

DATED 20

(1) YORK ST JOHN UNIVERSITY

and

(2) [THE FUNDER]

JOINT VENTURE AGREEMENT

relating to the financing, construction and operation of a Student Village at land known as Peppermill Court

\*ITPD version\*

Weightmans LLP

No1 Whitehall Riverside

Whitehall Road

Leeds

LS1 4BN

VKN. W17961-6



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|  |  |  |
| --- | --- | --- |
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THIS CONTRACT is made on 20

BETWEEN:

1. **YORK ST JOHN UNIVERSITY** of Lord Mayor’s Walk, York, YO31 7EX (the “University”); and
2. [*NAME OF THE FUNDER*] a company registered in [England and Wales] under company number [ ] whose registered office is at [ ] (the “Funder”)

(each a “Party” and together the “Parties”).

INTRODUCTION

1. The University is a successful and ambitious institution and was ranked 7th in the WUSCA 2023 University of the Year awards. It wishes to construct and operate a new Student Village at the Site.
2. On [insert date] the University advertised on Find a Tender (reference [insert FTS number]), inviting prospective funders to participate in a Competitive Dialogue process to be selected as the University’s joint venture partner to contribute funding to the development costs of the Project.
3. The Funder is [insert business of Funder] and has experience in funding projects of this nature.
4. On the basis of the Funder's response to the advertisement and the subsequent Competitive Dialogue process, the University selected the Funder as its preferred joint venture partner.
5. The University [has appointed] [will appoint] the Building Contractor and the Professional Team to design and build the Student Village pursuant to the Building Contract and the Appointments.
6. Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions of this Agreement as set out below.

IT IS AGREED as follows:

1. PRELIMINARIES AND TERM
2. DEFINITIONS AND INTERPRETATION
	1. In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions and interpretation) or the relevant Schedule in which that capitalised expression appears.
	2. Interpretation is as set out in Schedule 1 (Definitions and interpretation).
	3. If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
		* 1. the Clauses and Schedule 1 (Definitions and interpretation); and
			2. any other Schedules and their Annexes.
	4. The Schedules and their Annexes form part of this Agreement.
3. DUE DILIGENCE
	1. The Funder acknowledges that:
		* 1. the University has delivered or made available to the Funder all of the information and documents that the Funder considers necessary or relevant for the performance of its obligations under this Agreement;
			2. it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
			3. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the University before the Effective Date) of all relevant details relating to:
				1. the state and condition of the Site;
				2. the progress and quality of the Works;
				3. the identity, suitability and covenant strength of the Building Contractor, the Professional Team and Warranting Sub-contractors;
				4. the content and appropriateness of the Building Contract and the appointments of the Parent Company Guarantee, Performance Bond and any and all documents that are referred to in Schedule 4 (Development Obligations);
				5. the University’s standard form student tenancy agreement;
				6. the operating processes and procedures and the working methods of the University including but not limited in relation to the provision of the Services and its dealings with Students.
	2. The Funder shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Funder be entitled to revise the terms on which the Funding is made available, nor recover any additional costs or charges, arising as a result of:
		* 1. any unsuitable aspects of the matters referred to in Clause 2.1;
			2. any misinterpretation of the University Requirements; and/or
			3. any failure by the Funder to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
4. WARRANTIES
	1. The University represents and warrants that:
		* 1. it has full capacity and authority to enter into and to perform this Agreement;
			2. this Agreement is executed by its duly authorised representative;
			3. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
			4. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
	2. The Funder represents and warrants that:
		* 1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
			2. it has full capacity and authority to enter into and to perform this Agreement;
			3. this Agreement is executed by its duly authorised representative;
			4. it has all necessary consents and regulatory approvals to enter into this Agreement;
			5. it has notified the University in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
			6. its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
			7. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
			8. all written statements and representations in any written submissions made by the Funder as part of the procurement process, including without limitation its response to the selection questionnaire and ITPB (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Funder has otherwise disclosed to the University in writing prior to the date of this Agreement;
			9. it has notified the University in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
			10. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
			11. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Funder or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Funder’s assets or revenue; and
			12. within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
	3. The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Funder on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
	4. Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
	5. If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
	6. For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the University may have in respect of breach of that provision by the Funder.
	7. Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
5. TERM
	1. This Agreement shall:
		* 1. come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 15 (*Confidentiality*), 16 (*Transparency and Freedom of Information*), 14 (*Publicity and Branding*), 18 (*Limitations on Liability*), 24 (*Waiver* *and Cumulative Remedies*), 25 (*Relationship of the Parties*), 27 (*Severance*), 29 (*Entire Agreement*), 30 (*Third Party Rights*), 31 (*Notices*), 32 (*Disputes*) and 33 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
			2. unless terminated at an earlier date by operation of Law or in accordance with Clause 20 (*Termination Rights*), terminate:
				1. at the end of the Initial Term; or
				2. if the University elects to extend the Initial Term by giving the Funder at least [***insert figure***] Working Days’ notice before the end of the Initial Term, at the end of the Extension Period.

