

## Terms and Conditions for an EPA Consultant providing Services for Advance HE's End Point Assessment Service of the Level 7 Academic Professional Apprenticeship

### 1 Definitions and Interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following words and phrases shall have the following meanings:

1.1.1 **"Advance HE"**: a company limited by guarantee incorporated in England and Wales under company number 4931031, and registered as a charity in England under charity number 1101607 and in Scotland under charity number SC043946, to whom the EPA Consultant is to provide the Services to;

1.1.2 **"Advance HE Data"**: the (i) Personal Data (as defined in clause 13.1) and (ii) the data, text, diagrams, images or sounds (together with any database made up of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(a) supplied to the EPA Consultant by or on behalf of Advance HE; and/or

(b) which the EPA Consultant is required to generate, process, store or transmit pursuant to this Contract;

1.1.3 **"Advance HE Requirements"**: the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents of Advance HE notified to the EPA Consultant;

1.1.4 **"Apprentice"**: means the individual who has successfully completed their apprentice training and is seen to have met the Gateway Requirements ;

1.1.5 **"Background IPR"**: any Intellectual Property Rights in items or materials developed and owned by a party or any third party and which were pre-existing prior to the Commencement Date;;

1.1.6 **"Business Opportunities"**: any opportunities which the EPA Consultant becomes aware of during the Term which relate to the business of Advance HE or which the Senior Leadership Team at Advance HE reasonably considers might be of benefit to Advance HE;

1.1.7 **"Client"**: means the employer or training provider of the Apprentice;

1.1.8 **"Commencement Date"**: as defined in the Letter;

1.1.9 **"Confidential Information"**: any confidential information provided by the Employer/Training Provider/Apprentice; and any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to information which relates to the business, affairs, finances, properties, assets, trading practices, Services, products, marketing, developments, trade secrets, technical data, Intellectual Property Rights, know-how relating

to the business of Advance HE, personnel, and customers of Advance HE or the EPA Consultant (as the case may be), information that the EPA Consultant creates, develops or receives or obtains in connection with this Contract and all personal data and sensitive personal data within the meaning of the Data Protection Legislation, which is in each case provided or obtained by one party, to or for the other party;

1.1.10 **"Control"**: the ability to direct the affairs of another party whether by virtue of the ownership of shares, contract or otherwise (and **"Controlled"** shall be construed accordingly);

1.1.9 **"Data Protection Legislation"** shall mean the DPA, the GDPR (or such replacement thereof in the UK), and any other laws relating to the protection of personal data and the privacy of individuals;

1.1.10 **"Deliverables"**: deliverables described at Schedule 1 of the Letter including (without limitation) any and all materials, documents, designs, presentation materials, products, data, information, devices, processes, reports, graphics, logos, hardware, software or other material to be provided by the EPA Consultant to Advance HE as part of the Services, whether part of the specific deliverables listed at Schedule 1 or otherwise and which are in any physical form or electronic media;

1.1.11 **"DPA"** means the UK Data Protection Act 2018;

1.1.12 **"End Date"**: as defined in the Letter;

1.1.13 **"End Point Assessment" / "EPA"**: means the end point assessment(s) delivered by the Independent Assessor under this Contract, for the Apprentice. Each EPA shall include the following assessment components:

- Academic Professional Practice Assessment;
- Professional Conversation; and
- Written Submission

1.1.14 **"EPA Consultant"**: as defined in the Letter;

1.1.15 **"EPA Consultant's Equipment"**: any equipment, including tools, systems (including laptops), cabling or facilities provided by the EPA Consultant 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 Advance HE;

1.1.16 **"Equality Legislation"**: any and all legislation, applicable guidance and statutory codes of practice relating to diversity, equality, non-discrimination and human rights as may be in force from time-to-time in England and Wales or in any other territory in which, or in respect of which, the EPA Consultant provides the Services;

- 1.1.17 **“Gateway Requirements”**: the requirements to be achieved by an apprentice to be eligible to take the End Point Assessment;
- 1.1.18 **“GDPR”** means the General Data Protection Regulation (EU) 2016/679 (or such replacement thereof in the UK following the UK’s exit from the EEA);
- 1.1.19 **“Good Industry Practice”**: the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at the time of relevant performance from a leading and expert EPA independent assessor, moderator, consultancy or business of services similar to the Services to a customer like Advance HE, such independent assessor, moderator, consultancy or business seeking to comply with his / her contractual obligations in full and complying with all applicable laws;
- 1.1.20 **“Independent Assessor”**: as defined in the Letter;
- 1.1.21 **“Intellectual Property Rights”**: any copyright and related rights, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trade marks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 1.1.22 **“Letter”**: the letter sent by Advance HE to the EPA Consultant detailing the Services to be provided;
- 1.1.23 **“Malicious Software”**: any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully or without knowledge of its existence;
- 1.1.24 **“Moderator”**: as defined in the Letter;
- 1.1.25 **“Schedule 1”**: the scheduled appended to the Letter;
- 1.1.26 **“Services”**: as defined in the Letter
- 1.1.27 **“Term”**: as defined in the Letter; and
- 1.1.28 **“Working Day”**: a day (other than a Saturday or Sunday or public holiday) on which banks are generally open for business in London.
- 1.2 In this Contract, unless otherwise indicated, references to clauses and Schedule(s) are to the clauses and Schedule(s) of this Contract.
- 1.3 Where the words **“include(s)”** or **“including”**, or words of a similar nature, are used in this Contract, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them.
- 1.4 Unless otherwise stated, a reference in this Contract to a statute or statutory provision is a reference to the relevant UK statute or statutory provision as it is in force during the Term, taking account of any

amendment, extension, or re-enactment and includes any subordinate legislation made under such statute or statutory provision and in force during the Term.

