

Operational Technology Co-Creation - Challenge Research & Development Terms & Conditions

BACKGROUND

- (A) The Solution Provider has submitted a competitive tender in response to an Operational Technology (Op Tech) Co-Creation network published challenge. The Co-Creation network brings together expertise and specialist facilities from government partners, the private sector and leading academic science and technology communities that strengthen UK National Security at pace and scale.
- (B) At the instruction of the Funding Party, Cranfield wishes to engage the Solution Provider to perform the Services, as hereafter defined, and the Solution Provider wishes to provide the Services on the terms and conditions set out in this Contract.

TERMS & CONDITIONS

1 Definitions

In these conditions:

“Agile Delivery Manager” means the Crown assigned project Agile Delivery Manager (ADM) responsible for the project management of the Contract in collaboration with the Solution Provider throughout the Contract Delivery and confirming the satisfactory delivery of the Contract Services.

“Background IP” means all Intellectual Property, other than Project IP, which is owned by, proprietary to or licensed to either Party and which is used, sub-licensed or contributed by that Party in the provision of or in connection with the Services;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Solution Provider, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential.

“Contract” means the agreement between Cranfield and the Solution Provider comprising the Contract Offer Letter, the Purchase Order, these terms and conditions and any documents referred to therein.

“Contract Delivery” means the date identified in the Contract by which the Solution Provider shall have completed the Contract to the satisfaction of Cranfield.

“Contract Offer Letter” means the letter issued by Cranfield notifying the Solution Provider of acceptance of their quotation.

“Contract Start” means the date identified in the Contract when the Solution Provider shall commence delivery of the Contract.

“Crown” means any department, office or agency of the Crown.

“Deliverables” means any and all literature, manuals, reports, research papers, data, flow charts, drawings, designs, diagrams, tables, software or other information or goods or materials (in whatever form and on whatever media) developed, designed or otherwise provided during the course of this Contract, to be provided as part of the Services.

“Funding Party” means either Her Majesty’s Government Communication Centre (referred to in this document as “the Funding Party”) or the Defence Science & Technology Laboratory (DSTL) acting as part of the Crown.

“Intellectual Property” means all patents, rights to inventions, including all design and ongoing development rights in all hardware and software including computer software and database rights including rights to use, utility models, copyright and related rights, trade marks, service marks, trade business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, topography rights, rights to use, and protect the confidentiality of, confidential information, (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Intellectual Property Rights” means patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto.

“Party” means either Cranfield or the Solution Provider and the **“Parties”** means Cranfield and the Solution Provider.

“Purchase Order” means the document with this name which is issued by Cranfield to the Solution Provider for the provision of Services.

“Premises” means the location where the Deliverables are to be delivered and/or where relevant installed as set out in the Purchase Order.

“Project IP” means any Intellectual Property that results from or is generated or arises or is made, originated, or developed by or on behalf of the Solution Provider in the course of the provision of the Services;

“Services” means all the research service activities that the Solution Provider is required to carry out under the Contract.

“Solution Provider” means the party named in the Contract Offer Letter.

“Solution Provider Proprietary Material” means all Intellectual Property Rights which were created or used by the Solution Provider prior to the Contract Start or which are created independently of the delivery of the Services and Deliverables.

“Special Conditions” means the additional terms and conditions, if any, set out in the Schedule to this Contract. For the avoidance of doubt, in the event of any inconsistencies between the terms and conditions set out in the main body of this Contract and any Special Conditions, the latter shall take precedence.

“VAT” means Value Added Tax in accordance with the provisions of the Value Added Tax Act 1994.

“Work” includes all work to be performed and Services to be rendered, and other obligations to be fulfilled by the Solution Provider.

2 Duties

- 2.1 Cranfield expects that the Solution Provider will understand the operating environment in which the Services are to be performed and the standards of performance that are necessary.
- 2.2 The Solution Provider warrants and represents that, throughout the term of this Contract, he has full capacity, authority and all necessary approvals to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Solution Provider. The Solution Provider will not (and will ensure that its agents and servants do not) say or do anything that might lead any other person to believe that the Solution Provider is acting as the agent of Cranfield.
- 2.3 The Solution Provider shall properly perform the Services specified in the Contract with the standard of skill, care and diligence which a competent and suitably qualified person performing such Services

could reasonably be expected to exercise and in accordance with all relevant statutory requirements, Cranfield policies and industry good practice.