Condition Precedent

* 1. Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 15 (*Confidentiality*), 16 (*Transparency and Freedom of Information*), 14 (*Publicity and Branding*), 18 (*Limitations on Liability*), 24 (*Waiver and* *Cumulative Remedies*), 25 (*Relationship of the Parties*), 27 (*Severance*), 29 (*Entire Agreement*), 30 (*Third Party Rights*), 31 (*Notices*), 32 (*Disputes*) and 33 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the matters specified in Clause 4.3 (the “Condition Precedent”). The University may in its sole discretion at any time agree to waive compliance with any or all of the Conditions Precedent by giving the Funder notice in writing.
	2. [Specify any conditions precedent and which party is required to satisfy them – clause 4.5 assumes that it is the Funder]
	3. In the event that the Condition Precedents are not satisfied within [xx] Working Days after the date of this Agreement (“**Conditions Longstop Date**”) then, unless any or all of the Condition Precedents are waived by the University in accordance with Clause 4.2:
		+ 1. this Agreement shall automatically cease and shall not come into effect; and
			2. neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
	4. [The Funder shall consult with the University in relation to the steps it takes to satisfy the Conditions Precedent and shall keep the University fully informed of its progress in satisfying them and of any circumstances which are likely to result in their not being satisfied by the Conditions Longstop Date].
1. KEY OPERATIONAL MATTERS
2. PROPERTY INTERESTS

The provisions of Schedule 2 shall apply.

1. FUNDING AND FINANCE
	1. The provisions of Schedule 3 shall apply.

Financial Distress

* 1. The Parties shall comply with the provisions of Schedule 14 in relation to the assessment of the financial standing of the Funder and the consequences of a change to that financial standing.

Promoting Tax Compliance

* 1. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Funder shall:
		+ 1. notify the University in writing of such fact within 5 Working Days of its occurrence; and
			2. promptly provide to the University:
				1. details of the steps which the Funder is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
				2. such other information in relation to the Occasion of Tax Non-Compliance as the University may reasonably require.
1. DEVELOPMENT OBLIGATIONS

The provisions of Schedule 4 shall apply.

1. RELATIONSHIP WITH STUDENTS
	1. The University shall retain and have responsibility for all aspects of the relationship with Students. It is not expected that the Funder will have or need to have any relationship or dealings with Students; only the University.
	2. Without prejudice to the generality of Clause 8.1, the matters which fall within the University’s responsibilities include, but shall not be limited, to the following:
		* 1. setting the level of Rent;
			2. collecting the Rent and dealing with the payment or waiver of any arrears;
			3. marketing and allocating the Rooms;
			4. the form of the student tenancy agreement including the number of weeks that it covers;
			5. entering into student tenancy agreements in its own name and without any reference to the Funder;
			6. managing student tenancy agreements including complaints, disciplinary action, removal or withdrawal;
			7. appointing and managing wardens;
			8. all aspects of Student welfare;
			9. contact and correspondence with parents or carers.
2. INCOME GENERATION

The provisions of Schedule 5 shall apply.