- 1.5 In the event and only to the extent of any conflict between these terms and conditions and the Letter and/or Schedule 1, these terms and conditions shall prevail except where the Letter or Schedule 1 (as applicable) specifically states that its terms are to prevail over these terms and conditions. These terms and conditions shall apply to the Services to the exclusion of any purchase order issued by Advance HE, or other terms and conditions issued by the EPA Consultant.
- 1.6 The headings in this Contract are inserted for convenience only and shall not affect its construction.
- 1.7 The Schedule(s) form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedule(s) and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2 Term and Scope of Contract**

- 2.1 Notwithstanding anything to the contrary elsewhere in this Contract, Advance HE shall be entitled to terminate this Contract by serving not less than 14 days’ written notice on the EPA Consultant.
- 2.2 If Advance HE terminates this Contract under clause 2.1 above, Advance HE shall reimburse the EPA Consultant for all reasonable costs which the EPA Consultant can demonstrate to Advance HE’s satisfaction (acting reasonably) are necessarily and properly incurred by the EPA Consultant in relation to the orderly cessation of the Services, including any commitments, liabilities or expenditure which are reasonably incurred, and would represent an unavoidable loss by the EPA Consultant by reason of the termination of this Contract. For the avoidance of doubt:
- 2.2.1 Advance HE shall not indemnify the EPA Consultant against, or otherwise be liable to the EPA Consultant for, loss of profit or any indirect or consequential loss arising out of such termination; and
- 2.2.2 Advance HE shall not in any case be liable to pay any sum under this clause 2.2 which, when taken together with any sums paid or due or becoming due to the EPA Consultant under this Contract, exceed the total Charges paid or payable under this Contract.

## **3 EPA Consultant’s responsibilities**

- 3.1 The EPA Consultant shall provide the Services in accordance with the timescales set out in Schedule 1 (and time for delivery of the Services shall be of the essence), and deliver the Deliverables to Advance HE:

- 3.1.1 with reasonable skill, care and ability in accordance with the terms of this Contract (and, in particular, Schedule 1);
- 3.1.2 in accordance with Good Industry Practice; and
- 3.1.3 using his / her best endeavours to promote the interests of Advance HE,
- and the EPA Consultant shall allocate sufficient resources to the Services to enable him / her to comply with these obligations.
- 3.2 The EPA Consultant shall comply with, and complete and return any forms or reports from time-to-time required by Advance HE Requirements.
- 3.3 If the EPA Consultant is unable to provide the Services due to illness or injury, the EPA Consultant shall advise Advance HE of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 6 in respect of any period during which the Services are not provided
- 3.4 The EPA Consultant shall:
- 3.6.1 observe, and ensure that he/she observes any applicable security policy or health and safety policy notified to the EPA Consultant and any reasonable verbal or written instructions or policies issued to the EPA Consultant at any time and shall comply with the legal requirements of any country in which the Services are being provided. If the EPA Consultant fails to do so, Advance HE reserves the right to suspend the provision of the Services until such time as the EPA Consultant is compliant with such policies, instructions or requirements and Advance HE shall not be required to pay the Charges in respect of the period of such suspension; and
- 3.6.2 before the date on which the Services are to start, obtain and at all times maintain and comply with all licences and consents required to enable the EPA Consultant to provide the Services in accordance with this Contract.
- 3.7 The EPA Consultant shall not at any time during the Term do or say anything which damages or which could reasonably be expected to damage the interests or reputation of Advance HE or its officers, employees, agents, contractors, funders or owners.
- 3.8 The EPA Consultant shall use all reasonable endeavours to ensure that in the performance of his / her obligations under this Contract it does not disrupt the operations of Advance HE, its employees or any other contractor engaged by Advance HE.
- 3.9 The EPA Consultant shall use all reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as Advance HE may require.
- 3.10 The EPA Consultant warrants that the EPA Consultants Equipment shall be of satisfactory quality and fit for the purpose of providing the Services in accordance with this Contract.
- 3.11 The EPA Consultant acknowledges that he / she:
- 3.11.1 has made and shall make his / her own enquiries to satisfy himself / herself as to the accuracy and adequacy of any information supplied to him / her by or on behalf of Advance HE and has entered into this Contract in reliance on his / her own due diligence alone; and
- 3.11.2 has received sufficient information required by him / her in order to determine whether he / she is able to provide the Services in accordance with the terms of this Contract.
- 3.12 If requested by Advance HE, the EPA Consultant shall provide documentary evidence of their eligibility to work in the UK.
- 3.13 Unless specifically authorised to do so by Advance HE in writing, the EPA Consultant shall not:
- 3.13.1 have any authority to incur any expenditure in the name of or for the account of Advance HE; or
- 3.13.2 hold themselves out as having authority to bind Advance HE.
- 3.14 The EPA Consultant shall supply EPA services to Advance HE on a sole and exclusive basis to the exclusion of any other EPA service providers.
- 3.15 The EPA Consultant shall ensure, as a condition precedent before commencing an EPA, that he / she declares any actual or potential conflict of interest to Advance HE in accordance with Advance HE's EPA conflicts of interest policy (as updated from time-to-time) found on its website . The obligation to check for and report on a conflict of interest shall be an enduring obligation throughout the Term of this Contract.
- 3.16 The EPA Consultant shall utilise the Smart EPA platform (or such other platform as notified to him / her by Advance HE) for the purpose of delivering the Services during the Term of this Contract.
- 3.17 The EPA Consultant will ensure that he / she complies with the "Other requirements of the EPA Consultant as set out in Schedule 1 of the Letter.
- 3.18 To act as Independent Assessor / Moderator for Advance HE's EPA Service, the EPA Consultant is required to:
- (i) Hold an HEA Fellowship;
- (ii) Hold a Masters or other higher education qualification in learning and teaching or research;
- (iii) Demonstrate CPD relevant to the role;

- (iv) Hold Senior Fellowship if acting as a Moderator for Advance HE's other independent assessors; and
- (v) Be subject to annual review by Advance HE.

