

**ABERYSTWYTH UNIVERSITY**

**CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES**

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## **ABERYSTWYTH UNIVERSITY CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES**

These Conditions may only be varied with the written agreement of the University. No terms or conditions put forward at any time by the Consultant shall form any part of the Contract.

### **1. DEFINITIONS**

In these conditions:

**'University'** includes any specific University Department named in the Contract;

**'Consultant'** means the person, firm, or company to whom the Contract is issued;

**'Project'** means the services to be provided as specified in the Contract and any other documents and instructions issued to or made known to the Consultant by the University, as constituting part of the Contract;

**'Premises'** means the location where the Project is to be performed as specified in the Contract;

**'Contract'** means the Contract between the University and the Consultant consisting of the Purchase Order and/or Agreement, these Conditions and any other documents and instructions issued to or made known to the Consultant by the University, as constituting part of the Contract;

**'Purchase Order and/or Agreement'** mean the document/s setting out the University's requirements for the Contract.

**'Codes of Practice'** means the Department for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA issued under s45 and/or s46 of the FOIA and/or such other code issued under the FOIA as may be relevant from time to time to the University's discharge of its obligations under the FOIA

**'Confidential Information'** means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either party in writing or that ought to be considered as confidential (in whatever form or medium and whether disclosed orally or in writing, together with all reproductions in whatsoever form or medium and any part or parts of it) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, Goods/Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the DPA. For the avoidance of doubt and subject to Clause 20, the information set out in an agreed Schedule is regarded by the Consultant as Confidential Information relating to the Consultant under this Agreement and for the duration specified in that Schedule.

**'DPA'** means the Data Protection Act 1998 and any subordinate legislation made under it from time to time;

**'EI Regulations'** means the Environmental Information Regulations 2004;

**'FOIA'** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time

**'Information'** has the meaning given under section 84 of the FOIA;

**"Information Commissioner"** and **"Information Tribunal"** have the meanings given under section 6 of the DPA

## **2. THE PROJECT**

2.1 The Consultant shall complete the Project with reasonable skill, care, and diligence, in accordance with the Contract.

2.2 The Consultant shall provide the University with such reports of their work and performance on the Project at such intervals and in such form as the University may from time to time require.

2.3 The University reserves the right by notice to the Consultant to modify its requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 16.

## **3. CONSULTANTS PERSONNEL**

3.1 The Consultant shall make available for the purposes of the Project any individuals either named in the Contract or otherwise identified between both parties as key personnel. The Consultant shall provide the University with a list of the names and qualifications of all individuals regarded by the Consultant as key personnel, including a CV for such individuals, if required. The Consultant shall also provide, if and when instructed by the University, details of all other persons who may be at any time concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned, and any such other particulars and evidence of identity and other supporting evidence as the University may reasonably require.

3.2 The Consultant shall provide for the Project any such persons so identified in accordance with the requirements contained in Clause 3.1, and shall ensure that such persons have the necessary skills, competence, qualifications and experience to fulfill the requirements placed on the Consultant under the Contract. The University may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not, without the prior written approval of the University, make any changes in the key personnel referred to in this paragraph and Clause 3.1, such approval not being unreasonably withheld by the University.

3.3 The Consultant shall take the steps reasonably required by the University to prevent unauthorized persons being admitted to the Premises. If the University gives the Consultant notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice. The Consultant shall ensure that all persons concerned with the Project comply with the requirements of the Contract and the site regulations and Health & Safety rules of the University

3.4 The decision of the University as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

3.5 The Consultant shall bear the cost of any notice, instruction or decision of the University under this Condition.

#### **4. FEES AND EXPENSES**

4.1 The University shall pay to the Consultant fees at the rate specified in the Contract.

4.2 Subject to the terms of the Contract, the Consultant may be entitled to be reimbursed by the University the amount of all expenses reasonably and properly incurred by them in the performance of their duties thereunder, subject to production of such evidence thereof as the University may reasonably require, in applicable cases.

4.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of correctly rendered invoices, in arrears, submitted monthly or in accordance with any other time scale mutually agreed between the parties, for work completed to the satisfaction of the University.

4.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

4.5 Unless otherwise expressly agreed to the contrary by the University, the rates and prices contained in the Contract will remain applicable for the duration of the Project, and may not be adjusted at any time without the prior written agreement of the University.

4.6 Notwithstanding Clause 4.3 above, the University reserves the right to withhold payment against any Consultants invoice which is not in accordance with the terms of this Contract or which covers or purports to cover persons which have not been clearly identified and provided in accordance with the conditions required of the Consultant as stipulated in Clause 3, and shall notify the reasons to the Consultant in writing forthwith.

