any delivery note is evidence only of the number of packages received and not evidence of acceptance of the Goods.
  - (f) Acceptance of the Goods will not take place until the University has had reasonable time (which shall be no less than 10 days) to inspect of the Goods after Delivery (or installation if the Goods form part of the Works) and if there are Goods with latent defects these will not be deemed accepted until reasonable time (which shall be no less than 10 days) has passed after the defect becomes apparent to

the University. Acceptance of the Goods under this sub-clause 3.14 (f) shall not affect any rights or remedies that the University may have under this Contract or otherwise.

- (g) The Contractor warrants that the Goods:
- (i) will be sold to the University with valid and unrestricted title;
  - (ii) correspond with their description and specification under the Works Order and/or the Purchase Order or otherwise agreed in writing;
  - (iii) are of satisfactory quality and fit for any purpose held out by the Contractor or made known to the Contractor by the University expressly or by implication;
  - (iv) are free from defects in design, materials and workmanship and will remain so for the longer of 12 months or any manufacturer's warranty period; and
  - (v) comply with all applicable Statutory Requirements.
- (h) To the extent that the Goods are to be installed by the Contractor as part of the Works, the Contractor shall install the Goods in a good and workmanlike manner and make good any damage caused as a result of installation. The Contractor shall test and inspect the Goods following installation and notify the University once installation has been completed. The University shall be deemed to have accepted the Goods after completion of installation when the Contractor has certified successful testing and that the Goods operate in accordance with their specification.
- (i) Risk in the Goods shall pass to the University on Delivery (where the Contractor is not to install the Goods as part of the Works) or upon Practical Completion of the Works (where the Goods form part of the Works). Risk in the Works shall pass to the University upon Practical Completion of the Works and the Contractor having vacated the Site.
- (j) Title in the Goods shall pass to the University on the earlier of: i) payment for the Goods by the University; or ii) Delivery (where the Contractor is not to install the Goods as part of the Works) or acceptance of the Goods in accordance with clause 13.4 (h) (where the Goods form part of the Works).

#### **4. VARIATIONS**

- 4.1. Subject to the Contractor's right to raise reasonable objections, the University may issue instructions requiring a Variation. Any oral instructions for a Variation given by the University shall be confirmed in writing by the University and/or the Contractor.
- 4.2. Variations shall be valued by the Contractor on a fair and reasonable basis with reference to, where available and relevant, rates and prices contained in any pricing document incorporated into this Contract. The Contract Sum shall be adjusted to account for any Variation by agreement between the Parties in writing or in the absence of such agreement by a reasonable sum determined at the sole discretion of the University.
- 4.3. No instruction issued by the University requiring a Variation shall invalidate this Contract.

#### **5. COMMENCEMENT AND COMPLETION**

- 5.1 From the Commencement Date the Contractor shall be obliged to carry out the Works, including (where provided for in the Works Order or Contract Documents) the design of the Works, together with the ordering of Goods, in a timely manner so as to ensure that the Works achieve Practical Completion on or before the Date for Completion.

#### **6. CONTRACT SUM AND PAYMENT**

- 6.1. The Contract Sum is exclusive of VAT. In relation to any payment to the Contractor under this Contract, the University shall in addition pay the amount of any VAT properly chargeable in respect of it.
- 6.2. If at any time up to the payment of the Contract the University becomes a "Contractor" for the purposes of the CIS, the obligation of the University to make any payments under this Contract shall be subject to the provisions of the CIS.
- 6.3. The University shall pay the Contract Sum in accordance with this clause 6.
- 6.4. The University shall issue a Purchase Order or Purchase Orders to the Contractor for the Contract Sum or part of the Contract Sum.

