**Terms and Conditions**

**Supply of Services**

**Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_202\***

**Swansea University**

**and**

**[Company]**

**Contract for [insert]**

**SUPPLY OF SERVICES**

**CONTRACT DETAILS**

**DATE:**

|  |  |
| --- | --- |
| **Contract No.** | [CONTRACT NUMBER] |
| **Customer:** | Swansea University (Charity Registration No. 1138342) |
| **Customer's address:** | Swansea University, Singleton Campus, Sketty, Swansea, SA2 8PP |
| **Customer's Representative:** | Name: [NAME]Title: [TITLE]Email: [EMAIL]Telephone: [Telephone]Postal Address: [POSTAL ADDRESS] |
| **Supplier:** | [COMPANY NAME] (No. [NUMBER]) |
| **Supplier's address:** | [ADDRESS] |
| **Supplier's VAT number:** | [NUMBER] |
| **Supplier's Representative:** | Name: [NAME]Title: [TITLE]Email: [EMAIL]Telephone: [NUMBER]Postal Address: [POSTAL ADDRESS] |
| **Services Start Date:** | [[DATE] **OR** The date the Contract has been signed by both parties.] |
| **Expiry Date:** | [[DATE] **OR** the [first] anniversary of the Commencement Date] |
| **Services:** | [SERVICES DESCRIPTION] |
| **[Key Deliverables:]** | [KEY DELIVEREABLES]  |
| **Charges:** | [£], as detailed in Schedule [X] |
| **[Special terms:]** | [In the Conditions:[(a) Clause [NUMBER] deleted: The entire text of clause [NUMBER] is deleted and replaced with the words “Not used”.][(b) Clause [NUMBER] added: This clause is inserted into the Conditions: [NEW CLAUSE].][c) Clause [NUMBER] amended: This clause is amended to read as follows: [AMENDED CLAUSE IN FULL].]] |
| **Schedules:** | Schedule 1: ServicesSchedule 2: ChargesSchedule 3: Data Processing AgreementSchedule 4: Mandatory Policies[Schedule 5: Supplier’s Tender] |

1. This Contract is made up of the following:

(a) The Contract Details

(b) The Agreed Terms and Conditions

(c) The additional Schedules specified in the Contract Details.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

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

Signed on behalf of **Swansea University**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Position:

Date:

Signed on behalf of [**Supplier**]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Position:

Date:

Agreed terms and conditions

# **Interpretation**

## **Definitions**:

ADR Notice: has the meaning given to it in clause 10.3.

Business Day**:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges**:** the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Contract Details and Schedule 2.

Conditions**:** these terms and conditions set out in clause ‎1 to clause 18 (inclusive).

Contract**:** the contract between the Customer and the Supplier for the supply of the Services in accordance with the Contract Details, the Mandatory Policies, these Conditions and any Schedules.

Control**:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression ‘change of control’ shall be construed accordingly.

Customer Materials**:** all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

Customer’s Representative: means the representative appointed by the Customer and identified in the Contract Details;

Deliverables**:** all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts), and the Key Deliverables set out in the Contract Details.

EIRs: the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Expiry Date: the date on which the Contract expires.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: an event affecting the performance by a party of its obligations under this Contract arising from acts, omissions or non-events 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 Supplier, the Supplier’s Personnel or any other failure in the Supplier’s supply chain.

Group**:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Information: has the meaning given under section 84 of the FOIA.

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

Mandatory Policies**:** the Customer's mandatory policies for contracts set out in Schedule 4, as amended by notification to the Supplier from time to time.

Prohibited Act: the following constitute Prohibited Acts:

1. To directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage:
	1. To induce that person to perform improperly a relevant function or activity;
	2. To reward that person for improper performance of a relevant function or activity;
	3. Under the Bribery Act 2010;
	4. Under legislation or common law concerning fraudulent acts; or
	5. Defrauding, attempting to defraud or conspiring to defraud the Customer.

Purchase Order**:** the Customer's order for the Services submitted by the Customer.

Regulations: has the meaning given to it in clause 11.3(a).

Request for Information: a request for information or an apparent request under the FOIA or the EIRs.

Services**:** the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to this Contract, as described in Schedule 1.

