



THE UNIVERSITY *of* EDINBURGH

**STANDARD TERMS & CONDITIONS RELATING TO THE PURCHASE OF SERVICES**  
**between**

**The University Court of the University of Edinburgh,**

a charitable body registered in Scotland under the registration number SC005336, incorporated under the Universities (Scotland) Acts and having its principal administrative offices at Old College, South Bridge, Edinburgh, EH8 9YL (the “**University**”)

**and**

**The person, firm, company or other body**

accepting the Purchase Order (the “**Supplier**”)

**WHEREAS**

- A. The Supplier is engaged in the business of supplying the Services;
- B. The University has agreed to purchase from the Supplier (or by any of the Supplier’s permitted sub-contractors) the Services as more specifically detailed in the Purchase Order; and
- C. These “Standard Terms & Conditions Relating To The Purchase Of Services” are intended to make clear, in as straightforward a manner as possible, the manner in which the University expects the Supplier to implement and fulfil the Purchase Order. This benefits the University and the Supplier to understand their relationship under the Purchase Order and avoid any misunderstandings or uncertainty in the future.

**NOW THEREFORE:**

**1. DEFINITIONS AND INTERPRETATION**

In these conditions (including the recitals), the following words and expressions have the following meanings unless inconsistent with the context:-

<b>Authorised Service Recipients</b>	means such of the University’s subsidiaries as may be notified by the University in writing to the Supplier from time to time; or any third party to whom the parties agree (in accordance with condition 4.1) the Services should be supplied.
<b>Conditions</b>	means these Standard Terms & Conditions relating to the purchase of Services.
<b>Contract</b>	means the agreement constituted by the Supplier’s quotation for Services in response to the University’s invitation to tender (or similar) including any clarifications requested by the University from the Supplier and the University’s Purchase Order confirming the order of the services.

<b>Deliverables</b>	means all Documents, products and materials developed by the Supplier or its agents, subcontractors and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts) or/and the deliverables specified in the Purchase Order.
<b>Document</b>	means any document in writing and includes, without limitation, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form or media.
<b>In-put Material</b>	means all Documents, information and materials provided by the University relating to the Services including (without limitation), computer programs, data, reports and specifications the in-put materials specified in the Purchase Order.
<b>Intellectual Rights</b>	<b>Property</b> means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>Purchase Order</b>	means the University's written instruction to supply the Services, incorporating these Conditions together with any invitation to tender provided by the University to the Supplier, any response to the invitation to tender (including clarifications) insofar as such responses or clarifications do not attempt to substitute these Conditions;

<b>Services</b>	means the services to be provided by the Supplier under the Contract and the Supplier's obligations under the Contract, together with any other services which the University expressly agrees in writing to take from the Supplier.
<b>Supplier</b>	means the person, firm or company who supplies the Services to the University.
<b>Supplier's Equipment</b>	means any equipment, including, without limitation, tools, systems, cabling or facilities, provided by the Supplier or its permitted subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the University.
<b>University's Equipment</b>	means any equipment, including, without limitation, tools, systems, cabling or facilities provided by the University and used directly or indirectly in the supply of the Services.

**VAT** means value added tax.

1.1 Unless the context requires otherwise:

- a) any period of time from a specified date or day shall be calculated exclusive of that date or day;
- b) the words "include" or "including" or "in particular" are to be construed as meaning without limitation;
- c) words in the singular include the plural and vice versa and words for any gender shall include all genders;
- d) reference to persons shall be deemed to include references to natural persons, to firms, to partnerships, to companies, to corporations, to associations, to organisations, to trusts (in each case whether or not having separate legal personality) but references to individuals shall be deemed to be references to natural persons only.

1.2 The headings are inserted for convenience only and shall not affect the construction of the Contract.

- 1.3 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

## **2. APPLICATION OF CONDITIONS**

### **2.1 These Conditions shall:**

- a) apply to and be or be deemed to have been validly incorporated into the Contract;
- b) be in substitution for any oral or other arrangements made between the University and the Supplier; and
- c) prevail over any inconsistent terms or conditions contained, or referred to, in the Supplier's quotation for the Services, confirmation of order, or specification, or other Document supplied by the Supplier, or implied by law, trade custom, practice or course of dealing.

2.2 The Supplier's quotation for Services constitutes an offer by the Supplier to supply the Services specified in it on these Conditions. No offer placed by the Supplier shall be accepted or be deemed to have been accepted by or apply in any way or be deemed to have been incorporated to any extent into the University other than by the University issuing a written and executed Purchase Order in acceptance of the quotation for Services by the Supplier, at which point the Contract for the supply and purchase of the Services on these Conditions will be established. The Supplier's standard terms and conditions (if any) attached to, enclosed with or referred to in any quotation, specification or other Document shall not govern the Contract.

2.3 No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these Conditions or any of them shall be binding on the University unless in writing and signed by a duly authorised representative of the University. Signature of any delivery note for the Services or any Deliverables is an acknowledgement of delivery only and shall not constitute acceptance of new terms and conditions. The parties hereby agree that any signatory of any delivery note does not have actual authority or otherwise to contract and bind the University.

2.4 Where the Purchase Order is for more than one item, it shall (following acceptance by the Supplier) be regarded as a single Contract for all Services supplied pursuant to that Purchase Order.

## **3. COMMENCEMENT AND DURATION**

- 3.1 The Services supplied under the Contract shall be provided by the Supplier to the University from the date of acceptance by the University of the Supplier's offer in accordance with condition 2.1 or from the date specified in the Purchase Order (or otherwise by the University).
- 3.2 Unless terminated in terms of clause 11, the Services supplied under the Contract shall continue to be supplied for the period specified in the Purchase Order (or otherwise specified by the University).

