

## The University of Bath Terms and Conditions – provision of services by an individual or personal services company

### 1. DEFINITIONS

In this Agreement unless the context otherwise requires:-

- 1.1 **"Bath"** means the University of Bath;
- 1.2 **"Consultant"** means the supplier of the Services to Bath;
- 1.3 **"Intellectual Property"** means all patents, trademarks, service marks, registered designs, utility models, plant variety rights, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, copyright, database rights, design rights, inventions, confidential information (including without limitation know how) and any other similar rights situated in any country in the world;
- 1.2 **"Results"** means all data, information and results derived from the Services as carried out by the Consultant;
- 1.3 **"Services"** means the services as defined in the Schedule.

### 2. CONDUCT OF SERVICES

- 2.1 The Consultant shall use all reasonable endeavours to carry out the Services within the agreed timescale(s), and shall ensure completion by the date agreed (as specified in the Schedule).
- 2.2 The price for the carrying out of the Services shall be the Fee (price) plus agreed expenses as set out in the Schedule, and VAT. This is payable by Bath to the Consultant within 30 days of the receipt of a valid accurate invoice. Copy receipts must be provided for all expenses claimed.
- 2.3 The Consultant shall in carrying out the Services use the required skill and expertise and shall carry out the Services efficiently
- 2.4 Where Bath, for the purposes of the Agreement, issues materials 'free of charge' to the Consultant such materials shall be and shall remain the property of Bath. The Consultant shall maintain all such materials in good order and condition subject, in the case of tooling patterns and the like, to fair wear and tear. The Consultant shall use such materials solely in connection with the Agreement. Any surplus materials shall be disposed of at Bath's discretion. Waste of such materials arising from bad workmanship or negligence of the Consultant shall be made good at the Consultant's expense. Without prejudice to any other of the rights of Bath, the Consultant shall deliver up such materials whether further processed or not to Bath on demand.
- 2.5 The Consultant shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person, any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person or Company in relation to the Agreement.
- 2.6 The Consultant shall ensure that no slavery or human trafficking is taking place in any part of his business or supply chain.
- 2.7 Any enquiry made of the Consultant concerning Bath or its Agreements should be notified to Bath's Head of Procurement.
- 2.8 The Consultant shall ensure that any of his staff (or those of his subcontractor) who have access to or are employed on Bath's premises are made aware of and comply with Bath's Health and Safety and Security Procedures and Instructions at all times. The Consultant shall also provide the services in accordance with Bath's Environmental Policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone-depleting substances and minimise the release of greenhouse gases, volatile organic compounds or any other substances damaging to health and the environment.
- 2.9 In performing its obligations under this Agreement, the Consultant shall comply with (a) all applicable laws, statutes

and regulations from time to time in force, including the Data Protection Act 2018, the Bribery Act 2010 and the Modern Slavery Act 2015, and any amendments, re-enactments or revisions of such laws, statutes and regulations; (b) Bath's policies as notified to the Consultant from time to time.

- 2.10 The Consultant shall take appropriate steps to ensure that neither the Consultant nor its staff are in a position where there is or may be an actual, or potential, conflict between the pecuniary or personal interests of the Contractor and/or its staff and the duties owed to Bath, including:
  - (a) formal procedures to oblige all staff to declare any actual or potential personal or financial interest in any matter concerning this Agreement, and to exclude any such staff from any discussion or decision-making relating to this Agreement;
  - (b) disclosure to Bath of full particulars of any such conflict of interest which may arise.

### 3. ACCEPTANCE AND RESULTS

- 3.1 In the case of Services performed by the Consultant not conforming with the Agreement whether by reason of being a quality not stipulated or being unfit for the purpose for which they are required, Bath shall have the right to reject such Services within a reasonable time of their performance and to purchase a service elsewhere as near as practicable to the same specifications and conditions as circumstances shall permit but without prejudice to any other right which Bath may have against the Consultant. Before exercising the right to purchase elsewhere Bath shall give the Consultant a reasonable opportunity to improve the Services with those which conform to the Agreement. The making of payment shall not prejudice Bath's right of rejection. Any inspection, checking, approval or acceptance given on behalf of Bath shall not relieve the Consultant or his sub-contractor from any obligation under the Agreement.
- 3.2 The Consultant shall deliver all Results to Bath forthwith at the end of the relevant Services.

