

## Conditions of Contract - R & D

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## 1. DEFINITIONS

1.1 In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

1.1.2 The Agency The Environment Agency, its successors and assigns.

1.1.3 The Agency's Prior Rights  
All Intellectual Property Rights owned by, or lawfully used by Agency, whether under licence or otherwise, before the date of this Contract.

1.1.4 The Appendix The Appendix to these Conditions

1.1.5 The Contractor  
The person, firm, company or body who undertakes to supply the goods or services to the Agency as defined in the Contract.

1.1.6 Contractor's Prior Rights  
All Intellectual Property Rights owned by or lawfully used by the Contractor, whether under licence or otherwise before the date of this Contract.

1.1.7 The Contract  
These Conditions including the Appendix, any Special Conditions, the Specification, Pricing Schedule, Contractor's tender, acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing.

1.1.8 Contract Period  
The time period stated in the Appendix, or otherwise in the Contract, for the performance of the Services

1.1.9 Contract Supervisor  
Any duly authorised representative of the Agency, notified in writing to the Contractor for all purposes connected with the Contract. Any Notice or other written communication given by or to the Contract Supervisor, shall be taken as given by or made to the Agency.

1.1.10 Contract Price  
The price exclusive of VAT set out in the Contract for which the Contractor has agreed to supply the goods and or services

1.1.11 Notice  
Any written instruction or notice given to the Contractor by the Contract Supervisor, delivered by:

- a) fax, or hand delivery to the Contractors registered office or other address notified for the purposes of the Contract and be deemed to have been served at the date time of delivery.

- b) first class post to the Contractor's registered office. Such notices are deemed to have been served 48 hours after posting

#### 1.1.12 Intellectual Property Rights

All Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for same, copyright know-how, rights in semi-conductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected.

#### 1.1.13 Results

All things produced in performing the Services including maps, plans, photographs, drawings, tapes, statistical data, experimental results, field data, analysis of results, published and unpublished results and reports, inventions, computer programmes and user documentation.

#### 1.1.14 The Resulting Rights

All Intellectual Property Rights in the Results that are originated, conceived, written or made by the Contractor, whether alone or with others in the performance of the Services or otherwise resulting from the Contract.

#### 1.1.15 Services

All Services detailed in the Specification including any additions or substitutions as may be requested by the Contract Supervisor

- 1.2 Except as set out above, the Contract shall be interpreted in accordance with the Interpretation Act 1988.
- 1.3 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.
- 1.4 Any reference in these Conditions to a statutory requirement this will include all subsequent modifications.
- 1.5 All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Shorter Oxford English Dictionary.

## **2. PRECEDENCE**

To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence.

Conditions of Contract including Appendix and any Special Conditions  
Specification  
Pricing Schedule  
Drawings, maps or other diagrams.

## **3. CONTRACT SUPERVISOR**

The Contractor shall strictly comply with any instruction given by Contract Supervisor concerning, or about, the Contract. All such instructions shall be in writing. The Contractor is not obliged to comply with any verbal instruction from Contract Supervisor, that is not confirmed in writing within seven working days

## **4. SERVICES**

- 4.1** The Contractor shall provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract using all skill, care and diligence, and to the satisfaction of Contract Supervisor
- 4.2** Where the Agency has indicated in writing, at or before the date of the Contract, that there will be a need to retain certain persons crucial to the successful provision of the Services, such persons ("Key Personnel") shall be identified from within the Contractor's business or staff and agreed in writing, and a list made of such persons ("the Key Personnel List")
- 4.3** The Contractor shall (subject to Condition 4.5 ) make Key Personnel available for the whole of the Contract Period , for the purposes of providing the Services.
- 4.4** Where the Contract Supervisor gives Notice that Key Personnel are associated with the provision of specific services, such services shall only be provided by such persons.
- 4.5** No changes of any kind shall be made to the Key Personnel List, without the written agreement of the Contract Supervisor, which shall not be unreasonably withheld.
- 4.6** The Contractor shall provide the Contract Supervisor with such information as may reasonably be required in support of any proposed change to the Key Personnel List.
- 4.7** The Contractor shall only employ in the execution and superintendence of the Contract, persons who are suitable, and appropriately skilled and experienced The Contract Supervisor shall be at liberty to object to, and require the Contractor to remove any person employed in or about the Contract who is unsuitable misconducts himself, is incompetent or negligent in the performance of his duties, or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the express permission of Contract Supervisor.