#### **4. SUPPLIER'S RESPONSIBILITIES**

- 4.1 The Supplier shall manage and complete/provide the Services, and deliver the Deliverables to the University and/or to any Authorised Service Recipients, in accordance with the timescales and conditions specified in the Purchase Order and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
- 4.2 The Supplier shall meet, and time is of the essence as to, any performance dates specified in the Purchase Order. If the Supplier fails to do so, the University may (without prejudice to any other rights it may have):
  - 4.2.1 terminate the Contract in whole or in part without liability to the University;
  - 4.2.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make (either in whole or in part);
  - 4.2.3 purchase substitute services from elsewhere;
  - 4.2.4 hold the Supplier accountable for any loss and additional costs incurred by the University and/or any Authorised Service Recipient; and
  - 4.2.5 have all sums previously paid by the University to the Supplier under the Contract refunded by the Supplier in full without any retention, cancellation, withholding, lien or set-off.
- 4.3 The Supplier shall:
  - 4.3.1 co-operate in good faith with the University in all matters relating to the Services;
  - 4.3.2 use reasonable skill and care in the performance of the Services;
  - 4.3.3 observe, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the Services observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the University's or any Authorised Service Recipient's premises and that have been communicated to it under condition 0. The Supplier shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract. The University reserves the right to refuse such persons

as it sees fit access to the University's premises, and any such access shall only be given to the extent necessary for the performance of the Services;

4.3.4 notify the University as soon as it becomes aware of any environmental health and/or safety hazards or issues which arise in relation to the Services;

4.3.5 before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:

4.3.5.1 the Services;

4.3.5.2 the installation of the Supplier's Equipment;

4.3.5.3 the use of In-put Material;

4.3.5.4 the use of all Documents, information and materials provided by the Supplier or its agents, subcontractors, consultants or employees, relating to the Services which existed prior to and after the commencement of the Contract, including, without limitation, computer programs, data, reports and specifications or such products or materials as specified in the Purchase Order; and

4.3.5.5 the use of the University's Equipment in relation to the Supplier's Equipment.

4.4 The Supplier acknowledges and agrees that if it considers that the University is not, or may not, be complying with any of the University's obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under the Contract:

4.4.1 only to the extent that it restricts or precludes performance of the Services by the Supplier; and

4.4.2 if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has provided sufficient details to the University in writing to enable the University to consider the nature, scope and extent of any such actual or potential non-compliance.

## **5. UNIVERSITY'S OBLIGATIONS**

5.1 The University shall:

5.1.1 co-operate in good faith with the Supplier in all matters relating to the Services;

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

- 5.1.3 provide the In-put Material and/or such information as the Supplier may reasonably request and the University considers reasonably necessary, in order to carry out the Services in a timely manner and use reasonable endeavours to ensure that it is accurate in all material respects (but no warranty or representation is given in that regard);
- 5.1.4 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the University's premises; and

## **6. CHARGES AND PAYMENT**

- 6.1 In consideration of the provision of the Services by the Supplier, the University shall pay the charges as set out in the Purchase Order, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Condition 6.2 shall apply if the Supplier provides Services on a time and materials basis. Condition 6.3 shall apply if the Supplier provides Services for a fixed price. The remainder of this Condition 6 shall apply in either case.
- 6.2 Where Services are provided on a time and materials basis:
  - 6.2.1 the charges payable for the Services shall be calculated in accordance with the Supplier's daily fee rates as set out in the Purchase Order or, if the Purchase Order is silent, the Supplier's quotation for the Services;
  - 6.2.2 where the Supplier's agreed daily fee rates will apply, for each individual person these are calculated on the basis of an seven-hour day, worked between 9.00 am and 5.00 pm on weekdays (excluding public holidays);
  - 6.2.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days unless it has the University's prior written consent to do so;
  - 6.2.4 all charges quoted to the University shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;
  - 6.2.5 the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in Condition 6.2.6; and
  - 6.2.6 the Supplier shall invoice the University monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Condition 6.1 and Condition 6.3. Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any reasonable expenses and materials, accompanied by the relevant receipts.

- 6.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Purchase Order. The total price shall be paid to the Supplier in instalments, as set out in the Purchase Order. At the end of a period specified in the Purchase Order, the Supplier shall invoice the University for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in the Purchase Order or this Condition 6. If no instalments are set out in the Purchase Order, payment shall be made by the University only when the Services have been fully completed to the satisfaction of the University.
- 6.4 Any fixed price and/or daily rate contained in the Purchase Order shall exclude unless otherwise provided for in the Purchase Order:
- 6.4.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost. The Supplier shall obtain the University's written approval before incurring any such expense, material or service exceeding £50; and
- 6.4.2 VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 6.5 The University shall pay each valid VAT invoice which is properly due and submitted to it by the Supplier within 45 days of receipt by cheque.
- 6.6 Invoices covering payment in respect of materials purchased by, or services provided to, the Supplier, or for reimbursement of expenses, shall be payable by the University only if accompanied by relevant receipts.
- 6.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the University shall approve. The Supplier shall allow the University to inspect such records at all reasonable times on request. The University shall have no liability to pay the Supplier to the extent that it is unable to evidence any work undertaken by it by way of verified and completed time sheets.
- 6.8 Without prejudice to any other right or remedy it may have, the University reserves the right to set off any amount owing at any time to it by the Supplier against any amount payable by the University to the Supplier under the Contract.