1. UNIVERSITY RESPONSIBILITIES

The University shall comply with its responsibilities set out in Schedule 6.

1. GOVERNANCE
2. GOVERNANCE
	1. The Parties shall comply with the provisions of Schedule 7 in relation to the management and governance of this Agreement.

Representatives

* 1. Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
	2. The initial Funder Representative shall be the person named as such in Schedule 7.
	3. The University shall notify the Funder of the identity of the initial University Representative within 5 Working Days of the Effective Date. The University may, by written notice to the Funder, revoke or amend the authority of the University Representative or appoint a new University Representative.
1. RECORDS AND REPORTS

The University shall maintain such records as it sees fit in relation to the operation of this Agreement and shall provide reports to the Funder as are necessary and appropriate.

1. VARIATIONS

No variation of this Agreement shall be effective unless it is made in writing and signed by or on behalf of the Parties.

1. PUBLICITY AND BRANDING
	1. The Funder shall not:
		* 1. make any press announcements or publicise this Agreement or its contents in any way; or
			2. use the University's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the University, which shall not be unreasonably withheld or delayed.

1. CONFIDENTIALITY AND DATA
2. CONFIDENTIALITY
	1. For the purposes of this Clause 15, the term “Disclosing Party” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “Recipient” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
	2. Except to the extent set out in this Clause 15 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
		* 1. treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
			2. not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
			3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
			4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
	3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
		* 1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 16 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
			2. the need for such disclosure arises out of or in connection with:
				1. any legal challenge or potential legal challenge against the University arising out of or in connection with this Agreement;
				2. the examination and certification of the University's accounts (provided that the disclosure is made on a confidential basis); or
				3. the conduct of a Central Government Body review in respect of this Agreement; or
			3. the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
	4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
	5. The Funder may disclose the Confidential Information of the University on a confidential basis only to:
		* 1. Funder Personnel who need to know the Confidential Information to enable performance of the Funder’s obligations under this Agreement;
			2. its auditors; and
			3. its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Funder discloses Confidential Information of the University pursuant to this Clause 15.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

* 1. The University may disclose the Confidential Information of the Funder:
		+ 1. on a confidential basis to any Central Government Body for any proper purpose of the University or of the relevant Central Government Body;
			2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
			3. to the extent that the University (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
			4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 15.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
			5. on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
			6. on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the University under this Clause 15.

* 1. Nothing in this Clause 15 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.
1. TRANSPARENCY AND FREEDOM OF INFORMATION
	1. The Parties acknowledge that the content of this Agreement, including any changes to this Agreement agreed from time to time, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the University; and Commercially Sensitive Information (together the “Transparency Information”) are not Confidential Information.
	2. Notwithstanding any other provision of this Agreement, the Funder hereby gives its consent for the University to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The University shall, prior to publication, consult with the Funder on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
	3. The Funder shall assist and co-operate with the University to enable the University to publish the Transparency Information.
	4. If the University believes that publication of any element of the Transparency Information would be contrary to the public interest, the University shall be entitled to exclude such information from publication. The University acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the University acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Funder.
	5. The University shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Funder.
	6. The Funder agrees that any Information it holds that is not included in the Transparency Information but is reasonably relevant to or that arises from this Agreement shall be provided to the University on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The University may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 15.6(c)) and Open Book Data) publish such Information. The Funder shall provide to the University within five (5) Working Days (or such other period as the University may reasonably specify) any such Information requested by the University.
	7. The Funder acknowledges that the University is subject to the requirements of the FOIA and the EIRs. The Funder shall:
		* 1. provide all necessary assistance and cooperation as reasonably requested by the University to enable the University to comply with its obligations under the FOIA and EIRs;
			2. transfer to the University all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
			3. provide the University with a copy of all Information held on behalf of the University which is requested in a Request For Information and which is in its possession or control in the form that the University requires within 5 Working Days (or such other period as the University may reasonably specify) of the University's request for such Information; and
			4. not respond directly to a Request For Information addressed to the University unless authorised in writing to do so by the University.
	8. The Funder acknowledges that the University may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Funder. The University shall take reasonable steps to notify the Funder of a Request For Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the 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 in this Agreement) the University shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.
2. PROTECTION OF PERSONAL DATA
	1. It is not expected that either Party will need to share Personal Data with the other Party. The Funder will not share or need to share any Personal Data with the University. Most if not all of the information that is shared by the University with the Funder will not be Personal Data. However, the Parties acknowledge that for the purposes of the Data Protection Legislation, if the University does share any Personal Data with the Funder, the University will be the Controller of that Personal Data and the Funder will be the Processor.
	2. The only processing that the Funder is authorised to do is listed in Schedule 8.
	3. The Funder shall notify the University immediately if it considers that any of the University’s instructions infringe the Data Protection Legislation.
	4. The Funder 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 Schedule 8, unless the Funder is required to do otherwise by Law. If it is so required the Funder shall promptly notify the University before processing the Personal Data unless prohibited by Law;
			2. ensure that it has in place Protective Measures which the University may reasonably reject (but failure to reject shall not amount to approval by the University of the adequacy of the Protective Measures) 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 Funder Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 8;
				2. it takes all reasonable steps to ensure the reliability and integrity of any Funder Personnel who have access to the Personal Data and ensure that they:

