THE UNIVERSITY OF BIRMINGHAM

GENERAL CONDITIONS OF CONTRACT FOR THE PROVISION OF CONSULTANCY SERVICES

1. GENERAL

1.1 These terms and conditions together with the Order and any other Attachments to this Contract and/or the Order, and any document, plan or specification referred to in the Order and/or any Attachment constitute the contract between the Parties for the Project and/or the provision of the Services (the "Contract").

1.2 In the event of any conflict between the provisions of this Contract and the Attachment hereto and the provisions set out in the Order and/or any Attachment to the Order, then, unless otherwise provided for in the Order, the provisions set out in the Order shall take precedence.

1.3 The Contract constitutes the entire agreement between the Parties relating to the Project and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

1.4 Nothing in this Contract shall have the effect of making the Consultant a servant or employee of the Client.

2. DEFINITIONS

2.1 ‘Client’ shall mean the University of Birmingham or any wholly owned or associated subsidiary so named at the address stated on the Order.

2.2 ‘Consultant’ means the person, firm or company to whom the Contract is issued; and who is responsible for providing the services in accordance with the Contract.

2.3 ‘Parties’ shall mean the Client and the Consultant and ‘Party’ shall mean the Client or the Consultant as the context demands.

2.4 ‘Project’ shall mean the deliverables and/or project to be delivered by means of the provision of the consultancy services, such project being as specified in the Order; and/or on any Attachment.

2.5 ‘Services’ shall mean the consultancy services to be provided as specified in the order and/or on any Attachment to deliver and complete the Project and/or otherwise to be provided to deliver the outputs specified in the Order and/or on any Attachment.

2.6 ‘Fees’ shall mean the price or rate for the Project stated in the Attachment and/or on the Order.

2.7 ‘Key Personnel’ shall mean any person named in the Attachment and/or on the Order as key personnel and/or any person who the Client notifies the Consultant is to be regarded as key personnel during the course of the provision of the Services and/or the Project and fulfillment of the Contract.

2.8 ‘Premises’ shall mean the location where the Project is to be performed, as specified in the Order; and/or the Schedule to this Contract.

2.9 ‘Contract’ shall mean the Contract between the Client and the Consultant consisting of the Order, these Conditions and any other documents (or parts thereof) specified in the Order; and/or the Schedule to this Contract.

2.10 ‘Order’ shall mean a properly authorised Purchase Order for consultancy services issued by the Client to the Consultant authorising the Consultant to proceed with the Project and/or the provision of services and setting out (either on the Order or on an Attachment to the Order and/or this Contract) the details of the Project, the Fees payable and any terms applying to the Project and/or the provision of Services which are additional to these terms and conditions.

2.11 ‘Attachment’ shall mean a document attached to these terms and conditions of contract and/or attached to or referred to in an Order.
3. THE PROJECT

3.1 The Consultant shall carry out and complete the Project; and/or provide the Services:

3.1.1 in accordance with the Contract and/or the Order; and
3.1.2 with reasonable skill, care and diligence; and
3.1.3 to the satisfaction of the Client; and
3.1.4 (where applicable) using staff or agents that are adequately trained and with appropriate skills and qualifications.

3.2 The Consultant shall not place or cause to be placed any orders with third parties or otherwise incur any liabilities to third parties in the name of the Client without the prior written consent of the Client.

3.3 The Consultant shall provide the Client with such reports of its work on the Project at such intervals and in such form as the Client may from time to time require.

4. CONSULTANT'S PERSONNEL AND ACCESS

4.1 The Consultant shall make the Key Personnel available for the purposes of the Project and/or provision of the Services and shall not make any changes in the Key Personnel without prior approval of the Client.

4.2 If and when requested by the Client, the Consultant shall provide the Client with a list of the names and addresses of any persons being used in the Project or any part of it specifying in each case the capacities in which they are involved and giving such other particulars, evidence of identity and other supporting evidence as the Client may reasonably require.

4.3 The Consultant shall comply with any notice reasonably given by the Client stating that a person named in the notice is not to be involved any further in the provision of the Project and/or the Services. The Consultant shall bear the cost of complying with such a notice.

4.4 Where the Project is being carried out at Premises owned or occupied by the Client:

4.4.1 the Consultant shall comply and shall ensure that its Key Personnel, staff, sub-contractors and agent comply with any rules or regulations applied by the Client in relation to security and/or health and safety at its Premises;

4.4.2 if the Client gives the Consultant notice that any person is not to be admitted to or is to be removed from its land or Premises or is not to become involved in or is to be removed from involvement in the Project and/or Services, the Consultant shall take all reasonable steps to comply with such notice and shall bear the cost of any such notice. The Consultant shall ensure that any person who is removed is replaced by someone at least of equivalent qualifications, experience and expertise.