## **7. QUALITY OF SERVICES**

- 7.1 The Supplier warrants and represents to the University that:
- 7.1.1 the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial

practices and standards in the industry for similar services and using competent and explained personnel;

7.1.2 the Services and Deliverables will conform with all descriptions and specifications provided to the University by the Supplier; and

7.1.3 the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform the University as soon as it becomes aware of any changes in that legislation.

7.2 The University's rights under these Conditions are in addition to the statutory terms implied in favour of the University by the Sale of Goods Act 1979 and Supply of Goods and Services Act 1982 and any other statute.

7.3 The provisions of this Condition 7 shall survive any performance, acceptance or payment pursuant to the contract and shall extend to any substituted or remedial services provided by the Supplier.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 The Supplier assigns to the University, free from encumbrance and free from all third party rights, the Intellectual Property Rights and all other rights arising by virtue of the purchase of the Services (including the Deliverables).

8.2 The Supplier shall, promptly at the University's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the University may from time to time require for the purpose of securing for the University the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the University in accordance with Condition 8.1.

## **9. INDEMNITY**

9.1 The Supplier shall indemnify and hold the University harmless in full and demand from all claims and any and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or suffered or paid by, the University as a result of or in connection with:

9.1.1 any alleged or actual infringement, whether under Scottish or English law or otherwise, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Services (including the Deliverables); or

9.1.2 any claim made against the University in respect of any liability, loss, damage, injury, cost or expense sustained by the University's officers, consultants, sub-contractors, employees or agents or by any University or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or

arises from the provision of the Services or the Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier.

- 9.2 During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than the total value of the Contract or such other amount as specified in the Purchase Order and shall, on the University's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

## **10. CONFIDENTIALITY AND THE UNIVERSITY'S PROPERTY**

- 10.1 The Supplier shall keep in strict confidence all In-input Material and all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the University, its employees, consultants, agents or subcontractors, and any other confidential information concerning the University's business or its products which the Supplier may obtain during the provision of the Services. The Supplier shall restrict disclosure of such confidential material to such of its employees, consultants, agents or subcontractors as need to know it for the purpose of discharging the Supplier's obligations to the University, and shall ensure that they are subject to obligations of confidentiality corresponding to those which bind the Supplier.
- 10.2 All In-input Materials, University's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier shall, at all times, be and remain as between the University and the Supplier the exclusive property of the University, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the University. They shall not be disposed of or used other than in accordance with the University's written instructions or authorisation.

## **11. TERMINATION**

- 11.1 Without prejudice to any other rights or remedies which the parties may have, the University may terminate the Contract without liability to the other on giving the other not less than 3 months written notice or immediately on giving notice to the other if:
- 11.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment save unless such non-payment is on account of a bona fide dispute regarding the provision of the Services by the Supplier, in which case, the Supplier shall have no right or remuneration; or
- 11.1.2 (subject to Condition 11.1.1) the other party commits a material breach of any of the material terms of the Contract

- and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 11.1.3 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
  - 11.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
  - 11.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
  - 11.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
  - 11.1.7 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
  - 11.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
  - 11.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - 11.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1.3 to condition 11.1.8 (inclusive); or
  - 11.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 11.1.12 there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

- 11.2 On termination of the Contract for any reason, the Supplier shall immediately deliver to the University:
- 11.2.1 all In-put Material and all copies of information and data provided by the University to the Supplier for the purposes of the Contract. The Supplier shall certify to the University that it has not retained any copies of In-put Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in Condition 10; and
  - 11.2.2 all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the University (to the extent that they have not already done so by virtue of condition 10), who shall be entitled to enter the premises of the Supplier to take possession of them.
- 11.3 If the Supplier fails to fulfil its obligations under Condition 11.2, then the University may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.
- 11.4 On termination of the Contract (however arising), the accrued rights of the parties as at termination shall not be affected and the following conditions shall survive and continue in full force and effect:
- 11.4.1 Condition 8;
  - 11.4.2 Condition 9;
  - 11.4.3 Condition 10;
  - 11.4.4 Condition 11;
  - 11.4.5 Condition 22; and
  - 11.4.6 Condition 22.

## 12. FORCE MAJEURE

The University reserves the right to defer the date for performance of, or payment for, the Services, or to terminate this Contract, if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lockouts or other industrial disputes (whether involving the workforce of the University or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**13. VARIATION**

No variation of the Contract or these Conditions shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

**14. WAIVER**

14.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**15. SEVERANCE**

15.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable or the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

**16. ENTIRE AGREEMENT**

- 16.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 16.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in the Contract.
- 16.3 Nothing in this condition shall limit or exclude any liability for fraud.

**17. ASSIGNATION**

- 17.1 The Supplier shall not, without the prior written consent of the University, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier shall not disclose any interest of any kind arising as a result of this Contract by way of advertisement, publicity or purposes of trade without prior consent of the University.
- 17.2 The University may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 17.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

**18. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**19. RIGHTS OF THIRD PARTIES**

The Contract is made for the benefit of the parties and a parties Authorised Service Recipient to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

**20. NOTICES**

Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract (or such other address as may have been notified by that party for such purposes), or sent by fax to the other party's fax number as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or, if delivery is not in business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery

post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post provided this is within normal business hours. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## 21. COMPLIANCE WITH LAW

21.1 The Supplier shall and shall procure that persons associated with it or other persons who are involved in any way with this Contract shall:

