

Dated

Appointment

relating to

the

between

(Consultant)

and

University of Bristol, acting through the National Composites Centre

(Client)

Reference Number:



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www.nccuk.com | info@nccuk.com

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This agreement is dated

Parties

- (1) XXXXX incorporated and registered in England and Wales with company number XXXXX whose registered office is at XXXXX (**Consultant**)
- (2) The University of Bristol a corporation incorporated in England and Wales by Royal Charter with registration number RC000648 and an exempt charity whose principal offices are at Beacon House, Queens Road, Bristol, BS8 1QU (**Client**)

Background

- (A) The Client intends to deliver the XXXXX project (**Project**).
- (B) The Client wishes to appoint the Consultant as XXXXX in connection with the Project on the terms and conditions set out in this agreement.

Agreed terms

1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any designs or inventions incorporated or referred to in them for any purpose relating to the Project.

Permitted Uses: the design, completion, modification, development and extension of the Project.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.8 References to clauses are to the clauses of this agreement.



- 1.9 Where the words include(s), including or in particular are used in this agreement, they are deemed to have the words "without limitation" following them.

2 Services

- 2.1 The Consultant shall provide the services specified in Schedule 1 (**Services**).
- 2.2 The Consultant shall provide such additional services within its discipline and competence as the Client may reasonably request in writing relating to the Project.
- 2.3 The Consultant shall perform the Services in conjunction with the Client and the Client's representatives, agents, officers and employees.
- 2.4 The Consultant shall comply with all reasonable instructions given by the Client in writing in connection with this agreement.

3 Duty of care

- 3.1 The Consultant warrants and undertakes that it shall use all the reasonable skill, care and diligence in the performance of the Services to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services similar in scope and character to the Project (**Required Standard**).
- 3.2 The Consultant shall perform its duties in compliance with all, permissions, conditions, statutory requirements and regulations with regard to all deeds and documents relating to the Project which the Client has brought to the attention of the Consultant in writing and agreed with the consultant, and insofar as consistent with the Services and subject always to clause 7.2.
- 3.3 No inspection or approval or review by the Client or its agents, and no omission to inspect or review or to disapprove, shall negate or diminish any duty or liability of the Consultant under or in connection with this agreement.

4 Deleterious materials

- 4.1 Without prejudice to the generality of clause 3, the Consultant further warrants that it has exercised and will continue to exercise the Required Standard not to specify for use anything in the Project, which is Deleterious at the time of specification and delivery.

5 Design changes

- 5.1 The Consultant may not without the Client's express written permission (such permission not to be unreasonably withheld or delayed) make or permit any material alteration, addition or omission to the designs or specifications for the Project, after they have been settled or approved.
- 5.2 The Consultant shall keep the Client informed on a day to day basis of all changes in design or specification made or authorised by the Consultant and shall co-ordinate any design changes with any other design consultants as the Client may from time to time appoint.

6 Budget and programme

- 6.1 The Consultant is to use reasonable endeavours to collaborate with the Client and any other design consultants as the Client may from time to time appoint to establish a co-ordinated programme.



7 Remuneration

- 7.1 The Consultant's fee payable for the Services (**Fee**) and the instalments in which the Fee is payable is specified in Schedule 2.
- 7.2 If the Client instructs the Consultant to perform additional functions or services outside the scope of the Services by reason of any design changes requested by the Client, or in accordance with clause 2.2 of this agreement, or due to any other circumstances beyond the Consultant's control, then the Client shall pay to the Consultant such additional fee as agreed prior to the commencement of the additional work, or if no such fee is agreed, such additional fee as shall be calculated at the applicable hourly rates specified in Schedule 2, or if no such hourly rates are specified in Schedule 2, shall be such amount as is fair and reasonable in the circumstances. Instruction under this clause may be given by email as a noted exception to clause 17.3 where such email instruction can be demonstrated as accepted by the Consultant.
- 7.3 The Client will approve for payment Consultant invoices received, following reviews of satisfactory progress being made against the specified deliverables within the given month.
- 7.4 If for any reason the Client does not proceed with the Project, or if the Consultant's contract is terminated by the Client for any reason other than the Consultant's breach of the terms of this agreement or the Consultant becomes Insolvent, the Consultant shall be entitled (in addition to any fee in instalments which are then due in full) to a fair and reasonable proportion of any fee instalments in respect of which the Consultant's services are part-performed at the date of termination. This is the Consultant's sole entitlement to compensation for termination of its engagement under this agreement.

