Dated 2019

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Consultancy Agreement

via a Service Company

between

University College London

and

[Party 2]



**LONDON’S GLOBAL UNIVERSITY**

This agreement is dated

Parties

1. **UNIVERSITY COLLEGE LONDON** whose registered office is at Gower Street, London WC1E 6BT (the "**Client**"); and
2. **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the "**Consultant Company**").

Agreed Terms

1. Interpretation
	1. The following definitions and rules of interpretation apply in this agreement (unless the context requires otherwise).

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| 1. "Capacity"
 | 1. means as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.
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| 1. "Claim"
 | 1. means any allegation or claim, other than a Decision, that the IR35 Condition is met.
 |
| 1. "Client Property"
 | 1. means all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of the Client or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant Company or the Individual's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant Company or the Individual on the computer systems or other electronic equipment of the Client, the Consultant Company or the Individual during the Engagement.
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| 1. "Commencement Date"
 | 1. means the commencement date set out in Schedule 1.
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| 1. "Confidential Information"
 | 1. means information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the business of the Client or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) and including (but not limited to) information that the Consultant Company or the Individual creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.
 |
| 1. "Decision"
 | 1. means a written notice or determination issued by HMRC that the IR35 Condition has been met in relation to the Engagement (or relevant part thereof) in respect of which there is no recourse or right of appeal other than to the First-tier Tax Tribunal or any higher appellate tribunal or court.
 |
| 1. "Engagement"
 | 1. means the engagement of the Consultant Company by the Client on the terms of this agreement.
 |
| 1. "Engaging Manager"
 | 1. means the Client's employee whom is designated by the Client to liaise with the Consultant Company regarding the delivery of the Services, whose details are set out in Schedule Schedule 1.
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| 1. “Expiry Date”
 | 1. means the expiry date set out in Schedule 1 or any earlier date on which the Services are completed.
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| 1. "Fraudulent Documentation Condition"
 | 1. has the meaning given to it in section 61V(4) of the IR35 Public Sector Rules.
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| 1. "HMRC"
 | 1. means Her Majesty's Revenue & Customs or any other government department that succeeds it in carrying out the administration of taxes in the United Kingdom (other than local authority taxes)
 |
| 1. "Individual"
 | 1. means the individual set out in Schedule 1.
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| 1. "Insurance Policies"
 | 1. means commercial general liability insurance cover, employer's liability insurance cover, professional indemnity insurance cover and public liability insurance cover.
 |
| 1. "Intellectual Property Rights"
 | 1. means any and all trademarks, rights in designs, get-up, trade, business or domain names, copyrights, future copyrights, patents, rights in databases (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing) rights in inventions, know-how, trade secrets and other confidential information and all other intellectual property rights of a similar or corresponding nature which may exist now or in the future in any part of the world.
 |
| 1. "Invention"
 | 1. means any invention, idea, discovery, development, improvement or innovation made by the Consultant Company or by the Individual in connection with the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.
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| 1. "IR35 Condition"
 | 1. means the condition set out in section 61M(1)(d) of the IR35 Public Sector Rules.
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| 1. "IR35 Public Sector Rules"
 | 1. means the amendments made to Chapter 8 of Part 2 of ITEPA 2003 and the introduction of Chapter 10 of Part 2 of ITEPA 2003 as set out in the Finance Act 2017 and the Social Security (Miscellaneous Amendments No. 2) Regulations 2017 (SI 2017/373).
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| 1. "ITEPA 2003"
 | 1. means the Income Tax (Earnings and Pensions Act) 2003.
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| 1. "Liabilities"
 | 1. means any unpaid employer NICs (which, for the avoidance of doubt, excludes unpaid employee NICs) due on or after 6 April 2017 and payable by the Client to HMRC in respect of the Engagement, together with all penalties, fines and interest payable by the Client to HMRC as the result of the non-payment of such employer NICs, income tax and employee NICs in respect of the Engagement.
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| 1. "Milestones"
 | 1. means the specific delivery targets to be delivered by the Consultant Company in the provision of the Services, details of which are set out in Schedule Schedule 1.
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| 1. "NICs"
 | 1. means National Insurance contributions.
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| 1. "Services"
 | 1. means the services described in the Schedule 1.
 |
| 1. "Substitute"
 | 1. means a substitute for the Individual appointed under the terms of Clause 3.6.
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| 1. "Termination Date"
 | 1. means the date of termination of this agreement, howsoever arising.
 |
| 1. "Works"
 | 1. means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant Company or the Individual in connection with the provision of the Services.
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* 1. The headings in this agreement are inserted for convenience only and shall not affect its construction.