4.5 The decision of the Client as to whether any person is to be admitted to or is to be removed from the Premises, or is not to become involved in, or is not to be removed from involvement in, the Project, or as to the designation or approval of Key Personnel and as to whether the Consultant has furnished the information or taken the steps required under clauses 4.3 and/or 4.4 shall be final and conclusive, and shall not relieve the Consultant of any of its obligations under the Contract.

4.6 Without prejudice to the provisions of clause 23 below if, the Consultant employs anyone for the purposes of providing the Project, and/or the Services, the Consultant shall not unlawfully discriminate within the meaning and scope of the provisions of any Act of Parliament relating to discrimination in employment.
5. **PAYMENT**

5.1 In consideration of the carrying out and/or completion of the Project and/or provision of the Services by the Consultant the Client shall pay the Consultant the Fees.

5.2 The Consultant shall submit an invoice for the Project and/or the Services to the Client's address for invoices given on the Order. The invoice shall contain the Order Number, a description of the part of the Project and/or the Services to which it refers and the applicable Fees.

5.3 The Consultant shall be entitled to be reimbursed its reasonable expense which the Consultant can demonstrate as being actually, reasonably and necessarily incurred in connection with the Project and/or the Services subject to the production of such receipts and documentation as the Client reasonably requires. Expenses shall be reimbursable at the rates set out in any Attachment and/or in the Order.

5.4 The Client shall pay the Consultant within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed and/or Services rendered and confirmed as being to the satisfaction of the Client.

5.5 In addition to the Fees, the Client shall pay the Consultant a sum equivalent to any Value Added Tax chargeable in respect of the Project and/or Services. Value Added Tax shall be shown as a separate item on the Consultant's invoice.

5.6 The Consultant shall be entirely responsible for the payment of all and any income tax, national insurance contributions and any similar liabilities on any Fees earned under this Contract.

6. **RECOVER OF SUMS DUE**

6.1 If any sum is recoverable from or payable by the Consultant under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Consultant under the Contract or under any other agreement with the Client.

7. **AUDIT**

7.1 The Consultant shall keep and maintain, until two (2) years after the Contract has been completed, records to the satisfaction of the Client of all costs and expenditure which are reimbursable by the Client. This shall include records of the hours worked and costs incurred by the Consultant and the costs of any employees of the Consultant paid for by the Client, and/or costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant shall on request afford the Client or its representatives such access to those records as may be required by the Client.

8. **QUALITY**

8.1. In the absence of any specification, the Project and/or any Services provided and/or any goods supplied in order that the Consultant may meet its obligations to deliver the Project and/or provide the Services in accordance with the Contract must comply with the express terms of the Contract and implied conditions, warranties and terms contained in the Sale and Supply of Goods and Services Act 1982, any related statutes, and any statutory re-enactment(s) or modification(s) thereof, and with any specifications contained in any European Standards of Conformity (CE Standards) and/or any specification of the British Standards Institute (or equivalents) which are relevant to the goods and/or Services concerned at the time of the fulfilment of the Consultant's obligations under the Contract.

9. **INTELLECTUAL PROPERTY RIGHTS**

9.1 Without prejudice to any other rights and/or obligations of the Client under the Contract, and subject to the rights of any third parties and/or all and any rights and/or obligations arising in all and any pre-existing contracts with any third parties relating to the subject matter of this Contract, all Intellectual Property Rights and copyrights in any of the tangible outputs and/or results produced as a result of the provision of the Services and/or delivery of the Project in accordance with this Contract shall vest in the Client. Accordingly the intellectual property rights (including the copyright and/or
similar protection) in any reports, documentation or materials are hereby assigned to, and shall vest in, the Client absolutely. This condition and the provisions set out in this clause 9.1 shall survive the discharge and/or termination of the Contract however such termination may arise.

9.2 Save where provision of the Services and/or the Project uses documentation and materials supplied by the Client, the Consultant warrants that none of the documentation and materials used or created as part of the Project and/or provision of the Services shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

9.3 The Consultant shall indemnify the Client against all actions, demands, charges, expenses and costs (including legal costs) which the Client may incur as a result of or in connection with any breach of clause 9.2.

10. INDEMNITIES AND INSURANCE

10.1 The Consultant shall indemnify and keep indemnified the Client, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, its servants or agents.

10.2. The Consultant (if an individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Consultant by reason of or in relation to this Contract.