- 6.5. The Contractor shall be entitled to submit an invoice for the Contract Sum following Practical Completion of the Works.
- 6.6. Each invoice submitted by the Contractor must be valid and to be deemed valid an invoice must: correspond with the amount of the Contract Sum and currency specified in the Purchase Order; quote the Purchase Order number and be issued to the University by email to the following email address: [purchasing-invoices@bristol.ac.uk](mailto:purchasing-invoices@bristol.ac.uk).
- 6.7. The due date (**Due Date**) for payment of an invoice shall be the date the University receives a valid invoice and the final date for payment (**Final Date for Payment**) shall be 30 days after the Due Date.
- 6.8. If the University fails to pay any undisputed amounts due under this Contract by the Final Date for Payment, the University shall pay interest on the overdue amount of such undisputed amounts at the rate of four per cent (4%) per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the Final Date for Payment of the overdue amount whether before or after judgment. The University shall pay the interest together with the overdue amount.
- 6.9. The University may set off any liability of the Contractor to the University against any liability of the University to the Contractor, whether or not either liability arises under this Contract. Any exercise by the University of such rights of set off shall not limit or affect any other rights or remedies available to the University under this Contract or otherwise.

#### **7. ACCESS TO THE SITE AND TO THE WORKS**

- 7.1. The University will give the Contractor suitable access to the Site during the Construction Period to enable the Contractor to carry out and complete the Works in accordance with this Contract.

#### **8. FACILITIES FOR THE CONTRACTOR**

- 8.1. The University will allow the Contractor the non-exclusive use of the facilities at the Site (if any) free of charge during the Construction Period, including but not limited to electricity; water; site security; welfare facilities; and any other facilities that are agreed by the University in writing.

#### **9. CORRECTION OF DEFECTS**

- 9.1. Without prejudice to any other right or remedy available to the University under this Contract, the Contractor shall promptly make good defects or other faults in the Works without cost to the University which:
- (a) appear during the Defects Rectification Period; and
  - (b) are caused by materials, workmanship or design not being in accordance with this Contract; and
  - (c) are notified in writing by the University to the Contractor not later than seven days after the expiry of the Defects Rectification Period.

#### **10. DELAYS AND EXTENSIONS OF TIME**

- 10.1. If it becomes apparent that the Works will not be completed by the Date for Completion for reasons beyond the control of the Contractor including, without limitation, compliance with any instruction of the University requiring a Variation (which has not been issued due to a default of the Contractor) or delay caused any FM Event under clause 17.3, then the Contractor shall thereupon in writing so notify the University and the University shall allow such an extension of time for the carrying out and completion of the Works as may be reasonable.

#### **11. STATUTORY REQUIREMENTS**

- 11.1. Unless otherwise agreed the University at its cost shall make all necessary statutory applications, give all notices and pay all fees required by law or by any government organisation (of any tier) including, without limitation, planning permission and listed building consent as the same may be modified and amended from time to time and which are necessary for the carrying out and completion of the Works.
- 11.2. If the Contractor becomes aware of any divergence between the Statutory Requirements and this Contract or between the Statutory Requirements and any instruction issued by the University under this Contract he shall immediately give to the University a written

notice specifying the divergence. If the Works require changes due to any divergence notified under this clause 11.2 then such changes shall be treated as a Variation.

## **12. TERMINATION**

- 12.1. The University may terminate this Contract immediately by written notice if the Contractor:
- (a) commits a material breach of its obligations under this Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or
  - (b) becomes Insolvent or any similar insolvency event occurs or action or proceeding is taken to manage the affairs of or wind up the Contractor.
- 12.2. Upon termination or expiry of this Contract the Contractor shall:
- (a) immediately deliver to the University any Goods and Material (whether or not complete) relating to the Works it has in its possession in respect of which title has passed to the University, failing which the University may enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - (b) cease carrying out the Works in an orderly manner and promptly vacate the Site; and
  - (c) provide all assistance reasonably required by the University to facilitate the smooth transition of the Works to the University or any replacement contractor appointed by it.
- 12.3. Termination or expiry of this Contract, however arising, shall not affect any of the Parties' rights remedies, obligations or liabilities that have accrued up to the date of termination or expiry. Any provision of this Contract that expressly or by implication is intended to continue in force on or after termination or expiry of this Contract shall remain in full force and effect.