are aware of and comply with the Funder’s duties under this Clause 17 and Clause 15;

are subject to appropriate confidentiality undertakings with the Funder or any Sub-processor;

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 University or as otherwise permitted by this Agreement; and

have undergone adequate training in the use, care, protection and handling of Personal Data;

* + - 1. where the Personal Data is subject to UK GDPR or EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of the University has been obtained and such conditions as the University may impose as a result of Data Protection Legislation are fulfilled; and
			2. at the written direction of the University, delete or return Personal Data (and any copies of it) to the University on termination of this Agreement unless the Funder is required by Law to retain the Personal Data.
	1. Subject to Clause 17.6, the Funder shall notify the University immediately if it:
		+ 1. receives a Data Subject Request (or purported Data Subject 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.
	2. The Funder’s obligation to notify under Clause 17.5 shall include the provision of further information to the University in phases, as details become available.
	3. Taking into account the nature of the processing, the Funder shall provide the University with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 17.5 (and insofar as possible within the timescales reasonably required by the University) including by promptly providing:
		+ 1. the University with full details and copies of the complaint, communication or request;
			2. such assistance as is reasonably requested by the University to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
			3. the University, at its request, with any Personal Data it holds in relation to a Data Subject;
			4. assistance as requested by the University following any Data Loss Event; and/or
			5. assistance as requested by the University with respect to any request from the Information Commissioner’s Office or any other regulatory authority, or any consultation by the University with the Information Commissioner's Office or any other regulatory authority.
	4. The Funder shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 17. This requirement does not apply where the Funder employs fewer than 250 staff, unless:
		+ 1. the University determines that the processing is not occasional;
			2. the University determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
			3. the University determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
	5. The Funder shall allow for audits of its Data Processing activity by the University or the University’s designated auditor.
	6. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
	7. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Funder must:
		+ 1. notify the University in writing of the intended Sub-processor and processing;
			2. obtain the written consent of the University;
			3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 17 such that they apply to the Sub-processor; and
			4. provide the University with such information regarding the Sub-processor as the University may reasonably require.
	8. The Funder shall remain fully liable for all acts or omissions of any of its Sub-processors.
	9. The University may, at any time on not less than 30 Working Days’ notice, revise this Clause 17 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).
	10. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The University may on not less than 30 Working Days’ notice to the Funder amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
1. LIABILITY AND INSURANCE
2. LIMITATIONS ON LIABILITY
	1. Neither Party limits its liability for:
		* 1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
			2. fraud or fraudulent misrepresentation by it or its employees;
			3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
			4. any liability to the extent it cannot be limited or excluded by Law.
	2. Subject to Clauses 18.1, neither Party shall be liable to the other Party for:
		* 1. any indirect, special or consequential Loss; or
			2. any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
	3. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.
3. INSURANCE

The University shall comply with the provisions of Schedule 9 in relation to obtaining and maintaining insurance.

