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## Consultancy Agreement

Concerning *[Type of services]*

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between

**European Spallation Source ERIC**

and

*[Name of the company/individual]*

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This Agreement is made by and between:

- (1) **European Spallation Source ERIC**, Swedish Reg. No. 768200-0018, a European Research Infrastructure Consortium established by decision (EU) 2015/1478 of the European Commission in accordance with Regulation (EC) No 723/2009, having its statutory seat in Lund, Sweden ("**ESS**"); and
- (2) **[Name]**, Reg. No. **[number]**, a **[type of company]** incorporated under the laws of **[Country]**, having its registered office in **[address, Country]** (the "**Consultant**").

ESS and the Consultant are hereinafter individually referred to as a "**Party**" and jointly as the "**Parties**".

## **BACKGROUND**

- A. The European Spallation Source (ESS) is a joint European project. The ESS facility (the "**Facility**") will be a world-leading centre for materials research and life sciences using neutrons and will host the world's most powerful neutron source. The Facility is being built in Lund, Sweden, with a data management and software centre in Copenhagen, Denmark.
- B. The European Commission has, by decision (EU) 2015/1478 of 19 August 2015, established the ESS as a European Research Infrastructure Consortium, responsible for constructing, operating, developing and decommissioning the Facility. The Swedish and Danish Governments have agreed to host ESS with Sweden as the host member state in accordance with Regulation (EC) No 723/2009.
- C. The Parties have agreed that the Consultant shall provide certain services to ESS relating to the ESS project.

## **1. SCOPE OF SERVICES**

- 1.1 The Consultant shall carry out the works and services set out in Schedule 1 (the "**Services**") on behalf of ESS. The Parties may agree on changes in the Services in accordance with Clause 9.4.1.
- 1.2 The Consultant shall notify ESS in case it discovers a need for the rendering of services or works not covered by this Agreement but clearly required to be performed in order to meet ESS' objectives with the Services under this Agreement.

## **2. TIME SCHEDULE**

- 2.1 Schedule 1 may include a time schedule for the Services. If so, the Services shall be carried out and completed in accordance with such time schedule. If Schedule 1 does not include any such time schedule, the Services shall be carried out and completed on the times agreed between ESS and the Consultant following the signing of this Agreement.
- 2.2 Delivery of the Services shall be considered completed when ESS has approved the Services. In case ESS does not approve the Services, ESS shall state the reasons for why approval has not been given. Any use by ESS of the Services prior to approval shall not be construed as if approval has been given.

## **3. PERFORMANCE OF THE SERVICES**

### **3.1 Standard of Performance**

- 3.1.1 In carrying out the Services, the Consultant shall use the degree of skill, care, and diligence reasonably expected of a professional and experienced consultant providing works and

services similar to the Services and shall use his best endeavours to promote the interests of ESS.

3.1.2 If the Consultant is unable to provide the Services due to illness or injury, the Consultant shall inform ESS of that fact as soon as reasonably possible. For the avoidance of doubt, no remuneration shall be payable in accordance with Clause 4 in respect of any period during which the Services are not provided.

3.1.3 Unless the Consultant has been specifically authorised to do so by ESS in writing, it shall not have any authority to incur any expenditure in the name of or for the account of ESS and it shall not hold itself out as having authority to bind ESS.

### **3.2 Compliance with Laws, Authorisations and Intellectual Property Rights**

3.2.1 The Consultant shall carry out the Services in accordance with applicable laws and regulations, including but not limited to regulations relating to anti-bribery and anti-corruption, permits and authorisations, and recognised up-to-date professional practices and standards.

3.2.2 The Consultant shall provide the Services in such places as ESS may reasonably specify. The Consultant, the Consultant's staff or any other personnel working on behalf of the Consultant shall comply with ESS' IT, Travel and Code of Conduct Policies, Code of Ethics in Contracting and if applicable procedures for time reporting. Whenever the Consultant, the Consultant's staff or any other personnel working on behalf of the Consultant work on ESS' premises, the Consultant shall ensure their compliance with ESS' applicable fire, health and safety rules and procedures.

3.2.3 The Consultant shall carry out the Services without infringement of any patent, design, copyright or other intellectual property right of any third party. Any plant, equipment or material designed, specified, recommended or required by the Consultant shall, when properly operated after completion, be capable of operation without infringement of any such intellectual property rights.