	2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
	3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
	4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
	5. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
1. Term of engagement
	1. The Client shall engage the Consultant Company and the Consultant Company shall make available to the Client the Individual to provide the Services on the terms of this agreement.
	2. The Engagement shall be deemed to have commenced on the Commencement Date and shall continue (subject to termination pursuant to the terms of this agreement) until the Services have been completed, which shall be the Expiry Date, or earlier by either party giving to the other not less than 7 days’ prior written notice.
2. Duties and Obligations
	1. During the Engagement the Consultant Company shall, and (where appropriate) shall procure that the Individual shall:
		1. provide the Services with all due care, skill and ability;
		2. provide the Services at such locations as are reasonable and necessary for the proper performance of the Services and, for the avoidance of doubt, shall not be required to attend the Client's premises but shall be permitted to do so at such times as the Consultant Company (in consultation with the Engaging Manager) considers is necessary for the delivery of the Services;
		3. liaise with, but have no line management responsibilities for nor be line managed by, the Engaging Manager and such other of the Client's employees as is necessary for the proper and timely delivery of the Services;
		4. unless the Individual and/or a Substitute is prevented by ill health or accident, devote such time as the Consultant Company reasonably considers is necessary for the proper and timely delivery of the Services;
		5. promptly give to the Client all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the business of the Client.
		6. be responsible for correcting any defects to the Services at its own cost and in its own time, provided that the Client notified the Consultant Company of such defects within twenty one days of discovering such defects. It is the Client’s responsibility to afford the Consultant Company (and, where appropriate, the Individual) reasonable opportunity to so rectify any defects to the Services
	2. The Consultant Company shall be responsible for providing the equipment needed to deliver the Services except where the nature of the Services means that specialist Client equipment needs to be used to deliver the Services or where the Client requires the use of Client equipment for security reasons.
	3. In the event that either Party wishes to vary the scope of the Services (which may include but is not limited to variation of the Milestones), it shall serve on the other Party a draft amended Schedule 1 to this agreement setting out the nature of the changes in scope requested by the Party serving the draft amended Schedule 1, together with any consequential change in the fee set out in paragraph 4.1 below. The Parties may negotiate and agree further changes to the scope of the Services and (if relevant) the fee. Any such proposed variation in scope and (where relevant) fee, shall only apply if accepted in writing by the Party on whom the amended draft schedule is served. Once any such proposal is accepted by the Party on whom it is served, the new draft schedule shall replace the existing Schedule 1 to this agreement and (where relevant) the fee set out in Clause 4.1 below shall be amended accordingly.
	4. None of the Consultant Company, the Individual or any Substitute engaged by the Consultant Company shall be required to provide any services other than those set out in Schedule Schedule 1 (as may be amended by agreement from time to time in accordance with Clause 3.3).
	5. If the Individual is unable to provide the Services due to illness or injury, the Consultant Company shall advise the Client of that fact as soon as reasonably practicable and shall furnish such evidence of the illness or injury as the Client may reasonably require.
	6. The Consultant Company may, with the prior written approval of the Client and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual, provided that the Substitute shall be required to enter into direct undertakings with the Client, including with regard to confidentiality. The Consultant Company shall provide 14 days' written notice of the same. The Client has absolute discretion not to accept the Substitute. If the Client accepts the Substitute, the Consultant Company shall continue to invoice the Client in accordance with Clause 4 and shall be responsible for the remuneration of the Substitute. The Consultant Company shall procure that any Substitute shall comply with all of the Individual's obligations under this agreement.
	7. Unless it or he has been specifically authorised to do so by the Client in writing:
		1. neither the Consultant Company nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Client; and
		2. the Consultant Company shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the Client.
	8. The Consultant Company shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the Client's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Client any unsafe working conditions or practices.
	9. The Consultant Company shall procure that the Individual (and any Substitute) shall comply with the Client's policies and procedures on use of information and communication systems, data protection, anti-harassment and bullying, together with such other policies, procedures and compliance requirements of the Client as notified by the Client to the Consultant Company from time to time. The Consultant Company shall report to the Client any alleged or suspected violation of any such policy, procedure or compliance requirement on the part of the Individual (or any Substitute) as soon as reasonably practicable and shall use all reasonable endeavours to assist the Client in rectifying any such non-compliance.
	10. The Consultant Company may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:
		1. the Client will not be liable to bear the cost of such functions; and