1. TERMINATION AND EXIT MANAGEMENT
2. TERMINATION RIGHTS

Termination by the University

* 1. The University may terminate this Agreement in whole or in part by issuing a Termination Notice to the Funder:
		+ 1. for convenience at any time;
			2. if the Funder fails to pay an undisputed sum due to the University under this Agreement which in aggregate exceeds £[*insert amount*] and such amount remains outstanding 20 Working Days after the receipt by the Funder of a notice of non-payment from the University;
			3. a Funder Termination Event has occurred
			4. if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

and this Agreement shall terminate on the date specified in the Termination Notice.

Termination by the Funder

* 1. The Funder may, by issuing a Termination Notice to the University, terminate:
		+ 1. this Agreement if the University fails to pay an undisputed sum due to the Funder under this Agreement which in aggregate exceeds £[*insert amount*] and such amount remains outstanding 40 Working Days after the receipt by the University of a notice of non-payment from the Funder; or
			2. if a Force Majeure Event endures for a continuous period of more than one hundred and eighty (180) days,

and this Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice).

* 1. The Funder shall be entitled to request the termination of this Agreement for convenience at any time by service of written notice, in which event the provisions of Schedule 10 shall apply. For the avoidance of doubt, the University would need to consent to such termination in order for it to take effect, and shall be entitled to withhold its consent in its absolute discretion.
1. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

* 1. The provisions of Clauses 12 (Records and Reports), 15 (Confidentiality), 16 (Transparency and Freedom of Information), 17 (Protection of Personal Data), 18 (Limitations on Liability), 21 (Consequences of Expiry or Termination), 27 (Severance), 29 (Entire Agreement), 30 (Third Party Rights), 32 (Disputes) and 33 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions and interpretation) and 12 (Dispute Resolution Procedure) shall survive the termination or expiry of this Agreement.

Payments by the University

* 1. If this Agreement is terminated by the University pursuant to Clause 20.1(a) (*Termination by the University*) or by the Funder pursuant to Clause 20.2(a) (*Termination by the Funder*), the University shall pay the Funder the following payments (which shall be the Funder's sole remedy for the termination of this Agreement):
		+ 1. the Termination Payment; and
			2. the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:
				1. the period from (but excluding) the date that the Termination Notice is given by the University pursuant to Clause 20.1(a) (*Termination by the University*)) to (and including) the Termination Date; or
				2. the period from (and including) the date of the non-payment by the University referred to in Clause 20.2(a) (*Termination by* *the Funder*) to (and including) the Termination Date.
	2. If this Agreement is terminated (in part or in whole) by the University pursuant to Clauses 20.1(b) or 20.1(d), or the Term expires, the only payments that the University shall be required to make as a result of such termination (whether by way of compensation or otherwise) are payments which are due to be paid to the Funder in accordance with the terms of this Agreement up until the Termination Date.
	3. The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 20.1(d) or 20.2(b).

Payments by the Funder if a Funder Termination Event occurs

* 1. If this Agreement is terminated (in part or in whole) by the University pursuant to Clause 20.1(b) the Funder shall pay to the University the payments that are set out or referred to in Part [ ] of Schedule 11.
1. MISCELLANEOUS AND GOVERNING LAW
2. FORCE MAJEURE
	1. Subject to the remaining provisions of this Clause 22 the University may claim relief under this Clause 22 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event.
	2. The University shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on its obligations and any action it proposes to take to mitigate its effect.
	3. Subject to Clause 22.4, as soon as practicable after the University issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
	4. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event.
	5. Where, as a result of a Force Majeure Event the University fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
		* 1. the University shall not be in breach of contract and shall have no liability to the Funder in respect of such failure;
			2. neither Party shall be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 20.1(c) or Clause 20.2(b); and
			3. the University shall be entitled to receive payment in respect of the provision of the Services to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
	6. The University shall notify the Funder as soon as practicable after the Force Majeure Event ceases or no longer causes the University to be unable to comply with its obligations under this Agreement.
	7. Relief from liability for the University under this Clause 22 shall end as soon as the Force Majeure Event no longer causes it to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 22.6.
3. ASSIGNMENT AND NOVATION
	1. The Funder shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the University.
	2. The University may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to any third party and the Funder shall, at the University’s request, enter into a novation agreement in such form as the University shall reasonably specify in order to enable the University to exercise its rights pursuant to this Clause 23.2.
4. WAIVER AND CUMULATIVE REMEDIES
	1. The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
	2. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.
5. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