## **13. LIABILITY AND INSURANCE**

- 13.1. Nothing in this Contract shall exclude or limit liability of either Party for:
- (a) death or personal injury resulting from negligence or wilful default or;
  - (b) any other matter for which liability may not be excluded or limited by law.
- 13.2. The University's liability to the Contractor shall not exceed the total value of the Works carried out under this Contract.
- 13.3. The Contractor's liability for breach of this Contract shall not exceed 200% of the total value of the Works except for liability arising:
- (a) from a breach of clause 3.2 which shall be limited to the level of professional indemnity insurance the Contractor is obliged to maintain under clause 13.9; and
  - (b) under clauses 13.5 and/or 13.6 which shall be unlimited.
- 13.4. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
- 13.5. The Contractor shall be liable for, and shall indemnify the University against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the Works (including any rectification of the Works during the Defects Rectification Period) to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any person employed or engaged by the Contractor on or in connection with the Works or any part of them.
- 13.6. The Contractor shall be liable for, and shall indemnify the University against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (other than loss, injury or damage to the Works but including the Existing Structures) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works (including any rectification of the Works during the Defects Rectification Period) and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any person employed or engaged by the Contractor on or in connection with the Works or any part of them.

- 13.7. Unless otherwise required by the University and agreed in writing between the parties, the Contractor shall maintain insurances covering its legal liabilities to the University under this Contract, as an employer and to third parties, for the duration of the Construction Period and the Defects Rectification Period. Accordingly, the Contractor shall take out and maintain:
- (a) public liability insurance of at least ten million pounds (£10,000,000) in respect of any one occurrence or series of occurrences;
  - (b) employers liability insurance of at least five million pounds (£5,000,000) per occurrence or series of occurrences; and
  - (c) motor third party liability insurance for the amount of at least one million pounds (£1,000,000).
- 13.8. The Contractor shall take out and maintain with the insurers approved by the University a Joint Names Policy for All Risks Insurance for the Works for the full reinstatement value of the Works and shall maintain such policy up to and including the Date of Practical Completion.
- 13.9. Where the Contractor is obliged to design the Works or part of the Works the Contractor shall take out and maintain for the duration of this agreement and for the period of six years from Practical Completion professional indemnity insurance for at least five million pounds (£5,000,000) in respect of any one claim in any one period of insurance relating to any design work to be carried out by the Contractor;
- 13.10. The Contractor shall produce copies of current insurance certificates showing details of cover in respect of each insurance required under this Contract: i) prior to the commencement of the Works; and ii) upon any renewal of (or material change to) such insurance policies during the Construction Period or Defects Rectification Period.

## **14. SUB-CONTRACTING**

- 14.1. The Contractor shall not delegate, transfer or sub-contract any of its obligations under this Contract (**Sub-Contract**) without the University's prior written consent. Where the University gives consent to any Sub-Contract, the Contractor shall be responsible for any works it sub-contracts to a third party as if it had performed those works itself and be liable to the University for the acts or omissions of its sub-contractors as though they are its own.
- 14.2. The Contractor shall ensure that all Sub-Contracts contain a provision requiring the Contractor:
- (a) to consider in a timely manner whether each invoice received under a Sub-Contract is valid and undisputed; and
  - (b) to pay each invoice within 30 days from the date on which the Contractor determines each invoice to be valid and undisputed.
- 14.3. The Contractor shall comply with its obligations under each Sub-Contract as prescribed under clause 14.2, and shall provide the University on demand with evidence of compliance with clause 14.2 and this clause 14.3.

## **15. COPYRIGHT**

- 15.1. The Contractor grants to the University, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Contractor for any purpose relating to the Works.
- 15.2. The licence granted under clause 15.1 allows the University to use the Material in connection with any extension of the Works.
- 15.3. The licence granted under clause 15.1 carries the right to grant sub-licences and is transferrable to third parties without the consent of the Contractor.
- 15.4. The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and / or provided.

## **16. FREEDOM OF INFORMATION AND DATA PROTECTION**

- 16.1 The Contractor acknowledges that the University is subject to the requirements of the Freedom Of Information Act 2000, (**FOIA**), and the Environmental Information Regulations 2004 (**EIR**) and the Contractor agrees to assist and cooperate with the University (at the Contractor's expense) as required by the University in relation to these laws to allow the University to reply to any requests within the time limits contained in section 10 of the FOIA and 5 of the EIR.

