

## **Standard Terms and Conditions for Construction and Other Related Services**

### **1 Interpretation**

**“Conditions”** means the terms and conditions set out in this document as amended by Us and notified in writing to You from time to time;

**“Completion”** means the day on which the last of the Professional Services and/or Works are provided by You to our satisfaction (acting reasonably);

**“Contract”** means the contract between Us and You for the provision of Professional Services and/or Works by You incorporating these Conditions, the Order to Undertake Services and any other documents referred to therein;

**“Legislation”** means:

- (a) legislation or a legislative provision, code of practice or guidance is a reference to it as amended, extended or re-enacted from time to time; and
- (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision;

**“Order to Undertake Services”** means the order from Us accepting your offer to provide Professional Services and/or Works and setting out:

- (a) the Project to which the Order to Undertake Services relates;
- (b) the Professional Services and/or Works to which We require You to provide in respect of the Project;
- (c) the sums which shall be payable by Us to You in respect of the Project (Fee) and the times and/or stages at which the instalments of those sums shall be payable;
- (d) any key personnel for the Project (and their roles on the Project); and
- (e) any other details agreed between the parties in respect of the Project;

The Order to Undertake Services can only be amended by agreement by both parties in writing;

**“Fee”** means the total amount payable by us to you for the Professional Services and/or Works as specified in the Order to Undertake Services;

**“Professional Services”** means any design services provided by You and as further described in the Specification;

**“Statutory Requirements”** means:

- (a) all planning and/or other permissions, consents, approvals, permits, licences and certificates which are necessary lawfully to design, construct, complete, commission, maintain and use the Works;

- (b) any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law;
- (c) any regulation or bye-law of any local authority, statutory undertaker or similar body or organisation which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected, including any statutory provisions and any decision of a relevant authority under them which controls the right to develop the site; and
- (d) the consents of all persons who have rights or interests in or over the Works and/or the site who by the lawful exercise of their powers in the absence of such consents could delay or disrupt the carrying out or progress of the Works or the use or enjoyment of the Project;

**“Specification”** means the description and/or specification of the Professional Services and/or Works as set out in the Order to Undertake Services and in any other specification, drawings or other documents which We agree between Us;

**“Quotation”** means the offer by You to provide Professional Services and/or Works to Us;

- (a) **“We”** and **“Us”** refer to the Kingston University Higher Education Corporation, or any subsidiary company thereof which acts on its behalf;

**“Works”** means the carrying out of works referred to in the Order to Undertake Services and as further described in the Specification;

**“You”** means the party providing Works and/or Professional Services to Us.

## **2 Basis of Contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate.
- 2.2 The Quotation constitutes an offer by You to provide the Professional Services and/or Works in accordance with these Conditions. The Order to Undertake Services is our acceptance of your offer, and the terms of which we agree to contract with you.

## **3 Obligations**

- 3.1 Where the Contract includes the carrying out of Works,
  - 3.1.1 You confirm that you have read and understood the Specification and you accept full responsibility for the contents thereof;
  - 3.1.2 You shall carry out and complete the Works;
    - (i) in a good, proper and workmanlike manner in accordance with good industry practice, and appropriate to the Works,
    - (ii) to our reasonable satisfaction; and
    - (iii) in compliance with the Specification. In carrying out any design in relation to the Works,

- 3.1.3 You will exercise all of the reasonable skill, care and diligence to be expected of a properly qualified and competent contractor experienced in carrying out works and services for projects of a similar size, nature, scope and complexity of the Works.
- 3.1.4 You will comply with all Statutory Requirements.
- 3.1.5 You are responsible for obtaining and working to all necessary permissions, authorisations and consents required for the carrying out of the Works.
- 3.2 Where You supply or procure the supply by others of goods and/or materials under the terms of the Contract, such goods and materials shall be:
  - 3.2.1 in compliance with the Specification;
  - 3.2.2 free from any defects; and
  - 3.2.3 be of new and satisfactory quality and fit for the purpose for which they are supplied.
- 3.3 You will not substitute any plant, materials or goods so described without Our consent (acting reasonably).
- 3.4 Your duties and liabilities under this Contract shall not be negated or diminished by any approval, inspection, test or omission to approve, inspect or test, by Us or on Our behalf.
- 3.5 In carrying out the Works, You will at all times prevent any nuisance (including but without limitation noisy work operations) or other interference with the rights of any adjoining land owner, tenant or occupier of the premises comprising the Works (“**the Property**”) and will assist Us in defending any action or proceedings which may be instituted in relation thereto. You will be responsible for and will indemnify Us from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any failure or default by You in this regard.
- 3.6 You shall ensure that:
  - 3.6.1 The Property is at all times secured as fully as practicable against all unauthorised entry
  - 3.6.2 no earth, clay, gravel, sand or other minerals are removed from the Property otherwise than as necessary to enable the Works to be carried out; and
  - 3.6.3 the Property, surrounding roads, alleyways, pavements, public rights of ways and general access areas are kept tidy and properly cleaned of all surplus materials, rubble, rubbish or waste connected with the Works and no goods or materials are deposited or stored on site which are not required within a reasonable time for the carrying out of the Works.
- 3.7 Where the Contract includes the provision of Professional Services, You shall provide the Professional Services using all of the reasonable skill, care and diligence and the best up to date practice to be expected of a fully qualified and competent designer experienced in performing services such as the Professional Services for projects of a similar size, nature, scope, complexity and timescale to the Works.