3.19 The EPA Consultant will comply with Advance HE's guidance notes and policy documents in relation to EPA as provided by Advance HE (as updated from time-to-time).

3.20 The EPA Consultant will comply with the safeguarding policy set out in Schedule 1 of the Letter.

3.21 Nothing in this clause 3 shall operate to exclude fraud or fraudulent misrepresentation.

#### **4 Quality and performance**

4.1 The EPA Consultant shall comply with any quality assurance procedure and provide any feedback or other form of reporting, in connection with the Services, that is reasonably requested by Advance HE from time-to-time.

4.2 The EPA Consultant shall meet with representatives of Advance HE upon request to discuss matters relating to the Services and to review the quality of the Services and Deliverables provided.

4.3 Advance HE reserves the right to reject or require re-performance (at no additional cost to Advance HE) of any Services which are defective or which are otherwise not in accordance with the requirements of this Contract.

#### **5 Status**

5.1 The relationship of the EPA Consultant to Advance HE will be that of independent contractor and nothing in this Contract shall render the EPA Consultant an employee, worker, agent or partner of Advance HE and the EPA Consultant shall not hold himself / herself out as such.

5.2 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the EPA Consultant shall be fully responsible for and shall indemnify Advance HE for and in respect of:

5.2.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The EPA Consultant shall further indemnify Advance HE against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by Advance HE in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise

5.2.2 out of the Advance HE's negligence or wilful default; any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the EPA Consultant against Advance HE arising out of or in connection with the provision of the Services.

5.3 The EPA Consultant shall be fully responsible for and shall indemnify Advance HE for and in respect of any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the EPA Consultant against Advance HE arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of Advance HE.

5.4 Advance HE may at its option satisfy the indemnity set out in clause 5.3 above (in whole or in part) by way of deduction from any outstanding Charges or other payments due to the EPA Consultant.

5.5 The EPA Consultant acknowledges that in entering into this Contract no form of exclusivity or future volume guarantee has been granted by Advance HE for Services from the EPA Consultant and that Advance HE is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

#### **6 Price and payment**

6.1 In consideration for the provision of the Services, the EPA Consultant shall be entitled to issue invoices in accordance with the requirements of clause 6.6 for the sums payable by Advance HE as stated in Schedule 1 and on those dates/milestones specified in Schedule 1 (the "Charges").

6.2 The Charges set out in Schedule 1 are an all-inclusive fee except for those additional expenses specifically stated in Schedule 1, and covers all travel and expenses, travel time and all preparation, report writing and all other work which is carried out under this Contract.

6.3 The EPA Consultant shall pay all bank charges applicable to payments made by Advance HE under this Contract (and shall reimburse Advance HE, upon the Advance HE's request, for the sum of any such bank charges incurred by Advance HE).

6.4 Subject to clause 8, the Charges are fixed for the duration of the Contract.

6.5 Where value added tax (VAT) or any equivalent sales tax in any applicable jurisdiction is properly chargeable and identified in Schedule 1, the EPA Consultant shall issue a valid and accurate tax invoice (including the EPA Consultant's VAT registration number). In the event that Advance HE is required by the laws or regulations of any applicable jurisdiction to deduct any withholding tax or similar

taxes from the Charges, Advance HE shall deduct and account for such taxes before paying the remainder of the Charges to the EPA Consultant and shall notify the EPA Consultant in writing of all such sums properly deducted.

- 6.6 All invoices submitted in accordance with clause 6.1 shall be accompanied by a statement setting out the Services supplied in the relevant month in sufficient detail to justify the Charges charged (including any timesheets or other information required by, and to be provided in the format set out in, Advance HE Requirements).
- 6.7 Subject to clauses 6.8 to 6.10 below, Advance HE shall in consideration of the provision of the Services during the Term, unless agreed otherwise by the parties in writing, pay each of the EPA Consultant's valid and accurate invoices by automated transfer into the EPA Consultant's nominated bank account no later than 30 days after the invoice is received.
- 6.8 Provided that it notifies the EPA Consultant in writing in advance, and works in good faith to resolve any issues or disputes within 30 days, Advance HE shall be entitled to withhold payment of any sums in respect of any Services or Deliverables which have not been provided by the EPA Consultant to Advance HE's satisfaction and in accordance with the terms of this Contract.
- 6.9 In the event that Advance HE makes any overpayment in connection with this Contract (or any other agreement between the parties), Advance HE may, upon written notice to the EPA Consultant, deduct the amount of such overpayment from any future invoice or require repayment of such sum within 30 days after the date on which it serves written notice on the EPA Consultant.
- 6.10 Without prejudice to the other rights and remedies available to Advance HE under this Contract, Advance HE shall be entitled (but not obliged) at any time or times without notice to the EPA Consultant to set off any liability of the EPA Consultant to Advance HE against any liability of Advance HE to the EPA Consultant (in any case howsoever arising and whether any such liability is present or future) and may for such purpose convert or exchange any currency.
- 6.11 Any requirement under applicable law to account for the Services in Euro (€) (or to prepare such accounting), instead of and/or in addition to Sterling (£), shall be implemented by the EPA Consultant at no additional cost to Advance HE.
- 6.12 The Charges, together with any applicable VAT or equivalent sales tax, shall be the full and exclusive remuneration of the EPA Consultant in respect of the supply of the Services (unless otherwise agreed in writing by Advance HE).

