

Terms and Conditions for Recovery Innovation Funding

1. Definitions

Kent, Completion Date, Commencement Date, Expenses, Price, Project, Client and Consultant	Shall have the meanings set out in the Agreement for Recovery Innovation Funding overleaf
Agreement	Shall mean the contract formed by the Client's acceptance of the Agreement for Recovery Innovation Funding and the Terms and Conditions for Recovery Innovation Funding set out and referred to on this page and overleaf
Background IP	shall mean all technical know-how and information known to either of the Parties at the date of this Agreement together with all intellectual property rights owned by or licensed to the Parties at the date of this Agreement, all technical know-how and information and intellectual property rights owned by or licensed to the Parties which is not Foreground IP
Confidential Information	shall mean (i) any Background IP disclosed by a Party to the other Party for use in the Project; (ii) any Foreground IP; and (iii) any other information disclosed by a Party to the other Party for use in the Project or under this Agreement which, by its nature or from the circumstances of its disclosure, should reasonably be presumed to be confidential
Disclosing Party	shall mean the Party to this Agreement that discloses information directly or indirectly to the Receiving Party under or in anticipation of this Agreement
Field	
Foreground IP	shall mean all information, know-how, results, designs, inventions and other matter capable of being the subject of intellectual property rights which is conceived, first reduced to practice or writing or developed in whole or in substantial part in the course of the Project
Parties	shall mean Kent and the Client, and 'Party' shall mean either of them
Receiving Party	shall mean the Party to this Agreement that receives information, directly or indirectly from the Disclosing Party
Results	all information, know-how, results, inventions and other intellectual property within the Project deliverables and identified or first reduced to practice or writing during the course of the Project

2. Duration and Termination

- 2.1. This Agreement shall commence on the Commencement Date and Kent shall use its reasonable endeavours to complete the work by the Completion Date, or such other date as the Parties may agree in writing.
- 2.2. This Agreement may be terminated by either Party giving notice to the other as specified overleaf at Clause J.
- 2.3. If the Consultant is or becomes unavailable to work on the Project this Agreement may be terminated by either Party giving notice to the other Party such notice to take effect as specified in the notice.

- 2.4. Either Party may also terminate forthwith this Agreement if the other Party (a) commits a material breach of the terms or conditions of this Agreement and in the case of a breach capable of remedy within 30 days, does not remedy the breach within 30 days of notice from the Party specifying the breach and requiring it to be remedied; or (b) compounds or makes arrangements with its creditors or goes into liquidation (voluntarily or otherwise) other than for the purpose of *bona fide* reconstruction or a receiver, administrative receiver or administrator is appointed in respect of the whole or any part of its business or assets or if any similar or analogous event occurs.
- 2.5. On termination of this Agreement, the Client will pay to Kent: (a) any payment which was due to Kent prior to the date of termination but which was not paid prior to termination, and (b) a proportion of the next payment (if any) falling due after the date of termination reflecting Kent's actual expenditure on Project work prior to the date of termination and any non-cancellable commitments entered into by Kent.

3. Price

- 3.1. Where the Price is quoted on a daily rate basis, a day shall mean up to 7.5 hour's work. Any hours worked beyond 7.5 hours in a day may be charged pro-rata to the Client.
- 3.2. Kent retains the discretion to charge for any reasonable costs incurred in connection with any variation in or delay to the Project resulting from the Client's instructions or lack of instructions.

4. Payment

- 4.1. In consideration of the services to be provided under the Project by Kent to the Client, the Client shall pay the sums described in Clauses G, H & I overleaf to Kent and in accordance with the payment provisions set out in those clauses.
- 4.2. All sums due under this Agreement: (a) are exclusive of VAT which where applicable will be paid by the Client to Kent in addition to any amount or rate quoted; (b) shall be paid on the due date(s) by the Client to Kent as specified overleaf or no more than 30 days after receipt of Kent's invoice; (c) shall be paid by the Client in accordance with the instructions set out in Kent's invoice. All payments shall quote Kent's invoice reference.
- 4.3. If the Client fails to make any payment due to Kent under this Agreement then, without prejudice to Kent's other rights and remedies, Kent may charge interest (both before and after any judgment) on the amount outstanding, on a daily basis at the rate of four per cent per year above the base rate of Barclays Bank plc (or any other London clearing bank which the University may nominate) from time to time in force. That interest shall be calculated from the date or last date for payment to the actual date of payment, both dates inclusive, and shall be compounded quarterly. The Client shall pay that interest to Kent on demand.