- 4.8** The Contractor shall provide the Agency with such progress reports at such intervals and in such form as is detailed in the Specification or otherwise as reasonably required by the Contract Supervisor.
- 4.9** The Contractor shall notify the Contract Supervisor immediately if any factors occur which give the Contractor reason to believe that the Contract could be completed more effectively or expeditiously by changing the programme or method of working in the Specification.
- 4.8** The Contractor shall not carry out any survey for the Agency (whether or not such survey forms part of the Services) which includes any interviews or the circulation of questionnaires or similar documents without the agreement of the Agency to the form and content of such interviews, questionnaires or other documents.
- 4.9** The Contractor shall promptly notify the Contract Supervisor, in writing of any situation, or event arising from circumstances beyond his control and which he could not have reasonably foreseen which makes it difficult for the Contractor to carry out in whole or in part the Contract in accordance with the Specification. On receipt of such notification, any revision to the Condition 6 (Contract Period) in accordance with Condition 10 (Variations) and/or Condition 11 (Extensions of Time) shall be considered by the Contract Supervisor on its merits, and the Contractor notified in writing of the decision.

## **5. ASSIGNMENT**

- 5.1** The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the prior written permission of Contract Supervisor.
- 5.2** Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.
- 5.3** Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract

## **6. CONTRACT PERIOD**

The Contractor shall perform the Services within the time stated in the Appendix, subject to such amendments arising from Condition 10 (Variations), and/or Condition 11 (Extensions of Time.)

## **7. PROPERTY**

- 7.1** All property issued by the Agency to the Contractor in connection with the Contract shall remain the property of the Agency, and shall be used in the execution of the Contract, and for no other purpose whatsoever without the prior approval of Contract Supervisor
- 7.2** The Contractor shall keep all Property issued by the Agency in safe custody and good condition, set aside and clearly marked as the property of the Agency.
- 7.3** On expiry, or earlier termination of the Contract, the Contractor shall, if so required, either surrender such property to the Agency, or otherwise dispose of it, as instructed by Contract Supervisor.

## **8. CONFIDENTIAL INFORMATION**

- 8.1** Confidential Information shall comprise any information disclosed to, or made available to the Contractor and his agents and staff in connection with the Contract and the provision of the Services. This will include, but not be limited to its procedures, the Contract, the Results, any Intellectual Property of the Agency, or any other information which could reasonably be regarded as confidential.
- 8.2** The Contractor shall take all necessary precautions to ensure that all Confidential Information as in Condition 8.1 :
- 8.2.1 is given only to the minimum number of staff and then only to the extent necessary for each member of staff's activities in the provision of the Services.
- 8.2.2 is treated as confidential and not disclosed, without the prior approval of the Contract Supervisor, to any other person.
- 8.3** Where, required by the Contract Supervisor, the Contractor will ensure his staff sign a confidentiality undertaking before commencing work on the provision of the Services, and provide copies to the Contract Supervisor
- 8.4** The Agency's remedies for breaches of Conditions 8.1, 8.2, and 8.3 shall not be limited to damages.
- 8.5** Nothing in this Condition shall prevent the Agency from disclosing such information relating to the outcome of the Contract procurement process as may be required to be published in the Supplement to the Official Journal of the European Communities in accordance with E.C. Directives, or elsewhere in accordance with requirements of United Kingdom law on the disclosure of information.