## **7 Audit**

- 7.1 The EPA Consultant will fully co-operate with and assist Advance HE in meeting its audit and regulatory requirements by providing access for Advance HE, its internal auditors (which shall include for the purposes of this Contract Advance HE's internal audit, security and operational risk functions), its external auditors or any agents appointed by Advance HE to conduct appropriate reviews and inspections of the activities and records of the EPA Consultant (and to take copies of records and documents) and interview the EPA Consultant relating to the performance of the Services and to the accuracy of the Charges. The EPA Consultant shall maintain all records relating to this Contract (including the provision of the Services and the payment of all Charges and expenses) for a period of six (6) years following the year in which the provision of the Services under this Contract is completed or such longer period as Advance HE may notify to the EPA Consultant in writing from time-to-time.
- 7.2 If the results of an audit demonstrate that the EPA Consultant has claimed any sums in respect of Charges or reimbursable expenditure in excess of their entitlement under the terms of the Contract, the EPA Consultant shall within 28 days after a written demand by Advance HE make reimbursement in full in respect of any such overpayment.
- 7.3 Where any audit reveals any breach or non-compliance by the EPA Consultant, the EPA Consultant shall also bear the costs of Advance HE carrying out such audit.

## **8 Change control and variation**

- 8.1 If either party wishes to change the scope or provision of the Services, it shall submit details of the requested change to the other in writing and such change shall only be implemented if agreed in accordance with the remainder of this clause 8 or by mutual agreement in writing between the parties.
- 8.2 If Advance HE requests a change to the scope or provision of the Services:
- 8.2.1 the EPA Consultant shall, within a reasonable time (and in any event not more than 10 Working Days after receipt of the Advance HE's request), provide a written estimate to the Advance HE of:
- 8.2.1.1 the likely time required to implement the change;
- 8.2.1.2 any reasonable variations to the Charges arising directly as a result of the proposed change; and
- 8.2.1.3 any other impact of the change on the terms of this Contract;
- 8.2.2 if, following receipt of the EPA Consultant's written estimate submitted in accordance with clause 8.2.1, Advance HE does not wish to proceed, there shall be no change to this Contract; and
- 8.2.3 if Advance HE wishes the EPA Consultant to proceed with the change, the EPA Consultant shall do so after agreement on the necessary variations to the Charges, the Services and any other relevant terms

of this Contract to take account of the change following which this Contract shall be varied by the parties setting out in writing, and signing, the agreed changes.

- 8.3 If the EPA Consultant requests a change to the scope or provision of the Services, it shall send such request to Advance HE in writing, accompanied by a written statement of the matters referred to in clause 8.2.1, and Advance HE shall withhold or give its consent to such change in its sole discretion. If Advance HE wishes the EPA Consultant to proceed with the change, the EPA Consultant shall do so, following a variation of this Contract in writing signed by (or on behalf of) each of the parties.

## **9 Intellectual Property Rights**

- 9.1 Each party and their licensors (as the case may be) shall own and retain all Intellectual Property Rights in and to the Background IPR. The EPA Consultant hereby grants to Advance HE a non-exclusive, royalty-free and perpetual licence to use his / her Background IPR, including the rights to use, copy, amend, modify, adapt, publish, or distribute his/her Background IPR for Advance HE's internal business purposes and for the purposes of receiving and using the Services in accordance with this Contract.

- 9.2 Subject to clause 9.1, the parties acknowledge and agree that the Intellectual Property Rights in the Deliverables shall become the absolute property of and shall vest and remain vested with Advance HE. In consideration of the Charges paid by Advance HE under this Contract, the EPA Consultant hereby assigns to Advance HE with full title guarantee for the whole term of such rights together with any and all reversion, extensions or renewals, the following rights throughout the world:

- 9.2.1 all title to and rights and interest in the Intellectual Property Rights in the Deliverables including all preliminary or earlier versions of the Deliverables; and

- 9.2.2 all related rights and powers arising or accrued, including the right to sue for damages and other remedies for any infringement of any of the rights listed above which occurred prior to the Commencement Date.

- 9.3 The assignment under clause 9.2 shall take effect either on the date of signature of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Deliverables (as appropriate).

- 9.4 The EPA Consultant shall procure the waiver in favour of Advance HE of all moral rights arising under the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world, relating to the Deliverables.

- 9.5 The Intellectual Property Rights in any items, materials and/or documents provided by Advance HE to the EPA Consultant in connection with this Contract ("**Advance**

**HE Materials**") shall belong to Advance HE or its licensors (as the case may be). Advance HE hereby grants to the EPA Consultant a non-exclusive, personal, non-transferable licence to use Advance HE Materials solely for the purpose of providing the Services to Advance HE and producing the Deliverables as set out in this Contract and for no other purpose whatsoever.

- 9.6 Nothing in this Contract shall operate to grant any licence or rights to the EPA Consultant to use Advance HE's names, trade marks or logos whether in connection with the Deliverables or otherwise without Advance HE's prior written consent.

- 9.7 All rights that are not expressly granted by Advance HE are reserved by Advance HE.

- 9.8 The EPA Consultant shall, at Advance HE's request, execute all deeds and documents which may reasonably be required to give effect to this clause 9.

- 9.9 The EPA Consultant warrants to Advance HE to the best of his / her knowledge and belief that:

- 9.9.1 the performance of the Services by the EPA Consultant will not result in the infringement of any Intellectual Property Rights of any third party;

- 9.9.2 any documents or other materials created by the EPA Consultant in the provision of the Services for use by Advance HE will be original and created specifically for Advance HE;

- 9.9.3 the Deliverables contain nothing libellous, obscene or unlawful and respect the privacy of any individual(s) named therein; and

- 9.9.4 all statements in the Deliverables purporting to be facts are, to the best of the EPA Consultant's knowledge and belief, true and accurate.

- 9.10 The EPA Consultant agrees to indemnify Advance HE, and to keep Advance HE indemnified, together with its officers, directors, employees and agents, against all actions, claims, proceedings and all damages, losses, costs and expenses arising out of or in connection any infringement of the third party's rights, including any infringement of the Intellectual Property Rights of any third party, occurring as a result of or in the course of or in connection with the performance of the Services (a "**Claim**"), except to the extent that such claims arise directly from the use in accordance with Advance HE's instructions of any data, information or other resources provided by Advance HE to the EPA Consultant.