10.3. The Seller will keep the Buyer indemnified in respect of:-

10.3.1 all loss and/or expense which results during proper use directly from defective materials, goods; workmanship or design supplied by the Consultant. For these purposes the Consultant will on request produce evidence of premium receipts for Product Liability insurance coverage of not less than five million pounds sterling (£5,000,000) or as otherwise shown in the Order and/or in any Attachment for any one, or series of claims that may arise; and

10.3.2. all loss and/or expenses and all actions, claims, demands, costs and expenses incurred by or made against the Client which arises from the Project and/or any Services provided and/or advice given or anything done or omitted to be done under the Contract by the Consultant. For these purposes the Consultant will on request produce evidence of premium receipts for Professional Indemnity Insurance coverage of not less than two million pounds sterling (£2,000,000) or as otherwise shown in the Order and/or in any Attachment for any one, or series of claims that may arise; and

10.3.3. against any claims for the loss or injury to any person by reason of the Consultant's negligence, or any act or omission on the part of the Consultant's employees, sub-contractors, or agents arising out of the performance the Contract; and

10.3.4. the Consultant will keep the Client indemnified against any damage to the Client's property. For these purposes the Consultant will on request produce evidence of premium receipts for Public Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) or as otherwise shown on the Order and/or in any Attachment for any one, or series of claims that may arise.

11. HEALTH AND SAFETY

11.1 The Consultant shall notify the Client of any health and safety hazards that may arise in connection with the performance of this Contract.
11.2 Where the Project is being carried out and/or the Services provided at Premises owned or occupied by the Client, the Client shall notify the Consultant of any health and safety hazards which may exist or arise at the Premises and which may affect the Consultant. The Consultant shall draw these hazards to the attention of any of its Key Personnel; employees, sub-contractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measure.

12. CONFIDENTIALITY

12.1 Each Party ('the Receiving Party') shall keep confidential all information of the other Party ('the Disclosing Party') obtained under or in connection with the Contract, whether such information (which shall include, but not be limited to information obtained by the Consultant when visiting the Premises) is related to the Contract or otherwise, and shall not divulge the same to any third party without the written consent of the Disclosing Party, and shall use it only for the purposes of the Project, the provision of the Services and/or the Contract.

12.2 The provisions of this clause shall not apply to any information if such information is:

12.2.1 in the public domain, other than through the fault of the Receiving Party, or

12.2.2 in the possession of the Receiving Party before its disclosure by the Disclosing Party; or

12.2.3 obtained from a third party that is free to divulge the information concerned without a continuing restriction on its disclosure; or

12.2.4 independently developed by the Receiving Party.

12.3 The Consultant and the Client shall divulge the information of the other Party only to those Key Personnel; employees, including the agents and/or employees of any authorised sub-contractor in accordance with clause 12.4 below, that are directly involved in the Project, the Contract and/or provision of Services in accordance with the Contract, and shall ensure that the Key Personnel; employees and/or agents are aware of and comply with these obligations as to confidentiality.

12.4 The Consultant must ensure that its authorised sub-contractors are bound by the requirements of this clause and shall be held responsible for any breaches of confidentiality committed by them.

12.5 Either Party may request that access be granted to the Consultant and the Client and/or an authorised third party to confidential information in whatsoever media format it is held for specific purposes and in order for the party concerned to fulfil its obligations under the Contract. Such requests shall not be unreasonably withheld, and access and/or authority shall be granted as far as party granting access is legally able to do. In such circumstances, requests must be issued in writing, and any confidential information released in accordance with this clause 12.5 shall be held in strictest confidence by the Disclosing Party, and may, subject to the request of the Disclosing Party, be subject to separate Non-Disclosure Agreement or Commercial Confidentiality Certificate, the terms and conditions of which shall be agreed at the appropriate time.

12.6 Without prejudice to clause 24 below, the Contract shall be subject to the Date Protection Act 1994 and the Consultant and the Client shall at all times comply with their obligations under the aforesaid Act.

12.7 Subject to the provisions of the Freedom of Information Act, the provisions of this clause shall continue in perpetuity, notwithstanding the termination or discharge of the Contract.

12.8 Where the Consultant holds information for an on behalf of the Client, and the Client receives a freedom of information request in respect of the information the Consultant holds on behalf of the Client, the Consultant shall fully co-operate and provide all assistance requested and/or required by the Client in order to enable the Client to respond to such request within the timescales provided and set out in the Freedom of Information Act 2000 and shall fully indemnify the Client in the event of any action,
claims, demands, costs and expenses incurred by or made against the Client as a result of any failure of the Consultant to comply with its obligations under this clause 12.8.

13. TIME OF PERFORMANCE AND DEFAULT

13.1 The Consultant shall carry out the Project and/or provide the Services by the date or in accordance with the timescales set out in the Order and/or in any Attachment, or otherwise in accordance with any timescale reasonably notified to the Consultant by the Client. Any time or period for the provision of the Services and/or delivery and/or completion of the Project shall be of the essence of the Contract.

13.2 The Consultant shall submit such detailed programmes of work and progress reports as the Client may from time require.

13.3 The Consultant shall notify the Client immediately if it becomes aware of any event that it believes is likely to delay or impede the Project and/or the provision of the Services.