Services Start Date**:** the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

Supplier IPRs**:** all Intellectual Property Rights either subsisting in the Deliverables (excluding any Customer Materials incorporated in them) or otherwise necessary or desirable to enable a Customer to receive and use the Services.

Supplier’s Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any subcontractors who are engaged in the supply of Goods from time to time.

Supplier’s Representative: means the representative appointed by the Supplier and identified in the Contract Details;

Supplier’s Tender: the Supplier’s response to the tender.

**Welsh Language Standards Compliance Notice:** Swansea University’s Compliance Notice – Section 44 Welsh Language (Wales) Measure 2011, issued on 29th September 2017 and includes any subsequent amendments or updates that come into force during the Term of the Contract.

## **Interpretation**:

### Clause, schedule and paragraph headings are for ease of reference only and shall not affect the interpretation of this agreement.

### The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.

### A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

### Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### A reference to writing or written includes email.

### Unless the context otherwise requires:

#### words in the singular shall include the plural and vice versa; and

#### a reference to one gender shall include reference to the other genders.

### A reference to a party includes that party’s successors and permitted assigns.

### Reference to a person shall include any individual, firm, unincorporated association or body corporate.

# **Commencement and Term**

## This Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until the Expiry Date.

# **Supply of Services**

## The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with this Contract.

## In performing the Services the Supplier shall meet any performance dates specified in Schedule 1.

## In supplying the Services, the Supplier shall:

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

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

### appoint the Supplier’s Representative who shall have authority to contractually bind the Supplier on all matters relating to the Services;

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

### ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in this Contract;

### ensure that the Services and Deliverables will conform in all respects with the service description set out in Schedule 1 and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Customer;

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

### ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;

### comply with:

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

#### the Mandatory Policies.

### observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time and are notified to the Supplier;

### hold all Customer Materials in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;

### not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and

### notify the Customer in writing immediately upon the occurrence of a change of control of the Supplier.

# **Customer's Obligations**

## The Customer shall:

### co-operate with the Supplier in all matters relating to the Services;

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

### provide such information as the Supplier may reasonably request and the Customer considers necessary, in order to carry out the Services in a timely manner.

## A failure by the Customer to comply with the terms of this agreement can only relieve the Supplier from complying with its obligations under this agreement with effect from the date on which the Supplier notifies the Customer in writing and in reasonable detail of the Customer's failure and its effect or anticipated effect on the Services.

# **Title to Deliverables and Customer Materials**

## Title to any Deliverables that are goods or in any physical media on which Deliverables are stored shall pass to the Customer on the earlier of their delivery to the Customer or payment of the Charges for them. The Supplier transfers the Deliverables to the Customer free from all liens, charges and encumbrances.

## All Customer Materials are the exclusive property of the Customer.

# **Intellectual Property**

## The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

## The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Supplier IPRs for the purpose of receiving and using the Services during the term of the Contract and for the duration of any exit assistance services provided under clause ‎12(b).

## The Customer may sub-licence the rights granted in clause ‎6.2 to the Customer's Group and its customers.

## The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Contract for the purpose of providing the Services to the Customer in accordance with this Contract.

## The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by the Customer and its licensees and sub-licensees. This clause ‎6.5 shall survive termination of the Contract.

# **Charges and Payment**

## In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause ‎7.

## All amounts payable by the Customer exclude amounts in respect of VAT which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

## The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer at the intervals specified in Schedule 2. Each invoice shall include all reasonable supporting information required by the Customer.

## The Customer shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.

## If the Customer fails to make any payment due to the Supplier under this Contract by the due date for payment, then, without limiting the Supplier's remedies under clause ‎10, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

## In relation to payments disputed in good faith, interest under clause ‎7.5 is payable only after the dispute is resolved, on sums found or agreed to be due, from the date the dispute is resolved until payment.

## The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

## The Supplier shall not be entitled to retain or set off any amount due to the Customer under the Contract.

# **Limitation of Liability**

## Nothing in this Contract:

### shall limit or exclude the Supplier's or the Customer's liability for:

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

#### fraud or fraudulent misrepresentation;

#### breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

#### any other liability which cannot be limited or excluded by applicable law; or

### shall limit or exclude the Supplier's liability under clause ‎6.5 of these Conditions.

## Subject to clause ‎8.1 of these Conditions:

### neither party to this Contract shall have any liability 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 this Contract;

### the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to one hundred and twenty five per cent (125%) of the total charges paid and payable by the Customer under this Contract; and

### the Customer's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to one hundred and twenty five per cent (125%) of the total charges paid by the Customer under this Contract.

