

RCUK SHARED SERVICES CENTRE LTD STANDARD CONDITIONS FOR CONSULTANCY SERVICES

These conditions may only be varied with the written agreement of the Contracting Authority. At no time shall terms and conditions, put forward by the Company, form any part of the Contract.

1. Interpretation, etc.

1.1 In these conditions “the Contract” means the agreement concluded between the Contracting Authority (acting on behalf of the Council) and the Company, including all specifications, plans, drawings and other documents that are relevant.

1.2 The following provisions shall have effect with respect to the interpretation of the Contract except where the context otherwise requires:-

- (a) “the Contracting Authority” means the RCUK Shared Services Centre Ltd;
- (b) “the Work” means all work and services which the Company is required under the Contract to carry out;
- (c) “the Council” means the **Research Council named in the Schedule to the Contract;**
- (d) “the Company” means the Company who by the Contract undertakes to perform the Work under the Contract. Where the Company is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Company with the consent of the Council;
- (e) “the Project Officer” means the officer appointed by the Council to act as the Project Officer for the purposes of this contract. The Project Officer appointed shall be specified in the Contract;
- (f) “the Contract Price” means the price, exclusive of Value Added Tax, payable to the Company by the Council for the full and proper performance of the Contract as determined under the provisions thereof;
- (g) “parties” means the Council and the Company;
- (h) “person” includes a corporation;
- (i) “representative of the Council” in any provision of the Contract means the person duly authorised by the Council to act for the purposes of the provision;
- (i) “the Site” means **the address where the Work is to be performed, stated in the Schedule to the Contract;**
- (j) the masculine includes the feminine;
- (k) the singular includes the plural, and vice versa;
- (l) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

1.3 The headings to these conditions shall not affect the interpretation thereof.

1.4 Any decision, act or thing which the Council is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specially, by the Council to take or do that decision, act or thing.

1.5 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address as the party shown on the Contract, or to such other address as the party may by notice to the other have substituted thereof, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

1.6 All communication between the parties, letters, documentation, specifications, reports etc. shall be in the English language.

2. Scope and Duration of the Work

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The Company shall complete the Work detailed in the Contract between the dates specified in the Contract. The Company shall exercise all reasonable skill, care and diligence in the discharge of all duties to be performed by him/her in completing the Work which shall be completed to the satisfaction of the Project Officer.

3. Company's Obligations

- 3.1 The Company shall make available for the purpose of the project any individuals named in the Contract as key personnel. The Company shall provide the Council with a list of the names of all others regarded by the Company as key personnel and, if and when instructed by the Council, all other persons who may be at the time concerned with the project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other supporting evidence as the Council may reasonably require. The Council may at any time by notice to the Company designate any person concerned with the project or any part of it as a key person. The Company shall not without the prior written approval of the Council make any changes in the key personnel referred to in this clause.
- 3.2 The Company shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Site. If the Council gives the Company notice that any person is not to be admitted to or is to be removed from involvement in the Work, the Company shall take all reasonable steps to comply with such notice.
- 3.3 The decision of the Council as to whether any person is to be admitted to or is to be removed from the Site or is not to become involved in or is to be removed from involvement in the Work and as to whether the Company has furnished the information or taken the steps required of him/her by this Condition shall be final and conclusive.
- 3.4 The Company shall bear the cost of any notice, instruction or decision of the Council under this Condition.
- 3.5 Where the Company enters into a sub-contract for the purpose of performing the Services, the Company shall ensure that a term is included in the sub-contract which requires the Company to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

4. Use of Documents, Information etc.

- 4.1 Except with the consent in writing of the Council, the Company shall not disclose the Contract or any specification, plan, drawing, pattern, sample or information issued or furnished by or on behalf of the Council in connection herewith to any person, other than a person employed by the Company in carrying out the Contract or any sub-contractor, supplier or other person concerned with the Contract. Any such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purpose of the Contract.
- 4.2 Any specifications, plans, drawings, patterns, samples or information issued by or on behalf of the Council for the purposes of this Contract remain the property of the Council and must be returned on completion of the Contract.