- a) comply with all applicable laws, statutes and regulations (including but not limited to:- (i) anti-bribery and anti-corruption legislation as specifically outlined in the Bribery Act 2010 (“Relevant Requirements”); and (ii) anti-discrimination legislation as specifically outlined in the Equality Act 2010);
- b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- c) comply with the University’s Anti-corruption Policy currently in force and any update thereof (annexed to this Contract and a copy of which can be found at [http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Bribery-Anti\\_Bribery\\_and\\_Corruption\\_Policy.pdf](http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Bribery-Anti_Bribery_and_Corruption_Policy.pdf) (“Relevant Policies”).
- d) maintain in place throughout the term of this Contract adequate policies and procedures under the Bribery Act 2010 and inform the University immediately (in writing) in the case of any breach, investigation of prosecution thereunder;
- e) promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract; and
- f) immediately notify the University (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract);

21.2 For the purpose of this Condition 21, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the avoidance of doubt, a breach of any of the terms of this Condition 21 shall be a material breach in terms of the Contract;

21.3 The Supplier shall indemnify the University against any losses, liabilities, damages, costs (including but not limited to legal fees) and

expenses incurred by, or awarded against, the University as a result of any breach of this Condition 21 by the Supplier or any persons associated with it in connection with the performance of this Contract

## **22. GOVERNING LAW AND JURISDICTION**

- 22.1 The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with Scots law.
- 22.2 The parties irrevocably agree that the Scottish courts have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.

## Anti-Bribery and Corruption Policy

### 1. Policy Statement

In accordance with the highest standards of professional practice and good governance, the University does not tolerate bribery or corruption of any kind.

All members of staff must adhere strictly to the UK legislation in relation to bribery and corruption and follow the procedures designed by the University to prevent bribery.

Staff must not offer, promise or pay bribes and they must not request or receive bribes. The University will also expect the highest standards of compliance in this area from other parties that provide services to the University or on its behalf.

### 2. Scope and Purpose

This policy applies to all employees and any other member of staff of the University, including any temporary or agency staff or unpaid members of staff and voluntary workers. It also applies to staff in subsidiary companies. The policy applies to all activities of the University, whether related to its research, teaching, commercial or other activities, and exists for the protection of members of staff and the University.

The University will expect any person or organisation performing services for it or on its behalf, to adhere to this policy or otherwise have equivalent procedures in place to prevent corruption. These third parties include agents and others who represent the University and suppliers, consultants and private sector partners who perform services for the University or on its behalf, wherever located in the world.

The policy sets out the University's approach to dealing with the relevant legislation, which can apply as follows:

Nature of Offence	Scope
Paying bribes	Members of staff and the University
Receiving bribes	Members of staff and the University

Bribery of a foreign public official	Members of staff and the University
Failure of a commercial organisation to prevent bribery	The University and its subsidiary companies

The policy also covers issues related to the following of other policies and Codes of the University, where reference should be made for guidance on procedures:

- [Disciplinary Policy](#)
- [Policy on Conflict of interest](#)
- [Code of Practice on Reporting Malpractice and Raising Concerns under the Public Interest Disclosure Legislation \('Whistleblowing'\)](#)
- [Code of Practice for Staff on the Receipt of Gifts, Hospitality and Other Benefits](#)
- [Procurement Policy \(Scottish Procurement Policy Handbook\)](#)

A summary of the UK Bribery Act Legislation, as well as relevant definitions of the terms in the policy can be found at **Appendix A**. Further guidance on the application of this policy can be found at **Appendix B**.

### 3. Principles of the Policy

The University and members of staff are required to comply with the following principles:

- Bribes must not be offered, promised, paid, requested, agreed to or accepted.
- In line with its core values and constitution, the University does not make political donations (whether to individuals, political parties or other political organisations, either in the UK or overseas) and any donations made on behalf of the University by any member of staff will be deemed a violation of this policy.
- Facilitation payments must not be offered, promised, paid, requested, agreed or accepted (for a definition of these, refer to Appendix B, Paragraph 8).
- Disciplinary action will be taken by the University or its subsidiary companies against staff who breach this policy. This includes the sanction of summary dismissal in cases where staff pay or receive bribes. Similar action will also be taken against other parties performing services for the University who fail to

abide by this policy or equivalent anti-corruption standards, which includes termination of the University's relationship with them.

- The University encourages all staff to report any corruption concerns immediately and will support staff that do so. All reporting will be handled sensitively and the University is committed to ensuring that no member of staff who reports a corruption concern in good faith suffers any detrimental effect for doing so.
- A deliberate failure to report suspicions of corruption or to conceal bribes by others will also be subject to disciplinary action.
- Third parties who have, or who are suspected of having, offered or accepted bribes should not be engaged to work for the University
- Any malicious, wilful or deliberate misreporting of a bribe or suspicion of a bribe may be treated as a disciplinary matter, and handled through the University's Disciplinary Policy.

#### **4. Responsibilities**

All members of staff must read and adhere strictly to the guidelines contained in this policy.

The University Court has ultimate responsibility for approval of this policy;

- Monitoring and receiving regular updates on the implementation of this policy

The Principal, Vice Principals, Heads of College, Support Groups, Schools and Support Departments have responsibility for the following, in conjunction with the University's Risk Management Committee:

- The implementation of this policy;
- Communication of the policy to staff and other stakeholders, and development of further anti-corruption compliance procedures for the University as appropriate;
- Conducting a regular risk assessment of corruption risks faced by the University;
- Commissioning regular audits and monitoring of this policy and related policies and procedures to ensure they are effectively implemented and are responsive to the University's potential corruption risks.