5. Confidential Information

- 5.1. Each Party shall keep confidential and secret any and all Confidential Information that it may acquire in relation to the Project. Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party shall be responsible for ensuring that its officers and employees comply with the provisions of this clause.
- 5.2. The obligations on a Party set out in clause 5.1 shall not apply to information which: (a) was known by a Party before it was imparted by the other Party; or (b) is publicly available or becomes publicly available through no act or omission of that Party; or (c) is developed by or on behalf of that Party by any person(s) who have not had any direct or indirect access to, or use of knowledge of, the Confidential Information imparted by the other Party; or (d) a Party is required to disclose by law or an order of a court of competent jurisdiction
- 5.3. If Kent receives a request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 to disclose any information which, under this Agreement, is the Client's Confidential Information, Kent will notify and consult with the Client promptly and, before making any disclosure under that Act or those Regulations, Kent, where appropriate, will consider the availability and applicability of any exemptions and any other options available, and will notify the Client of the intended response to that request. The

Client will respond to Kent within 10 days after receiving Kent's notice if that notice requests the Client to provide information to assist Kent to determine whether or not an exemption to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 applies to the information requested under that Act or those Regulations. The Client may make representations in relation to that request and the proposed response and may request amendments to the proposed response.

- 5.4. The Provisions of this clause 5 shall survive any termination of this Agreement for a period of 5 years from termination.

6. Intellectual property

- 6.1. All Background IP used in connection with the Project shall remain the property of the Party who introduces it. No licence is granted to either Party's intellectual property unless specifically for the purpose of carrying out the Project.
- 6.2. Each Party will use all reasonable endeavours to notify the other Party promptly after identifying any Results that are capable of commercial exploitation. The notifying Party will supply the other Party with appropriate documentation to enable the Parties to evaluate those Results.
- 6.3. Where the Results are developed by the Client and are linked to the Client's Background Intellectual Property, the Client will own all rights to the Results.
- 6.4. Where the Results are developed by the University and are inextricably linked to the Client's Background Intellectual Property, the University will grant a royalty free perpetual exclusive European licence to the Results within the Field with no right to sub licence.
- 6.5. Where the Results are developed by the University and are not based, or can be operated outside of the Client's Background Intellectual Property, the University will grant a royalty free perpetual European licence to the Results within the Field with no right to sub licence.
- 6.6. Kent and each employee, student, visiting researcher and agent of Kent have the irrevocable, royalty-free right to use the Foreground IP for academic research purposes, including in research projects that are sponsored by third parties provided that the use of the Foreground IP in those projects does not involve the disclosure of any Confidential Information to the third parties.

7. Visits and property

- 7.1. The Client may attend, on reasonable notice and at mutually agreed times, Kent's premises and inspect progress of the Project from time to time.
- 7.2. Kent shall not be liable for any loss, destruction of or damage to items or property provided by the Client to Kent on whatever terms in connection with the Project, except if caused by the negligence of Kent and always subject to clauses 10.3, 10.4 and 10.5.

8. Publication

- 8.1. The Project is undertaken by Kent in pursuance of a primary charitable purpose that is the advancement of education through teaching and research. Therefore, any employee or student of Kent may, providing Kent has not received a Confidentiality Notice under clause 8.2, discuss work undertaken as part of the Project in Kent seminars, tutorials and lectures.
- 8.2. Kent will submit to the Client, in writing, details of any of the Client's Confidential Information which any employee or student of Kent intends to publish, at least 30 days before the date of the proposed submission for publication. The Client may, by giving written notice to Kent ("a Confidentiality Notice") (i) require Kent to delay the proposed publication for a maximum of 3 months after receipt of the Confidentiality Notice if, in the Client's reasonable option, that delay is necessary in order to seek patent or other protection for any of the Confidential Information which is to be published; or (ii) prevent the publication of any of the Client's Confidential Information which cannot be protected by patent or other registration or which can be protected in that way but which the Client has chosen not to protect in that way.
- 8.3. The Client must give that Confidentiality Notice within 15 days after the Client receives details of the proposed publication. If Kent does not receive a Confidentiality Notice within that period, the proposed publication may proceed.

- 8.4. Nothing in this Agreement is intended to prevent any registered student of Kent from submitting for a degree at Kent a thesis based on the Results, the examination of the thesis by examiners appointed by Kent, or the deposit of such a thesis in a library of Kent in accordance with the relevant procedures of Kent. However, if the examination or deposit of the thesis would otherwise disclose confidential Results, Kent will notify the Client when the thesis is submitted, and the Client may, by giving notice to Kent (“a Thesis Notice”), require any external examiners or readers of the deposited thesis to sign confidentiality undertakings as a condition of receipt of the thesis. Kent must receive the Thesis Notice within seven days after the receipt of Kent’s notice. If Kent does not receive a Thesis Notice in that period, it may proceed with examination and deposit of the thesis.
- 8.5. Kent will not breach the obligation in clause 5 by;
- 8.5.1. Publishing Results if it has followed the procedure in clause 8.2 and has received no Confidentiality Notice within the period stated in that clause;
 - 8.5.2. The examination or deposit of a student thesis if Kent has followed the procedure in clause 8.4 and has received no Thesis Notice within the period stated in that clause;
 - 8.5.2.1. Avoiding the disclosure of Client Background IP, and to be able to demonstrate approach and learning, publishing results based on a fictitious data set.
- 8.6. Neither Kent nor the Client shall use the other’s name or logo in any press release or product advertising, or for any other commercial purpose, without the prior written consent of the other.