5 Termination

- 5.1 In the event that the Company has failed (or in the Council's reasonable opinion is failing) to provide the Work to the Council, the Council may terminate this Contract by giving not less than 7 days written notice to the Company, provided that no such notice may be given until the Council has first served a written notice detailing the cause of the Council's dissatisfaction with the Company and the Company has been unable to remedy the cause within 7 days of such written notice.
- 5.2 Notwithstanding clause 5.1 the Council reserves the right to terminate the Contract at any time subject to the giving of not less than 7 days notice in writing and the reimbursement of any costs in respect of commitments properly and necessarily incurred before the date that notice of termination is received and any unavoidable commitments arising as a direct consequence of such notice.

6. Inspection

The Company shall allow the Project Officer and other authorised representatives of the Council access at all reasonable times to the place where the Work is being carried out. Such representatives will be allowed to inspect the progress of the Work under the Contract and to make observations and suggestions which may be deemed appropriate. Nothing in this condition shall relieve the Company of any obligations under the Contract.

7. Progress Reports

The Company shall render such reports as to the progress of the Contract in such form and at such frequency as may be reasonably called for by the Council. The submission and acceptance of these reports shall not prejudice the rights of the Council under the Contract.

8. Intellectual Property Rights

- 8.1 Reports, recommendations and any other results of the Work arising out of or deriving from this Contract shall be the property of

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the Council. The copyright in all documents prepared for the Council under this contract, remains with the Company but will be licensed to the Council for its own use. The Council shall have the right as it thinks fit to make use of the documents without further payment to the Company.

- 8.2 The Company shall not publish, use in the course of their business or disclose to third parties, other than as required by this Contract, information obtained in the performance of this Contract without having previously obtained the consent of the Council in writing.

9. Work on Site

Where the Contract involves the performance of any Work or the provision of any service on Site the Company shall comply with any Health and Safety regulations, codes of practice and instructions in force at such Site.

10. Disclaimer

The Council accepts no responsibility or liability for any injury (including death) to any person or for any loss of or damage to property of whatever kind occasioned by or arising out of any work carried out in pursuance of this Contract save to the extent that such injury, loss or damage is caused by the proven negligence of the Council, its servants or agents.

11. Indemnity

- 11.1 The Company shall indemnify and keep indemnified the Council, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Council, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Company, its servants or agents.
- 11.2 The Company (if an individual) represents that he is regarded by both HM Revenue and Customs and the Department for Work and Pensions as self employed and accordingly shall indemnify the Council against any tax, national insurance contributions or similar impost for which the Council may be liable in respect of the Company by reason of the Contract.

12. Default

- 12.1 Should the Work or any portion thereof not be completed within the time or times specified in the Contract, the Council may, without prejudice to any other remedies, by notice to the Company, determine the Contract either as respects the Work which has not been completed in accordance with the Contract at the time of such determination, or as respects all the Work to which the Contract relates other than that portion completed in accordance with the Contract before that time.
- 12.2 Where the Council has determined the Contract under clause 12.1 and without prejudice as aforesaid the Council may complete all or any part of the Work as respects which the Contract is so determined by allocating resources to complete the Work, and shall recover from the Company the amount by which the aggregate of the cost of completing the Work in this way exceeds the amount which would have been payable to the Company in respect of all the Work so completed if it had been completed in accordance with the Contract, provided that the Council will not seek to make such recovery in cases where the delay in executing the Contract is due to causes outside the Company's control.

13. Bankruptcy, etc.

- 13.1 The Council may at any time by notice in writing summarily determine the Contract without compensation to the Company in any of the following events:-
- (a) if the Company, being an individual, or where the Company is a firm, any partner in that firm, shall at any time become bankrupt, or shall have a receiving order or administration order made against him/her, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made under the Bankruptcy Act for the time being in force for sequestration of this estate, or a trust deed shall be granted by him/her for behoof of his creditors; or
 - (b) if the Company, passes a resolution, or the Court shall make an order that the Company shall be wound up, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or a manager or which entitle the Court to make a winding -up order,

Provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

14. Transfer and Sub-Letting

The Company shall not give, bargain, sell, assign, sub-let (except as in customary in the trade) or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous written consent of the Council.

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15. Contract Price

The Contract Price, exclusive of VAT, payable to the Company by the Council in consideration of the Work under the Contract shall be a firm fee as specified in the Contract.

16. Limit of Liability

The total amount, exclusive of VAT, to be paid by the Council to the Company under this Contract shall not, without the prior written approval of the Contracting Authority's Procurement Officer, exceed the Contract Price specified in the Schedule to the Contract.

17. Value Added Tax

17.1 The Council shall pay to the Company, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the Work provided in accordance with the Contract.