		2. at the Client's request the third party shall be required to enter into direct undertakings with the Client, including with regard to confidentiality.
	11. The Consultant Company shall, and shall procure that the Individual shall:
		1. comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
		2. comply with the ethics, anti-bribery and anti-corruption policies of the Client from time to time in force;
		3. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
		4. promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant Company or the Individual in connection with the performance of this agreement;
		5. immediately notify the Client if a foreign public official becomes an officer or employee of the Consultant Company or acquires a direct or indirect interest in the Consultant Company (and the Consultant Company warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
		6. ensure that all persons associated with the Consultant Company or other persons who are performing services in connection with this agreement comply with this Clause 3.11.
	12. Breach of Clause 3.11 shall be deemed a serious breach of this agreement allowing the Client to terminate under Clause 12.1.2.
	13. For the purpose of Clause 3.11, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of Clause 3.11, a person associated with the Consultant Company includes but is not limited to any Substitute for the Individual.
3. Fees
	1. Subject to Clause 3.3 above and Clause 15.2 below, the Client shall pay the Consultant Company a total fee of [AMOUNT] inclusive of VAT in payment for the Services, payable in stage payments against the Milestones as set out in Schedule 1. On the last working day of each month during the Engagement the Consultant Company shall submit to the Client an invoice which gives details of the Services provided and Milestones (if any) reached during such month and the amount of the fee therefore payable (inclusive of VAT, if applicable) for the Services during that month.
	2. Payment will be made subject to the work having been carried out to the satisfaction of the Client and subject to the process for correcting defective Services in accordance with Clause 3.1.6 above.
	3. Where the Consultant Company submits an invoice to the Client in accordance with the terms of this agreement, the Client will consider and verify that invoice in a timely fashion.
	4. Unless the Client notifies the Consultant Company of defective Services in accordance with Clause 3.1.6 above within the timescale provided in that Clause, the Client shall pay valid and undisputed invoices submitted to the Client in accordance with the terms of this agreement within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Consultant Company.
	5. Where the Client fails to comply with Clause 4.3, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.4 after a reasonable time has passed.
	6. Where the Consultant Company enters into a Sub-Contract, the Consultant Company shall include in that Sub-Contract:
		1. provisions having the same effect as Clauses 4.3 to 4.5 of this agreement; and
		2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clauses 4.3 to 4.5 of this agreement.
	7. In Clause 4.6, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Client in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.
	8. The Client shall be entitled to deduct from the fees (and any other sums) due to the Consultant Company any sums that the Consultant Company or the Individual may owe to the Client at any time.
	9. Payment in full or in part of the fees claimed under Clause 4 or any expenses claimed under Clause 5 shall be without prejudice to any claims or rights of the Client against the Consultant Company or the Individual in respect of the provision of the Services.
4. Expenses
	1. Except for expenses identified in Schedule 1 as being approved in advance, the Consultant Company shall normally bear its own expenses incurred in the course of the Engagement and the Client shall not normally be obliged to reimburse the Consultant Company for any such expenses.
5. Other Activities
	1. Nothing in this agreement shall prevent the Consultant Company or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:
		1. such activity does not cause a breach of any of the Consultant Company's obligations under this agreement; and
		2. the Consultant Company shall give due priority to the provision of the Services to the Client over any other business activities undertaken by it during the course of the Engagement.
6. Confidential Information and Client Property
	1. The Consultant Company acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultant Company has therefore agreed to accept the restrictions in this Clause 7.
	2. The Consultant Company shall not, and shall procure that the Individual shall not (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:
		1. any use or disclosure authorised by the Client or required by law; or
		2. any information which is already in, or comes into, the public domain otherwise than through the Consultant Company's or the Individual's unauthorised disclosure.
	3. The Consultant Company shall not and shall procure that the Individual shall not (except in the proper course of its or his duties) make (other than for the benefit of the Client) any record (whether on paper, computer memory, disc or otherwise) relating to any matter within the scope of the business of the Client other than for the benefit of the Client, it being agreed by the parties that all such records (and copies thereof) shall be the property of the Client and shall be handed over to the Client by the Consultant Company on the Termination Date or at the request of the Client at any time during the Engagement.
	4. The Consultant Company shall not and shall procure that the Individual shall not (except in the proper course of its or his duties), during the Engagement either directly or indirectly publish any opinion, fact or material on any matter connected or relating to the business of the Client (whether confidential or not) without the prior written approval of the Client.