13.4 In the event that the Consultant shall fail to provide the Services and/or deliver and/or complete the Project, or any part thereof:-

13.4.1 in accordance with the date or dates and/or the timescale set out in the Order and/or in any Attachment and/or in accordance with any timescale notified to the Consultant by the Client; and/or

13.4.2 to appropriate standards that are to the satisfaction of the Client and/or in accordance with the Contract in any single or series of events,

the Client's rights shall, without prejudice to any other rights or remedies which may accrue to the Client, be as set out in clause 13.5 below.

13.5 In the event of any default of the Consultant as set out in clause 13.4 above, the Client shall have the right, at the Client's sole discretion to:-

13.5.1 require that the Consultant provides all such additional resources as may be necessary in order to fulfil its obligations under the Contract, at no additional cost to the Client and such that the Services are provided and/or Project (or any part thereof) delivered and completed within a timescale and/or by a date or dates which shall be agreed in writing by the Parties; and/or

13.5.2 contract with others to provide the Services and/or deliver and/or complete the Project, in part or in whole at the discretion of the Client and recover any additional costs and/or expenses incurred by the Client as a result of taking such action, provided that the Consultant's maximum liability under this sub-clause 13.5.2 shall not exceed the percentage and/or amount set out on the Order and/or in any Attachment, and/or

13.5.3 put in place such interim arrangements as the Client deems necessary in order to maintain its standards of operation and/or meet its obligations in relation to the Services and/or the Project, including, without limitation, meeting the Client's own contractual commitments to any third party that are, or may be dependent upon the provision of the Services and/or delivery and/or completion of the Project, or any part thereof. The Client shall have the right to recover any costs and/or expenses incurred in taking action under this sub-clause 13.5.3 on the same basis and subject to the Consultant having the same limit of liability as set out in sub-clause 13.5.2; and

13.5.4 any combination of the above; or

13.5.5 terminate the Contract subject to the provisions of clauses 15 and 16 below.

13.6 In the event that the Client shall elect to proceed with the fulfilment of the Contract under any of the provisions of clause 13.5 above, and the Client shall have suffered a loss, the Client shall (in addition to its rights as set out in sub-clauses 13.5.2 and 13.5.3 and/or any other rights and remedies that may accrue to the Client under the
Contract or otherwise) have the right to recover, as liquidated damages and not by way of a penalty, any such losses that the Client has incurred and/or suffered due to the fault or failure of the Consultancy to fulfill its obligations under the Contract. The percentage rate of liquidated damages and the maximum liability of the Consultancy that shall apply to this Contract shall be as set out on the Order and/or in any Attachment and such rate and maximum liability shall be deemed to be a reasonable pre-estimate of the Client's losses due to the failure of the Consultancy to provide the Services and/or deliver and/or complete the Project in accordance with the date or dates and/or timescale set out in, and/or forming part of, the Contract.

14. REJECTION OF THE SERVICES AND/OR THE PROJECT

14.1 The Client may at any time reject anything delivered or provided as part of the Services and/or the Project which, in the view of the Client, does not comply with the Contract in any material way.

14.2 If the Client rejects all or part of the Services and/or the Project under clause 14.1 above, it shall serve a notice on the Consultancy stating the reasons for such rejection.

14.3 Following receipt of a notice of rejection of the Services and/or the Project or any part thereof, the Consultancy shall have five (5) working days (or such other period as the Parties may agree in writing) during which the Consultancy shall correct the faults which caused the notice of rejection to be issued.

14.4 Without prejudice to the Client's other rights under this Contract, if the Consultancy fails to correct the faults which caused the notice of rejection to be issued to the satisfaction of the Client within five (5) working days (or such longer period as the Parties have agreed), the Client's rights shall be as set out in clauses 16.2 and 16.3.

15. TERMINATION

15.1 The Consultancy shall notify the Client in writing immediately upon the occurrence of any of the following events:

15.1.1 (where the Consultancy is an individual) if a petition is presented for the Consultancy's bankruptcy or a criminal bankruptcy order is made against the Consultancy, or the Consultancy makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

15.1.2 (where the Consultancy is not an individual but is a firm, or a number of persons acting together in any capacity), if any event in sub-clauses 15.1.1 or 15.1.3 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultancy to be wound up as an unregistered company; or

15.1.3 where the Consultancy is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

15.2 The Client shall be entitled to terminate this Contract by notice to the Consultancy with immediate effect if:

15.2.1 any of the events described in clause 15.1 occurs; or

15.2.2 the Consultancy has committed a material breach of this Contract which is not capable of remedy; or

15.2.3 the Consultancy has failed, or consistently failed, to provide the Services and/or deliver and/or complete the Project or any part thereof by the date or dates and/or in the timescale set out in the Order; or any Attachment or otherwise agreed in writing by the Parties (or any combination of the foregoing); or
15.2.4 the Consultant has failed to correct the faults which give rise to a notice of rejection as set out in clause 14.4 within the period of five (5) working days (or such longer period as the Parties have agreed) as set out in clause 14.4; or