## **9. SECURITY**

The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the provision of the Services, belonging to the Contractor, or Contractors staff, or sub-contractors whilst on Agency premises. This Condition shall not prejudice the Agency's rights under Condition 15

## **10. VARIATIONS**

- 10.1** The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Goods or Services to be supplied, by written order to the Contractor.
- 10.2** The value of any such variation, other than any variation arising out of Condition 10.3, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Goods and or Services so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.

- 10.3** Where a variation is the result of some default or breach of the Contract by the Contractor, or for some other cause for which he is solely responsible, any additional cost attributable to the Variation shall be borne by the Contractor.
- 10.4** The Contractor may also propose a variation to the Services, but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.
- 10.5** No variation shall have the effect of invalidating the Contract, or placing the Contract at large, if that variation is reasonably consistent with the nature, scope and value of the Contract.

## **11. EXTENSIONS OF TIME**

- 11.1** Should the performance of the Contract be directly delayed by any cause beyond the reasonable control of the Contractor, and provided that the Contractor shall first have given Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then, the Contract Supervisor, if satisfied that the Condition applies:

11.1.1 in the case of any delay of which the Agency is not the cause, may grant the Contractor such extension of time as in his opinion, is reasonable, having regard, without limitation, to any other delays or extensions of time that may have occurred or been granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.

11.1.2 in the case of any delay of which the Agency is the cause, shall grant the Contractor a reasonable extension of time to take account of the delay.

- 11.2** No extension of time shall be granted where in the opinion of the Agency, the Contractor has failed to use best endeavours to avoid or reduce the cause and/or effects of the delay.
- 11.3** Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under conditions 13 and 14 respectively.

## **12. DEFAULT**

- 12.1** The Contractor shall be in default if he:-

12.1.1 fails to perform the Contract with due skill, care, diligence and timeliness

12.1.2 refuses or neglects to comply with any reasonable written instruction given by the Contract Supervisor.

12.1.3 is in breach of Contract

- 12.2** Where in the opinion of the Contract Supervisor, the Contractor is in default, the Contract Supervisor may serve a Notice, giving at least 7 days in which to remedy the default.

**12.3** If the Contractor fails to comply with such a Notice, Contract Supervisor may without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the Contract, and make other arrangements for its completion. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

### **13 TERMINATION**

**13.1** The Agency may immediately, without prejudice to any other rights and remedies under the Contract, terminate all, or any part of the Contract by Notice in writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, if the Contractor:-

13.1.1 fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 12.2

13.1.2 becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors, or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court.

### **14 DETERMINATION**

**14.1** Without prejudice to any other rights or remedies under the Contract, the Agency reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate)

**14.2** The Agency shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.

**14.3** The Agency will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Agency has validated to its satisfaction. The Agency's total liability under this clause shall not in any circumstances exceed the Contract Price that would have been payable for the Goods or Services if the Contract had not been determined.

### **15 INDEMNITY**

**15.1** Without prejudice to the Agency's remedies for Breach of Contract, the Contractor shall fully indemnify the Agency and its staff against any liability, loss, costs, expenses, claims or proceedings in respect of:-

15.1.1 Death or injury to any person, and/or

15.1.2 Loss or damage to any property, excluding indirect and consequential loss.

15.1.3 Infringement of third party Intellectual Property rights

which might arise as a direct consequence of the actions or negligence of the Contractor, his staff or agents in the execution of the Contract.

- 15.2** This Condition shall not apply where the damage, injury or death is a direct result of the actions, or negligence of the Agency or its staff

## **16 LIMIT OF CONTRACTOR'S LIABILITY**

The limit of the Contractor's liability for each and every claim by the Agency, other than for death or personal injury, whether by way of indemnity or by reason of breach of Contract, or statutory duty, or by reason of any tort shall be:-

16.1.1 The sum stated in the Appendix

16.1.2 If no sum is stated, the Contract Price, or five million pounds whichever is the greater

## **17 INSURANCE**

**17.1** The Contractor shall insure, and maintain insurance against the liabilities under Condition 15 (Indemnity), in the manner, and to the values listed in the Appendix to these Conditions. If no sum is stated, the value insured shall be £5M, (five million pounds).