4.7 If the payment of any sum due under the Contract shall be delayed by the University other than in accordance with the terms of the Contract, the Consultant shall be entitled to charge interest on the delayed payment at a rate to be proposed by the Consultant & agreeable to the University.

#### **5. AUDIT**

5.1 The Consultant shall keep and maintain for at least 6 years (after the Contract has been completed) records to the satisfaction of the University of all expenditures which are reimbursable by the University and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the University on a time charge basis in connection with the Contract.

The Consultant shall on request afford the University or their representatives such access to those records as may be required by the University in connection with the Contract and should also note that the permissions of WEFO (as applicable) may be required to take any action related to the retained records. The Consultant should be mindful that, typically, any WEFO related consultancy engagements require records to be retained for around 12 years after the completion of the project

## **6. INDEMNITIES AND INSURANCE**

6.1 The Consultant shall indemnify and keep indemnified the University, its servants and agents against all actions, claims, demands, costs, expenses and liabilities whatsoever incurred by or made against the University, its servants or agents either at common law or by statute 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 by the Consultant, its servants or agents to the extent that such loss, damage or injury (including death) is caused by the negligence or other wrongful act of the Consultant, its servants or agents.

6.2 The Consultant (if an individual) represents that he/she is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the University against any tax, national insurance contributions or similar impost for which the University may be liable in respect of the Consultant by reason of this Contract.

6.3 The Consultant shall effect with an insurance company or companies acceptable to the University a policy or policies of insurance covering all the matters that are the subject of the indemnities and undertakings on the part of the Consultant contained in this Contract, including public liability cover of at least £5M (Five Million Pounds Sterling). If requested, the Consultant shall provide a certificate/s evidencing the existence of such policies to the University.

6.4 Save as expressly stated elsewhere in the Contract and/or within these conditions, neither party shall be liable to the other for any consequential loss or damage, howsoever caused.

## **7. CORRUPT GIFTS OR PAYMENTS**

7.1 The Consultant shall not offer or give, or agree to give, to any member, employee or representative of the University any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the University or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Consultant is drawn to the criminal offences created by the Prevention of Corruption Acts 1669 to 1916.

## **8. COPYRIGHT**

8.1 All reports and other documents and materials and the copyright or similar protection therein arising out of the performance by the Consultant of his duties hereunder are hereby assigned to and shall vest in the University absolutely.

8.2 The Consultant shall fully indemnify the University against all damages (excluding consequential loss) costs, charges and expenses arising from or occurred by reason of any infringement or alleged infringement in the United Kingdom of copyright arising from the provision of the service by the Consultant, subject to:

- i) The University promptly notifying the Consultant in writing of any alleged infringement of which the University becomes aware.
- ii) The University must make no admissions without the Consultants prior written consent.
- iii) If the Consultant so requests, the University shall allow the Consultant to conduct any negotiations or litigation and/or settle any claim. The University shall give the Consultant all reasonable assistance. All costs shall be borne by the Consultant.

8.3 The provisions of this Condition 8 shall apply during the continuance of this Contract and after its termination, howsoever arising.

## **9. RACIAL DISCRIMINATION**

In accordance with its responsibilities under the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000, the Race Relations 1976 (Amendment) Regulations 2003 and any other relevant statutory amendments) to eliminate unlawful racial discrimination, promote equal opportunities and promote good relations between people of different racial groups, the University requires its contractors/consultants and sub-contractors to comply with the terms of this section.

### **Personnel**

9.1 All personnel employed by the Consultant for the purpose of performing this Contract must be fully trained, suitably qualified and experienced, and shall fulfil their duties in a professional, ethical manner, consistent with the University's commitment to equal opportunities and race equality and high standards of behaviour.

### **Equal Opportunities**

9.2 The Consultant will comply with legislation for the prevention of discrimination on the grounds of disability, race, sex, sexual orientation, age, religion and belief and the promotion of race equality. The Consultant is required where appropriate to provide information to the University on its compliance with legislation and its practices and procedures to prevent unlawful discrimination and to promote race equality and equal opportunities.

9.3 The Consultant shall not discriminate directly or indirectly against any person on grounds of their colour, race, nationality or ethnic or national origins contrary to Part II of the Race Relations Act 1976 (Discrimination in the Field of Employment) and/or contrary to Part III of the Act (Discrimination in Other Fields) either in employment or in service and/or contravene Part IV of the Act (Other Unlawful Acts).