9. Amendment

- 9.1. No variation, amendment or addition to the terms of this Agreement can be made or agreed unless it is in writing and signed by an authorised signatory of Kent.
- 9.2. Any other terms and conditions whether contained in the Client’s purchase order or other documentation that purport to impose terms shall have no effect whether produced before or after signature.

10. Warranties, liability and indemnities

- 10.1. Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 10.2. Nothing in this Agreement excludes liability for death;
- 10.2.1. Personal injury;
 - 10.2.2. Any fraud;
 - 10.2.3. Or anything that by law cannot be limited.
- 10.3. Kent undertakes that it will use its reasonable endeavours to perform the Project and if any part of the Project is performed negligently or in breach of contract then, at the request of the Client given within 6 months of the Completion Date, Kent will re-perform the relevant part of the Project, always subject to Clauses 10.4 and 10.5 below.
- 10.4. Kent expressly does not warrant that any result or objective whether stated in this Agreement or not shall be achieved, be achievable or be attained at all or by a given Completion Date or any other date.
- 10.5. Except as set out in clause 10.2, 10.2.1, 10.2.2 and 10.2.3, Kent’s liability under or in connection with this Agreement however arising, shall not exceed the contract Price paid to Kent under this Agreement.
- 10.6. Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty nor otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- 10.7. The Client shall indemnify and hold harmless Kent from and against all Claims and Losses arising from loss, damage, liability, injury to Kent’s employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any

information, device or product supplied to the Client by Kent its employees or consultants, or supplied to Kent by the Client within or out of the scope of this Agreement. “Claims” shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and “Losses” shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

11. Impact

The Client acknowledges that the University is required by its funders to demonstrate the University’s impact on society and agrees to provide to the University any information which the University reasonably requests that is connected to this Agreement and Project in order to allow it to demonstrate that impact.

12. Data Protection

Research and Innovation services, a department of the University of Kent will use your data for the processing of contracts. For further information on how your data will be used please see our privacy notice on our website.

13. Notices

Any notices required to be given under this Agreement shall be in writing and sent by mail or email only to the addresses specified at clause K or to such other addresses as the Parties may specify from time to time in writing. They will be deemed to have been received 3 working days after posting or emailing.

14. Non-assignment

Neither Party may assign or transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.

15. Force majeure

Kent shall not be liable under or be deemed to be in breach of this Agreement for any delays or failure in performance of this Agreement which results from circumstances beyond its reasonable control, including without limitation any delays or failures by the Client to give adequate instructions or approvals.

16. Assistance and delay by the Client

The Client shall provide all information and materials sufficient in the reasonable opinion of Kent to enable Kent to proceed with the Project on or after the Commencement Date. If at any time in the reasonable opinion of Kent such information and/or materials are not provided in a timely fashion, then Kent may alter the Commencement Date or terminate the Agreement as provided for in this Agreement.

17. Third parties

This Agreement does not create any right enforceable by any person or organisation not a party to it.

18. Electronic Signature

Where the Parties agree this Agreement may be executed using Kent’s E-Signature system “DocuSign”, the transmission of an executed agreement via DocuSign will take effect as the delivery of an executed original of this Agreement.

19. Counterparts: This Agreement may be executed in any number of counterparts. Once it has been executed and each Party has executed at least one counterpart, each counterpart will constitute a duplicate original copy of this Agreement. All the counterparts together will constitute a single fully signed agreement. The transmission of an executed counterpart of this Agreement (but not just a signature page) by e-mail (such as in PDF or JPEG) or by DocuSign will take effect as the delivery of an executed original counterpart of this Agreement.

20. Illegal/Unenforceable provisions

Each provision of this Agreement is to be construed separately and, even if the whole or any part of any provision proves to be illegal, void or unenforceable in any jurisdiction, the other provisions of the Agreement, and the remainder of the illegal, void or unenforceable provision, shall continue in full force and effect in that jurisdiction and the legality, validity and enforceability of that provision in any other jurisdiction shall not be affected.

21. No Agency

Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the parties, or the relationship of principal and agent. Neither Party has any authority to make representation or commitment, or incur any liability, on behalf of the other.

22. Jurisdiction

As set out in clause L, the validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties hereby submit. Save where the parties agree to resolve any dispute by arbitration, mediation or other similar means.