- 9.11 Without prejudice to clause 9.10, if a Claim is brought and relates to any Deliverable(s), the EPA Consultant shall have the right (at his / her own expense):

- 9.11.1 to procure the right for Advance HE to continue using the relevant Deliverable(s) in accordance with the terms of this Contract;

- 9.11.2 to make such modifications to the relevant Deliverable(s) so that it/they become non infringing; or

9.11.3 to replace the relevant Deliverable(s) with non-infringing documents, products, data, information, devices, processes, hardware, software or other material,

provided that if the EPA Consultant modifies or replaces the relevant Deliverable(s), the modified or replacement Deliverable(s) must comply with the terms of this Contract (including the warranties contained in clause 9.9).

9.12 Nothing in this Contract shall prevent the EPA Consultant from using any techniques, ideas or know-how gained during the performance of this Contract in the course of his / her normal business, to the extent that it does not result in a disclosure of Advance HE's Confidential Information or an infringement of Intellectual Property Rights.

9.13 The provisions of this clause 9 shall survive the termination or expiry of this Contract, however arising.

## **10 Limitation of liability**

10.1 Nothing in this Contract shall exclude or restrict the liability of either party to the other:

10.1.1 for death or personal injury resulting from negligence; or

10.1.2 for fraudulent misrepresentation; or

10.1.3 in any other circumstances where liability may not be limited under any applicable law.

10.2 Nothing in this Contract shall exclude or restrict the liability of the EPA Consultant to Advance HE:

10.2.1 for any breach by the EPA Consultant of :

10.2.1.1 clause 11 (Confidentiality); or

10.2.1.2 clause 13 (Protection of Personal Data); or

10.2.1.3 clause 17 (Prevention of fraud, corruption and bribery); or

10.2.2 under clause 9.12 (Intellectual Property Rights).

10.3 Subject to clauses 10.1 and 10.2:

10.3.1 neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Contract; and

10.3.2 the liability of the EPA Consultant to Advance HE, whether in contract, tort, negligence, breach of statutory duty or otherwise, in respect of any one claim or series of linked claims under or in connection with this Contract shall be limited to the sum equal to 200% of the Charges properly paid and payable (plus any late payment interest properly chargeable thereon) during the period of 12 months immediately preceding the relevant claim; and

10.3.3 the liability of Advance HE to the EPA Consultant r, whether in contract, tort, negligence, breach of statutory duty or otherwise, in respect of any one claim or series of linked claims under or in connection

with this Contract shall be limited to the sum equal to the Charges properly paid and payable (plus any late payment interest properly chargeable thereon) during the period of 12 months immediately preceding the relevant claim.

10.4 Except where otherwise expressly stated in this Contract, all remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

10.5 The EPA Consultant shall ensure that it has adequate insurance taken out with a reputable insurance company on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time-to-time. This must cover any actions, claims or demands which may be brought or made against the EPA Consultant or any other organisation by any persons injured or suffering damage or loss in connection with the EPA Consultant's or the other organisation's activities in carrying out this Contract. The EPA Consultant, or the other organisation, shall give to Advance HE not less than 30 days' notice in writing of any alteration or cancellation of such insurance cover. The EPA Consultant shall forward to Advance HE within 7 days of request a copy of such policy of insurance together with such evidence as Advance HE may reasonably require evidencing that such insurance cover is in place and effective.

10.6 The provisions of this clause 10 shall survive the termination or expiry of this Contract, however arising.

## **11 Confidentiality**

11.1 For the purposes of this clause 11:

11.1.1 the "**Disclosing Party**" is the party which discloses Confidential Information to, or in respect of which Confidential Information comes to the knowledge of, the other party; and

11.1.2 the "**Receiving Party**" is the party which receives Confidential Information relating to the other party.

11.2 The Receiving Party shall take all necessary precautions, and apply the same security measures and degree of care to the Confidential Information as the Receiving Party applies to its own confidential information (which the Receiving Party warrants as providing adequate protection from unauthorised disclosure, copying or use) to ensure that all Confidential Information it receives under or in connection with this Contract:

11.2.1 is given only to such of its professional advisors or consultants engaged to advise it in connection with this Contract as is strictly necessary for the performance of this Contract and only to the extent necessary for the performance of this Contract; and

