

## **King's College London - Standard Terms and Conditions for donations**

*(to be read in conjunction with the definitions at the rear of this section)*

### **1 The Donor's obligations**

- 1.1 The Donor undertakes to pay to the College the amounts set out to the bank account on the Payment Date/s.

### **2 The College's obligations**

- 2.1 The College undertakes to apply the donation for the purpose as set out in the Schedule (if no purpose is so specified, then the donation shall be applied for the general charitable purposes of the College).

### **3 Term**

- 3.1 **(For non-permanently endowed donations)** This Agreement shall commence on the date of this Agreement and run for the length of the Term or the earlier of:

- 3.1.1 termination by either party in accordance with the provisions of clause 6;
- 3.1.2 the death of the Donor (if the Donor is an individual);
- 3.1.3 the 30<sup>th</sup> anniversary of the date of this Agreement (if the Donor is a corporate); the corporate ceasing to exist; and the corporate being subject to a change of control ("control" shall have the meaning ascribed to it in section 1124 of the Corporation Taxes Act 2010); or

- 3.2 Subject as above, the Agreement may be renewed by the parties by mutual agreement, in which case such a renewal shall form the basis of a formal amendment to this Agreement.

### **4 Publicity**

- 4.1 Unless specified otherwise in the Schedule, the College may publicise the donation, subject to any conditions specified in the Schedule or these terms and conditions.
- 4.2 The Donor shall be entitled to publicise the donation, provided that the Donor first consults with the College about such publicity and agrees with the College on any requirements regarding such matters as timing and branding (after which the Donor will not be required to consult with the College about the same type of publicity in the future).
- 4.3 Except as may be provided for elsewhere in this Agreement, neither party shall use the other's name, crest, logo or trademarks, or the name of any of its staff nor imply their identity, without the express written permission of that party or individual in writing, except that nothing in this clause shall restrict, delay, impede or prevent a party from using the other party's name when making disclosures under applicable freedom of information legislation or in its own reports or internal literature.
- 4.4 The content and timing of any internet or press releases regarding the purpose shall be agreed by both parties, such agreement not unreasonably to be withheld. Where appropriate, publicity relating to the donation may be made jointly.

### **5 Reporting Requirements**

- 5.1 The College shall submit the donor report to the Donor in accordance with the provisions set out in the Schedule (if any such obligations).

## **6 Termination**

- 6.1 If any material part of the donation has been applied by the College for any costs or liabilities not related to the purpose then the Donor may, after consultation with the College, terminate this Agreement and the College shall, on written request of the Donor, repay to the Donor such part of the Donation that has been misapplied.
- 6.2 If the Donor fails to pay the donation specified in the Schedule by the due date/s for payment the College may, subject to giving to the Donor 30 days' written notice to make payment of the amount due, terminate this Agreement forthwith. Upon such termination the Donor will have no further obligation to make any donations under this Agreement nor will it have any further liability under this Agreement. For the avoidance of doubt, the College shall normally only exercise its rights under this clause where efforts to agree a revised payment schedule with the Donor have proved unsuccessful.
- 6.3 Notwithstanding clause 6.2, the College may in exceptional circumstances and after consultation with the Donor, terminate this Agreement if the Principal of the College considers it is in the best interests of the College to do so. If the College terminates this Agreement in accordance with this clause 6.3 it shall repay to the Donor (in such amount as the Principal of the College acting reasonably, deems fair and appropriate) a sum up to the capital sum received by the College at the point of termination up to the maximum amount of the endowment specified in the Schedule in cases where all or part of the donation has been used to create an endowment, and any unspent or uncommitted part of the donation specified in the Schedule which has been received by the College in cases where all or part of the donation has not been used to create an endowment.
- 6.4 If this Agreement is terminated, the College may change the name of any facility named in recognition of the donation (if any) to such other name as it shall in its absolute discretion decide and the College shall have no further obligations under this Agreement.
- 6.5 Termination or expiry of this Agreement shall not affect the survival of any clauses or provisions herein which are stated, or which by their nature are intended, to continue after termination, such as, by way of example only, clauses 4, 8 and 10.