	5. At any stage during the Engagement, the Consultant Company will promptly on request return to the Client all and any Client Property in its or the Individual's possession.
7. Freedom of Information
	1. The Consultant Company acknowledges that the Client is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and cooperate with the Client, and shall procure that the Individual shall assist and co-operate with the Client (at the Consultant Company’s expense), to enable the Client to comply with these information disclosure requirements.
8. Data Protection
	1. In this Clause 9 the following definitions shall apply:
9. **Controller** means a person which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data;
10. **Data Protection Laws** means all laws and regulations relating to the Processing of Personal Data as the same may be in force from time to time;
11. **Data Subject** means the individual to which the Personal Data relates;
12. **Personal Data** means any information relating to an identified or identifiable living individual;
13. **Personal Data Breach** means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;
14. **Processing** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, and Process, Processes and Processed shall be construed accordingly; and
15. **Processor** means a person which Processes Personal Data on behalf of a Controller.
	1. The parties acknowledge and agree that:
		1. this agreement may require the Processing of Personal Data by the Consultant Company (via the Individual or a Substitute) on behalf of the Client;
		2. the Client alone shall determine the purposes for which and the manner in which Personal Data will be processed by the Consultant Company on behalf of the Client under the agreement; and
		3. the Client shall be the Controller and the Consultant Company shall be the Client's Processor in respect of all such Personal Data.
	2. Confirmation of whether the Consultant Company Processes Personal Data on behalf of the Client as the Client's Processor under or in connection with this agreement and, where it does so, the Particulars of the Processing to be carried out by the Consultant Company on behalf of the Client under or in connection with this agreement are set out in Schedule 1, 'Data Protection Particulars'.
	3. Where, under or in connection with this agreement, the Consultant Company Processes Personal Data on behalf of the Client as the Client's Processor, the Consultant Company shall.
		1. Process the Personal Data only:
			1. on the written instructions of the Client and to the extent reasonably necessary for the performance by the Consultant Company of its obligations under this agreement. The Consultant Company shall immediately inform the Client if, in its opinion, Processing the Personal Data in accordance with a written instruction received from the Client or in the performance of its obligations under this agreement infringes Data Protection Laws to which either the Client or the Consultant Company (in its capacity as a Processor) is subject; or
			2. as otherwise required by European Union law or individual European Union member state law to which the Consultant Company is subject, in which case the Consultant Company shall inform the Client of that legal requirement before Processing the Personal Data (unless that law, on important grounds of public interest, prohibits the Consultant Company from informing the Client);
		2. not disclose the Personal Data to any person except as required or permitted by this agreement or with the Client's prior written consent;
		3. without prejudice to Clause 7 (Confidential Information and Client property), ensure that all persons authorised by the Consultant Company to Process the Personal Data:
			1. Process the Personal Data in accordance with provisions of this Clause 9; and
			2. are under an appropriate contractual or other legal obligation to keep the Personal Data confidential;
		4. notwithstanding any other provision of this agreement, and taking into account the state of the art, the nature, scope, context and purposes of the Processing and the risks to Data Subjects, implement appropriate technical and organisational measures to ensure the security of the Personal Data and prevent Personal Data Breaches;
		5. not engage another Processor to Process the Personal Data on behalf of the Client (Sub-processor) except with the Client's prior written consent. The Consultant Company shall, prior to engaging a Sub-processor, enter into a written contract with the Sub-processor that imposes on the Sub-processor obligations that are the same as, or more onerous than, the obligations imposed on the Consultant Company under this Clause 9. The Consultant Company shall remain fully liable and responsible for all acts and omissions of its Sub-processors and the acts and omissions of those employed or engaged by its Sub-processors as if they were its own. An obligation on the Consultant Company to do, or to refrain from doing, any act or thing shall include an obligation upon the Consultant Company to procure that its employees, staff, agents and its Sub-processors' employees, staff and agents also do, or refrain from doing, such act or thing;
		6. not transfer or Process the Personal Data outside the European Economic Area, nor disclose the Personal Data to any party located outside the European Economic Area, except with the Client's prior written consent. Where such consent is given by the Client, the Consultant Company shall take such actions and enter into such written agreements as the Client may require in order to help ensure that such transfer, disclosure or Processing complies with the Data Protection Laws to which the Client is subject;
		7. provide such assistance and co-operation as the Client may require from time to time in relation to the Personal Data to help the Client comply with its obligations under the Data Protection Laws to which it is subject, including (without limitation) its obligations in relation to:
			1. keeping Personal Data secure;
			2. dealing with Personal Data Breaches;
			3. carrying out data protection impact assessments; and
			4. dealing with requests from Data Subjects to exercise their legal rights in relation to their Personal Data