The Consultant undertakes:

  - 3.2.1 to keep the Results in confidence as confidential material.
  - 3.2.2 to retain copies of the Results for no longer than 12 months following delivery of the Results to Bath (and then only to satisfy any regulatory requirements and to ensure compliance with its obligations under this Agreement).

### 4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 All Intellectual Property existing in the Results is and shall remain within the sole ownership of Bath. The Consultant shall not acquire from Bath any right, title, interest or licence in any of Bath's Intellectual Property and shall not use all or any part of Bath's Intellectual Property for any purpose whatsoever.

### 5. CONFIDENTIALITY

- 5.1 Each party (the "receiving party") hereby agrees and undertakes that during a period of 10 years from the date of this Agreement it shall keep confidential and shall not without prior written consent of the other party (the "disclosing party") disclose to any third party or use any confidential information of the disclosing party which may have been disclosed to it by the disclosing party in connection with the terms of this Agreement ("Confidential Information") Provided always that such obligation of confidentiality shall not extend to all or any part of such Confidential Information which:
  - 5.1.1 is or shall (otherwise than by reason of any default by the receiving party) become freely

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available to the general public; or

- 5.1.2 the receiving party can show by documentary evidence came into its possession or control from a third party free of any obligation of confidentiality and otherwise than by reason of any breach of any obligation of confidentiality by such third party.
- 5.2 The parties acknowledge that all Results shall be regarded as Confidential Information of Bath.
- 5.3 The receiving party shall procure that any employee of the receiving party who shall obtain or shall have access to any Confidential Information of the disclosing party in connection with the performance of this Agreement shall be bound by obligations of confidentiality substantially similar to the provisions of clause 5.1 and any such employee shall treat such Confidential Information with not less than the same degree of care that said employee uses in respect of the receiving party's Confidential Information. The receiving party shall ensure that such employee shall comply with the obligations of the receiving party under this Agreement.
- 6. LIABILITY**
- 6.1 The Consultant warrants that it will use all reasonable care and skill in performing its obligations, and expressly warrants that any result or objective shall be achieved by the end of the given period.
- 6.2 Any commentary or advice given by Bath in connection with the Results is provided only by way of assistance to interpret the Results and shall not constitute advice capable of being relied on. No third party shall be entitled to rely on any such advice.
- 6.3 The Consultant hereby indemnifies and shall keep Bath fully and effectively indemnified against any loss, claim, damage, expense or liability, of whatever nature, which may arise from or in connection with the conduct of the Services.
- 6.4 The Consultant shall, without delay and at his own expense, reinstate, replace or make good to the satisfaction of Bath or, if Bath agrees, compensate Bath, for any loss or damage connected with the execution of the Agreement, except to the extent that such loss or damage is caused by the neglect or default of Bath. 'Loss or damage' includes: loss or damage to property; personal injury to, or the sickness or death of, any person; loss of profits or loss of use suffered as a result of any loss or damage.
- 6.5 Nothing in this Agreement shall be deemed to exclude or limit a party's liability in negligence for death or personal injury or a party's liability for fraud.
- 6.6 The Consultant shall hold all current relevant insurances applicable to this Agreement
- 7. NATURE OF THIS AGREEMENT**
- 7.1 This Agreement shall be binding on the legal successors and assigns of the parties hereto and may only be varied following a written confirmation of variation from Bath's Head of Procurement.
- 7.2 The Consultant shall not transfer, assign, charge, or otherwise dispose of the Agreement or any part of it without the prior written consent of Bath's Head of Procurement. The Consultant shall not sub-contract the performance of the Services without the prior written consent of Bath's Head of Procurement which shall not be unreasonably withheld provided that any person to whom the Services are sub-contracted has the necessary skills and experience for the proper performance of the Services. Where the Consultant enters into an agreement with another consultant or sub-contractor for the purpose of performing the Agreement or any part of it, he shall cause a term to be included in such

agreement which requires payment to be made by the Consultant to the sub-contractor within a period not exceeding 30 days from receipt of a valid accurate Invoice, and the Consultant shall remain liable to Bath for the proper performance of the Services.