- 2.4 If any part of the Work is found to be unsatisfactory or not in accordance with the Contract, other than as a result of negligence on the part of Cranfield or its authorised representative, the Solution Provider shall, at his own expense re-schedule and perform the Work correctly within such reasonable time as may be specified.
- 2.5 Where formal progress reports are specified in the Contract the Solution Provider shall render such reports at such time and in such form as may be specified as or as otherwise agreed between the Solution Provider and Cranfield or its authorised representative.

3 Environmental Requirements

In providing the Services the Solution Provider shall comply with Cranfield's environmental policy, which is to meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only for Cranfield, but also to society and the economy, whilst minimising damage to the environment.

4 Invoices and Payment

The Solution Provider shall submit an invoice to Cranfield within 28 days of supplying the Services in accordance with any milestone set out in the request for quotation or proposal to the satisfaction of Cranfield and the ADM. The invoice shall show the amount of VAT and include: the Purchase Order Line Number and the description of Services corresponding to the Purchase Order. Cranfield shall pay the Solution Provider within 30 days of receipt of an invoice except where an invoice is disputed or Cranfield deems the invoice to be incomplete or inaccurate. Cranfield shall return any incomplete or inaccurate invoices to the Solution Provider.

5 Corrupt Gifts and Payments of Commission

- 5.1 The Solution Provider shall not receive or agree to receive from any person, or offer or agree to give to, or procure on behalf of any person in the employment of Cranfield or the Crown, any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in connection with the Contract.
- 5.2 If the Solution Provider or any of his employees, servants, agents or sub-Solution Providers, or any person acting on his or their behalf, commits any offence under the Bribery Act 2010, with or without the knowledge of the Solution Provider, in relation to this Contract or any other contract with Cranfield or the Crown, Cranfield shall be entitled:
- (a) to terminate the Contract with immediate effect by written notice to the Solution Provider and recover from the Solution Provider the amount of any loss to Cranfield resulting from the termination;
 - (b) to recover from the Solution Provider the amount or value of any such gift, consideration or commission; and
 - (c) to recover from the Solution Provider any other loss sustained as a result of any breach of this Condition, whether or not the Contract has been terminated.
- 5.3 When exercising its rights or remedies under Condition Cranfield shall:
- (a) act proportionately in the light of the gravity and circumstances of the particular breach; and
 - (b) give all due consideration, where appropriate, to the use of remedies other than termination of the Contract.

6 Confidentiality

- 6.1 The Solution Provider undertakes:
- (a) to treat as confidential all information which may be derived from or obtained in the course of the Contract; and
 - (b) to take all necessary precautions to ensure that all such information is treated as confidential by the Solution Provider, his staff, agents and sub-Solution Providers.
- 6.2 The Solution Provider undertakes to ensure that all Solution Provider personnel, agents and sub-Solution Providers have signed equivalent confidentiality or non-disclosure provisions.

7 Disclosure of Information and Transparency

- 7.1 To enable compliance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations, Cranfield reserves the right to disclose information about this Contract pursuant to a valid request for information, subject to any exemptions applicable to Cranfield.
- 7.2 The Solution Provider shall not disclose any information relating to the Contract or Cranfield's activities without the prior written consent of Cranfield, which shall not be unreasonably withheld. Such consent shall not be required where the information is already in the public domain, is in the possession of the Solution Provider without restriction as to its disclosure, or is received from a third party who lawfully acquired it and is under no obligation restricting its disclosure.
- 7.3 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. Cranfield shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Solution Provider gives consent to Cranfield to publish the Contract in its entirety to the general public, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract.
- 7.4 Cranfield may consult with the Solution Provider to inform its decision regarding any exemptions but Cranfield shall have the final decision in its absolute discretion.

8 Data Protection Act

- 8.1 The Solution Provider shall not disclose or allow access to any personal data provided by Cranfield or acquired by the Solution Provider during the course of the Contract, other than to a person employed or engaged by the Solution Provider or any sub-Solution Provider, agent or other person concerned with the same.
- 8.2 Any disclosure of or access to personal data allowed under condition 8.1 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Contract.
- 8.3 The Solution Provider shall store or process such personal data only at sites specifically agreed in writing, in advance, with Cranfield.
- 8.4 The Solution Provider shall implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the personal data and having regard to the nature of the personal data which is to be protected.