### **3.3 Errors and Deficiencies**

3.3.1 Errors or deficiencies in the Services shall, at the request of ESS, be rectified by the Consultant at his own expense. If the Consultant fails to fulfil such obligation within a reasonable time, ESS may, upon written notice, undertake itself or employ a third party to undertake necessary remedial work or services at the expense of the Consultant, in which case the Consultant shall provide such assistance and take such measures as may be necessary to enable ESS or any third party to carry out the remedial work or services.

### **3.4 Information and Communication**

3.4.1 The Consultant shall:

- (a) keep ESS fully informed of the progress of the Services, including providing ESS with such reports in writing as may be specified in Schedule 1 or as ESS may otherwise reasonably require;
- (b) attend meetings and briefings with the staff of ESS as reasonably required by ESS; and
- (c) take all other reasonable actions which are necessary to enable ESS to monitor the scientific, technical and financial performance of the Services.

#### **4. REMUNERATION**

- 4.1 For the Services to be performed by the Consultant under this Agreement, ESS shall pay remuneration to the Consultant in accordance with Schedule 2 (Financial Provisions).
- 4.2 The remuneration shall be paid within thirty (30) days after ESS' receipt of a Completed Invoice from the Consultant.
- 4.3 "Completed Invoices" raised by the Consultant shall, at the minimum, state the following:
- (a) fees due and, if applicable, expenses claimed with documentary evidence of such expenses;
  - (b) a reference to the Agreement;
  - (c) ESS' reference person;
  - (d) the Consultant's reference person;
  - (e) Relevant PCC Code of ESS;
  - (f) the time of working for each person during the month; and
  - (g) if applicable, the total budget for the Agreement.

ESS retains the right to return the invoice to the Contractor for supplementary information if such invoice is deemed deficient. If ESS returns an invoice for supplementary information, then the 30-day period referenced in Section 4.2 shall be suspended until the Consultant sufficiently resolves all outstanding issues with the invoice.

- 4.4 Except for Swedish value added tax (VAT), all taxes, charges and fees of whatever nature which may be imposed by any authority on the amounts paid to the Consultant under this Agreement shall be paid and borne by the Consultant.

#### **5. RIGHTS TO RESULTS**

- 5.1 All rights, title and interest in and to any reports, drawings, articles and other documents and material of any nature and in any form, whether completed or not, prepared by or on behalf of the Consultant in connection with this Agreement as well as any and all intellectual property rights and know-how with respect thereto shall, without any obligations of any kind further than the ones expressly stated in this Agreement, vest exclusively in ESS automatically and immediately upon their creation, which shall have the exclusive right to use such documents and materials and such intellectual property rights and know-how without restriction, including for the avoidance of doubt the right to make changes, further developments, transfers, licenses, copies and publications. Upon termination or expiration of this Agreement, however caused, all such documentation and other material shall be promptly delivered to ESS.

- 5.2 Should the Consultant include any of his pre-existing rights (meaning any intellectual property rights and know-how already existing at the effective date of this Agreement or independently developed or acquired by the Consultant during the term of this Agreement without using any information disclosed by ESS) in the results as set out in Clause 5.1 above, ESS shall be granted a royalty-free license to use such pre-existing rights to the extent necessary for ESS to fully exploit its ownership rights as set out in Clause 5.1 above.
- 5.3 The Consultant shall ensure that it has valid agreements with all its officers, consultants and employees engaged in the performance of the Services in order to fulfil the provisions set out in this Clause 5.

## 6. CONFIDENTIALITY

- 6.1 “**Confidential Information**” means any scientific, technical, financial, commercial or other information of any nature and in any form provided by either Party to the other Party which is not in the public domain and which relates to the affairs of ESS or any of its business contacts.
- 6.2 If the Consultant receives Confidential Information from ESS, the Consultant shall
- (a) keep the Confidential Information strictly confidential;
  - (b) make available the Confidential Information only to those of its officers and employees who need to have access to it for the purpose of this Agreement;
  - (c) not pass the Confidential Information to any third party, even under a confidentiality agreement, without the prior written consent of ESS; and
  - (d) use the Confidential Information only for purposes of this Agreement.
- 6.3 The foregoing obligations shall not apply to any portion of Confidential Information which the Consultant can establish,
- (a) was known to the Consultant prior to its receipt from ESS;
  - (b) at the time of disclosure was, or thereafter becomes through no fault of the Consultant, generally available to the public by publication or otherwise;
  - (c) was received without any obligation of secrecy from a third party which, to the best knowledge of the Consultant, has the right to disclose the same; or
  - (d) was disclosed in order to comply with applicable laws or regulations or with a court or administrative order.
- 6.4 The Consultant shall impose the same obligations as set out above on all of its officers, consultants and employees having access to the Confidential Information, both during and following their retention by ESS. The Consultant shall be liable for any breach of this Agreement by its officers, consultants and employees.