15.2.5 the Consultant has committed a material breach of this Contract which is capable of remedy but has failed to remedy such breach within thirty (30) days of being required by the Client in writing to do so; or

15.2.6 the Consultant commits a substantial and persistent breach of its obligations as set out in clause 23 below, provided that the Client has notified the Consultant of such breach and been given a reasonable period to remedy the breach in accordance with the provisions of clause 23.10; or

15.2.7 (where the Consultant is an individual), if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

15.3 The Consultant shall be entitled to terminate this Contract by notice to the Client with immediate effect if the Client has committed a material breach of this Contract which is capable of remedy but has failed to remedy such breach within thirty (30) days of being required by the Consultant in writing to do so.

15.4 The Client shall be entitled to terminate this Contract at any time by giving to the Consultant not less than thirty (30) days' notice in writing.

16. CONSEQUENCES OF TERMINATION

16.1 In the event of termination of this Contract under the provisions of sub-clauses 15.2.1 or 15.2.7, or clauses 15.3, 15.4 or 21.2, the Client shall be obliged to make payment of the Fees and expenses which the Consultant can demonstrate to the satisfaction of the Client are properly due for the provision of the Services properly rendered and/or the Project completed in accordance with the Contract and to the satisfaction of the Client to the date that termination takes effect. The Consultant shall be obliged to deliver to the Client any tangible output of the Services and/or the Project to the date of termination and/or any goods or services that the Consultant is required to supply or provide and for which payment is being made. The provisions of this clause 15.1 shall be provided that the Client's maximum liability under this clause and this Contract shall not exceed the Fees set out on the Order and/or in any Attachment plus any expenses properly due to the Consultant under the Contract. The Consultant shall in any event use all reasonable endeavours to maintain any fees, costs and expenses payable under this clause at the lowest practicable level.

16.2 In the event of termination of this Contract under the provisions of sub-clauses 15.2.2 to 15.2.6 inclusive, or clause 22.2 the rights, responsibilities and obligations of the Client and the Consultant shall be as set out in clauses 15.1 and 16.3. In addition to its rights under clauses 16.1 and 16.3 the Client shall have the right to recover from the Consultant the additional costs of obtaining the Services and/or completing the Project either using its own resources or those of a suitably qualified third party, selected at the discretion of the Client. The Consultant shall be obliged to provide promptly and without undue delay all assistance as the Client shall reasonably require either to the Client or its nominated third party (including, without limitation, providing copies of, and/or granting access to and/or any necessary permissions to use and/or modify any documentation, and/or materials, including software, belonging to the Consultant or any third party for the purposes of enabling the Services to be provided and/or the Project to be completed) in order that the provision of the Services and/or the Project can be completed.

16.3 Upon termination of the Contract for any reason, the Consultant shall either return to the Client, at the Consultant's sole risk and expenses, all and any documentation, materials and/or property of the Client which is in the possession of the Consultant promptly and without undue delay, or, at the Client's option, comply with any instruction issued by the Client to destroy such documentation, material and/or property at the Consultant's expense. Where requested by the Client, the Consultant shall provide a certificate or other written undertaking confirming that the Client's
documentation, materials and/or other property has been destroyed in accordance with the Client’s instructions.

18.4 Termination of the Contract shall not prejudice or affect any right, action or remedy that shall have accrued to either Party prior to the date of termination and shall not affect the continued operation of clauses 8 and 12 of the Contract. In the event of termination of the Contract, the Client shall, unless otherwise provided for in the Contract, have not be liable for any unfulfilled commitment.

17. CONSULTANT TO INFORM ITSELF FULLY

17.1 Unless otherwise provided for in the Contract, the Consultant shall be deemed to have examined the requirements specified by the Client and these terms and conditions of contract. No claims for additional Fees and/or payments of any kind will be allowed under any circumstances and in particular on the grounds of misinterpretation of the requirements specified; the Services to be provided and/or the Project or these terms and conditions of contract upon which the Consultant could have reasonably satisfied themselves by reference to the Client prior to the date of the Order and/or the Contract.

18. CHANGE CONTROL AND VARIATIONS

18.1 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Client and the Consultant.

18.2 Any variation in Fees and/or the basis for the recovery of expenses (whether such variation involves a reduction or increase in the Fees or expenses) must be agreed in writing in accordance with clause 18.1, and any such variation in Fees and/or expenses must be fair and reasonable taking into account the market price available to the Client for similar work and/or Services. It shall be for the Consultant to demonstrate to the satisfaction of the Client and that any increase or reduction in Fees and/or expenses proposed (whether in respect of a variation of the Services to be provided and/or the Project or otherwise) is justifiable, reasonable, necessary and appropriate to the circumstances prevailing and to which the variation in Fees and/or expenses in being applied.