9 Sub-Contracting and Assignment

The Solution Provider shall not sub-contract or transfer, assign, novate, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of Cranfield.

10 Intellectual Property Rights

- 10.1 All Background IP owned by or licensed to either Party prior to the commencement of the provision of the Services will remain the property of that Party or the licensor to that Party as appropriate.
- 10.2 All right, title, and interest in and to any Project IP shall belong exclusively to the Solution Provider and the Solution Provider shall, in its sole discretion, be entitled to apply for all patent and other registrable intellectual property rights whatsoever in respect of the Project IP.
- 10.3 For the duration of the Contract the Solution Provider shall grant Cranfield a non-exclusive, royalty free licence to use its Background IP and Project IP if Cranfield has a genuine need to use it in order to perform its duties under the Contract and in meeting the needs of the Funding Party but for no other purpose.
- 10.4 Upon completion of the Services and payment of the Fees and all other sums due to the Solution Provider from Cranfield in full, the Solution Provider will grant to the Funding Party for the Funding Party's sole use a non-exclusive, world-wide, non-transferable licence to use that part of the Solution Provider's Background IP used in the provision of the Services and a non-exclusive world-wide non-transferable licence to use that part of the Project IP which, in each case, is wholly and necessarily required for sole use of the Deliverables. Such licences granted to the Funding Party under this clause 10.2 shall only be revocable by the Solution Provider in the event that the Funding Party takes any step or does any act inconsistent with the Solution Provider's rights of ownership in the Project IP.
- 10.5 All rights associated with the Deliverables provided by the Solution Provider under the Contract shall be assigned directly to the Funding Party and not to Cranfield.

11 Publications

- 11.1 The Solution Provider shall not use the names, logos or other Intellectual Property of Cranfield or the Funding Party in any advertising, promotional or other material (whether in paper or electronic form) without their express written consent.
- 11.2 The Solution Provider may publish results of the Services but must notify Cranfield and the Funding Party through via the project Agile Delivery Manager at least 45 days in advance of any such publication and provide a copy of the proposed publication in order for it to be scrutinised for any potential national security implications.

12 Termination

- 12.1 If the Solution Provider fails to fulfil its obligations under the Contract Cranfield may terminate the Contract immediately by written notice and may recover from the Solution Provider any reasonable costs necessarily and properly incurred by Cranfield as a consequence of termination.
- 12.2 The Solution Provider shall ensure Cranfield is given immediate notice in writing of any proposed disposal or transfer (whether in whole or in part) of any interest in the Solution Provider or any group company (whether by group restructuring, private sale or an offer to the public), or any proposed amendments to the Memorandum or Articles of Association (or equivalent documents) of the Solution Provider or any group company ("Change of Control"), such notice to confirm the identity of the person or persons who will be obtaining interest in the Solution Provider as a result of such Change of Control. Cranfield may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that Cranfield becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

13 Termination for Convenience

- 13.1 Without prejudice to condition 12 (Termination), Cranfield shall at any time have the right to terminate the Contract or reduce the Services to be provided by the Solution Provider in each case by giving one months' written notice. During the period of notice Cranfield may direct the Solution Provider to deliver all or any of the Services under the Contract. Where Cranfield relies on either of these rights, the Solution Provider may claim reasonable costs that are necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit, loss of goodwill and consequential losses, but the claim for such costs shall not exceed the total cost of the Contract.
- 13.2 Termination or reduction under this provision shall not affect the rights of the parties to the Contract that may have accrued up to the date of termination.

14 Liability

- 14.1 If the Solution Provider causes loss or damage while performing the Contract they shall without delay and at the Solution Providers own expense, reinstate, replace or make good such loss or damage to the satisfaction of Cranfield, or if Cranfield agrees, compensate Cranfield, for any such loss or damage. The Solution Provider shall not be liable for any loss or damage which is caused by the neglect or default of Cranfield. "Loss or damage" includes but is not limited to: loss or damage to property; personal injury; sickness or death; and loss of profits or loss of use suffered as a result of any loss or damage.
- 14.2 The Solution Provider's liability under Condition 14.1 shall be limited in aggregate to one hundred and fifty percent of the total value of the Contract in respect of all losses save that there shall be no limit of liability in respect of death or injury resulting from the negligence of the Solution Provider its employees, servants or agents, fraud or fraudulent misrepresentation or any other liability which cannot by law be excluded or restricted.
- 14.3 Nothing in this Contract will impose any liability on Cranfield in respect of any liability incurred by the Solution Provider to any other person but this will not be taken to exclude or limit any liability of Cranfield to the Solution Provider that might arise by virtue of either a breach of this Contract or any negligence on the part of Cranfield, its staff or agents.