This shall include the Consultant Company entering into such other written agreements as may be required by the Client from time to time to enable the Client to comply with the Data Protection Laws to which the Client is subject;

* + 1. notify the Client without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach in respect of the Personal Data;
		2. at the Client's option, permanently and securely delete or return to the Client all the Personal Data promptly on termination of this agreement, and delete any existing copies of the Personal Data save to the extent that the Consultant Company is required to retain copies of the Personal Data by European Union law or individual European Union member state law to which the Consultant Company is subject; and
		3. make available to the Client all information necessary to demonstrate its compliance with its obligations under this Clause 9.
	1. The Client reserves the right to audit the Consultant Company's compliance with its obligations under this Clause, or to appoint a third party to carry out such audits.
	2. The Consultant Company shall implement, maintain and follow at all times the technical and organisational measures set out in Schedule 1, 'Minimum Technical and Organisational Security Measures' to help ensure the security of the data, including the Personal Data, it processes on behalf of the Client under or in connection with this agreement.
	3. The Consultant Company shall keep the Client indemnified in full from and against all liabilities, costs, expenses, damages and losses (whether direct or indirect) suffered or incurred by the Client, including, but not limited to, any interest, penalties and legal and other professional costs and expenses awarded against or incurred or paid by the Client, arising out of or in connection with any failure by the Consultant Company to comply with its obligations under this Clause 9 or the Data Protection Laws to which it is subject.
	4. The Consultant Company acknowledges and understands that Personal Data relating to the Individual and any Substitute will be Processed by the Client in connection with this agreement. The Consultant Company shall inform each such Data Subject that its Personal Data may be processed by the Client in connection with this agreement in the manner and for the purposes described in: (a) the UCL General Privacy Notice, available at <https://www.ucl.ac.uk/legal-services/privacy/general-privacy-notice>; and (b) any other privacy notices applicable to the Individual or Substitute which are provided or made available to the Consultant Company by the Client from time to time.
	5. This Clause 9 shall survive termination or expiry of this agreement.
1. Intellectual Property
	1. The Consultant Company warrants to the Client that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works and the Inventions and of all materials embodying such rights and a written irrevocable waiver of all the Individual's statutory moral rights in the Works, to the fullest extent permissible by law, and that the Individual has agreed to hold on trust for the Consultant Company any such rights in which the legal title has not passed (or will not pass) to the Consultant Company. The Consultant Company agrees to provide to the Client a copy of this assignment on or before the date of this agreement.
	2. In consideration of the sum of £1 (receipt of which the Consultant Company expressly acknowledges), the Consultant Company hereby assigns to the Client all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant Company holds legal title in these rights and inventions on trust for the Client.
	3. The Consultant Company undertakes to the Client:
		1. to notify to the Client in writing full details of all Inventions promptly on their creation;
		2. to keep confidential the details of all Inventions;
		3. whenever requested to do so by the Client and in any event on the termination of the Engagement, promptly to deliver to the Client all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its or the Individual's possession, custody or power;
		4. not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Client; and
		5. to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Client,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