**17.2** If specifically required by the Agency, nominated insurances shall be in the joint names of the Contractor and the Agency.

**17.3** The Contractor shall, upon request, produce to Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

## **18 INDUCEMENTS**

**18.1** The Contractor shall not, directly or indirectly through intermediaries commit any offence under the Corruption Acts, 1906 to 1916, in any of his dealings with the Agency.

## **19 MONITORING AND AUDIT**

**19.1** The Contract Supervisor may inspect and examine the Services being carried out on the Agency's premises or elsewhere at any reasonable time. Where the Services are being performed on other than the Agency's premises, reasonable notice to inspect shall be given to the Contractor. The Contractor shall give all such facilities as the Contract Supervisor may reasonably require for such inspection and examination.

**19.2** The Contractor shall keep and maintain until two years after the Contract has been ended, records of all expenses and expenditure which have been or are reimbursable by the Agency, and of the hours worked and costs incurred by the Contractor and its sub-contractors in the performance of the Contract, and the Contractor shall on request afford the Agency such access to those records as may be required to carry out audit checks.

## **20 CONTRACT PRICE**

- 20.1** The Contract Price will be paid by the Agency to the Contractor, as amended by any variations ordered under Condition 10 (Variations).
- 20.2** In addition to the Contract Price, the Agency will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

## **21 INVOICING AND PAYMENT**

- 21.1** Invoices shall only be submitted for work already satisfactorily completed, and accompanied by such information as the Contract Supervisor may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Agency.
- 21.2** If any sum shall become payable under the Contract by the Contractor to the Agency, whether by deduction from the Contract Price, or otherwise, it will be deducted from the next available invoice.

## **22 INTELLECTUAL PROPERTY RIGHTS**

- 22.1** All Prior Rights used in connection with the Services shall remain the property of the party introducing them. Details of each party's Prior Rights are set out in the Prior Right Schedule to this contract.
- 22.2** All Results shall be the property of the Agency.
- 22.3** The Resulting Rights in any Results, and any interim results shall, from the time they arise, be the property of the Agency and the Agency shall be free, should it so wish, to apply at its own expense for patent or other protection in respect of the Results or any interim results. The Agency's intention to apply for such patent or other protection shall be notified to the Contractor. Such applications for patents or other registered intellectual property rights shall be filed in the name of the Agency.

Unless otherwise agreed in writing between the Contractor and the Agency, the Contractor hereby:

22.3.1 assigns to the Agency all Resulting Rights

22.3.2 grants the Agency a non-exclusive, non transferable ( save for the purposes of sub-licensing, reorganisation or transfer to a successor body, for the purposes of all the successor body's normal business use), irrevocable , royalty free perpetual licence to the Agency in respect of all the Contractor's Prior Rights necessary in order for the Agency to use or exploit the Resulting Rights.

- 22.4** The Contractor undertakes to the Agency not to use, exploit or deal with any of the Agency's Prior Rights, other than in the performance of the Contract unless the Contractor has first obtained a written licence from the Agency, in specific terms to do so.

- 22.5** The Agency undertakes to the Contractor not to use or exploit the Contractor's Prior Rights, save as provided in Condition 22.3.2 .
- 22.6** The Contractor warrants to the Agency that the performance of the Services, the Contractor's Prior Rights and the Results shall not in any way infringe any intellectual property rights of any third party.
- 22.7** If the Contractor is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Agency may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 13 and 14, Termination and Determination respectively.
- 22.8** The Contractor shall not be liable if such infringement arises from the use of any design, technique or method of working provided by or specified by the Agency.
- 22.9** The Contractor waives in favour of the Agency its rights to object to derogatory treatment of the Results of the Work and the Contractor also agrees that he will not assert or seek to enforce against the Agency and/or any other person, firm or company any of its moral rights as defined in the Copyright Designs and Patents Act 1988 without the prior agreement of the Agency.
- 22.10** The Contractor shall not be liable for any consequential losses, damage or injuries arising from third party misuse of the Results, of which the Contractor is not aware.