17.2 Any invoices or other request for payment of monies due to the Company under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made in the Finance Act 1972.

17.3 The Company shall, if so requested by the Council, furnish such information as may reasonably be required by the Council as to the amount of Value Added Tax chargeable on the value of the Work provided in accordance with the Contract and payable by the Council to the Company in addition to the Contract Price. Any overpayments by Council to the Company shall be a sum of money recoverable from the Company for the purposes of Clause 18 (Recovery of Sums Due).

18. Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Company, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Company under the Contract.

19. Payment of the Contract Price

Payment of the Contract Price shall be made by the Council upon satisfactory completion of the Work.

Subject to the Council being satisfied that the amounts are in accordance with the Contract, payment will be made within 30 days of receipt of the invoice.

20. Data Protection

20.1 The Company shall not disclose or allow access to any personal data (as defined in Part 1, Section 1(1) of the Data Protection Act 1998) provided by the Council or acquired by the Company during the execution of the Contract, other than to a person placed by the Company under a like obligation who is employed or engaged by the Company or any sub-contractor, servant, agent or other person within the control of the Company and shall extend only in so far as that which is necessary for the purposes of the Contract.

20.2 The Company shall process only at sites specifically agreed in writing in advance with the Council.

20.3 If the Company or their representatives, agents or sub-contractors directly or indirectly cause the loss, damage or destruction of personal data held by the Council within the meaning of the Data Protection Act 1998 or any statutory modification or re-enactment thereof or, having obtained such data without the consent of the Council acting through its Procurement Group directly or indirectly disclose or publish data to any other person or allow improper access to the data, the Company shall indemnify the Council against all claims, proceedings, costs and expenses in respect of any damage or distress suffered thereby by any person.

20.4 If the Company shows that the neglect or default of any other person (not being their representative, agent or sub-contractor) was in part responsible, the Company's liability under the Clause shall not extend to the share in responsibility attributable to the neglect or default of that person.

21. Disputes And Law

21.1 Governing Law

21.1.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

21.2 Dispute Resolution

21.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within [30] days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director or equivalent of each Party.

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- 21.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an Interim order restraining the other Party from doing any act or compelling the other party to do any act.
- 21.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 21.2.1 the dispute shall be referred to mediation pursuant to the procedure set out in sub clause 21.2.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Company does not agree to mediation.
- 21.2.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Company (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 21.2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
 - (b) The Parties shall within 14 days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - (f) If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 21.2.6
- 21.2.6 Subject to clause 21.2.2, the Parties shall not institute court proceedings until the procedures set out in clauses 21.2. and 21.2.5 have been completed save that:
- (a) the Council may at any time before court proceedings are commenced, serve a notice on the Company requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 21.2.7.
 - (b) if the Company intends to commence court proceedings, it shall serve written notice on the Council of its intentions and the Council shall have 21 days following receipt of such notice to serve a reply on the Company requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 21.2.7..
 - (c) the Company may request by notice in writing to the Council that any dispute be referred and resolved by arbitration in accordance with the provisions of clause 21.2.7, to which the Council may in its discretion consent as it sees fit.
- 21.2.7 In the event that any arbitration proceedings are commenced pursuant to clause 21.2.6, the following provisions shall apply:
- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - (b) the Council shall give a written notice of arbitration to the Company (“the Arbitration Notice”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
 - (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 21.2.7(b) shall be applied and are deemed to be incorporated by reference to this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
 - (e) if the Parties fail to agree the appointment of an arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 21.2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - (f) the arbitration proceedings shall take place in London and in the English language; and

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(g) the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

22. Rights of Third Parties Act 1999

- 22.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.
- 22.2 No Third Party shall have the right to enforce all or any part of this Contract.
- 22.3 The conferring of any benefit under this Contract to any person other than the parties to this Contract shall not give that person the right to enforce all or any part of the Contract.

23. Freedom of Information Act. 2000

The Research Councils are Public Authorities within the meaning of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

Consequently, even if a confidentiality agreement has been agreed, information in relation to this order/tender/contract and all correspondence received may be made available on demand in accordance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

Suppliers/contractors should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information under the aforementioned Act/Regulations. Suppliers/contractors should state why they consider the information to be confidential or commercially sensitive.

This will not guarantee that the information will not be disclosed in response to requests for information but it will be examined in the light of the exemptions provided in the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 before a decision to disclose or not is made.