15 Audit

The Solution Provider shall keep full and accurate records of the Contract, all expenditure reimbursed and payments made by Cranfield for 6 years after the end of the Contract. Where necessary, the Solution Provider shall on request afford Cranfield or Cranfield's representatives such access to those records as may be requested by Cranfield in connection with the Contract.

16 Notices

A notice may be served: by delivery to the Solution Provider by sending it by email to him; or by ordinary first class post to the Solution Provider's last known place of business or registered office. A notice shall be deemed served at the time of delivery, after four hours for an email or on the fifth working day after posting by first class post.

17 Variations to the Contract

No variation to the Contract will be effective until it has been recorded in writing and signed by both Cranfield and the Solution Provider.

18 Duration

The Contract will begin on issue of a Purchase Order from Cranfield which will include a delivery date or end date for the Contract.

19 Solution Providers Personnel

The Funding Party has the right to reject any person or persons proposed by the Solution Provider to work under the Contract. If Cranfield or the Funding Party gives the Solution Provider notice of rejection of any person or persons, the Solution Provider will submit other suitably qualified person or persons for consideration by the Funding Party. The decision of the Funding Party as to the acceptability of individuals proposed by the Solution Provider shall be final and conclusive. The Solution Provider will bear the cost of any notice, instruction or decision of the Funding Party under this condition.

20 Insurance

The Solution Provider shall effect and maintain an adequate level of relevant insurance cover in respect of all risks that may be incurred by him in the performance of this Contract. At the request of Cranfield or the Funding Party, the Solution Provider shall produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

21 Waiver

The failure of either the Solution Provider or Cranfield to insist upon strict performance of any provision of the Contract, or the failure of either the Solution Provider or Cranfield to exercise any right or remedy to which it is entitled under the Contract, will not constitute a waiver and will not diminish the obligations established by the Contract. No waiver of any provision of the contract will be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with condition 16 (Notices).

22 Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions of the Contract will continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

23 Force Majeure

If any Party is prevented from or delayed in the performance of any of its obligations under this Contract by any event beyond the reasonable control of that Party, including, but not limited to, acts of God, civil commotion, war, fire, flood, industrial action or political interference, terrorism or the effects of terrorism or an epidemic or pandemic then it shall notify the other Party in writing of the circumstances, and shall be excused from performing those obligations for so long as the event shall continue. If the event continues for longer than 60 days, the Party not claiming relief under this condition shall be entitled to terminate the Contract by giving the other Party 30 days' written notice.

24 Rights of Third Parties

This Contract is enforceable by the original Parties to it and by their successors in title and permitted assignees. No provision of this Contract will be enforceable by any person who is not a Party to it pursuant to the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available independently of that Act.

25 Entire Agreement

The Contract sets forth the entire agreement and understanding between the Parties and supersedes all previous statements, documents and negotiations relating to the subject matter of the Contract provided that nothing in this condition purports to exclude any liability for any representation made fraudulently.

26 Dispute Resolution

- 26.1 In the event of dispute, the Parties shall negotiate in good faith to reach a solution. If they do not reach a solution within one month Cranfield may refer the dispute to mediation. During the dispute the Solution Provider shall at Cranfield's discretion continue to perform the Contract with all due diligence.
- 26.2 Where the Parties fail to reach agreement, either Party may refer the dispute to arbitration. Such arbitration shall be governed by the provisions of the Arbitration Act 1996. The London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration shall be applied and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules. The tribunal shall consist of a sole arbitrator to be agreed by the Parties. If the Parties fail to agree the appointment of the arbitrator within ten (10) days of the arbitration notice or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA. The arbitration proceedings shall take place in London and in the English language; and shall be governed by, and interpreted in accordance with, English law.

27 Survival

The provisions of the following conditions shall remain binding upon the Parties after expiry or any termination under this Contract 5, 6, 7, 8, 10, 11, 14, 15, 16, 26 and 28.

28 Law and Jurisdiction

This Contract shall be governed by and interpreted in accordance with English law and, subject to condition 24 (Dispute Resolution) shall be subject to the exclusive jurisdiction of the courts of England and Wales.

End.