19. ASSIGNMENT AND SUB-CONTRACTING

19.1 The Consultant shall not assign or sub-contract any part of the Services and/or the Project and/or the Contract without the written consent of the Client.

19.2 No sub-contracting of this Contract shall in any way relieve the Consultant of its obligations under the Contract.

19.3 Where the Consultant enters a sub-contract for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Consultant to pay the sub-contractor within 30 days of receipt of a valid invoice. The Consultant shall provide a copy of any sub-contract to the Client immediately upon the request of the Client.

20. STATUTORY AND OTHER REGULATIONS

20.1 The Consultant shall in all matters arising from the performance of the Contract conform with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to the Contract; the Consultant shall also observe through its Key Personnel, employees, workpeople and agents, and the personnel and employees of any authorised sub-contractor, any rules and regulations, including, but not limited to, those related to Health and Safety, both in terms of statutory obligations and Client policies and regulations, and security, applicable to the Premises to which the Consultant shall be provided access in order that it shall meet its obligations under the Contract. The Client shall on the request of the Consultant provide reasonable assistance to the Consultant in obtaining information as to local conditions affecting the aforesaid. The Consultant shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public. The cost to the Consultant of meeting its obligations under this clause shall be
deemed to be included in the Fees payable under the Contract, except as provided under clause 20.2 below.

20.2 In the event that either Party incurs costs to which the Party would not otherwise be liable due to the other Party's failure to comply with any law or any order, regulation or bye-law having the force of law, the amount of such costs shall be reimbursed by the other Party, subject to the Party concerned demonstrating that the costs claimed represent only those reasonably and necessarily incurred as a direct result of the failure of the other Party as set out above.

21. CONFLICTS OF INTEREST

22. CORRUPT GIFTS AND PAYMENT OF COMMISSION

22.1 The Consultant shall not offer or give or agree to give any person in the service of the Client any gift or consideration of any kind as an inducement or reward for doing or forbearing to do so or for having done or borne to do an act in relation to the obtaining or execution of the Contract or any other contract with the Client.

22.2 Any breach of this clause by the Consultant or by anyone employed by the Consultant or acting on behalf of the Consultant (whether with or without the knowledge of the Consultant) or the commission of any offence by the Consultant or by anyone employed by the Consultant or acting on the Consultant's behalf under the prevention of Corruption Acts 1889 to 1916 in relation to this Contract or any other contract with the Client, shall entitle the Client to terminate the Contract and recover from the Consultant the amount of any loss resulting from such termination and/or to recover from the Consultant the amount of value of any such gift, consideration or commission.

22.3 Where the Contract has been terminated under clause 22.2 above, the powers given by clause 16.2 shall apply as if there has been a failure to complete the Contract.

22.4 The decision of the Client shall be final and conclusive in any dispute, difference or question arising in respect of--

22.4.1 the interpretation of this clause 22 (except so far as the same may relate to the amount recoverable from the Consultant under clause 22.2 above in respect of any loss resulting from such termination of the Contract); or

22.4.2 the right of the Client to determine the Contract; or

22.4.3 the amount of value of any such gift, consideration or commission.

23. EQUAL OPPORTUNITIES

23.1 In accordance with its responsibilities under the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000, the Race Relations 1976 (Amendment) Regulations 2003 and any other relevant statutory amendments) to eliminate unlawful racial discrimination, promote equal opportunities and promote good relations between people of different racial groups, the Client requires the Consultant and the Consultant's sub-contractors to comply with the terms and conditions set out in this clause 23.

23.2 All personnel employed by the Consultant for the purpose of performing the Contract must be fully trained, suitably qualified and experienced, and shall fulfil their duties in a professional, ethical manner, consistent with the Client's commitment to equal opportunities and high standards of behaviour.

23.3 The Consultant will comply with legislation for the prevention of discrimination on the grounds of disability, race, sex, sexual orientation, age, religion and belief and the promotion of race equality. The Consultant is required where appropriate to provide information to the Client on its compliance with legislation and its practices and procedures to prevent unlawful discrimination and to promote race equality and equal opportunities.
23.4 The Consultant shall not discriminate directly or indirectly against any person on grounds of their colour, race, nationality or ethnic or national origins contrary to Part II of the Race Relations Act 1976 (Discrimination in the Field of Employment) and/or contrary to Part III of the Act (Discrimination in Other Fields) either in employment or in service and/or contravenes Part IV of the Act (Other Unlawful Acts).

23.5 The Consultant shall comply with the provisions of Section 7 of the Act in all dealings with its agents or sub-contractors.

23.6 The Consultant shall in performing the Contract comply with the provisions of Section 71(1) of the Race Relations Act 1976 as amended by the Race Relations Amendment Act 2000 and the Race Regulations Act 1976 (Amendment) Regulations 2003 as if the Consultant were a body within the meaning of Schedule 1A to the Act.