- 11.2.2 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff or its professional advisors or consultants otherwise than for the purposes of this Contract.
- 11.3 Where applicable, the EPA Consultant shall ensure that his / her professional advisors and / or consultants are aware of the EPA Consultant's confidentiality obligations under this Contract and shall immediately notify Advance HE if the EPA Consultant becomes aware of any unauthorised disclosure of any Confidential Information. The EPA Consultant shall co-operate with Advance HE in any investigation that Advance HE considers necessary to undertake as a result of any such unauthorised disclosure of Confidential Information.
- 11.4 The provisions of clauses 11.2 and 11.3 shall not apply to any Confidential Information which:
- 11.4.1 is or becomes public knowledge (otherwise than by breach of this clause 11);
- 11.4.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
- 11.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 11.4.4 is independently developed without access to the Confidential Information; or
- 11.4.5 is required to be disclosed by any applicable law or regulation, or any court, or governmental or administrative or regulatory authority competent to require such disclosure, provided that the Receiving Party has given the Disclosing Party reasonable notice (where legally permissible to do so) in writing of such required disclosure so that the Disclosing Party has had an opportunity to defend or apply to limit or protect such Confidential Information from disclosure and the provisions of this clause 11 shall not apply to that Confidential Information to the extent only that it is so required to be produced or disclosed.
- 11.5 The Confidential Information supplied by Advance HE will be supplied solely to assist the EPA Consultant to carry out the Services, and will be accepted by the EPA Consultant on the basis that although Advance HE has made reasonable efforts to ensure that such Confidential Information will be helpful, Advance HE gives no assurance as to its accuracy, completeness or adequacy for that purpose.
- 11.6 This clause 11 shall remain in full force and effect in the event of any termination or the expiry of this Contract.
- 12 Advance HE Data and security requirements**
- 12.1 The EPA Consultant shall not delete or remove any proprietary notices contained within or relating to Advance HE Data.
- 12.2 The EPA Consultant shall not store, copy, disclose, or use Advance HE Data except as necessary for the performance by the EPA Consultant of his / her obligations under this Contract or as otherwise expressly authorised in writing by Advance HE.
- 12.3 The EPA Consultant shall preserve the integrity of all Advance HE Data held and/or processed by the EPA Consultant and prevent the corruption or loss of all Advance HE Data at all times that the relevant Advance HE Data is under his / her control.
- 12.4 The EPA Consultant shall perform secure back-ups of all Advance HE Data and shall ensure that up-to-date back-ups are stored off-site. The EPA Consultant shall ensure that such back-ups are available to Advance HE (or to such other person as Advance HE may direct) at all times upon request and are delivered to Advance HE at no less than six monthly intervals (or such other intervals as may be agreed in writing between the parties).
- 12.5 The EPA Consultant shall ensure that any system on which the EPA Consultant holds any Advance HE Data (excluding the SEPA system), including back-up data, is a secure system that complies with Advance HE Requirements reasonably notified to the EPA Consultant.
- 12.6 If the Advance HE Data is corrupted, lost or sufficiently degraded as a result of the EPA Consultant's breach of his / her obligations (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act or omission, negligence or statement of the EPA Consultant, in connection with or in relation to the subject-matter of this Contract and in respect of which the EPA Consultant is liable to Advance HE, so as to make Advance HE Data unusable, Advance HE may:
- 12.6.1 require the EPA Consultant (at the EPA Consultant's expense) to restore or procure the restoration of Advance HE Data and the EPA Consultant shall do so as soon as practicable but not later than five Working Days from the date of receipt of Advance HE's notice; and/or
- 12.6.2 itself restore or procure the restoration of Advance HE Data, and shall be repaid by the EPA Consultant any reasonable expenses incurred in doing so.
- 12.7 If at any time the EPA Consultant suspects or has reason to believe that Advance HE Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the EPA Consultant shall notify Advance HE immediately and inform Advance HE of the remedial action the EPA Consultant proposes to take.
- 12.8 The EPA Consultant shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless



otherwise agreed in writing between the parties) to check for, contain the spread of, and minimise the impact of Malicious Software in Advance HE's computing environment (consisting of hardware, software and, or telecommunications networks or equipment used by Advance HE or the EPA Consultant in connection with this Contract and the information and communications technology system used by the EPA Consultant in implementing and performing the Services) (or as otherwise agreed by the parties).

12.9 Notwithstanding clause 12.8, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Advance HE Data, assist each other to mitigate any losses, liabilities, damages, costs and expenses and to restore the Services to their desired operating efficiency.

12.10 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 12.9 shall be borne by the parties as follows:

12.10.1 by the EPA Consultant where the Malicious Software originates from the EPA Consultant Software, third party software supplied by the EPA Consultant (except where Advance HE has waived the obligation set out in clause 12.8) or Advance HE Data (whilst Advance HE Data was under the control of the EPA Consultant) unless the EPA Consultant can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by Advance HE when provided to the EPA Consultant; and

12.10.2 otherwise by Advance HE.

### **13 Protection of Personal Data**

13.1 In this clause:

13.1.1 "**Controller**" has the same meaning as in the GDPR;

13.1.2 "**Data Protection Legislation**" shall mean the DPA, the GDPR, and any other laws relating to the protection of personal data and the privacy of individuals;

13.1.3 "**Data Subject**" has the same meaning as in the GDPR;

13.1.4 "**DPA**" means the UK Data Protection Act 2018;

13.1.5 "**GDPR**" means the General Data Protection Regulation (EU) 2016/679 (or such replacement thereof in the UK following the UK's exit from the EEA);

13.1.6 "**Personal Data**" means "personal data" (as defined in the Data Protection Legislation) that are Processed under this Contract;

13.1.7 "**Personal Data Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

13.1.8 "**Processing**" has the same meaning as in the GDPR and "Process" and "Processed" shall be construed accordingly; and

13.1.9 "**Processor**" has the same meaning as in the GDPR.

13.2 The parties acknowledge that the EPA Consultant is a Processor acting on behalf of Advance HE and that, for the purposes of this Contract:

13.2.1 the type of Personal Data and categories of Data Subjects are as defined in the Letter; and

13.2.2 the nature/purpose of the Processing is to enable the EPA Consultant to carry out his / her duties under this Contract (which form the subject matter of the Processing) and the duration of the Processing shall be the Term of this Contract.

13.3 The EPA Consultant shall comply with his / her obligations under the Data Protection Legislation and shall, in particular:

13.3.1 Process the Personal Data only to the extent, and in such manner, as is necessary for the purpose of carrying out his / her duties under this Contract and in accordance with the Advance HE's written instructions and this clause;

