

## TERMS AND CONDITIONS OF CONTRACT FOR RESEARCH CONTRACTS

These terms and conditions may only be varied with the written agreement of SNIFFER. No terms or conditions put forward at any time by the Contractor shall form part of the Contract unless specifically agreed in writing by SNIFFER.

### 1. DEFINITIONS

In these Conditions:

*"Background Information"* means all technical know-how, data, designs, drawings, inventions, photographs, maps, models, programs, reports, specifications or other materials, works or information in existence prior to the Commencement Date;

*'Commencement Date'* means the date stated in the Contract as being the date when the Project will commence.

*'Completion Date'* means the date stated in the Contract as being the date when the Project will be completed.

*'Contract'* means the contract between SNIFFER and the Contractor incorporating these Terms and Conditions.

*'Contractor'* means the person, firm or company to whom the Contract is issued.

*"Contractor Background Information"* means any and all Background Information owned by or otherwise possessed by the Contractor.

*"Foreground Information"* means all project deliverables described in the Contract and all other information, know-how, results, data, designs, drawings, inventions, photographs, maps, models, programs, reports, specifications and other materials or works of whatever nature conceived, developed, made or otherwise produced in the course of, or otherwise arising from the performance of, the Project.

*'Intellectual Property Rights'* means patents, designs, copyright, applications for any of the foregoing, know-how and other similar rights and obligations, whether registrable or not, and whether registered or not, in the United Kingdom or abroad.

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

*'Project'* means the research project to be carried out by the Contractor as specified in the Contract, and subject to such modifications as may subsequently be made in accordance with Condition 5 of these Conditions, or otherwise by agreement in writing between the parties.

*'SNIFFER'* means the Scotland & Northern Ireland Forum For Environmental Research (Company No. SC149513).

### 2. CONTRACTOR'S DUTIES

- 2.1 The Contractor shall carry out and complete the Project with due diligence and reasonable skill and care, and in accordance with best current professional, technical and scientific knowledge and practice, and in compliance with all relevant legislation.
- 2.2 The Contractor shall procure that any software forming part of the project deliverables conforms to such IT standards and specifications as may be set out in the Contract.
- 2.3 The Contractor shall be responsible for the management and carrying out of the Project including the provision of all necessary personnel, accommodation, equipment, and services.
- 2.4 The Contractor shall not assign, transfer or dispose of any of its rights or obligations under the Contract.
- 2.5 The Contractor's staff may not use work done under this Contract as a basis for a thesis for a higher degree without the prior written approval of SNIFFER.
- 2.6 Unless permitted by the Contract, the Contractor shall not sub-contract any portion of the Contract without the prior written permission of SNIFFER. Sub-contracting any portion of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract.

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- 2.7 Where SNIFFER has consented to sub-contracting, the Contractor shall cause terms to be included in any such sub-contract which provide that all Intellectual Property Rights created by the sub-contractor are to vest in the Contractor. The Contractor shall also, if so requested by SNIFFER, provide to SNIFFER copies of all documents containing or evidencing such sub-contract or sub-contracts.
- 2.8 The Contractor shall at all times comply with all relevant health and safety legislation and employment laws, including all European, national and local laws, regulations, subordinate legislation, codes of practice or guidance notes in existence or formally proposed during the term of this Contract concerning the health, safety, training and competence of any person or persons engaged in work under the Contract.
- 2.9 The Contractor hereby undertakes to carry out its own comprehensive risk assessment concerning the health, safety, training and competence of its employees or any person or persons engaged in work under the Contract.

### **3. CONTRACTOR'S PERSONNEL**

- 3.1 The Contractor shall make available for the purposes of the Project any individuals named within the Contract as key personnel to complete the deliverables specified, and shall not make changes without the prior written approval of SNIFFER.
- 3.2 The Contractor will deploy in the performance of the Project only suitably qualified, trained, experienced and (where appropriate) supervised staff.
- 3.3 The Contractor shall ensure that all his personnel are and will be engaged in relation to the Contract and the Project on terms which provide for all Intellectual Property Rights created by such personnel to vest in the Contractor.
- 3.4 If so requested by SNIFFER, the Contractor shall, within seven days of such request, provide to SNIFFER the names of all personnel who will be carrying out any part of the Project. The Contractor shall also provide for each such person the capacities in which they are involved, their relevant qualifications and experience, and any other information reasonably requested by SNIFFER relevant to their suitability for performing the Project.
- 3.5 If SNIFFER reasonably considers that any person who is working for the Contractor in relation to the carrying out of the Project is not suitably qualified or competent, SNIFFER may request that that person's involvement with the Project ceases. The Contractor shall comply with any such request immediately.