8 Professional indemnity insurance

- 8.1 The Consultant shall maintain professional indemnity insurance with reputable underwriters or insurance companies licensed to operate in the EU with a limit of indemnity of not less than the amount specified in Schedule 2 in respect of each and every claim and, so long as such insurance is available in the market at reasonable rates and / or terms, the Consultant shall continue to maintain such insurance for a period of 2 years from the date of delivery, noted through Client acceptance of the final invoice.
- 8.2 As and when reasonably required by the Client the Consultant shall produce for inspection satisfactory documentary evidence that the insurance required under this agreement is being properly maintained.

9 Liability

- 9.1 The Consultant shall not be liable for any Indirect or consequential loss, loss of profit, loss of use, or corruption of data.
- 9.2 The total aggregate liability of the Consultant and/or its officers, directors, employees and subcontractors under or in connection with this Agreement, whether in contract, tort, breach of statutory duty or otherwise shall be limited to the lower of (i) such sum as the Consultant ought to reasonably pay having regard to its responsibility for the total loss or damage suffered by the client on the basis that all other consultants, contractors or suppliers whose acts, omissions, services or advices have caused or contributed to the said loss or damage shall be deemed to have paid the Client such contributions as it would be just and equitable for them to pay having regard only to



the extent of their responsibility and ignoring any limitations of liability that may be incorporated into their contracts with the Client or with any other party, (ii) twice the value of the contract.

10 Key personnel

- 10.1 The Consultant shall ensure that any key personnel named in Schedule 2 are employed on the Project and are available to attend any meetings where the Consultant's presence is required. Key personnel are not to be replaced save with the Client's consent or save for unavoidable necessity, and any replacement is to be subject to the Client's prior approval this not to be unreasonably withheld or delayed.
- 10.2 If at any time before completion of the Services the Client shall request the removal of any of the Consultant's personnel from the Project for reasons of negligence, incompetence, misconduct or obstructive behaviour, the Consultant shall promptly remove such personnel and replace him or them with persons reasonably acceptable to the Client.

11 Copyright

- 11.1 The Consultant owns all intellectual property rights (including copyright) relating to the Material produced by the Consultant.
- 11.2 The Consultant grants to the Client, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project, including any of the Permitted Uses.
- 11.3 The licence in clause 11.2 carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.
- 11.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared.

12 Data Protection

- 12.1 For the purpose of this clause the following definitions shall apply:
- 12.2 Applicable Laws means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 12.3 Data Protection Legislation means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.
- 12.4 UK Data Protection Legislation means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.
- 12.5 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and the Consultant is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Schedule 7 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the



types of personal data (as defined in the Data Protection Legislation, “Personal Data”) and categories of data subject.

- 12.6 Each Party shall comply with its obligations under the Data Protection Legislation in respect of Personal Data processed by it in connection with this Agreement. This clause 11 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 12.7 In processing the Personal Data the Consultant shall:
- 12.8 Only process Personal Data to the extent necessary to perform the Consultant's obligations under the Agreement in accordance with the specific instructions that Client may give to the Consultant from time to time and in compliance with the Data Protection Legislation.
- 12.9 Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.
- 12.10 Ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 12.11 Assist the Client, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.12 Notify the Client without undue delay and in any event within 72 hours from discovery of, and provide full cooperation in the event of, any breach of security leading to the accidental or unlawful destruction, loss, alteration unauthorised disclosure of, or access to, Personal Data in the Consultant's possession or control.
- 12.13 At the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Agreement unless required by Applicable Law to store the Personal Data.
- 12.14 Maintain complete and accurate records of its processing activities under or in connection with this Agreement to demonstrate its compliance with this clause 11 and allow for audits by the Client or the Client's designated auditor.
- 12.15 Not process Personal Data outside the European Economic Area (“EEA”) or a country not deemed to provide an adequate level of protection for personal data by any competent authority without the prior written consent of the Client. It shall be a condition of any consent given by the Client to the Consultant to transfer Personal Data outside the EEA or a country not deemed to provide an adequate level of protection for Personal Data that the Consultant shall (i) enter into a data transfer agreement to the extent that the formalisation of such a document represents a valid means of transferring Personal Data or (ii) otherwise ensure that the transfer is subject to terms which satisfy the Data Protection Legislation.



12.16 The Consultant shall not engage any third party or other sub-processor to process Personal Data on behalf of the Client without the express consent of the Client. In the event that a sub-processor is engaged in accordance with this clause 11.4, the Consultant shall enter into a written contract with the sub-processor containing data protection obligations no less onerous than those set out in this clause 11, which shall apply to the sub-processor. The Consultant shall remain liable for the acts and omission of any such sub-processor.

12.17 The Consultant shall indemnify the Client from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any failure by the Consultant or its employees or agents to comply with its obligation set forth in this clause 12. Any breach by the Consultant of its obligations set forth in this clause 12 shall be deemed to be a material breach and shall entitle the University to terminate this Agreement immediately upon notice to the Consultant.