## **7 Consents, approvals and consultation**

- 7.1 Where any party's consent or approval is required under the terms of this Agreement, such party shall not unreasonably withhold or delay such comment or approval. Where no response is received to a request for consent or approval it shall be deemed to have been given after 30 days of the original request.
- 7.2 If the Donor's consent or approval is required under this Agreement or if the Donor is required to be consulted under this Agreement, such consent, approval or consultation shall only be required to be obtained or undertaken by the College where it is practical and reasonable to do so and, in particular:
- 7.2.1 if the Donor is an individual, such obligation shall cease on the death of the Donor (the College will not be obliged to contact any heirs, personal representatives or similar of the Donor); or
- 7.2.2 if the Donor is a corporate, such obligation shall cease on the earlier of: the 30th anniversary of the date of this Agreement, the corporate ceasing to exist; and the corporate being subject to a change of control ("control" shall have the meaning ascribed to it in section 1124 of the Corporation Taxes Act 2010).

## **8 Confidentiality and Freedom of Information**

- 8.1 Each party will treat the other party's confidential information as confidential and safeguard it accordingly, and, subject to any contrary agreement between the parties, will not disclose any such confidential information to any person other than their own professional advisors, provided that those individuals shall be bound by confidentiality no less onerous than those in this Agreement. Confidential information may be disclosed if required to be disclosed by law or by an order of any court of law or competent regulatory authority and wherever practicable the party required to make the disclosure shall give the other party reasonable advance notice of the intended disclosure, and the relaxation of the obligations of confidentiality

shall apply only for as long as is necessary to comply with the relevant law or regulatory requirement and solely for the purposes of such compliance.

8.2 The Donor acknowledges that the College is subject to the requirements of the Freedom of Information Act 2000 and any Codes of Practice issued pursuant to it (each as amended, updated or replaced from time to time) ("FOI requirements") and agrees that:

8.2.1 without prejudice to the generality of sub-clause 8.2, the provisions of 8.1 are subject to the obligations of the College under the FOI requirements;

8.2.2 the decision as to whether any exemption applies to a request for the disclosure of information in accordance with the FOI requirements is a decision solely for the College; and

8.2.3 the College shall consult the Donor in relation to any request for the disclosure of the Donor's confidential information in accordance with any applicable guidance relating to the FOI requirements.

## **9 Force majeure**

9.1 No party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a force majeure event occurs and the affected party is prevented from carrying out obligations by that force majeure event.

9.2 The affected party shall be excused from performance for as long as the force majeure event reasonably persists, but shall take all reasonable steps to minimise the effects of such circumstances on its performance under this Agreement. Should a party be so delayed, prevented or impeded, it shall promptly inform the other party of the nature of the relevant cause and of the expected duration of the delay or impediment. If such circumstances persist for three (3) months or longer, the College may terminate this Agreement forthwith by giving notice in writing to that effect to the other party.

## **10 Dispute Resolution**

10.1 If any dispute arises out of this Agreement, the parties will endeavour to settle such matters amicably between themselves in good faith through responsible senior officers from their respective organisations. Should they be unable to resolve matters within a period of 35 working days, the matter shall then be settled finally by referring it promptly for resolution by the 'Model Mediation Procedure' at CEDR. Any decision reached in this way shall be final and binding upon the parties.

10.2 Nothing in this clause shall prevent or impede a party from being free to apply for interim relief in a court of competent jurisdiction seeking to require the other party to cease a particular activity in the event of a material or unremedied breach of this Agreement.

10.3 Neither party shall be liable to the other for any claims or demands arising out of this Agreement for loss of income, profits, turnover, business, opportunity, goodwill, economic loss, indirect loss or consequential loss, no matter how arising and whether by breach or by negligence and whether in contract, tort or otherwise.

## **11 Form of communications**

11.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

11.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

11.1.2 sent by email to the address specified by the relevant party from time to time. At date of this Agreement it shall be:

(i) in the case of the Donor: xxxx and xxxx

- (ii) in the case of the College: [fsdfundraisingsupport@kcl.ac.uk](mailto:fsdfundraisingsupport@kcl.ac.uk), and xxxx

11.1.3 Any notice or communication shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second day after posting or at the time recorded by the delivery service; and
- (iii) if sent by email, at the time of transmission, or this time falls outside business hours at 9.00 am on the next working day after transmission.