9.4 The Consultant shall comply with the provisions of Section 7 of the Act in all dealings with sub- contractors.

9.5 The Consultant shall in performing the Contract comply with the provisions of Section 71 (1) of the Race Relations Act 1976 as amended by the Race Relations Amendment Act 2000 and the Race Regulations Act 1976 (Amendment) Regulations 2003 as if the Consultant were a body within the meaning of Schedule 1A to the Act.

9.6 Where in connection with this Contract, the Consultant, its agents or sub-contractors, or the Consultant's staff are required to carry out work on the University's premises or alongside the University's employees or students on any other premises, the Consultant shall comply with the University's policies and codes of practice relating to racial discrimination and equal opportunities.

9.7 The Consultant shall monitor its own employees by reference to their racial origins and ethnicity, and provide such information on request to the University.

9.8 The Consultant shall provide such information as the University requires about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equal opportunities and race equality both in terms of employment and customer service. The Consultant shall have regard to the promotion of race equality and shall consider the promotion of race equality and good race relations as key objectives of the contract.

9.9 The University and Consultant shall continue to monitor the performance and objectives of the contract throughout its duration and to make any amendments or changes necessary to the contract, or its performance or objectives in order further to promote race equality.

9.10 The Consultant shall notify the University immediately in writing as soon as it becomes aware of any investigation or proceedings brought against him/her under the Race Relations Act 1976, Race Relations Amendment Act 2000 and Race Relations Act 1976 (Amendment) Regulations 2003 as amended.

9.11 Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Consultant or against the University either in connection with any contract awarded to the Consultant or generally, the Consultant shall, without charge:-

- i) provide any information requested in the timescale allotted;
- ii) attend and permit its employees to attend any meetings as required;
- iii) allow access to and investigation of any documents or data deemed to be relevant to the investigation;
- iv) allow itself and any of its employees to appear as witnesses in any proceedings; and
- v) co-operate fully with the person or body conducting the investigation.

9.12 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Consultant, its staff, employees, agents or sub-contractors and where there is a finding against the Consultant in any such investigation or proceedings, the Consultant shall indemnify the University with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the University during or in connection with any such investigation or proceedings and further indemnify the University for any compensation, damages, costs or other award the University may be ordered or required to pay to a third party.

9.13 If a finding of unlawful discrimination or breach of equal opportunities legislation is made against the Consultant or against the University arising from the conduct of the Consultant, the University will require the Consultant to take immediate remedial steps to prevent further recurrences.

9.14 If the Consultant enters into any sub-contract as authorised in this Contract in connection with this Contract, it shall impose obligations on its sub-contractors terms which are identical to those imposed on it in this section. The University expects that the Consultant will not sub-contract to any business, service or group which has a poor history of discrimination in employment or service delivery. A breach of this clause will be considered as a fundamental breach of the contract between the University and the Consultant.

9.15 Without prejudice to its remedies set out above, the University may terminate the contract if notice has been given to the Consultant of a substantial or persistent breach of this section 9 providing that a reasonable period has been given during which the breach may have been rectified and the Consultant has failed to remedy the breach within the stated period.

## **10. CONFIDENTIALITY**

10. 1. Without prejudice to clause 20, the Consultant acknowledges that they have/ will on request set out in an agreed Schedule an exhaustive list of Information that they regard as their confidential information for the duration identified in said Schedule, the disclosure of which would in the Consultants view constitute an actionable breach of confidence.

10.2 Each party:-

- i) shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
- ii) shall not disclose to any person any Confidential Information belonging to the other party without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Contract but only then where such persons are subject to or have executed a confidentiality undertaking in terms no less stringent than those set out in this clause 10 prior to disclosure of such Confidential Information to them or except where disclosure is otherwise expressly permitted by the provisions of this Agreement

10.3 The provisions of Clause 10.2 (ii) shall not apply to any Confidential Information received by one party from the other:-

- i) which is in or becomes part of the public domain (otherwise than by breach of this Clause 10);
- ii) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- iii) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;



iv) is independently developed without access to the Confidential Information; or

v) which is required to be disclosed in accordance with a statutory, legal or regulatory obligation placed upon the party making the disclosure, including any Request for Information or request for information under the EI Regulations.

10.4 In the event that one party fails to comply with this Clause 10, the other party reserves the right to terminate this Agreement by notice in writing with immediate effect.

## **11. TERMINATION**

11.1 The Consultant shall notify the University in writing immediately upon the occurrence of any of the following events:

(a) Where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or a criminal bankruptcy order is made against the Consultant, or he/she makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his/her affairs or;

(b) Where the Consultant is not an individual but is a firm: or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company; or

(c) Where the Consultant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

11.2 On the occurrence of any of the events described in paragraphs 9.15 and/or 11.1, or if the Consultant shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within fourteen days of being required by the University in writing to do so, or, where the Consultant is an individual, if he/she shall die or be adjudged incapable of managing his/her affairs within the meaning of Part VII of the Mental Health Act 1983 the University shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

11.3 In addition to its rights of termination under paragraph 11.2 the University shall be entitled to terminate this Contract by giving to the Consultant not less than fourteen days' notice to that effect.