## Notwithstanding the provisions of clause ‎8.2(a), the losses for which the Supplier assumes responsibility and which shall (subject to clause ‎8.2(b) and clause ‎8.2(c)) be recoverable by the Customer include:

### sums paid by the Customer to the Supplier pursuant to this Contract, in respect of any services not provided in accordance with the terms of this Contract;

### wasted expenditure;

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

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

### anticipated savings.

## No amounts awarded or agreed to be paid under clause ‎6.5 shall count towards the cap on the Supplier's liability under clause ‎8.2(b).

## The rights of the Customer under this Contract are in addition to, and not exclusive of, any rights or remedies provided by common law.

# **Insurance**

During the term of this Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, all insurance cover required by law and professional indemnity insurance, public liability insurance and employers liability insurance to cover the liabilities that may arise under or in connection with this Contract, and shall produce to the Customer on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

# **Dispute Resolution Procedure**

## If any dispute arises in connection with this Agreement, senior representatives of the parties with authority to settle the dispute shall, within seven (7) days of a written request from either Party to the other, meet in a good faith effort to resolve the dispute.]

## If the dispute is not resolved at that meeting, the parties may, but shall not be obliged to, attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.

## Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation a Party must give notice in writing (“ADR Notice”) to the other requesting a mediation. A copy of the request shall be sent to CEDR Solve. The mediation shall start no later than seven (7) days after the date of the ADR Notice.

# **Termination**

## Without affecting any other right or remedy available to it, the Customer may terminate this Contract with immediate effect by giving written notice to the Supplier if:

### there is a change of Control of the Supplier; or

### the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

### the Supplier commits a breach of clause ‎3.3(i).

## Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

### the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

### the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or

### the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## The Customer shall be entitled to terminate the Contract where:

### The Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with clause 31.5 of the Procurement Act 2023 (“Regulations”); or

### The Contractor has, at the time the Contract was awarded by the Customer, been an excluded supplier as defined in clause 57(1)(a) or 57(2)(a) of the Procurement Act 2023 and the Contractor should therefore have been excluded from the procurement process.

## Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

## Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

# **Exit Arrangements**

On termination of this Contract for whatever reason:

### the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete,and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and

### the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it including any assistance set out in the Specification.

# **Freedom of Information**

## The Supplier acknowledges the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

### Provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;

### Transfer to the Customer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Business Days of receipt;

### Provide the Customer with a copy of all Information belonging to the Customer requested within the Request for Information which is in its possession or control in the form that the Customer requires within 5 Business Days (or such other time period as the Customer may reasonably specify) of the Customer’s request for such Information; and

### Not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

## The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision within this Contract) the Customer shall be responsible for determining in its absolute discretion whether any Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

# **Data Protection**

## The Customer and the Supplier shall ensure it complies in all respect with the provisions of the Data Protection Act 2018 and any changes or amendments to Data Protection legislation including the UK General Data Protection Regulation (UK GDPR). [In particular where the Supplier receives any personal data (as defined by the Data Protection Act 2018 and Article 4 of the General Data Protection Regulation), each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under Schedule 3.]

# **Prevention of Bribery**

## The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier’s Personnel, have at any time prior to the Commencement Date:

### Committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

### Been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## The Supplier shall not during the term of this Contract:

### Commit a Prohibited Act; and/or

### Do or suffer anything to be done which would cause the Customer or any of the Customer’s employees, consultants, sub-contractors or agents to contravene any of the Bribery Act 2010 or otherwise incur any liability in relation to the Bribery Act 2010.

## The Supplier shall during the term of the Contract:

### Establish, maintain and enforce, and require that its subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act 2010 and prevent the occurrence of a Prohibited Act; and

### Keep appropriate records of its compliance with its obligations under clause 15.3(a) and make such records available to the Customer on request.