- 3.8 Unless otherwise authorised or instructed by Us, You will not specify, select and/or approve for use in the Works any material, equipment, substance or building practice or technique which is
- 3.8.1 prohibited by the Specification
  - 3.8.2 not in accordance with British Standards, relevant code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément,
  - 3.8.3 not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011;
  - 3.8.4 relevant European Standards, Codes of Practice, or
  - 3.8.5 generally known within the construction industry at the time of specification, selection, approval or use (as the case may be) to be deleterious or hazardous to the health and safety of any persons (including but not limited to the occupants of the Works) or threaten the durability and structural stability, physical integrity or performance of the Project or reduce the normal life-expectancy of the Project or any part or component of the project
- 3.9 You will comply with any applicable legislation, including but not limited to the Construction (Design and Management) Regulations 2015 and any amendment thereto at no cost to us. You shall report to Us on a monthly basis regarding person hours on site (or any such other information we may reasonably require in order to assist Us with our health and safety reporting).
- 3.10 You agree to engage and retain suitably qualified and competent personnel to carry out and complete the Works and/or Professional Services.
- 3.11 You will comply with our reasonable instructions in relation to the Contract (including but not limited to compliance with any other professionals and parties which we notify you) and you will proceed regularly and diligently with the Professional Services and/or Works so that You meet such reasonable financial and time limits that We agree with You.
- 3.12 You shall comply with, and give all notices required by, the Statutory Requirements and shall advise Us of our duties and obligations under them.
- 3.13 You shall use the skill and care referred to in clause 3.7 to ensure that You do not cause or contribute to any breach by us of any third party agreement and/or contract of which We have provided notice to You.
- 3.14 You shall use the skill and care referred to in clause 3.7 to avoid causing any damage at, on, near or under the site, failing which you shall reimburse us for any losses, costs, damages or expenses we incur as a result of such damage.
- 3.15 You shall notify Us of any delay in the performance of the whole or any part of the Professional Services and/or Works.

- 3.16 You shall allow Us to periodically review any Documents, including but not limited to, any design and any building work included or to be included in the Project. You acknowledge that both We and others may use the Documents to comply with Our statutory obligations.

#### **4 Fee and payment**

- 4.1 Unless otherwise agreed in writing between Us, the Fee is inclusive of all expenses but exclusive of VAT, which shall be charged at the prevailing rate.
- 4.2 You may apply for payment at monthly intervals. When applying for payment, You will provide such supporting evidence as We reasonably require to allow Us to evaluate the application. The final date for payment shall be 30 days after receipt by the Us of the invoice and such supporting evidence.
- 4.3 This clause 4.3 applies only to contracts where the duration of the Works and/or Professional Services is expected to be more than 45 days. In such contracts, the payment due date shall be 15 days after the receipt by Us of the relevant invoice. We will give You notice not later than five days after the payment due date specifying the sum We consider to have been due at the payment due date (“**Notified Sum**”). If we fail to serve this notice, the amount of your application for payment will stand as the Notified Sum. Where We intend to pay less than the Notified Sum, We will notify You of this not later than five days before the final date for payment (“**Prescribed Period**”) and specify the sum we consider to be due and the basis on which the sum is calculated.
- 4.4 Notwithstanding clause 4.3 above, and without prejudice to clause 12, if You becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996 after the Prescribed Period, We need not pay You the Notified Sum or any sum on or before the final date for payment.

#### **5 Intellectual Property**

- 5.1 We shall be entitled to copy, use and reproduce all drawings, details, specifications, calculations and other documents, whether in hard copy or computer generated format which have been or are prepared by You or on your behalf for any purpose connected with the Works and/or the Professional Services, and/or our interest in the site and/or the Project (“**the Documents**”), and to grant sub-licences in the terms of this licence and both our licence and any sub-licence shall be transferrable to others.
- 5.2 You shall not be liable for the use of any of the Documents for any purpose other than that for which they were prepared.