### **4. TIME OF PERFORMANCE**

The Contractor shall begin carrying out the Project no later than the Commencement Date stated in the Contract, and shall complete it by the Completion Date stated in the Contract. Time is of the essence of the Contract.

### **5. ALTERATION OF PROJECT REQUIREMENTS**

SNIFFER reserves the right to alter the requirements of the Project, as detailed in the Contract or otherwise, should this at any time become necessary. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions and changes in quality, form, character, kind, timing, method or sequence of the Project deliverables. In the event of any such alteration payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between SNIFFER and the Contractor and recorded in writing in accordance with SNIFFER's contract variation procedures. All alterations to Project requirements and/or deliverables requested by the Contractor (or either party's Nominated Officer) shall require the prior written permission of SNIFFER in accordance with SNIFFER's contract variation procedures.

### **6. CONTRACTOR'S STATUS**

- 6.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between SNIFFER and the Contractor.
- 6.2 The Contractor shall not, (and shall procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of SNIFFER.

6.3 Nothing in the Contract shall impose any liability on SNIFFER in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of SNIFFER to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of SNIFFER, its staff or agents.

## **7. LIAISON AND SUPERVISION**

7.1 SNIFFER and the Contractor will each appoint a Nominated Officer, who will together provide a formal link between the two parties on all matters. SNIFFER's Nominated Officer may be referred to as its Project Manager. Meetings shall be convened by either party as necessary to monitor the progress of the Contract.

7.2 SNIFFER will need to be satisfied that funds are used effectively and economically for the approved Project. The Contractor shall therefore provide for SNIFFER to be given access during business hours, on reasonable notice, to the Premises and ongoing Foreground Information under the Contract.

## **8. FINANCIAL LIABILITY, PAYMENT ARRANGEMENTS AND AUDIT**

8.1 SNIFFER shall pay to the Contractor such sums as are specified in the Contract in accordance with the payment schedule set out in the Contract or as otherwise agreed between the parties. Invoices must quote the Contract reference number and should be addressed to the SNIFFER Research Manager, First Floor, Greenside House, 25 Greenside Place, EDINBURGH, EH1 3AA, or such other address as notified by SNIFFER to the Contractor from time to time.

8.2 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt of the agreed invoice, for work completed to SNIFFER's satisfaction.

8.3 Value Added Tax, where applicable and consequently payable by SNIFFER, shall be shown separately on all invoices as a strictly net extra charge.

8.4 SNIFFER may reduce payment in respect of any invoice if the Contractor has failed to provide or has provided inadequately the deliverables or services to which the invoice relates, without prejudice to any other of SNIFFER's rights or remedies.

8.5 In the event that the Contractor is required to use a car in order to be able to carry out the Project, SNIFFER will reimburse the Contractor at the rate of 45 pence per mile exclusive of VAT.

8.6 The Contractor shall keep, and maintain for a period of 2 years after satisfactory completion of the Project, records to the satisfaction of SNIFFER of all expenditure reimbursable by SNIFFER and of the hours worked and costs incurred by the Contractor or in connection with any personnel of the Contractor paid for by SNIFFER on a time charge basis. The Contractor shall on request afford SNIFFER or its representatives such access to those records as may be required by SNIFFER in connection with the Project.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 The Contractor warrants and undertakes that nothing done by the Contractor in the performance of its obligations under this Contract shall infringe any Intellectual Property Rights held by any third party, and, without prejudice to the generality of Condition 11, the Contractor shall indemnify SNIFFER against all actions, claims, demands, costs, expenses and losses made against or incurred by SNIFFER as a result of or in connection with any such infringement or any breach of this Condition.

9.2 All Background Information used in connection with the Project, and all Intellectual Property Rights therein, shall remain the property of the party generating the same. If the Contractor requires to use Background Information belonging to a third party for the purposes of the Project, the Contractor shall enter into such licence or other agreement with that third party as may be required to permit such use. The Contractor shall, and shall procure that personnel working on the Project shall, comply with the terms of any such licence or other agreement.