- 7.3 No failure or delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any right, power or privilege hereunder or otherwise.
- 7.4 Nothing in this Agreement shall create or be deemed to create a partnership, joint venture or the relationship of principal and agent between the parties.
- 7.5 No provision of this Agreement shall be enforceable by any person who is not a party to this Agreement, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 7.6 Each party acknowledges that in entering into this Agreement it does not do so on the basis of and does not rely on any representation, warranty or other provision (except as expressly provided herein).
- 7.7 This Agreement is the entire agreement between the parties relating to its subject matter. No purported amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each party.
- 7.8 The Consultant shall be exclusively responsible for the payment of any applicable national insurance contributions and for the discharge of any income tax liability and value added tax payable in respect of all fees paid to him hereunder and any other payment made or benefits provided under this Agreement and shall pay any such contributions to the appropriate authorities.
- 7.9 In the event that Bath is charged with any liability for deducting PAYE or making any national insurance contribution or other such payment in respect of the Fee (other than where such liability arises out of Bath's negligence or wilful default), including any penalty or fine or interest for late payment, it shall notify the Consultant as soon as reasonably practicable. Subject to clause 7.10 below, the Consultant shall put Bath in funds to pay any such liability (save as aforesaid) or shall otherwise reimburse to Bath an amount equal to that incurred by Bath in settling the same within 30 days of any request by Bath so to do after it has settled the same (which it shall, subject to clause 7.10 be at liberty to do).
- 7.10 In the event that, following notification by Bath as envisaged in clause 7.9 above, the Consultant wishes Bath to appeal the assessment made upon it, the Consultant shall so notify Bath and Bath shall, subject to its being indemnified for all reasonable costs and expenses in respect thereof by the Consultant and to its reasonable satisfaction, take all such steps as the Consultant shall reasonably require in appealing the same and, subject as aforesaid, shall keep the Consultant informed and liaise with the Consultant during the course of the appeal. In the event that any such appeal is unsuccessful, the Consultant shall, without prejudice to the foregoing, pay to Bath an amount equal to the relevant liability of Bath, including in respect of any penalty or fine or interest for late payment and whether before or after payment of the same by Bath.
- 8. DATA PROTECTION**
- 8.1 The Consultant shall comply with all of the provisions of the UK GDPR including the Data Protection Act 2018, (the 'Act')
- 8.2 If the Consultant is a 'data controller', as defined by the Act, namely, a person who alone or jointly with another determines the purposes for which and the manner in which

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any personal data is processed, then the Consultant shall comply at its own cost with prevailing Data Protection legislation including but not limited to obtaining the necessary data protection notifications.

### 9. FORCE MAJEURE, TERMINATION AND RECOVERY OF SUMS

- 9.1 Neither party shall be liable for failure to perform its obligations under this Agreement if such failure results from circumstances which could not have been contemplated and which are beyond the party's reasonable control.
- 9.2 If a party is prevented from fulfilling its obligations under this Agreement for more than 30 consecutive days, the other party may terminate the then unperformed portion of the Agreement by notice in writing, without liability.
- 9.3 Whenever under the Agreement any sum or sums of money shall be recoverable from or payable by the Consultant to Bath, the same may be deducted from any sum then due, or which at any later time may become due, to the Consultant under the Agreement or under any other agreement with Bath.
- 9.4 Bath shall, in addition to its powers under these conditions, have the power to terminate the Agreement at any time by giving the Consultant written notice. Bath reserves the right to direct the Consultant to cease all work connected with the Agreement. Where Bath has invoked either of these rights, the Consultant may claim "reasonable" costs necessarily and properly incurred, excluding loss of profit. For the avoidance of doubt the Consultant's claim under this condition may not exceed the total Fee.

### 10. FREEDOM OF INFORMATION ACT (FOIA)

10.1 The Consultant acknowledges that Bath is subject to the requirements of the FOIA and shall provide all necessary assistance and cooperation as is reasonably requested by Bath to enable it to comply with its obligations under the FOIA.

10.2 Notwithstanding any other provision in the Agreement, Bath shall be responsible for determining in its absolute discretion whether any information relating to the Consultant or the Services is exempt from disclosure in accordance with the FOIA.

### 11. MISCELLANEOUS

11.1 No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

11.2 If any clause, sub-clause or other provision of the Agreement is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Agreement.

### 12. LAW AND JURISDICTION

12.1 This Agreement shall be governed by and construed in all respects in accordance with the Laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.