## The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of clause 15.1 and/or 15.2, or has reason to believe that it has or any of the Supplier’s Personnel have:

### Been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

### Been listed by any government department or agency as being debarred, suspected, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

### Received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connection with this Contract has committed or attempted to commit a Prohibited Act.

## If the Supplier makes a notification to the Customer pursuant to clause 15.4, the Supplier shall respond promptly to the Customer’s enquiries.

## If the Supplier fails to comply with clause 15.1 and/or 15.2, the Customer may by notice:

### Require the Supplier to remove from performance of the Contract any Supplier’s Personnel whose acts or omissions have caused the default; and

### Immediately terminate the Contract.

## Any notice served by the Customer under clause 15.6 shall specify the nature of the Prohibited Act and the action the Customer has elected to take (including, where relevant, the date on which the Contract shall terminate).

# **Modern Slavery**

## The Supplier undertakes that in relation to the Contract:

### It shall comply with all the provisions and requirements of the Modern Slavery Act 2015 as appropriate;

### It shall not engage in any activity, practice or conduct which would constitute an offence under the provisions of the Modern Slavery Act 2015; and

### It shall have and shall maintain in place throughout the duration of the Contract its own policies with regards to the avoidance of slavery and human trafficking where appropriate or agree to abide with the Customer’s policies on this.

## The Supplier undertakes:

### That neither it nor any of the Supplier’s Personnel has at any time been investigated or being investigated or been suspected in any jurisdiction of conduct which would constitute slavery, human trafficking or forced labour under the Modern Slavery Act 2015;

### That there is no relationship between the Supplier and the Supplier’s Personnel with any group or persons involved in such acts that constitute a breach of any provisions of the Modern Slavery Act 2015; and

### To promptly comply with any request from the Customer for information in compliance with the provisions of the Modern Slavery Act 2015.

# **Welsh Language Compliance**

# The Supplier shall ensure full compliance with all the provisions and the requirements of the Welsh Language Standards Regulations (6) 2017, including any updates or amendments, as they apply to the University in the Welsh Language Standards Compliance Notice and/or as outlined specifically in the tender or quote specification.

# Should this Contract require the provision of any bilingual goods or services, the source of any Welsh language translation will be communicated to the University and will be subject to reasonable quality checks by the University before the commencement of the Contract. Should the standard be deemed unacceptable, the position will be rectified by the Supplier through the correct sourcing of translation, at the Supplier’s cost and expense. The assessment of the quality of the translation will be under the University’s sole discretion.

# The Supplier shall comply with any reasonable instructions of the University to ensure compliance with the Welsh Language Standards Compliance Notice. The cost of compliance with this clause will be borne by the Supplier, unless otherwise agreed by the University in writing.

# **General**

## **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 90 days, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

## **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under this Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

## **Confidentiality.**

### Each party undertakes that it shall not at any time during this Contract, and for a period of five years after termination of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause ‎18.3(b).

### Each party may disclose the other party's confidential information:

#### to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause ‎18.3; and

#### as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

### Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Contract.

## **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.

## **Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **Waiver.**  A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

### waive that or any other right or remedy; or

### prevent or restrict the further exercise of that or any other right or remedy.

## **Severance.** If any provision or part-provision of this Contract 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 this Contract.

## **Notices.**

### Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

### A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause ‎18.8(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

### The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **Third party rights.** No one other than a party to this agreement shall have any right to enforce any of its terms.

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

## **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or format.

**Schedule 1: Services**

[INSERT THE SPECIFICATION/ DETAILS OF THE SERVICES]

*Schedule 1 should detail the Customer’s requirements for delivery of the service. This is a technical, rather than legal, document. In the event the University has undertaken a procurement process to award the Contract, the specification used to procure the Services can be incorporated to the Contract at Schedule 1.*

*As a minimum, Schedule 1 should include:*

* + 1. *A full description of the Services including any key performance dates;*
		2. *The Customer’s requirements in terms of outputs, i.e. what does the Customer want to achieve. The Supplier will set out in its tender (at Schedule 5 of the Contract) the method for delivering the Contract.*
		3. *Details of conditions for performance. For example, if the Supplier has to have access to the Customer’s site, are there any time restraints on when the services should be delivered.*
		4. *Reporting obligations placed on the Supplier.*

**Schedule 2: Charges**

**Charges for the services**

[Details of the Charges]

**Invoicing arrangements**

[Details of when invoices are to be raised for the Services]

**Schedule 3: Data Processing Agreement**

**CLAUSE DEFINITIONS:**

**Data Protection Legislation:** (i) the GDPR, (ii) the Data Protection Act 2018, (iii) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and (iv) all guidance, guidelines and codes of practice issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding).