* 1. The Consultant Company warrants that:
		1. it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
		2. it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
		3. the use of the Works or the Intellectual Property Rights in the Works by the Client will not infringe the rights of any third party,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

* 1. The Consultant Company agrees to indemnify the Client and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Client, or for which the Client may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant Company to the Client during the course of providing the Services. The Consultant Company shall maintain adequate liability insurance coverage and ensure that the Client's interest is noted on the policy, and shall supply a copy of the policy to the Client on request. The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant Company.
	2. The Consultant Company acknowledges that no further remuneration or compensation other than that provided for in this agreement is or may become due to the Consultant Company in respect of the performance of its obligations under this Clause 10.
	3. The Consultant Company undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the Client and at any time either during or after the Engagement, as may, in the opinion of the Client, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the Client and to defend the Client against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works. The Consultant Company confirms that the Individual has given written undertakings in the same terms to the Consultant Company.
1. Insurance and Liability
	1. The Consultant Company shall have liability for and shall indemnify the Client for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant Company or the Individual or any Substitute engaged by it of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.
	2. The Consultant Company shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Client and that the level of cover and other terms of insurance are acceptable to and agreed by the Client.
	3. The Consultant Company shall on request supply to the Client copies of the Insurance Policies and evidence that the relevant premiums have been paid.
	4. The Consultant Company shall use all insurance monies received by it to indemnify the Client in respect of any claim and shall make good any deficiency from its own resources.
	5. The Consultant Company shall comply (and shall procure that the Individual complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant Company is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant Company shall notify the Client without delay.
2. Termination
	1. Notwithstanding the provisions of Clause 2.2, the Client may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Consultant Company (other than in respect of amounts accrued before the Termination Date) if at any time:
		1. the Consultant Company or the Individual commits any gross misconduct affecting the Client;
		2. the Consultant Company or the Individual commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Client;
		3. the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
		4. the Consultant Company or the Individual is, in the reasonable opinion of the Client, negligent or incompetent in the performance of the Services;
		5. the Individual is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;
		6. the Consultant Company makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultant Company;
		7. the Individual is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 50 working days in any six month period;
		8. the Consultant Company or the Individual commits any fraud or dishonesty or acts in any manner which in the opinion of the Client brings or is likely to bring the Individual, the Consultant Company or the Client into disrepute or is materially adverse to the interests of the Client;
		9. the Consultant Company or the Individual commits any breach of the Client's policies and procedures; or
		10. the Consultant Company or the Individual commits any offence under the Bribery Act 2010.
	2. The rights of the Client under Clause 12.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant Company as having brought the agreement to an end. Any delay by the Client in exercising its rights to terminate shall not constitute a waiver of these rights.
3. Obligations on Termination
	1. On the Termination Date the Consultant Company shall, and shall procure that the Individual shall:
		1. immediately deliver to the Client all Client Property which is in its or his possession or under its or his control;
		2. irretrievably delete any information relating to the business or affairs of the Client stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its or his possession or under its or his control outside the premises of the Client; and
		3. if requested by the Client, provide a signed statement that it or he has complied fully with its or his obligations under this Clause 13.
4. Non-IR35 Status and Indemnities
	1. The relationship of the Consultant Company (and the Individual) to the Client will be that of independent contractor and nothing in this agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Client and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.
	2. The Consultant Company shall be fully responsible for and shall indemnify the Client for and in respect of:
		1. any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Consultant Company, the Individual or any Substitute in respect of the Services, where such recovery is not prohibited by law;
		2. all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Client's wilful default; and
		3. any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Client arising out of or in connection with the provision of the Services,