- 13.3.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
- 13.3.3 not transfer the Personal Data outside of the European Economic Area (or, upon the UK's exit from the EEA, the UK) without the prior written consent of Advance HE;
- 13.3.4 ensure that any employees or other persons authorised to process the Personal Data are subject to appropriate obligations of confidentiality;
- 13.3.5 not engage any third party to carry out his / her Processing obligations under this Contract without obtaining the prior written consent of Advance HE and, where such consent is given, procuring by way of a written contract that such third party will, at all times during the engagement, be subject to data Processing obligations equivalent to those set out in this clause;
- 13.3.6 notify Advance HE, as soon as reasonably practicable, about any request or complaint received from Data Subjects without responding to that request (unless authorised to do so by Advance HE) and assist Advance HE by technical and organisational measures, insofar as possible, for the fulfilment of Advance HE's obligations in respect of such requests and complaints;
- 13.3.7 on request by Advance HE and taking into account the nature of the Processing and the information available to the EPA Consultant, assist Advance HE in ensuring compliance with its obligations under the GDPR (where applicable) with respect to:
- (i) implementing appropriate technical and organisational measures in accordance with Article 32 of the GDPR;
  - (ii) where relevant, notifying any Personal Data Breach to the Information Commissioner's Office (or any replacement body) and/or communicating such Personal Data Breach to the Data Subject in accordance with Articles 33 and 34 of the GDPR; and
  - (iii) where necessary, carrying out and/or reviewing and, if applicable, consulting with the Information Commissioner's Office (or any replacement body) with respect to data protection impact assessments in accordance with Articles 35 and 36 of the GDPR;
- 13.3.8 on request by Advance HE, make available all information necessary to demonstrate the EPA Consultant's compliance with this clause and otherwise permit, and contribute to, audits carried out by Advance HE (or its authorised representative); and
- 13.3.9 on termination or expiry of this Contract, destroy or return to Advance HE (as Advance HE directs) all Personal Data and delete all existing copies of such Personal Data.
- 13.4 The EPA Consultant shall indemnify Advance HE on demand against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Advance HE arising out of or in connection with the breach of the Data Protection Legislation by the EPA Consultant, or his / her professional advisors.
- 14 Force majeure**
- 14.1 Neither party shall be in breach of this Contract if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control ("**force majeure**") including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm.
- 14.2 For the avoidance of doubt, no payments shall be due under this Contract in respect of any period where the EPA Consultant is prevented from or delayed in performing the Services as a result of force majeure.
- 15 Termination**
- 15.1 Without prejudice to any other rights or remedies which Advance HE may have, Advance HE may terminate this Contract immediately on giving notice to the EPA Consultant with no liability to make any further payment to the EPA Consultant (other than in respect of sums accrued before the date of termination, if applicable) if:
- 15.1.1 the performance of the Services is delayed, hindered or prevented by circumstances of force majeure (as defined in clause 14) for a period in excess of 28 days;
  - 15.1.2 at any time the EPA Consultant commits any gross misconduct affecting the business of Advance HE;
  - 15.1.3 at any time the EPA Consultant is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is

- imposed);
- 15.1.4 at any time the EPA Consultant is in the reasonable opinion of the Senior Leadership Team at Advance HE, negligent or incompetent in the performance of the Services;
- 15.1.5 at any time the EPA Consultant is declared bankrupt or makes any arrangement with or for the benefit of the EPA Consultant's creditors or a county court administration order made against the EPA Consultant under the County Court Act 1984; or
- 15.1.6 Advance HE ceases to be an EPA provider, for any reason.
- 15.2 Either party may give notice to the other terminating this Contract with immediate effect if:
- 15.2.1 the other party commits any material breach of any of the terms of this Contract and that breach (if capable of remedy) is not remedied within 30 days after notice being given requiring it to be remedied (and where such breach is not capable of remedy, the terminating party shall be entitled to terminate the Contract with immediate effect). For the avoidance of doubt, any breach of clause 3.7 and clause 17 (Prevention of fraud, corruption and bribery) shall be deemed to be a material breach of this Contract which is incapable of remedy; or
- 15.2.2 the other party ceases, or threatens to cease, to carry on business.
- 15.3 Advance HE may at any time by notice terminate this Contract with immediate effect if the EPA Consultant is in persistent breach of any of his / her obligations under this Contract, whether or not such breach is capable of remedy. For the purposes of this clause 15.3, three or more non-material breaches of the terms of this Contract may together constitute a persistent breach.
- 15.4 In any circumstances where Advance HE has the right to terminate this Contract it may instead, by serving notice on the EPA Consultant, opt to suspend the provision of the Services for a reasonable period and Advance HE shall not be required to pay any Charges in respect of such period of suspension.
- 15.5 On termination of this Contract for any reason the EPA Consultant shall immediately delete or return to Advance HE, at Advance HE's request, all documents, materials, information and other resources provided by Advance HE to the EPA Consultant for the purposes of or in connection with this Contract, including any Confidential Information and any Personal Data, except that:
- 15.5.1 where expressly agreed in writing by Advance HE, the EPA Consultant shall be entitled to retain one copy of such documents, materials, information and other resources for audit purposes only; and
- 15.5.2 the EPA Consultant shall not be required to return or destroy any such documents, materials, information and other resources stored in his / her automatically

archived electronic files, provided that such files are accessible only to the EPA Consultant who will be responsible for the safe and secure storage of such files,

and in each case the provisions of clause 11 (Confidentiality) shall continue to apply to such retained documents, materials, information and other resources.

- 15.6 If the EPA Consultant fails to fulfil his / her obligations under clause 15.5, Advance HE may enter the EPA Consultant's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the EPA Consultant shall be solely responsible for their safe keeping.
- 15.7 During the period between service of a notice of termination and the effective date of termination, the EPA Consultant shall provide Advance HE with all reasonable assistance and information to enable an efficient handover to a new service provider (or to Advance HE).
- 15.8 Termination of this Contract, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 15.9 Upon the termination of this Contract, Advance HE shall pay the Charges (or such percentage of the Charges) properly incurred but previously unpaid up to the effective date of termination.

## **16 Health and Safety**

- 16.1 The EPA Consultant shall promptly notify Advance HE of any health and safety hazards which may arise in connection with the performance of this Contract, take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by the performance of the Services and notify Advance HE of any incident occurring on Advance HE's premises or otherwise in connection with the provision of the Services of which the EPA Consultant becomes aware and which causes or could give rise to significant personal injury.
- 16.2 The EPA Consultant shall take all necessary measures to comply with the requirements of the Health & Safety at Work Etc Act 1974 (or any equivalent legislation in any applicable jurisdiction) and any other acts, orders, regulations and codes of practice (including any approved codes of practice) relating to health and safety, which may apply to the performance of this Contract.