#### **6 Retention of title**

- 6.1 Title in any goods or materials supplied by You or on your behalf shall pass to Us once such goods and materials arrive on our property/the site or once We have paid You for such goods and materials, whichever is the earlier. Risk in the goods and materials will remain with You until the Works and/or Professional Services are complete.

#### **7 Insurance and indemnity**

- 7.1 You indemnify Us against all claims, costs and expenses that We may incur arising directly or indirectly from a breach by You of your obligations under this Contract.

- 7.2 You will take out, hold and maintain for the duration of the Works and/or Professional Services (as applicable) policies of insurance against third party risk, employer's liability insurance and public liability insurance for such sum and range of cover as is appropriate for projects of a similar size, nature, scope and complexity to the Works and/or Professional Services.
- 7.3 Where You are carrying out Professional Services, You will take out, hold and maintain professional indemnity insurance with a well-established insurance company or underwriter of good repute based in the United Kingdom on terms that do not require you to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010. Any increased or additional premium required by insurers because of your claims record or other acts, omissions, matters or things particular to you shall be deemed to be within commercially reasonable rates, from the commencement of this Contract until the [6 year anniversary] of the Completion in the minimum sum of [£1,000,000 in the aggregate]<sup>1</sup>, or such other sum as is notified by Us to You in writing, provided that such insurance continues to be available at commercially reasonable rates and terms. You will immediately inform Us if You cease to maintain any of the above insurances. Whenever We reasonably request, You shall send us evidence that any required insurance policy has been taken out and is being maintained in accordance with this Contract.

## **8 Assignment**

- 8.1 We may assign the benefit of this Contract on
- 8.1.1 two occasions to any person; and
  - 8.1.2 without counting as one of those occasions:
    - (i) by way of security to a person who is to provide funding for the project, the Works and/or the site (including any reassignment on redemption of security); and/or
    - (ii) to and from subsidiary or other associated companies within the same group of companies as Us; and iii) on further occasions with Your consent which shall not be unreasonably withheld or delayed.
- 8.2 You may not assign or transfer your obligations to any other person. You shall not sub-contract the performance of any of the Professional Services and/or Works without our prior written consent. You shall be responsible for any services and/or works you sub-contract to a third party as if you had performed those services and/or works yourself.

## **9 Varying the Works**

- 9.1 We may, without invalidating this Contract, issue written instructions to You requiring an addition to, or omission from, or other change in the Works or the order or period in which the Works are to be carried out ("**Variations**").

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<sup>1</sup> Project specific and subject to change

9.2 We and You will endeavour to agree a price prior to you carrying out the work required by such Variations. If no agreement can be reached on a price, the Variations will be valued by Us on a fair and reasonable basis or using any relevant prices and/or profit margins contained in this Contract to the extent they apply. The agreed price for the Variations will include any reasonable direct loss and/or expense incurred by You due to the regular progress of the Works being affected by Your compliance with the Variations.

## **10 Defects**

10.1 If any defects, shrinkages or other faults in the Works ("**Defects**") appear no later than 12 months after the Completion ("**Defects Liability Period**") due to materials, goods, design or workmanship not in accordance with the Contract, We will notify You in writing no later than 14 days after the expiry of the Defects Liability Period and You will promptly make good the Defects entirely at your own cost unless We instruct You otherwise.

10.2 If You fail to complete and/or remedy the Defects, We may, at our sole discretion, arrange for the Defects to be carried out and the cost of so doing will be deducted from the Fee.

10.3 Save as for clause 10.4 below, no actions or proceedings shall be brought against You by Us in relation to this Contract after 6 years following Completion.

10.4 Either party may commence an action or proceedings against the other in connection with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or to claim a contribution in accordance with the Civil Liability (Contribution) Act 1978 in relation to any liability under sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984, provided that any action or proceedings are brought on or before the expiry of the limitation period for bringing such action or proceedings in accordance with the Limitation Act 1980.

## **11 Confidentiality**

11.1 Save as required by law and as may be reasonably necessary in the performance of the Professional Services and/or Works, You shall not disclose to any third party information of any kind whatsoever relating to the Professional Services and/or Works without the prior written consent of Us.

11.2 You shall ensure similar provisions to those set out in this clause 11 are included in its contracts with sub-contractors (including for the avoidance of doubt any sub-consultants) and shall enforce such provisions.