other than, in respect of clauses 14.2.1 and 14.2.2 only, in the circumstances set out in Clause 14.3 below.

* 1. The Consultant Company's indemnity in Clause 14.2 above shall not apply to any Liabilities incurred by the Client as a result of either:
		1. a Decision; or
		2. any Claim made by HMRC, which Claim the Client, in its entire discretion acting in good faith, decides not to contest or challenge.
	2. The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant Company.
	3. The Consultant Company warrants that it is not nor will it prior to the cessation of this agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.
	4. The exclusions in Clause 14.3 above to the Consultant Company's indemnity in Clause 14.2 above are conditional on the Consultant Company discharging all of its obligations under Clause 15 below.
1. The Parties' IR35 Obligations
	1. The Consultant Company shall, as soon as possible and at least 5 days before the Commencement Date, provide the Client with all information reasonably requested by the Client to allow the Client to determine whether the IR35 Condition is met in relation to the Engagement (or any relevant part thereof). The Consultant Company shall ensure the information provided is accurate and complete.
	2. If either
		1. the Client notifies the Consultant Company that it considers that the IR35 Condition has been met in relation to the Engagement (or a relevant part thereof); or
		2. there is a Decision; or
		3. a Claim is made by HMRC, which Claim the Client, in its entire discretion acting in good faith, decides not to contest or challenge,

the Client shall ensure that going forward the correct income tax and NICs are deducted from the gross fee payable to the Consultant Company under Clause 4.1 above and paid to HMRC as required by the IR35 Public Sector Rules and the fee due to the Consultant Company shall be reduced accordingly by the value of income tax and NICs paid by the Client to HMRC.

* 1. If HMRC makes a Claim against either the Client or the Consultant Company, or notifies the Client or the Consultant Company of an intention to make a Claim, the Consultant Company shall:
		1. in the case of such a notification or Claim to the Consultant Company, as soon as reasonably practicable, give written notice of the Claim to the Client, specifying the nature of the Claim in reasonable detail;
		2. not make, and use its best endeavours to prevent the Individual from making, any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Client;
		3. give, and use its best endeavours to procure that the Individual shall give, the Client and its professional advisers access at reasonable times (on reasonable prior notice) to its or their premises and its or their officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Consultant Company or the Individual, so as to enable the Clientand its professional advisers to examine them and to take copies (at the Client's expense) for the purpose of assessing the Claim; and
		4. subject to the Client providing security to the Consultant Company to the Consultant Company's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Client may reasonably request to avoid, dispute, compromise or defend the Claim.
	2. The Consultancy Company shall ensure that the Fraudulent Documentation Condition is not met at any time during the Engagement.
	3. The Consultant Company shall ensure that the delivery of the Services by the Individual adheres at all time to the terms and structure of this agreement.
1. Notices
	1. Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
	2. Any notice shall be deemed to have been received:
		1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
		2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.
	3. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
	4. A notice given under this agreement is not valid if sent by e-mail.
2. Entire agreement
	1. This agreement 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.
	2. Each party acknowledges that in entering into this agreement it does not rely on, and 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 agreement.
	3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
	4. Nothing in this Clause shall limit or exclude any liability for fraud.
3. Variation
	1. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
4. Counterparts
	1. This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
5. Third Party Rights
	1. Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
	2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.
6. Assignment and Other Dealings
	1. Except as expressly provided in this agreement, the Consultant Company shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
7. Governing Law and Jurisdiction
	1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
	2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

|  |  |
| --- | --- |
| Signed byfor and on behalf of University College London | .......................................Authorised Signatory……………………………Title |
| Signed by [NAME]for and on behalf of [NAME OF CONSULTANT COMPANY] | .......................................Director |