11.1.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **12 Entire agreement & validity of terms**

- 12.1 This Agreement constitutes the entire agreement between the parties and supersedes and terminates all previous drafts, agreements, arrangements and understandings between them, whether written or oral, express or implied, relating to the donation and represents the sole basis on which the parties have entered into this Agreement. To the fullest extent permitted by law the terms and conditions in this Agreement are agreed to be in place of any warranties, obligations or conditions implied by law, trade usage, custom or otherwise.
- 12.2 If any part or any provision of this Agreement proves to any extent to be invalid, illegal or unenforceable, the remainder of that provision and all other provisions of this Agreement shall remain valid and enforceable to the fullest extent permissible by law, and the provision in question shall be deemed to be omitted from this Agreement to the extent of such invalidity, illegality or unenforceability. The remainder of this Agreement shall continue in full force and effect and the parties shall negotiate in good faith to replace the invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which has an effect as close as possible to the provision or terms being replaced.
- 12.3 No failure to exercise or delay in the exercise of any right or remedy which any party may have under this Agreement or in connection with this Agreement shall operate as a waiver thereof, and nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or of any other such right or remedy.

## **13 Form of variations**

- 13.1 If in the opinion of the Principal of the College, all or part of the donation cannot reasonably be applied in strict conformance with any purpose specified by the Donor, the donation or any part of it may, subject to prior consultation with the Donor, be applied by the College, acting reasonably, for such other purposes as nearly aligned to the purpose specified by the Donor as the Principal of the College considers appropriate.
- 13.2 Subject to sub-clauses 12.1 and 7.1 above, no variation of or amendment to this Agreement, however effected, shall be valid or constitute part of this Agreement unless such variation or amendment has been made in writing and has been signed by the parties or their successors in title.

## **14 Form of agreements**

- 14.1 Except where this Agreement provides otherwise, no agreement between the parties which may be made under this Agreement shall be considered valid unless such agreement has been made in writing and signed by the parties.

## **15 Continuing effect of this Agreement**

- 15.1 This Agreement shall be binding on and inure to the benefit of the parties and their successors in title and assigns, and any amendments to this Agreement shall be agreed in writing by both parties, their successors

in title or assigns. Neither party may assign or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed

**16 No third party rights**

- 16.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or vary any term of this Agreement.

**17 Governing law and jurisdiction**

- 17.1 This Agreement is governed by, and shall be construed in accordance with, the law of England and Wales.
- 17.2 Subject to the provisions contained at clause 10 in relation to dispute resolution, each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales sitting in England

**18 Relationship of parties**

- 18.1 This Agreement is not intended to establish, and shall not be construed by any party as establishing, any form of business partnership or joint venture between themselves or to have created the relationship of principal and agent or any other legal entity between the parties, and accordingly neither party shall have any right or authority to act on behalf of another nor to bind another by contract or otherwise in connection with the Donation.

**19 Means of execution**

- 19.1 This Agreement may be an executed and scanned document and/or in counterparts, each of which shall be an original, and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Electronically transmitted signatures shall have the full force and effect of an original signature.

**20 Definitions and interpretation**

- 20.1 In this Agreement, the following expressions unless the context otherwise requires shall have the meanings hereinafter specified:

“affected party” means any party to this agreement affected by a force majeure event so that it must breach its obligations under this Agreement.

“bank account” means the College’s bank account at [REDACTED] or such other bank account notified by the College to the Donor;

“CEDR” means the Centre for Dispute Resolution, London;

“communication” means any notice or other legal or formal communication made or given under this Agreement;

“confidential information” means all information (whether in writing, in pictorial form, in machine-readable form, in oral form or in any other form or medium) belonging to a party relating to its business, academic, scientific or other activities provided that this expression shall not include any information which the party owning it states in writing shall not, or shall no longer be, treated as confidential information or which can be demonstrated to have lawfully entered the public domain through no fault of the other party;

“donation” means any sum of money paid to the College by the Donor in accordance with this Agreement;

“donor report” means the report submitted to the Donor by the College in accordance with clause 5 above giving details of the application of the donation for the purpose or, if no purpose is specified in the schedule, for its general charitable purposes. The report will contain any information specified in the schedule and

such other information as the Donor may reasonably request in writing and provided in all cases that the College is authorised to disclose such information;

“force majeure event” means any cause or sequence or combination of causes beyond a party’s reasonable and direct control preventing either party from performing any or all of its obligations under this Agreement;

“party” or “parties” means either or both of the Donor or the College, as the context requires.

“payment dates” means the dates set out in the schedule;

“purpose” means any purpose or conditions specified by the Donor for the use of the donation, details of which are set out in schedule; and

“working days” means days excluding weekends and excluding days that are designated as public holidays in the United Kingdom.