23.7 Where in connection with this Contract, the Consultant, its agents or sub-contractors, or the Consultant's staff are required to carry out work on the Client's Premises or alongside the Client's employees or students on any other premises, the Consultant shall comply with the Client's policies and codes of practice relating to racial discrimination and equal opportunities.

23.8 The Consultant shall monitor its own employees by reference to their racial origins and ethnicity, and provide such information on request to the Client.

23.9 The Consultant shall provide such information as the Client requires about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equal opportunities and race equality both in terms of employment and customer service. The Consultant shall have regard to the promotion of race equality and shall consider the promotion of race equality and good race relations as key objectives of the Contract.

23.10 The Client and Consultant shall continue to monitor the performance and objectives of the Contract throughout its duration and to make any amendments or changes necessary to the contract, or its performance or objectives in order further to promote race equality.

23.11 The Consultant shall notify the Client immediately in writing as soon as it becomes aware of any investigation or proceedings brought against it under the Race Relations Act 1976, Race Relations Amendment Act 2000 and Race Relations Act 1976 (Amendment) Regulations 2003 as amended.

23.12 Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Consultant or against the Client either in connection with the Contract or any Contract awarded to the Consultant or generally, the Consultant shall, without charge:

23.12.1 provide any information requested in the timescale allotted;

23.12.2 attend and permit its employees to attend any meetings as required;

23.12.3 allow access to and investigation of any documents or data deemed to be relevant to the investigation;

23.12.4 allow itself and any of its employees to appear as witnesses in any proceedings; and

23.12.5 co-operate fully with the person or body conducting the investigation.

23.13 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Consultant, its staff, employees, agents or sub-contractors and where there is a finding against the Consultant in any such investigation or proceedings, the Consultant shall indemnify the Client with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Client during or in connection with any such investigation or proceedings and further indemnify the Client for any compensation, damages, costs or other award the Client may be ordered or required to pay to a third party.
23.14 If a finding of unlawful discrimination or breach of equal opportunities legislation is made against the Consultant or against the Client arising from the conduct of the Consultant, the Client will require the Consultant to take immediate remedial steps to prevent further recurrences.

23.15 If the Consultant enters into any sub-contract as authorised in this Contract, and in connection with this Contract, it shall impose obligations on its sub-contractors terms which are identical to those imposed on it in this clause. The Client expects that the Consultant will not sub-contract to any business, service or group which has a poor history of discrimination in employment or service delivery. A breach of this clause will be considered as a fundamental breach of the Contract between the Client and the Consultant.

23.16 Without prejudice to its remedies set out above, the Client may terminate the Contract forthwith and without liability of any kind accruing against the Client if notice has been given to the Consultant of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the Consultant has failed to remedy the breach within the stated period.

24. DATA PROTECTION

24.1 The Consultant shall comply with the Data Protection Act 1998, the regulations made thereunder and any statutory amendments or re-enactments made thereof (together "the Act"), and acknowledges and agrees that it shall be acting as a data processor for the Client as defined by the Act, in respect of the Personal Data Processed by the Consultant on behalf of the Client under the Contract.

24.2 The Consultant shall ensure that appropriate technical and organisational measures are established against the unauthorised or unlawful Processing of Personal Data and against loss or destruction of, or damage to, Personal Data Processed by the Consultant on behalf of the Client. Such measures shall (taking into account the state of technological development and the cost of implementing such measures) be appropriate to the nature of the Personal Data Processed by the Consultant.

24.3 The Consultant shall only Process Personal Data on behalf of the Client in accordance with the Contract, in accordance with the Act, and in accordance with any instructions issued by the Client from time to time and for no other purpose whatsoever, save as required by law.

24.4 The Consultant shall keep the Personal Data Processed by the Consultant under the Contract safe and confidential, and will ensure that only such of its employees, including the Key Personnel, who may be required by the Consultant to assist it in meeting its obligations under the Contract shall have access to the Personal Data.

24.5 The Consultant shall adopt and maintain a written security policy in relation to Personal Data Processed by it on behalf of the Client and shall procure that all of its employees are aware of and abide by all of the provisions of such policy and the provisions of the Contract. In particular this clause 24, and shall make such policy available for inspection on request by the Client.

24.6 Where data is taken away from the Client for Processing by the Consultant, the Consultant shall, at the times agreed between the parties and set out in the Contract, and/or on reasonable notice and/or at any time:

24.6.1 permit the Client’s representatives to gain access to the Consultant’s premises to enable the Client to ascertain whether the Consultant is complying with clauses 24.1 to 24.5 inclusive of the Contract;

24.6.2 permit the Client’s representatives to have access to the Personal Data processed by the Consultant on behalf of the Client, including but not limited to where this is necessary in order to enable the Client to respond to a subject access request made under the Act.
24.7 The Consultant will indemnify the Client in full against all losses, claims, costs, expenses or other liabilities awarded against, or incurred by, the Client as a result of, or in connection with, any breach of this clause 24 by the Consultant, its employees, workers or agents.