## 7. LIABILITY AND INSURANCE

### 7.1 Liability

- 7.1.1 Where a Party breaches this Agreement, it shall be liable to the other Party for all reasonably foreseeable damages, losses and costs caused directly by the breach.

7.1.2 Neither Party shall be liable for any indirect or consequential damages or losses such as, but not limited to, loss of production, profit or good will, whether under contract, in tort or otherwise, provided, however, that this limitation shall not apply to claims arising from fraud, wilful misconduct or gross negligence.

7.1.3 The Consultant shall be liable for loss or damage to any IT equipment received from ESS caused by negligence, theft, misconduct or fraud.

## **7.2 Insurance**

7.2.1 The Consultant shall take out and maintain during the term of the Agreement adequate insurance to cover any liabilities, which may arise as a result of its performance under the Agreement. The Consultant shall also take out and maintain adequate insurance for sub-contractors, secondees, employees, consultants or any other personnel working on behalf of the Consultant.

## **8. DURATION AND TERMINATION**

8.1 The Consultant shall provide the Services to ESS from *[insert date]* and shall continue in effect until *[insert date]*, at which date it shall automatically terminate unless prolonged by the Parties in writing.

8.2 ESS may, in its sole discretion, terminate this Agreement at any time by written notice to the Consultant. As soon as this notice is received, the Consultant shall stop the Services and minimise expenditure.

8.3 Each Party may terminate this Agreement if the other Party is in material breach of its obligations under this Agreement and fails to rectify such breach within 30 days of a notice in writing from the complaining Party, or if the other Party should enter into liquidation, be declared bankrupt or otherwise become insolvent.

8.4 Upon any termination of this Agreement by either Party as set out above, ESS shall pay to the Consultant the amount being due to the Consultant to reflect the value to ESS of the Services provided up to the date of termination. If ESS terminates this Agreement in accordance with Clause 8.2, or if the Consultant terminates this Agreement in accordance with Clause 8.3, ESS shall also compensate the Consultant for all reasonably foreseeable damages, losses and costs caused directly by the termination. If ESS terminates this Agreement in accordance with Clause 8.3, the Consultant shall compensate ESS for all reasonably foreseeable damages, losses and costs caused directly by the termination.

8.5 Upon any termination of this Agreement, the Consultant shall promptly deliver to ESS all documents and other information which contain or record any Confidential Information, whether completed or in progress, as well as other materials prepared by the Consultant but owned by ESS as set out in Clause 5.1 above, in the Consultant's possession. All documents, manuals, hardware and software provided for use by the Consultant, and any data or documents (including copies) produced, maintained or stored on ESS' computer systems or other electronic equipment (including mobile phones) if provided by ESS to the Consultant, remain the property of ESS.

8.6 Termination of this Agreement shall not affect the rights and obligations of the Parties under Clauses 5 or 6 or under any other provisions of this Agreement which by their nature or by their express terms are intended to survive the termination of this Agreement.

## **9. MISCELLANEOUS**

### **9.1 Independent Consultant**

9.1.1 The Consultant shall be an independent Consultant in the performance of the Services and shall have complete charge of the persons engaged in the performance of the Services. Nothing in this Agreement creates or shall be deemed to create any agency, partnership or joint venture relationship between ESS and the Consultant. The Consultant shall always act within the instructions given by ESS and has no authority to act on behalf of or to bind ESS in any way.

9.1.2 All persons engaged by the Consultant shall for all purposes be considered as employees or representatives of the Consultant. If the Consultant seconded any of its employees to the offices of ESS during the term of the Agreement, any such secondees shall remain an employee of the Consultant. The Consultant shall be responsible for obtaining all necessary permits and for the payment of all taxes and charges for all persons employed or engaged by the Consultant. The Consultant shall also take out and maintain during the term of the Agreement adequate insurance for all personnel working on behalf of the Consultant.

## **9.2 Subcontracting**

9.2.1 The Consultant shall have the right, after prior approval from ESS, to involve subcontractors, availing of specific expertise, in the performance of the Services. The Consultant shall notify ESS and ask ESS for its approval of all subcontractors, specifying in each case their specific expertise.