- 16.2 Any requests for information under clause 16.1 received by the Contractor shall be forwarded to the University immediately.
- 16.3 The parties shall process any personal data under or in connection with this Contract strictly in compliance with the Data Protection Laws. For the purpose of this Contract, **Data Protection Laws** shall mean any applicable data protection and privacy legislation which applies to either party from time to time, including without limitation: a) the GDPR and the e-Privacy Directive and relevant member state laws in the European Economic Area; and b) in relation to the United Kingdom ("UK"), the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (amended by SI 2011 no. 6), the UK GDPR and any code of practice and guidance published by a relevant regulator or a court of law. **UK GDPR** has the meaning given to it in the DPA 2018, and **personal data** and **process** have the meaning given to them in the relevant part of the Data Protection Laws, as applicable.
- 17. GENERAL PROVISIONS**
- 17.1. **Confidentiality:** The Contractor undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the University: a) other than to its personnel, advisers or sub-contractors who need to know, and only to the extent they need to know, such information for the performance of the Contractor's obligations under this Contract; or b) as may be required by law or a court of competent jurisdiction. The Contractor shall not use (or allow use of) such confidential information for any purpose other than to perform its obligations under this Contract.
- 17.2. The Contractor undertakes that it shall not at any time disclose to any person (other than to those of its personnel who need to know such information for the performance of the Contractor's obligations or as may be required by law or a court of competent jurisdiction) any confidential information concerning the business, affairs, University's, clients or suppliers of the University and shall not use such confidential information for any purpose other than to perform its obligations under this Contract.
- 17.3. **Force majeure:** Neither Party shall be in breach nor liable for delay in performing, or failure to perform, any of its obligations under this agreement to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Contractor, the Contractor's personnel or any other failure in the Contractor's supply chain (**FM Event**). In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations, provided that a) it promptly notifies the other Party of the FM Event as its estimated duration; b) it takes reasonable steps to avoid or mitigate the FM Event or its consequences; and c) time for performance of the corresponding obligations of the other Party shall be prolonged to the same extent as the obligations of the affected Party. If the period of delay or non-performance continues for a continuous period of thirty (30) days, the Party not affected may (without detriment to other termination rights under this Contract) terminate this Contract by giving written notice to the affected Party.
- 17.4. **Assignment and other dealings:** The University may at any time assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract. The Contractor may not assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights of obligations under this Contract without the University's prior written consent.
- 17.5. **Severance:** If any court or competent authority finds that any provision or part-provision of this Contract invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.
- 17.6. **Amendment:** No amendment to this Contract will be effective unless recorded in writing and signed by the Contractor and the University.
- 17.7. **Waiver and Cumulative Remedies:** A waiver of any right under this Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law.
- 17.8. **Entire Agreement:** This Contract 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. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 17.9. **Third party rights:** A person who is not a Party to this Contract shall not have any rights to enforce its terms.
- 17.10. **Notices:** Notices given to a party under this Contract must be in writing and shall be either: i) delivered by hand or by pre-paid first-class post or other next working day delivery service at the notified party's registered office (if a company) or its principal place of business (in any other case); or ii) sent by email to the email addresses set out in the Purchase Order (or otherwise provided in writing by the notifying party from time to time). Any notice shall be deemed to have been received: i) if delivered by hand, at the time the notice is left at the proper address; ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting; and iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt when business hours resume. This clause 17.10 does not apply to the service of any proceedings or documents in any legal action.
- 17.11. **Modern Slavery:** The Contractor shall comply with all anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and shall not in any circumstances engage in, promote or otherwise support child labour, human trafficking or any other means of exploitation. The Contractor shall take reasonable steps to monitor and manage its own direct supply chain and sub-contractors compliance with all anti-slavery and human trafficking laws, statutes and regulations from time to time in force. If requested by the University, the Contractor shall demonstrate effective implementation of its policies and procedures in relation to equality, diversity, human rights and modern slavery and take specific action to make any necessary changes.
- 17.12. **Governing law and jurisdiction:** This Contract and any dispute or claim arising out of in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of in connection with this agreement or its subject matter (including non-contractual disputes or claims).
- 17.13. **Limitation Period:** No proceedings shall be commenced under this Contract more than six years after the Date of Practical Completion of the Works or, if earlier, more than six years after the date of termination of this Contract.

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