- 9.3 The Intellectual Property Rights in, and ownership of, all Foreground Information shall be vested in SNIFFER immediately upon coming into existence. By entering into the Contract, the Contractor assigns, makes over and transfers all right, title and interest to the Foreground Information, and the Intellectual Property Rights therein, present and future, to SNIFFER and shall execute or procure the execution of, any deed or document, and do all other things necessary, to ensure that all right, title and interest, present and future, in and to the Foreground Information and the Intellectual Property Rights therein vest in SNIFFER as aforesaid.
- 9.4 The Contractor shall inform SNIFFER immediately upon the coming into existence of any patentable inventions which arise from carrying out the Project.
- 9.5 The Contractor hereby grants to SNIFFER an irrevocable royalty free licence (with freedom to sub-licence) to use the Intellectual Property Rights in Contractor Background Information to the extent only that such Intellectual Property Rights may directly or indirectly limit SNIFFER's freedom to use and exploit the Foreground Information or disseminate results of the Project.
- 9.6 The rights and obligations of the parties under this Condition 9 shall survive the expiry or earlier termination of the Contract, howsoever arising.

## **10. PUBLICATION AND DISCLOSURE**

- 10.1 Subject to the other provisions of this Condition 10, SNIFFER's policy is that the results of research that it funds should generally be made available by it to the public. In appropriate cases such results will be made available via SNIFFER's web-site. SNIFFER also wishes to see the Contractor receive due recognition, and therefore normally expects the Contractor to prepare the research results for publication in appropriate scientific journals, subject to Condition 10.3. SNIFFER also encourages wide dissemination of appropriate material by the Contractor through other means, subject to the other provisions of this Condition 10.
- 10.2 SNIFFER's prior agreement in writing must be obtained if at any time the Contractor wishes to publish, present or communicate publicly any findings or results of the Project and/or the Foreground Information (in whole or part) and any Intellectual Property Rights therein. Permission must be sought at least 4 weeks in advance of the date of the intended presentation or publication, and a reply will be provided by SNIFFER within 4 weeks of the permission being sought. SNIFFER will expect opportunity to amend factual inaccuracies and to publish a disclaimer as to views or conclusions expressed.
- 10.3 Any published reports or scientific papers will be co-authored by the Contractor and one or more of SNIFFER's staff (usually including the Project Manager).
- 10.4 All publications and disclosures shall acknowledge both the work done by and contribution of the Contractor, and the contribution of SNIFFER.

## **11. INDEMNITY AND INSURANCE**

- 11.1 Without prejudice to any of SNIFFER's rights or remedies, the Contractor shall indemnify SNIFFER against all actions, suits, claims, demands, losses, charges, costs and expenses that SNIFFER may suffer or incur, whether direct or consequential, as a result of or in connection with any loss of or damage to property or in respect of any injury (whether fatal or otherwise) to any person which arises out of or in connection with or is caused by the Contractor's negligence, breach or negligent performance or breach of duty (whether statutory, contractual or otherwise), or other wrongful act or omission.
- 11.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the indemnity in Condition 11.1 above shall apply, whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of SNIFFER), the indemnity contained in Condition 11.1 shall not apply to the extent that the loss, damage, or injury is caused by the negligent or wilful act or omission of SNIFFER.
- 11.3 The Contractor shall take out and maintain, and shall require that any sub-contractor shall take out and maintain, the following insurances with reputable insurance companies, each such policy to cover a sum of not less than £5 million in respect of any single claim or such other sum as may otherwise be agreed by SNIFFER in writing:

- (a) where relevant, employer's liability insurance in accordance with any legal requirements for the time being in force;
  - (b) public liability insurance in respect of any loss or damage to the property of SNIFFER and/or third parties, and any personal injury to SNIFFER's servants or agents or third parties caused by the negligence and/or breach of contract and/or breach of statutory duty of the Contractor;
  - (c) professional indemnity insurance against any sum which may become due to SNIFFER pursuant to the Contract or as a result of the Contractor's breach or breaches of the Contract.
- 11.4 The policy or policies of insurance referred to in Condition 11.3 shall be shown to SNIFFER whenever it so requests, together with evidence of payment of premiums.