11.3 Your obligations under this clause 11 shall survive any termination of this Contract.

## **12 Termination**

12.1 Save to the extent that the Corporate Insolvency and Governance Act 2020 applies, either party may give notice in writing to the other terminating the Contract with immediate effect if the other becomes subject to one or more of the following:

12.1.1 the other party commits any material breach of any of the terms of the Contract and that breach (if capable of remedy) is not remedied within 14

days after notice being given in writing requiring it to be remedied (or such longer period as is reasonable in the circumstances);

- 12.1.2 the other party repeatedly breaches any of the terms of this 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 this Contract;
  - 12.1.3 a petition is filed, a notice is given, an order is made or a resolution is passed for for or in connection with the winding-up of the other party or;
  - 12.1.4 an an application is made to court, or a notice of intention to appoint an administrator or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or;
  - 12.1.5 a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or;
  - 12.1.6 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or;
  - 12.1.7 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy or;
  - 12.1.8 the other party takes or suffers any similar or analogous action in consequence of debt or;
  - 12.1.9 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or;
  - 12.1.10 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 any of its creditors or;
  - 12.1.11 the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986 or;
  - 12.1.12 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver.
- 12.2 We may terminate this Contract at any time with 2 weeks' notice in writing.
- 12.3 On termination of this Contract We shall pay You a fair and reasonable proportion of the Fee, such proportion to be commensurate on the Works and Professional Services



carried out by You and taking into account all of the circumstances of the termination. We shall not be responsible to You for any loss of profit or consequential losses incurred by You in relation to this Contract or its termination.

### **13 General**

- 13.1 Subject to clause 13.2, any notice required in writing under the Conditions shall be given properly if delivered by hand or sent by pre-paid post or email address to the party named in the Contract, such other person as the relevant party may notify to the other party or the company secretary. A notice shall be deemed to have been received on the day of delivery. Such notice, communication or document shall be deemed to have been received on the day of delivery if it is delivered by hand or by email and on the second business day after the day of posting if it is sent by pre-paid post.
- 13.2 Any termination or suspension notice sent shall be delivered by hand or sent by pre-paid Royal Mail Special Delivery post. Such notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second business day after posting if it is sent by pre-paid Royal Mail Special Delivery post.
- 13.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration, adjudication or other method of dispute resolution.
- 13.4 The Contract (Rights of Third Parties) Act 1999 shall have no application to this Contract whatsoever but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 13.5 Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between Us and You.
- 13.6 You must not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part of the Contract without the previous agreement in writing of Us.
- 13.7 A failure or delay by either party to exercise any right or remedy provided under this Contract (or by law) will not amount to a waiver of that (or any other) right or remedy.
- 13.8 You shall observe and comply with our rules, regulations and policies (including but without limitation its policies on Compliance and Health and Safety) and any relevant Legislation in relation to the provision of the Professional Services and Works or otherwise, and shall take all reasonable steps to ensure that all your servants, employees or agents and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate.

### **14 Bribery, Modern Slavery and Data Protection**

- 14.1 You shall comply at all times with The Bribery Act 2010, the Modern Slavery Act 2015, the General Data Protection Regulation 2016 and the Data Protection Act 2018.
- 14.2 You shall do nothing which constitutes an offence under The Bribery Act 2010, or which might put Us in the position of committing an offence under Section 7 of the Bribery Act 2010.

- 14.3 You shall have in place adequate procedures to maintain your compliance with clauses 14.1 and 14.2 above.
- 14.4 You shall indemnify Us against all and any loss, damages or costs sustained by Us arising out of any breach by You of your obligations at 12.1 and 12.2 above.
- 14.5 At our request and at your own expense, You shall provide all reasonable assistance to enable Us to resist any claim, action, prosecution or proceedings brought against Us arising from the subject matter of this Contract, or the circumstances surrounding the entering into of this Contract, or of Your breach of Clause 12.1 or 12.2 of this Contract, or by virtue of our relationship with You.
- 14.6 Any breach by You of your obligations at 12.1 or 12.2 above shall entitle Us to terminate this Contract without notice and allow Us to recover from You the amount of any loss arising from or in connection with our termination. Any such termination shall be without prejudice to any right or remedy that has already been accrued or subsequently accrues to Us.

**15 Governing law, Dispute resolution and jurisdiction**

- 15.1 This Contract shall be governed by, and construed and interpreted in accordance with, English law.
- 15.2 Either party may refer any dispute or difference under these Conditions to adjudication conducted by a person agreed between the parties, or if not agreed, appointed on the application of either party to the President or Vice President of the Chartered Institute of Arbitrators in accordance with Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011, notwithstanding that any legal proceedings have been commenced in respect of such dispute.
- 15.3 Subject to clause 15.1, the parties agree to submit any dispute or difference between them arising out of, or in connection with, these Conditions to the exclusive jurisdiction of the English courts.