1. PREVENTION OF FRAUD AND BRIBERY
	1. The Funder represents and warrants that neither it, nor to the best of its knowledge any Funder Personnel, have at any time prior to the Effective Date:
		* 1. 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
			2. 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.
	2. The Funder shall not during the term of this Agreement:
		* 1. commit a Prohibited Act; and/or
			2. do or suffer anything to be done which would cause the University or any of the University’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
	3. The Funder shall during the term of this Agreement:
		* 1. establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
			2. have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Funder do not commit tax evasion facilitation offences as defined under that Act;
			3. keep appropriate records of its compliance with its obligations under Clause 26.3(a) and make such records available to the University on request; and
			4. take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
	4. The Funder shall immediately notify the University in writing if it becomes aware of any breach of Clause 26.1 and/or 26.2, or has reason to believe that it has or any of the Funder Personnel have:
		* 1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
			2. 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; and/or
			3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
	5. If the Funder makes a notification to the University pursuant to Clause 26.4, the Funder shall respond promptly to the University's enquiries, co-operate with any investigation, and allow the University to Audit any books, Records and/or any other relevant documentation in its possession or control.
	6. If the Funder is in Default under Clauses 26.1 and/or 26.2, the University may by notice:
		* 1. require the Funder to remove from performance of this Agreement any Funder Personnel whose acts or omissions have caused the Default; or
			2. immediately terminate this Agreement.
	7. Any notice served by the University under Clause 26.6 shall specify the nature of the Prohibited Act, the identity of the Party who the University believes has committed the Prohibited Act and the action that the University has elected to take (including, where relevant, the date on which this Agreement shall terminate).
2. SEVERANCE
	1. If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
	2. In the event that any deemed deletion under Clause 27.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
	3. If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 27.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial* *Negotiation*) of Schedule 12 (except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 27.3.
3. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

1. ENTIRE AGREEMENT
	1. This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
	2. Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
	3. Nothing in this Clause 29 shall exclude any liability in respect of misrepresentations made fraudulently.
2. THIRD PARTY RIGHTS

No person who is not a Party to this Agreement shall have any rights under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

1. NOTICES
	1. Any notices sent under this Agreement must be in writing.
	2. Subject to Clause 31.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| Manner of Delivery | Deemed time of service  | Proof of service |
| Email | 9.00am on the first Working Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message. |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day. | Properly addressed and delivered as evidenced by signature of a delivery receipt  |
| Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery. | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm). | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |

* 1. Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

|  |  |  |
| --- | --- | --- |
|  | University | Funder |
| Contact |  |  |
| Address |  |  |
| Email |  |  |

* 1. The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 31.2:
		+ 1. Force Majeure Notices;
			2. notices issued by the Funder pursuant to Clause 20.2 (*Termination* *by the Funder*);
			3. Termination Notices; and
			4. Dispute Notices.
	2. Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 31.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 31.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
	3. This Clause 31 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 (other than the service of a Dispute Notice under Schedule 12.
1. DISPUTES
	1. The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
	2. The Funder shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.
2. GOVERNING LAW AND JURISDICTION
	1. This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
	2. Subject to Clause 32 (*Disputes*) and Schedule 12 (including the University’s right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

|  |  |
| --- | --- |
| SIGNED for and on behalf of )**YORK ST JOHN UNIVERSITY**: ) ) ) | Signature:Name (blockcapitals): Position: |

|  |  |
| --- | --- |
| SIGNED for and on behalf of )[**name of Funder** ] ) ) ) | Signature:Name (blockcapitals): Position: |