## **17 Prevention of fraud, corruption and bribery**

- 17.1 The EPA Consultant undertakes and warrants that he / she has offered, given or agreed to give (and that it will not offer or give or agree to give) to any person, company or firm any gift or consideration of any kind

as an inducement or reward for doing or forbearing to do anything in relation to the obtaining of this Contract or the performance of the EPA Consultant's obligations under this Contract.

17.2 The EPA Consultant warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud and in connection with his / her dealings with third parties.

17.3 The EPA Consultant warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party in any way in connection with this Contract (including in respect of pricing under this Contract). Nothing under this clause 17.3 is intended to prevent the EPA Consultant from discussing the terms of this Contract and the EPA Consultant's pricing with the EPA Consultant's professional advisors.

## **18 Conflicts of interest**

18.1 Advance HE understands and accepts that the EPA Consultant is entitled to seek, apply for, accept and perform contracts to supply goods and services to third parties. However, the EPA Consultant undertakes not to accept contracts to supply goods or services (including EPA services) to third parties during the period which they are registered as an EPA Consultant with Advance HE where this could result in:

18.1.1 the EPA Consultant providing goods or services to competitors of Advance HE where this could (in Advance HE's reasonable opinion) have a commercially harmful effect on Advance HE, without the prior written consent of Advance HE; or

18.1.2 a breach of the terms of this Contract, including the EPA Consultant's obligations under clause 11 (Confidentiality).

18.2 The EPA Consultant undertakes to Advance HE that during registration as an EPA Consultant, it will take all reasonable steps to offer (or cause to be offered) to Advance HE any Business Opportunities as soon as is practicable after the same shall have come to the EPA Consultant's knowledge and in any event before the same shall have been offered by the EPA Consultant (or caused by the EPA Consultant to be offered) to any other party, provided that nothing in this clause shall seek to restrict the EPA Consultant from pursuing business opportunities whereby a pre-existing relationship exists between the EPA Consultant and the third party and such arrangement has been made explicit to Advance HE prior to the EPA Consultant commencing delivery of the Services.

## **19 Responsible business**

19.1 The EPA Consultant shall:

19.1.1 demonstrate a commitment to equality and diversity, and ensure that it does not engage in any act or omission that would contravene the Equality

Legislation and comply with all his / her obligations as a provider of Services as set out in the Equality Legislation;

19.2 demonstrate environmental responsibility and comply in all material respects with applicable environmental laws and regulations in force from time-to-time in relation to the provision of the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the EPA Consultant shall comply with such agreements or codes of practice as if they were incorporated into English law.

19.3 The EPA Consultant shall meet all reasonable requests by Advance HE for information evidencing the EPA Consultant's compliance with the provisions of clause 19.1.

## **20 Publicity**

20.1 The EPA Consultant shall not publicise the terms of this Contract or use the name of Advance HE or any trade name or trade mark used by Advance HE or refer to Advance HE in any other way in any press release, promotional literature, publications or advertising material, including any website, "blogs", social media or other online services, without the prior written consent of Advance HE.

## **21 Assignment and sub-contracting**

21.1 The EPA Consultant shall not, without the prior written consent of Advance HE, assign, transfer, charge, create a trust in, or deal in any other manner with all or any of his / her rights or obligations under this Contract.

21.2 Advance HE may assign or novate this Contract to: (i) any separate entity Controlled (by the direction of the affairs of Advance HE by virtue of ownership of shares, contract or otherwise), by Advance HE; or (ii) any body or department which succeeds to those functions of Advance HE to which this Contract relates. The EPA Consultant warrants and represents that it will (at Advance HE's reasonable expense) execute all such documents and carry out all such acts, as reasonably required to give effect to this clause 21.2.

21.3 The EPA Consultant may not sub-contract the provision of the Services.

## **22 Third party rights**

22.1 This Contract does not create any rights or benefits enforceable by any person not a party to it (within the meaning of The Contracts (Rights of Third Parties) Act 1999) except that a person who under clause 21 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.

22.2 The parties agree that no consent from any such permitted successor or assignee is required for the parties to vary or rescind this Contract (whether or not in a way that varies or extinguishes rights or benefits in favour of such third parties).

**23 Entire agreement**

23.1 This Contract contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing, provided that nothing in this clause 23.1 shall operate to limit or exclude either party's liability for fraudulent misrepresentation.

**24 Waiver**

24.1 A waiver of any right under this Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

**25 Severability**

25.1 If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

25.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**26 Governing law**

26.1 This Contract and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.

**27 Dispute resolution procedure and jurisdiction**

27.1 Subject to the remainder of this clause 27, the parties agree irrevocably that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Contract or its subject matter.

27.2 If any dispute or claim arises out of or in connection with this Contract, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within 10 Working Days after such notice or by such later date as the parties may otherwise agree in writing).

27.3 If the parties are unable to resolve the dispute or claim in accordance with clause 27.2, the parties shall seek settlement of that dispute or claim by mediation in accordance with the LCIA Mediation Rules (as at the date of such mediation), and those Rules are deemed to be incorporated by reference into this clause 27.

27.4 If the dispute or claim is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall

agree in writing, either party may commence proceedings in accordance with clause 27.1.

27.5 Nothing in this clause 27 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Contract or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.

**28 Notices**

28.1 Notice given under this Contract shall be in writing, sent for the attention of the person, and to the address, given in the Letter (or such other address or person as the relevant party may notify to the other party) and shall be delivered either personally, by courier, or by recorded delivery. Subject to clause 28.2, a notice is deemed to have been received on signature of a delivery receipt by an individual at the correct address for notices, or at the time the notice is left at such correct address.

28.2 If deemed receipt under clause 28.1 is not within the hours of 09:00 to 17:00 on a Working Day the notice will be deemed to be received at 09:00 on the first subsequent Working Day.

**29 Warranties**

29.1 Each party warrants to the other party that it has full power and authority to carry out the actions contemplated under this Contract, and that its entry into and performance under the terms of this Contract will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party.

**30 Counterparts**

30.1 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.