## **12. TERMINATION**

- 12.1 The Contractor shall notify SNIFFER in writing immediately upon the occurrence of any of the following events:
- (a) where the Contractor is an individual, if a petition is presented for the Contractor's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Contractor, or he makes any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
  - (b) where the Contractor 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 Contractor to be wound up as an unregistered company; or
  - (c) where the Contractor is a company, if the company passes a resolution for the winding-up or the court makes an administrative order or a winding-up order, or the company makes a composition or arrangements with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any property under the terms of a floating charge.
- 12.2 On the occurrence of any of the events described in Condition 12.1, or if the Contractor shall have committed a material breach of this Contract (including failure to progress the Project to SNIFFER's reasonable satisfaction) and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days (or such other period as may reasonably be specified by SNIFFER) after service of written notice specifying the breach and requiring it to be remedied, or, where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health (Scotland) Act 1984 (or any consolidation or replacement of the same), SNIFFER shall be entitled to terminate this Contract by notice to the Contractor with immediate effect.
- 12.3 Without prejudice to any other rights or remedies of SNIFFER, in the event of the Contract being terminated by SNIFFER in accordance with Condition 12.2 by reason of the Contractor's breach of the Contract, SNIFFER shall be under no obligation to make any payment to the Contractor for such period as is reasonable for SNIFFER to assess the loss and/or damage suffered as a result of the termination. After such period, SNIFFER may set off against any sums otherwise due to the Contractor, or recover as a debt, the amount of loss and/or damage that SNIFFER has reasonably assessed as resulting from the termination of the Contract.
- 12.4 In addition to its rights of termination under Condition 12.2, SNIFFER shall be entitled to terminate the Contract by giving to the Contractor not less than 30 days notice to that effect. In the event of such termination, the Contractor shall, if required to do so by SNIFFER, prepare and submit to SNIFFER a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.
- 12.5 Termination under Conditions 12.2 and 12.4 shall not prejudice or affect any right or remedy which shall have accrued or shall thereupon accrue to SNIFFER.
- 12.6 Termination of the Contract shall be without prejudice to any provision intended to operate thereafter, including without prejudice to the foregoing generality Conditions 9, 10, 11 and 15.

12.7 The Contractor will return to SNIFFER promptly upon the termination of this Contract (howsoever occurring) any document, papers, materials or information supplied by or obtained from SNIFFER in connection with the Contract, or extracted from such documents, papers, materials or information.

12.8 Where the Contract has been terminated pursuant to Condition 12.4, the Contractor may retain any documents, papers, materials or information which shall be requested by him to prepare any report required pursuant to Condition 12.4. Promptly upon submission of such report to SNIFFER, the Contractor will return any documents, papers, materials or information which he may have retained in terms of this Condition to SNIFFER.

### **13. RECOVERY OF SUMS DUE**

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

### **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 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 Contract, 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. DISCLOSURE OF INFORMATION**

15.1 The Contractor shall keep secret and not disclose and shall procure that his employees keep secret and do not disclose any information of a confidential nature obtained by him by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

15.2 All information related to the Contract with the Contractor (but excluding, for the avoidance of doubt, the Intellectual Property Rights and the Foreground Information) will be treated as commercial in confidence by SNIFFER except that:

- (a) references may be sought from banks, existing or past clients, or other referees proposed by the Contractor, and
- (b) disclosure may be made of such information relating to the outcome of the procurement process as may be required to be published in the Official Journal of the European Communities or elsewhere in accordance with EC Directives or UK Government procurement policy on the disclosure of information regarding public sector contracts. This disclosure may include the number of tenders received, the identity of the successful tenderer, the winning contract price, the specification of services to be supplied, terms and conditions of contract, quality and performance standards and subsequent performance against those quality and performance standards.

### **16. CORRUPT GIFTS OR PAYMENTS**

16.1 The Contractor shall not offer or give, or agree to give, to any employee or representative of SNIFFER any consideration of any kind as an inducement or reward for doing or refraining from doing, any act in relation to the obtaining or execution of this or any other contract with SNIFFER or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.

### **17. SEVERABILITY**

17.1 If any provision of the Contract is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Contract.

### **18. WAIVER**

18.1 No delay by SNIFFER in enforcing or expressing any right, either arising out of the Contract or any right in respect of any breach of the Contract by the Contractor, shall constitute a waiver of such right.

18.2 No waiver by SNIFFER of any breach of the Contractor's obligations shall constitute a waiver of any other prior or subsequent breach.

## **19. ARBITRATION**

19.1 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 SNIFFER 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 a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1894.

## **20. HEADINGS**

20.1 The headings to Conditions shall not affect their interpretation.

## **21. GOVERNING LAW**

21.1 These Conditions shall be governed by and construed in accordance with Scots law and the Contractor hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit SNIFFER's right to take proceedings against the Contractor in any court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.