13 Assignment and subcontracting

13.1 This appointment is personal to the Consultant and the Consultant shall not assign, charge or transfer any right or obligation under this agreement.

13.2 The Consultant shall not delegate, subcontract or transfer performance of any of the Services to any other person without the prior written permission of the Client, such permission not to be unreasonably withheld or delayed.

13.3 The Consultant shall be responsible for any services it subcontracts to a third party as if it had performed those services itself.

13.4 As and when reasonably requested by the Client, the Consultant shall produce for inspection a copy of any sub consultant's form of appointment.

13.5 The Client may, upon written notice to the Consultant, assign this agreement by way of absolute legal assignment.

14 Suspension

14.1 The Client shall be entitled to suspend the Consultant's performance of the Services by written notice. The Consultant will use reasonable endeavours to restart work when requested by the Client. If a suspension lasts more than six months the Consultant may make a written request for the performance of the Services to be resumed, and if no instructions to resume are given within 28 days of the Consultant's request, the Consultant's employment under this agreement shall then terminate.

15 Termination

15.1 The Client may terminate the Consultant's appointment under this agreement at any time on seven days' written notice to the Consultant. Termination of this agreement shall not diminish or reduce any duty or liability of the Consultant in respect of the Services performed prior to the termination of this agreement.

15.2 Save for the Consultant's breach of the terms of this agreement upon termination of this agreement under clause 15.1 the Consultant shall be entitled to such payment as may be calculated as due to the Consultant in accordance with clause 7.4 above. This is the Consultant's sole entitlement to compensation for termination of its engagement under this agreement.



15.3 Termination of the Consultant's engagement under this agreement shall not affect the accrued rights of either party under this agreement and the provisions of this agreement shall continue to bind the parties for as long as necessary to give effect to their respective rights and obligations.

15.4 Covid-19 (Coronavirus)

If either Party is prevented, hindered or delayed from meeting all or part of their obligations under this Agreement due to events or circumstances relating to COVID-19 (Coronavirus) ("Delay Event") the affected party shall:

As soon as reasonably practicable after the start of the Delay Event, notify the other party in writing of the circumstances, the date on which they started, an estimate of the likely or potential duration and the effect of the Delay Event on its ability to perform its obligations.

Use all reasonable endeavours to mitigate the effect of the Delay Event on the performance of its obligations; not be entitled to claim or receive any payment under the agreement arising out of and/or the duration of the Delay Event; and if the Delay Event prevents, hinders or delays the affected party's performance of its obligations for a continuous period of 30 (thirty) days the Parties shall discuss in good faith and agree whether any amendments are required to this agreement as a result. Such amendments must maintain the same overall balance of obligations, benefits, liabilities and risk between the Parties as applied at the date of this agreement. If the Parties cannot agree amendments after 30 (thirty) days, then the University shall be entitled to terminate this agreement without liability for any goods or services that have not yet been provided.

If the Delay Event prevents, hinders or delays the affected party's performance of its obligations for a continuous period of 30 (thirty) days the Parties shall discuss in good faith and agree whether any amendments are required to this agreement as a result. Such amendments must maintain the same overall balance of obligations, benefits, liabilities and risk between the Parties as applied at the date of this agreement. If the Parties cannot agree amendments after 30 (thirty) days, then the University shall be entitled to terminate this agreement without liability for any goods or services that have not yet been provided.

15.5 Force majeure

Neither party shall be in breach nor liable for any delay or failure to perform any of its obligations under this agreement to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control including acts of God, riots, war, acts of terrorism, fire, epidemic or pandemic, flood, storm or earthquake and any disaster, industrial action or trade dispute other than relating to the Supplier ("FM Event").

16 Confidentiality

16.1 For the purposes of this clause 16, "Confidential Information" shall mean all confidential information (however recorded or preserved) disclosed or made available, directly or indirectly, by the Client or its employees, officers, representatives or advisers to the Consultant but excluding any information which: a) is or becomes generally available to the public (other than as a result of a breach of this agreement by the Consultant); b) is or becomes available to the Consultant on a non-confidential basis from a person who is not bound by obligations of confidentiality to the Client; c)



was lawfully in the possession of the Consultant before the information was disclosed; d) is trivial, obvious or useless; or e) the Client agrees in writing is not confidential or may be disclosed.

- 16.2 The Consultant shall not use or exploit the Confidential Information in any way except as is necessary to carry out its obligations under this agreement.
- 16.3 The Consultant shall keep the Client's Confidential Information confidential and shall not disclose or make available any Confidential Information to any third party, or copy, reduce to writing or otherwise record the Confidential Information except if doing so is expressly permitted by this agreement. However, the Consultant may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction.
- 16.4 The Consultant may only disclose the Client's Confidential Information to those of its employees, officers' agents and other representatives who need to know such Confidential Information, provided always that the Consultant informs such individuals of the confidential nature of the Confidential Information before disclosure and remains responsible for their compliance with the obligations set out in this agreement.