Line managers are responsible for ensuring that:

- All employees with whom they work are aware of this Policy and attend training as necessary on how it affects their work;
- They promote all other anti-corruption compliance measures within the parts of the University in which they work and that they lead by example.
- They inform their Head of School/Support Department immediately when they are notified of any corruption concerns

All employees are expected to:

- Adhere to the University's anti-corruption procedures, and other similar policies, as far as they are applicable to their roles within the University;
- Raise corruption concerns immediately with their line managers or their Head of School/Support Department;
- Follow University guidance and best practice when involved in activities relating to the procurement of goods, services or works, or using overseas or other agents and third parties

The University Secretary, Director of Corporate Services, Vice-Principals, Heads of College and each Head of School/Support Department has:

- Day-to-day responsibility for implementing this policy, checking its effectiveness and dealing with any queries in relation to it;
- Primary responsibility for monitoring compliance with the policy and for ensuring any instances of suspected corrupt activity are investigated appropriately.

## **5. Breaches of this Policy**

Where an allegation is made to the effect that a member of staff has breached this policy, the matter will be dealt with under the University's Disciplinary Policy. Where, after an investigation and subsequent disciplinary hearing, allegations are upheld, the employee may be subject to formal action which could ultimately include dismissal.

Where third parties performing services or supplying good for, or on behalf of the University are in breach of this policy, action may be taken to bring to an end the relevant contractual relationship.

For clarity, breaches of this policy include:

- Paying bribes
- Receiving bribes
- Bribery of a foreign public official
- Failure of a commercial organisation to prevent bribery

## **6. Reporting and Whistle Blowing**

The University encourages all staff to report any concerns about corruption that they encounter and make sure that suspicious behaviour does not go unchallenged.

It is important that if a member of staff suspects that someone else (e.g. a colleague, student, volunteer, supplier or consultant) may have or is about to engage in any corrupt conduct, or if a member of staff is offered a bribe, they should report it immediately to their line manager or Head of School / Support Department who in turn should report the matter to the University Secretary for expert advice and guidance.

The University will support anyone who raises concerns in good faith, and will give assurances that any concerns will be handled sensitively. This includes ensuring that no member of staff will suffer any detriment for refusing to accept or pay bribes, or if they report concerns they have about others' conduct.

Failure to report concerns can result in prohibited activity damaging the University - and may suggest that there has been complicity in this behaviour.

## **7. Record-keeping**

The University maintains financial records and has appropriate internal controls in place through other policies and procedures to ensure all payments to third parties (such as payments to anyone who provides services for or on its behalf) are properly documented and authorised.

## **8. Training**

The appropriate members of staff will receive regular, relevant training on how to implement and adhere to this policy.

## **9. Monitoring and Review**

The University's Risk Management Committee will monitor the effectiveness of this policy on an annual basis. Any potential improvements identified by the Committee will be actioned by production of an updated policy as appropriate and subsequent training where necessary. Internal control systems and procedures will be subject to regular audits to provide assurance that they are effective in countering bribery and corruption.

## **10. Policy History and Review**

This policy was approved by Central Management Group on 11 October 2011 and takes effect from 26 October 2011.

In the event of any significant change to the legal position on Bribery and Corruption, this policy will be subject to immediate review. In the absence of such a change, the policy will be reviewed by December 2012.

## **11. Alternative format**

This document can be provided in alternative formats on request by email to [UHRS@ed.ac.uk](mailto:UHRS@ed.ac.uk), or by calling 0131 650 8127.

**Appendix A****Summary of UK Bribery Act Legislation****1. What Is Bribery and Corruption?**

The Bribery Act defines corruption offences very widely. Most offences apply equally to private and public sector activities. This Appendix sets out further details of the offences and how they may apply to the University.

As a summary of the key provisions in the UK law, members of staff should follow these three principles:

- Do not make payments to someone (or favour them in any other way) if you know that this will involve someone in misuse of their position.
- Do not misuse your position in connection with payments (or other favours) for yourself or others.
- Do not deliberately use advantages to try to influence foreign public officials for business reasons. If you need to promote the University's business with a foreign public official, always check in advance with your Head of School/Support Department.

A bribe does not need to be a monetary sum. It can be any form of advantage: e.g. lavish hospitality or gifts; an offer of employment; or the provision of services free of charge or with a substantial discount. A person who is offered or agrees to accept a bribe does not need to benefit personally.

Actual payment of a bribe does not need to occur for there to be a criminal offence. An offer or request would be sufficient.

Sometimes offering or making a payment (or giving some other favour such as lavish hospitality) is an act of bribery in itself – i.e. where this is improper without the recipient needing to do anything else as a consequence.

**2. How Does Corruption Affect The University?**

Risks of corruption can arise in a wide range of the University's activities and its interaction with third parties. Some examples of these are as follows:

- International operations
- Recruitment of students and awards of degrees
- Gifts and donations to or from the University or its staff

- University Fundraising Activities
- Sponsorship and partnerships with private sector organisations in the UK or overseas and other commercial activities
- Procurement processes across the University and relationships involving estate and property management
- Appointment of agents or representatives in the UK or overseas who perform services for or on behalf of the University
- Relationships with other academic institutions, regulatory or funding bodies
- Field trips and overseas research in jurisdictions where there are particular corruption risks;

The University will undertake periodic risk assessments of its activities, including risks relating to: the sector in which it operates; its international business activities and presence in overseas countries; its existing processes for gifts and hospitality and donations; its relationships with a wide range of third parties in the UK and overseas who provide services to it or on its behalf; its procedures for procurement and other internal policies; and its other business structures, such as private sector joint ventures or joint international research collaborations.