## **23 WARRANTIES**

The Contractor warrants that the Goods and or Services supplied by him are fit for the Agency's intended purpose so far as this has been communicated to him, or which he would be reasonably be expected to know.

## **24 PUBLICATION OF RESULTS**

- 24.1** Without prejudice to the generality of Condition 22, the Contractor shall not, without the agreement of Contract Supervisor, use, disclose or permit any person or organisation to use or disclose the Results or Confidential Information for any thesis, degree, research or other educational purpose. Any such use or disclosure may only be made subject to such terms as the Agency shall require.
- 24.2** The Contractor shall not publish any other information related to the Contract without agreeing the text to be published, and the publication or transmission service in or on which it is to appear with Contract Supervisor. Such agreement shall not be unreasonably withheld.
- 24.3** Any agreed publication shall contain an acknowledgement that the Services were carried out under contract to the Agency, and is published with the Agency's agreement.

**24.4** Any publication by the Contractor shall be entirely at the Contractor's own cost and the Contractor shall, within ten days of publication, supply the Agency free of charge with a reasonable number of copies of any publication.

## **25 STATUTORY REQUIREMENTS**

The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract, including, but not limited to the giving of all necessary notices and the paying of all fees.

## **26 ENVIRONMENT**

**26.1** The Contractor shall in all his operations, including purchase of materials goods and services, adopt a sound proactive environmental approach, designed to minimise harm to the environment and be able to provide proof of so doing to the Contract Supervisor on demand.

## **27 LAW**

This Contract shall be governed and construed in accordance with English Law, and subject to jurisdiction of the courts of England and Wales.

## **28 WAIVER**

**28.1** No delay, neglect or forbearance by the Agency in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the Agency under the Contract.

**28.2** No waiver by the Agency shall be effective unless made in writing.

**28.3** No waiver by the Agency of a breach of the Contract shall constitute a waiver of any subsequent breach.

## **29. ENFORCEABILITY**

**29.1** If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, then that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

## **30 DISPUTE RESOLUTION**

**30.1** All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Agency and the Contractor.

**30.2** If the parties negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties respective senior managers or directors (supported as necessary by their advisors)

**30.3** If the parties respective senior managers or directors are unable to resolve the dispute within forty five days, the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediators supervision of the resolution of the dispute.

- 30.4** Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediator but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any parties right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts, or any other form of arbitration until forty five days after the appointment of the mediator.
- 30.5** If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
- 30.6** The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 30.7** Any of the time limits in Conditions 30 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

## **31 GENERAL**

- 31.1** Neither party to the Contract will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.
- 31.2** The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract.

### **31.3 FREEDOM OF INFORMATION ACT**

The Environment Agency is committed to open government and to meeting its responsibilities under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Accordingly, all information submitted to us may need to be disclosed by us in response to a request under the Act or the Regulations. We may also decide to include certain information in the publication scheme which we maintain under the Act or publish the Agreement (but with any information which is exempt from disclosure in accordance with the provisions of the Act or the Regulations or the Agency's Confidential Information redacted), including from time to time agreed changes to the Agreement, to the general public. If you consider that any of the information included in your tender, or any other information that you have submitted or is otherwise in the Agreement, is commercially sensitive, please identify it and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. You should be aware that, even where you have indicated that information is commercially sensitive, we may be required to

disclose it under the Act if a request is received. Please also note that the receipt of any material marked 'confidential' or equivalent by the Agency should not be taken to mean that we accept any duty of confidence by virtue of that marking.