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.**

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data**.**

**DPA 2018:** Data Protection Act 2018

**GDPR:** means the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom from time to time).

**Information:** has the meaning given under section 84 of FOIA.

**LED:** Law Enforcement Directive *(Directive (EU) 2016/680)*

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Request for Information:** a request for information or an apparent request under the FOIA or the Environmental Information Regulations

**Sub-processor:** any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement.

**Supplier Personnel:** all directors, officers, employees, agents and consultants of the Supplier and/or of any Sub-Supplier engaged in the performance of its obligations under this Agreement.

1. **DATA PROTECTION**
	1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Annex A by the Customer and may not be determined by the Supplier.
	2. The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
	3. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
		1. a systematic description of the envisaged processing operations and the purpose of the processing;
		2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
		3. an assessment of the risks to the rights and freedoms of Data Subjects; and
		4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
	4. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
		1. process that Personal Data only in accordance with Annex A, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
		2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
			1. nature of the data to be protected;
			2. harm that might result from a Data Loss Event;
			3. state of technological development; and
			4. cost of implementing any measures;
		3. ensure that :
			1. the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex A);
			2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
				1. are aware of and comply with the Supplier’s duties under this clause;
				2. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
				3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
				4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
		4. not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
			1. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
			2. the Data Subject has enforceable rights and effective legal remedies;
			3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
			4. the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
		5. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
	5. Subject to clause 1.6, the Supplier shall notify the Customer immediately if it:
		1. receives a Data Subject Access Request (or purported Data Subject Access Request);
		2. receives a request to rectify, block or erase any Personal Data;
		3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
		4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
		5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
		6. becomes aware of a Data Loss Event.
	6. The Supplier’s obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.
	7. Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
		1. the Customer with full details and copies of the complaint, communication or request;
		2. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
		3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
		4. assistance as requested by the Customer following any Data Loss Event;
		5. assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner's Office.
	8. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
		1. the Customer determines that the processing is not occasional;
		2. the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
		3. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
	9. The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.
	10. The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
	11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
		1. notify the Customer in writing of the intended Sub-processor and processing;
		2. obtain the written consent of the Customer;
		3. enter into a written agreement with the Sub-processor where the contract is on terms no less onerous than the terms set out within this contract; and
		4. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
	12. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
	13. The Customer may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
	14. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**Annex A - Schedule of Processing, Personal Data and Data Subjects**

1. The Supplier shall comply with any further written instructions with respect to processing by the Customer.

2. Any such further instructions shall be incorporated into this Annex.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of theprocessing | *[This should be a high level, short description of what the**processing is about i.e. its subject matter]* |
| Duration of theprocessing | *[Clearly set out the duration of the processing including**dates]* |
| Nature and purposes ofthe processing | *Please be as specific as possible, but make sure that you cover all intended purposes.**The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.**The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data | *[Examples here include: name, address, date of birth, NI**number, telephone number, pay, images, biometric data etc]* |
| Categories of DataSubject | *[Examples include: Staff (including volunteers, agents, and**temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| Plan for return anddestruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | *[Describe how long the data will be retained for, how it be**returned or destroyed]* |

**Schedule 4: Mandatory Policies**

The Mandatory Policies are:

1. Corporate and Social Responsibility Policy.

2. Ethics Policy

3. Data and Privacy Policy

4. Welsh Language Standards Regulations (6) 2017, [What are the Welsh language Standards? - Swansea University](https://www.swansea.ac.uk/welsh-language-standards/what-are-the-welsh-language-standards/)

5. Swansea University’s Compliance Notice – Section 44 Welsh Language (Wales) Measure 2011, issued on 29th September 2017 [20190619-DG-S-Compliance-Notice44-Swansea-University.pdf](https://www.swansea.ac.uk/media/20190619-DG-S-Compliance-Notice44-Swansea-University.pdf)

**[Schedule 5: Supplier’s Tender]**