24.8 On termination or discharge of the Contract the Consultant shall return to the Client all Personal Data provided to it by the Client and/or otherwise acquired by the Consultant for the purposes of the provision of the Services under, and/or the performance of the Contract by the Consultant.

25. WAIVER

25.1 No delay, neglect, or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Contract shall either be, or deemed to be a waiver or in any way prejudice any right of that Party under the Contract.

26. NOTICES

26.1 All communications between the Parties with respect to any of the provisions of this Contract shall be delivered to the Parties in person or sent to the addresses set out in this Contract or to such other addressed as may be notified by the Parties for the purpose of this clause by prepaid registered or recorded delivery post or by telex facsimile transmission or other electronic means of written communication with immediate confirmation by letter.

26.2 Notice served by hand shall be deemed effective forthwith and notice served by post shall be deemed effective two business days after despatch. Notice served by telex facsimile transmission or other electronic means of written communications shall be deemed effective one business day after the same has been sent.

26.3 In proving service by post it shall only be necessary to prove that the communication was contained in an envelope which was duly addressed stamped and posted by registered or recorded delivery post. In proving service by telex facsimile transmission or other electronic means of written communication proof of service will be accepted on proof of posting of the confirmatory letter.

27. PERIOD OF CONTRACT

27.1 Where specified in the Order and/or in any Attachment the terms and conditions of this Contract shall apply to all Orders issued to the Consultant by the Client authorising the Client to proceed with the provision of Services and/or the delivery of a Project as set out in the Order and/or any Attachment for the period stated in the order and/or on the Attachment. In the absence of any reference to any period or term, the Contract shall be deemed to apply only to the Services and/or Project referenced in a specific Order and/or on specific Attachments related to the Contract.

27.2 For the purposes of clarification, where a period or term is specified in the Order and/or in any Attachment, all Orders issued by the Client and all Contracts shall be between the Parties shall be subject to these terms and conditions of contract. Each Order issued shall constitute a separate Contract made (subject to these terms and conditions of contract as set out above) between the Parties and as such Contracts shall only be created by the issue of a properly authorised Order.

28. ARBITRATION

28.1 Any dispute or difference which may arise between the Client and the Consultant in connection with or arising out of the Contract may, at the discretion of either Party, but wherever possible, by the agreement of the Parties, be resolved by arbitration in which event, such dispute or difference shall be referred to a single arbitrator to be agreed between the Client and the Consultant, or failing such agreement within 14 elapsed days, to be nominated by the President for the time being of the English Law Society. Liability for any costs incurred in undertaking necessary arbitration procedure shall also, whenever possible, be agreed in writing by the Parties at the appropriate time, but in the absence of such agreement shall be determined by the arbitrator.
29. **FORCE MAJEURE AND EXTENSION OF TIME**

29.1 If, by any reason of any act or default of the Client or any other circumstance which is beyond the control of the Consultant arising after the date of the Contract, the Consultant has been delayed or impeded in the completion of the Contract provided that the Consultant shall immediately have given to the Client notice in writing of his claim for an extension of time, the Client shall on receipt of such notice grant the Consultant from time to time in writing either prospectively or retrospectively such extension of the time for the completion of the Contract as may be reasonable. This clause only applies if:

29.1.1 the Consultant shall, immediately upon becoming aware that any such delay has been or is likely to be caused, give notice in writing to the Client specifying the circumstances causing or likely to cause the delay and the actual or estimated extent of the delay caused or likely to cause the delay;

29.1.2 the Consultant could not reasonably be expected to have foreseen at the date of the Contract that a delay would, or was likely to, occur;

29.1.3 the Consultant uses its best endeavours to prevent any delay being caused and to minimise any such delay to the satisfaction of the Client; and

29.1.4 such delay is not attributable to any negligence, default or improper conduct of the Consultant.

29.2 If the Client has granted the Consultant an extension of time as set out in Clause 29.1, and the provision of the Services and/or the Project and/or the Contract is not completed within the extended period, the Client may by giving notice to the Consultant terminate the Contract with immediate effect. Termination of the Contract under this clause 29 shall be without prejudice to any rights which may have accrued to the Buyer to the effective date of such termination, and the Client's other rights in the event of termination due to the Consultant's failure to provide the Services and/or complete the Project and/or the Contract as referred to above shall be as set out in clause 16.2

30. **RIGHTS OF THIRD PARTIES**

30.1 Nothing in the Contract shall create or confer on any sub-contractor or other third party any benefit or the right to enforce any provision of the Contract.

31. **GOVERNING LAW**

31.1 The construction, validity and performance of the Contract shall be governed by and construed in accordance with the law of England and Wales and shall, subject to clause 28, be subject to the jurisdiction of the courts of England and Wales.