### 3. What is the Law?

The offences under the Bribery Act are extensive in scope, broadly defined and, in some circumstances, also allow for crimes committed anywhere in the world to be prosecuted in UK courts. The University's standards therefore apply to conduct that occurs both in the UK and in any activity it undertakes abroad.

The UK law has serious consequences for anyone found guilty of an offence. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for commercial organisations, an unlimited fine can be imposed. Other measures can include the ability to confiscate assets, where these are found to be the proceeds of criminal activity including corruption.

The Bribery Act includes a new offence of failure of commercial organisations to prevent bribery. In light of its various commercial activities, the University will be treated as a commercial organisation for this purpose even though it has primarily educational aims.

### 4. Offences under the Bribery Act

The Bribery Act contains four main offences:

- **Paying bribes** - Can apply to members of staff and the University
- **Receiving bribes** - Can apply to members of staff and the University

- **Bribery of a foreign public official** - Can apply to members of staff and the University
- **Failure of a commercial organisation to prevent bribery** - Can apply to the University and its subsidiary companies.

In addition, if a senior officer of a commercial organisation consents to or connives in an act of bribery by that organisation, they can be separately prosecuted.

As a reference guide, set out below are brief explanations of what each of the four main offences mean.

#### 4.1 Paying bribes

It is an offence if a person offers, promises or gives a financial or other advantage with the intention of inducing another person to **perform a function or activity improperly** or to reward that person for doing so.

It is not necessary to prove that this person intended this consequence in all cases: it is also an offence if the person knows or believes that acceptance of the advantage by another is in itself an improper performance of their function or activity.

#### 4.2 Receiving bribes

It is an offence if a person requests, or agrees to accept, or receives a financial or other advantage intending that a **function or activity** should be **performed improperly** as a result.

It is also an offence:

- Where the request or receipt of the advantage is in itself an improper performance of a function or activity;
- Where the request or receipt is a reward for the person's or someone else's improper performance in the past;
- Where their improper performance takes place in anticipation or as a consequence of a request or receipt of an advantage.

In these other scenarios, it does not matter whether the person knows or believes that the performance of a function or activity is improper.

With both of the above offences, it does not matter that no money changed hands, or that a person received no personal benefit or enrichment.

Both offences can also apply to acts of bribery that take place outside of the UK, where the person or organisation paying or receiving a bribe has a close connection to the UK.

This includes all UK citizens, other persons ordinarily resident in the UK, and UK incorporated companies.

### 4.3 What activities do these offences apply to?

The offences could apply to any function or activity involving the University and any activities of its staff, connected with a business, performed in the course of employment, or on behalf of the University or a subsidiary company. Examples include the University's dealings with:

- private sector businesses, or third parties including subcontractors or agents
- other publicly funded organisations, grant giving bodies, and relevant public bodies.
- service providers or agents
- individuals, including students and prospective students, donors and other sponsors.

### 4.4 What does improper performance mean?

Whether an activity or function is **performed improperly** will be measured on an objective basis, not necessarily on a person's own perception of the circumstances of the activity. The test will be whether a function has been performed in breach of how a reasonable person in the UK would expect it should be performed. This means customary or historic practices will not necessarily be acceptable.

### 4.5 Bribery of a foreign public official

It is an offence if a person offers or gives a financial or other advantage to a foreign public official with the intention of influencing the foreign public official and to obtain or retain business or a business advantage. Foreign public officials include persons performing functions at state owned or controlled enterprises and agencies - and therefore could potentially include those working for public universities outside of the UK.

The University has identified that it has relevant international activities where it may have dealings with foreign public officials, including:

- In territories where the University has overseas offices
- In territories where it engages overseas agents for student recruitment
- In territories where companies or commercial enterprises owned or controlled by the University, or similar partnerships the University has with third parties in the private sector, operate

- In territories where it engages patent attorneys to protect its intellectual property rights
- In territories where members of the University undertake research or other academic activities from time to time

The Bribery Act contains no exemption for “facilitation payments” (see also the section of this Guidance Notes to the University Policy relating to Facilitation Payments).

If a member of staff of the University in the UK or overseas needs to promote the University's business with a foreign public official, the member of staff must contact their Head of School/Support Department in advance to confirm what steps are appropriate in any dealings they intend to have with the foreign public official.

#### **4.6 Failure of commercial organisations to prevent bribery**

It is an offence for the University in relation to its commercial activities if a person associated with the University bribes another person intending to:

- obtain or retain business for the University; or
- obtain or retain an advantage in the conduct of business for the University.

A person is associated with the University if they perform services for or on behalf of the University. This covers a wide category of people where the University has a potential liability for their acts. It does not matter in what capacity they are acting. Associated persons include all employees of the University as well as other persons outside of the University such as agents, joint ventures to which the University is party, and those with whom the University contracts to perform services.

## Appendix B

## Guidance Notes on the University of Edinburgh Anti-Bribery and Corruption Policy

These Guidance Notes supplement the University's Anti-Bribery and Corruption Policy. They are designed to assist staff on the practical application of the Policy. In addition, they include important obligations on specific areas, which staff must adhere to.

### 1. Frequently Asked Questions about the Bribery Act

#### ***1.1. It is customary to provide gifts in some countries outside of the UK when visiting or meeting with public officials. Can University staff offer gifts to their counterparts at an overseas university?***

The fact that something is a local custom is not a defence under the Bribery Act so a cautious approach is required to ensure any gift or other advantage that is offered overseas is not construed as a bribe based on UK standards of conduct. Secondly, in this scenario it is possible that a member of an overseas university will be classed as a "foreign public official" under the Bribery Act. If so, it is very easy to fall foul of the law. Any financial or other advantage offered to them will be seen as a bribe if the offeror intends to influence the official and intends to obtain or retain any business advantage.