11.4 Termination under paragraphs 11.2 or 11.3 shall not prejudice or affect any right of action or remedy that shall have accrued or shall thereupon accrue to the University and shall not affect the continued operation of Conditions 8 and 10.

## **12. RECOVERY AND SUMS DUE**

12.1 Wherever under this Contract any sum of money is recoverable from or payable by the Consultant, that sum may be deducted from any sum then due, or which at any later time may become due, to the Consultant under this Contract or under any other agreement or Contract with the University.

## **13. ASSIGNMENT AND SUBCONTRACTING**

13.1 The Consultant shall not assign or Sub-Contract any portion of the Contract without the prior written consent of the University. Sub-Contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to him/her under the Contract or these conditions.

13.2 Where the University has consented to the placing of Sub-Contracts, the Consultant shall send copies of each Sub-Contract to the University immediately it is issued.

13.3 Where the University has consented to the placing of Sub-Contracts, the Consultant shall ensure that all appointed sub-contractors are aware of, and agree unconditionally to, the terms of this contract.

## **14. NOTICES**

14.1 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 telex, 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 of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, 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.

## **15. STATUS OF CONTRACT**

15.1 Nothing in the Contract shall have the effect of making the Consultant the servant of the University.

## **16. ARBITRATION**

16.1 All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the University is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons one to be appointed by the University and one by the Consultant or their Umpire, in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

## **17. HEADINGS**

17.1 The headings to Conditions shall not affect their interpretation.

## **18. STANDARDS OF PERFORMANCE**

18.1 The Consultant shall ensure that the service provided to the University meets the standard of performance specified in the Contract, during its execution.

18.2 If the University can demonstrate that the Standard of Performance specified in the Contract has not been maintained due to the fault of the Consultant and/or its Sub Contractors, the University shall have the right to require the Consultant to forthwith, and at his/her own expense, undertake such remedial action as may be necessary to delivery the standard of performance specified in the Contract, to meet the Consultants contractual obligations to the University.

18.3 Exercise by the University of its rights under paragraph 18.2 represents a final and conclusive decision by the University relating to the Standard of Performance of the Consultant. Notwithstanding this, any such rights exercised by the University in accordance with paragraph 18.2 shall not prejudice any other rights or remedies open to the University under the contract.

## **19. GOVERNING LAW**

19.1 These Conditions shall be governed by and construed in accordance with English law and the Consultant hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the University to take proceedings against the Consultant in any other court of competent jurisdiction, nor shall the taking of proceedings preclude taking of proceedings in any other jurisdiction, concurrently or not.

## **20. FREEDOM OF INFORMATION**

20.1 The Consultant acknowledges that the University is subject to the requirements of the FOIA, the Codes of Practice and the EI Regulations

20.2 The University may, at its discretion, notify the Consultant that a Request for Information concerning this Agreement has been submitted.

20.3 The Consultant shall assist and cooperate with the University at his expense to enable the University to comply with the Information disclosure requirements concerning Information held by the University and relating to the Consultant or this Agreement and within the time for compliance set out in FOIA s10.

20.4 Subject to any prior determination of the Information Commissioner and/or the Information Tribunal and/or the courts, (and the University shall notify the Consultant of such determination) the University shall be responsible for determining at its absolute discretion whether:-

i) the Information relating to this Agreement and/or the Confidential Information is exempt from disclosure under the FOIA and/or the Code of Practice and/or the EI Regulations;

ii) the Information and/or the Confidential Information is to be disclosed in response to a Request for Information.

20.5 The Consultant acknowledges that he/she is not a public authority under the FOIA and shall not respond directly to a Request for Information concerning information relating to the University or to this Agreement unless expressly authorised to do so by the University.

20.6 The Consultant acknowledges that the University may, acting in accordance with the Codes of Practice, be obliged under the Codes of Practice, the FOIA, or the EI Regulations to disclose Information:-

i) without consulting with the Consultant, or

ii) following consultation with the Consultant and having taken their views into account, but without any obligation on the University to comply with those views.

**PARTIES TO THE AGREEMENT**

**For & on Behalf of the  
Aberystwyth University:**

**For & on Behalf of the  
Consultants:**

**Signature:.....**

**Signature:.....**

**Name (Printed): .....**

**Name (Printed): .....**

**Date: .....**

**Date: .....**