1. Engagement Details [To be completed with engagement details based on the RFP specification, response document, agreed pricing and any clarifications]
	* + 1. Commencement Date:

[INSERT COMMENCEMENT DATE]

* + - 1. Expiry Date:

[INSERT EXPIRY DATE]

* + - 1. The Individual:

[INSERT NAME OF INDIVIDUAL]

* + - 1. Fees:

[INSERT FEES]

|  |  |  |
| --- | --- | --- |
| **Milestone** | **Due Date** | **Fixed Price** |
| xxx |  |  |
| xxx |  |  |
| xxx |  |  |
|  | **Sub-Total** |  |
|  | **VAT** |  |
|  | **Total Fixed Price** |  |

* + - 1. Expenses:

The Consultant Company shall bear all expenses incurred in providing the Services and the Client shall not be obliged to reimburse the Consultant Company for any such expenses, unless otherwise agreed with UCL in advance and in writing.

* + - 1. Engaging Manager:

[INSERT]

* + - 1. The Services and Milestones:

[Insert]

1. **Scope of Work**

1. **Method of Delivery**

1. **Implementation Plan**

1. **Milestones/Deliverables**

1. **Out of Scope**

1. **Acceptance criteria and process**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Milestone/Deliverable** | **Method of Acceptance (e.g. review, UAT)** | **Tested By Who** | **Acceptance Criteria (Measure)** | **Signed/****Checked By (UCL)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

1. **UCL Responsibilities**

1. **Supplier Responsibilities**

1. **Assumptions**

1. **Reporting Procedure**
	* + 1. Data Protection Particulars:

[Note: the addition of further requirements may be required]

|  |  |
| --- | --- |
| Will the Consultant Company (via the Consultant) be processing personal data on behalf of UCL as UCL's processor?  | Yes |
| Subject matter and duration of the processing | The subject matter is the provision of the Services by the Consultant Company under this agreement. The duration of the Processing is the term of this agreement plus any additional period during which the provision of the Services is being transitioned to a new provider. |
| Nature and purpose of the processing | The Personal Data is being Processed by the Consultant Company as part of its provision of the Services.The data is limited personal data required to facilitate communication, application processes with prospective clients. This will be contained in e-mails and electronic documents such as PDFs or word documents. The data is solely for the purpose of transacting business, prospective job applicants and for the day-to-day operations of the ESE. These day-to-day operations are likely to include e-mailing, meetings and phone-calls.  |
| Type of personal data being processed | The main types of Personal Data being processed are: Personal Data: names, addresses, telephone numbers, email addresses, job titles, date of birth and bank details of Data Subjects.Special Categories of Personal Data: In the case of job applications, the Consultant Company may process special category data such as gender, health information and employment history information of Data Subjects.Criminal Convictions Data: In the case of job applications or partnership tenders, the Consultant Company may process criminal convictions data. |
| Categories of data subjects | The main categories of individuals whose Personal Data are being processed under this agreement are:UCL staffProspective clientsProspective employees |

# Minimum Technical and Organisational Security Measures

Where the Consultant Company Processes Personal Data under this agreement using non-Client software or systems, Consultant Company shall implement at least the following standards:

* FIPS 140-2 (cryptographic modules, software and hardware) and FIPS 197 (or any standard(s) that replace FIPS 140-2 and/or FIPS 197); or
* Encryption products certified from time to time via the product and service tests from the National Cyber Security Centre (NCSC) – such as Foundation Grade assurance (under the Commercial Product Assurance scheme and/or International Common Criteria) or the CAPS Assisted Products scheme.

[Note: the addition of further requirements may be considered depending on the circumstances.]