This guidance does not however preclude the University or its staff from giving small, low value gifts seen as a 'mark of respect' to other public officials.

#### ***1.2. Can gifts and hospitality be accepted from private sector companies with whom the University has a business relationship or may do in future? What about sponsorship?***

Care has to be exercised that no gift or hospitality could be considered excessive or lavish. Normal business meals and modest entertainment is normally acceptable where there is a legitimate purpose for the hospitality - such as to foster cordial relations or for reasonable public relations. No hospitality should be accepted if it could be construed as intended to induce a member of staff to perform their functions improperly. [The University has introduced clear rules on gifts and hospitality by setting threshold amounts for each. Where a gift or hospitality is proposed that is above these threshold amounts, a member of staff must seek prior approval and, if granted, must register the gift or hospitality on the registers maintained by Heads of Schools/Support Departments]. ([Code on practice on receipt of gifts](#))

In relation to sponsorship, similar principles apply. Care should be exercised that the sponsorship does not improperly induce members of the University to perform their functions improperly. This could include where it compromises academic integrity or influences the outcome of a research project.

**1.3. *Can we engage agents to recruit international students to the University?***

Yes but a number of compliance steps must be taken. The use of overseas agents involves high risks to an organisation, whether for recruitment or other purposes. The University will be liable for any corrupt acts by anyone performing services on its behalf. The risks of engaging an agent in a particular case must be assessed and enhanced due diligence undertaken about the suitability of the agent and the nature of the services they are providing to the University. Further guidance on these steps is set out below.

**1.4. *A University Department undertakes an annual research project in a jurisdiction outside of the UK with a poor reputation for corruption. The Department needs to transport equipment to the overseas location for the project, which will be checked by local customs officials. What steps should the Department consider?***

The Department should consider in advance the risk that members of staff or others acting on behalf of the University will be vulnerable to demands for corrupt payments, such as facilitation payments. Staff will need guidance in advance on strategies to resist any such demands. The Department should also consider any preventative measures that can be taken in advance, such as allowing adequate time for delays in the delivery of equipment whilst any demand for a facilitation payment is resisted.

**1.5. *The family of a student who is applying to the University offers to provide the University with a substantial donation to its development fund in return for a place at the University being offered to the student. Is this caught by the Bribery Act?***

Yes. This situation clearly involves a financial advantage being offered to the University, which is intended by the family to induce the admissions department to perform their functions improperly. It does not matter what decision is in fact reached over offering the student a place or not. The donation should be refused because of the basis on which it was offered. Donations can be bribes in other less obvious circumstances. The University's due diligence procedures should always be followed to ensure a donation does not involve someone misusing their position or being induced to do so.

## **2. Further Guidance on Gifts Entertainment and Hospitality**

All members of staff should refer to the Code of Practice for Staff on the Receipt of Gifts, Hospitality and Other Benefits.

This Guidance Note is intended to supplement the provisions of the above Code of Practice. It applies to all gifts, hospitality and entertainment that members of staff give or receive in the context of their activities for the University. In cases where a member

of staff pays for a gift, entertainment or hospitality, but it is not reimbursed by the University, this Guidance Note remains applicable in this context.

The following overarching principles in relation to Gifts Entertainment and Hospitality (whether given or received) are particularly important for staff to consider in the context of potential corruption risks:

- Expenditure should always be reasonable and proportionate (having regard in particular to the recipient)
- Expenditure should be in accordance with the Code of Practice for Staff on the Receipt of Gifts, Hospitality and Other Benefits; and any necessary approvals sought in accordance with that Code; and records kept in accordance with the Code.
- The recipient must always be entitled to receive the gift, entertainment or hospitality under the law of the recipient's country.

### **3. Charitable and Political Donations by the University**

All charitable donations should be recorded accurately in the University's financial records and accounts.

Requests for charitable donations can sometimes mask corrupt activity by others. No charitable donations should be made if these could be construed as improperly influencing another party with whom the University has a business relationship. Should a member of staff have any ethical concerns about a proposed charitable donation, this should be reported immediately to their Head of School / Support Department.

The University does not under any circumstances make donations to political parties.

### **4. Philanthropic Giving**

All donations made to the University by benefactors or others wishing to support the University's activities must be considered in the light of the Bribery Act.

Donations of this kind can sometimes mask corrupt activity. No donations should be accepted without due diligence procedures being followed in respect of the purpose of the donation and the background of the donor, amongst other steps. The level of due diligence required will be proportionate to any potential corruption risk identified.

No donation should be accepted if it could be construed as improperly influencing the University or another person. Should a member of staff have any ethical concerns about a proposed donation, this should be reported immediately to their Head of School /

Support Department who should refer the matter to the Ethical Fundraising Advisory Group for further advice.

## **5. Honorary Degrees**

Honorary Degrees are awarded by the University for one of the following reasons:

- Outstanding personal contributions to the work and development of the University - in the case of (normally former) members of staff, extending beyond their immediate area of responsibility;
- Outstanding social, economic or cultural contribution to the City of Edinburgh or Scotland;
- Outstanding work, public service or contribution to society more generally in areas of particular relevance to the University's values and mission;
- Outstanding achievement by an alumnus/a, especially combined with one of the above.