17 Communications

- 17.1 Except as otherwise provided for in this agreement, all notices or other communication under or in respect of this agreement to be given or made to either party shall be deemed to be duly given or made when delivered by personal delivery or letter to the party addressed to him at the address stated in this agreement (or such other address as the party may hereafter specify in writing).
- 17.2 A written notice shall include a notice by facsimile. A notice or other communication received on a non-working day, or after business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place.
- 17.3 A notice required to be given under this agreement shall not be validly given if sent by email.

18 Contracts (Rights of Third Parties) Act 1999

- 18.1 Notwithstanding any other provisions of this agreement nothing in this agreement shall confer or purport to confer any right to enforce any of its terms on any person who is not a party to it.

19 Entire agreement

- 19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 19.3 Nothing in this clause shall limit or exclude any liability for fraud.



20 **VAT**

- 20.1 All costs, fees and disbursements expressed to be payable or reimbursable to the Consultant shall be deemed to be exclusive of VAT. VAT shall be payable by the Client on the submission by the Consultant of a valid VAT invoice.

21 **Governing law**

- 21.1 This agreement shall be governed by the laws of England and Wales and the English courts shall have jurisdiction with regard to all matters arising under it.

This agreement has been delivered and takes effect on the date stated at the beginning of it.



Schedule 1 Services

The Consultant shall carry out the following Services:

Services as defined within the associated



Schedule 2 Project data

1 Clause 7: Remuneration

The Fee may be invoiced in against completion of the milestones as below, these as defined within the associated

Ref	Item	Payment for completion (£GBP excluding VAT)	Expected Completion date (dates are indicative and not contractually bound)
WP1	Completion of WP1		
WP2	Completion of WP2		
WP3	Completion of WP3		
WP4	Completion of WP4		

2 Clause 8: Professional indemnity insurance

Limit of indemnity: £1,000,000 per claim

3 Clause 10: Key personnel



Schedule 3 Purchase Order



Schedule 4 Form of novation agreement

Not Applicable



Schedule 5 Form of Consultant collateral warranty

Not Applicable



Schedule 6 Form of sub consultant collateral warranty

Not Applicable



Schedule 7 Processing Personal Data

Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller, and the Consultant is the Processor in accordance with Clause 12.
Subject matter of the processing	The processing is needed in order to ensure that the Consultant can perform its obligations set forth in the Agreement.
Duration of the Processing	The processing is needed for the duration of the Agreement
Nature and purpose of the processing	<ul style="list-style-type: none">• <i>Collection and use of business contacts required for the execution of the agreement, including names and business contact details as a contractual necessity</i>• <i>Booking of meetings, recording the attendees of training, meetings, reviews, workshops, audits, contents of discussions, and the recording of actions, action owners, progress and outcomes as a contractual necessity</i>• <i>Processing as required to complete the workshops, training, meetings, process improvements and implementation of the proposed improvements, as a contractual necessity. This may include access to NCC held business records that contain Personal Data. The NCC shall ensure that information provided does not include Sensitive personal data. Such Personal data used shall be the minimum possible to achieve the required contracted outcomes, shall not include any Sensitive personal data, and shall be processed within the NCC IT systems and in accordance with the relevant NCC policies and procedures.</i>
Categories of Data Subject	<i>name, business address, business telephone numbers, business emails, business calendar availability, other personal data as required to achieve the contacted outcomes where these are held and processed within the NCC Systems</i>
Return or destruction of the Personal Data once processing is completed	Data will be retained for the duration of the Agreement and shall be returned or destroyed in accordance with clause 12.13 of the Agreement.



Annex A Contract Acceptance Certificate

CONTRACT ACCEPTANCE CERTIFICATE

University of Bristol

Contract for the Supply of technical consultancy services to support the 'XXXX' project at the National Composites Centre

Date	
Client	The University of Bristol a corporation incorporated in England and Wales by Royal Charter with registration number RC000648 and an exempt charity whose principal offices are at Beacon House, Queens Road, Bristol, BS8 1QU
Consultant	XXXXX registered in England and Wales, registration number Registered office: XXXXXX VAT Registration number:



AUTHORISED REPRESENTATIVES' DETAILS

The Consultant agrees to supply, and the Client agrees to take and pay for the Goods and/or Services on and subject to the terms and conditions set out in the agreement

Signed for and on behalf of the Client		Signed for and on behalf of the Consultant	
Signature		Signature	
Print name:		Print name:	
Job title:		Job title:	