Under no circumstances may an honorary degree be awarded as an improper inducement to the individual recipient to provide additional services to the University. In addition, the University's 'Honorary Degree Committee' will oversee the award of Honorary Degrees and will ensure the guidance in this policy is taken into account when considering nominations for such degrees.

## **6. Agents, Other Third Parties, and Joint Ventures**

In some parts of the University's commercial activities, it needs to engage agents and other intermediaries.

All appointments of agents and other parties who provide the University with services must follow risk-based due diligence procedures. This includes where the University enters in to any form of partnership with another organisation or a joint venture arrangement.

For the appointment of any overseas agents, a high level of due diligence is required. A non-exhaustive list of steps that must be considered is set out in Section 7 below.

Equivalent due diligence steps to those taken for overseas agents should be taken in relation to all Joint Venture Partners outside of the UK.

Advice should be sought from Heads of Schools/Support Departments on due diligence steps required for any joint venture, whether in the UK or overseas. All appointments of agents and joint venture partners must be monitored and reviewed on a periodic basis

and ongoing due diligence procedures adopted, proportionate to any corruption risks that have been identified.

Any agents or other parties who are performing services for, or on behalf of the University, will be expected to agree to a contractual clause which confirms that they will comply with the University's Anti-Bribery and Corruption Policy or adhere to an equivalent policy, standard or other procedures they may have in place to prevent bribery. This clause will confirm that any breach of these anti-corruption obligations can lead to termination of the contractual relationship.

## 7. Due Diligence

Appropriate risk-based due diligence must be conducted in relation to any party outside of the University who is performing services for it or on its behalf. Enhanced due diligence should be conducted in relation to overseas agents and joint venture partners of the University. The following guidance indicates the steps that should be considered in planning and conducting Due Diligence in these types of relationship.

- Require the party/agent to complete a Questionnaire (**currently under development**), which requests details of the party/agent's ownership; details of senior management of the party/agent; a copy of CVs of key personnel performing services for the University); details of referees for the party/agent and key personnel who will be providing services under the proposed agreement; details of other directorships held, existing partnerships, and third-party relationships, and any relevant judicial or regulatory findings about the party/agent or key personnel of the party/agent, and details of the jurisdictions in which the agent operates.
- Undertake research, including reasonable internet research (dependent on risk), on the party/agent and any individuals who have a degree of control if the agent is a corporate entity.
- Check independently that the party/agent does not appear on any applicable sanctions list, or have outstanding court actions or judgments against it
- Make enquiries with any relevant authorities, including contacting a commercial attaché at the embassy in the territory where the party/agent operates, to verify information obtained in the Questionnaire and seek any independent background information about the party/agent's reputation.
- Take up references and assess responses received
- Conduct any further enquiries of the party/agent to clarify any matters arising from the questionnaire, including arranging a face to face meeting if required. There may also be a need to meet with the party/agent in the territory
- Request and review copies of the party/agent's anti-bribery policies and any relevant procedures they operate to prevent bribery and corruption
- Assess relevant commercial considerations for the University's activities, e.g.:

- is the appointment necessary?
- does the party/agent have the required expertise to provide the services?
- is the party/agent going to interact with a public official, or are there any other connections between an party/agent and a public official?
- are the proposed payment terms of the party/agent reasonable and in accordance with the market rate?
- have appropriate steps been taken to consider alternative appointments/competitors to this party/agent?

## 8. Facilitation Payments

Facilitation payments are typically small unofficial payments paid to speed up an administrative process or secure a routine government action by an official. They are more common in certain overseas jurisdictions in which the University conducts its activities, but it is possible that they could arise in the UK.

Facilitation payments are treated as bribes by the Bribery Act and are prohibited by this Policy.

Examples of when such payments may be requested include:

- To obtain or expedite a permit, licence or other official document or approval
- To facilitate provision of utilities, such as connecting water, electricity, gas or telephone services
- At border controls or crossings to allow safe or prompt entry or exit from a jurisdiction
- To avoid unwarranted delays when goods are held by a customs official
- To ensure personal security or preservation of property from law enforcement officials

Facilitation payments should be contrasted with official, lawful payments (typically to an organisation rather than an individual) to expedite certain functions (e.g. where there is an official system to choose a premium fast track service to obtain a passport). Sometimes demands for facilitation payments are forms of extortion (e.g. unless the demand is met, a person's safety or liberty is placed in jeopardy). However, identifying when a payment is a lawful, official payment and when it is a facilitation payment and a bribe is not always easy. In these cases, it is important for staff to seek confirmation wherever possible of the lawfulness of the payment from an independent source, and seek additional guidance from their Head of School/Support Department or the University Secretary immediately.

If it is not possible to undertake the above steps and if a member of staff is unsure as to the validity of an official's request for a payment, the steps below should be followed as far as they are applicable and as far as it is possible to do so:

The member of staff should:

- Contact their line manager
- Ask the official for proof of the validity of the fee
- Request that a receipt be provided confirming the validity of the payment
- If no proof of validity will be provided, politely decline to make the payment and explain they cannot make the payment because of the University's policy and anti-bribery laws
- If possible ask to see the official's supervisor
- Make a full note of the request, the circumstances and the parties involved
- At all times remain calm, respectful and polite

The University policy is that it strictly prohibits any kind of facilitation payments made by members of staff or third parties acting on its behalf. However, if a member of staff is in fear for their safety or at risk of loss of liberty, they should not refuse the demand for a payment. In all circumstances members of staff must report any demand for facilitation payments immediately to their Head of School/Support Department, who should in turn refer to matter to the University Secretary for expert advice and guidance where appropriate.