9.2.2 The subcontracting of any part of the Services shall not relieve the Consultant from any liability or obligation under the Agreement. The Consultant is fully responsible for the compliance with the Agreement by all of its subcontractors.

## **9.3 Entire Agreement**

9.3.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject matter of this Agreement.

## **9.4 Amendments**

9.4.1 Amendments to or changes of this Agreement shall, in order to be valid, be made in writing and signed by authorized representatives of each of the Parties and shall be clearly stated as amendments to or changes of this Agreement.

## **9.5 Assignment**

9.5.1 Except with the prior written consent of ESS, the Consultant shall not assign, novate or otherwise transfer partially or totally any of its rights or obligations under this Agreement.

## **9.6 Publicity**

9.6.1 Except with the prior written consent of ESS, the Consultant shall not publicise this Agreement or any part thereof unless it is obliged to do so to comply with applicable laws or regulations or with a court or administrative order.

9.6.2 The Consultant shall not use the fact that it is a consultant or an associate of ESS in any related publicity or advertisement without the prior written consent of ESS. The Consultant shall also not use the name, logo or emblem of ESS in any manner for advertising or other promotional purposes without written consent of an authorized staff member of ESS.

## **9.7 Other activities**



- 9.7.1 The Consultant acknowledges that no prior or existing relationships or any other legal ground exist which would prevent the Consultant from entering into and fulfilling all obligations under this Agreement.
- 9.7.2 Nothing in this Agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the term of this Agreement provided that:
- (a) such activity does not cause a breach of any of the Consultant's obligations under this agreement and/or raises conflict of interests;
  - (b) the Consultant shall not engage in any such activity if it relates to a business which is in any way competitive with or conflict with the activity carried out at ESS without the prior written consent of ESS; and
  - (c) the Consultant shall give priority to the provision of the Services to ESS over any other business activities undertaken by the Consultant during the course of this Agreement.

## **9.8 No Waiver**

- 9.8.1 This Agreement may not be waived except in writing. The failure of Party to insist upon strict adherence to any provision of the Agreement shall not be considered a waiver of any right under the Agreement, and shall not deprive that Party of the right at any later time to insist upon the strict adherence to the Agreement.

## **9.9 Anti-Corruption**

- 9.9.1 The Consultant warrants that no offer, payment, consideration, or benefit of any kind which constitutes an illegal or corrupt practice has been made or shall be made, either directly or indirectly, as an inducement or reward for entry into this Agreement or in the subsequent execution of the Agreement. Any such practice will be grounds for terminating the Agreement without any compensation to the Consultant and for such other additional actions, civil and/or criminal, as may be applicable.

## **9.10 Notices**

- 9.10.1 All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the respective Party's contact person set out in this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section 9.10).
- 9.10.2 All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), certified or registered mail (in each case, postage prepaid), facsimile or e-mail. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 9.10.

## **10. GOVERNING LAW AND RESOLUTION OF DISPUTES**

- 10.1 This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of Sweden without giving effect to any choice of law rules and principles thereof.

- 10.2 In the event of any dispute of difference of opinion between the Parties arising out of or in connection with this Agreement, each of the Parties shall use its best efforts to settle each dispute or difference in opinion amicably by negotiations.
- 10.3 Disputes, controversies or differences of opinion arising out of or in connection with this Agreement, including with respect to any right or obligation that survives termination or cancellation of this Agreement, which cannot be amicably settled by negotiations between the Parties within thirty (30) days after discussions to this effect have been initiated shall be finally settled administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "**SCC**"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The place of arbitration shall be Lund, Sweden. The language to be used in the arbitral proceedings shall be English.
- 10.4 The Parties undertake and agree that arbitral proceedings pursuant to this Agreement shall be kept strictly confidential, and all information disclosed in the course of such proceedings, as well as the contents of any decision or award made, shall constitute Confidential Information.

IN WITNESS WHEREOF, this Agreement has been executed by way of electronic exchanging of signed copies and each Party has received one (1) copy of the signed version of the Agreement.

**European Spallation Source ERIC**

**[Name of Company]**

\_\_\_\_\_

*Date*

\_\_\_\_\_

*Date*

\_\_\_\_\_

*Signature*

\_\_\_\_\_

*Signature*

\_\_\_\_\_

*Name (in block letters)*

\_\_\_\_\_

*Name (in block letters)*

\_\_\_\_\_

*Position*

\_\_\_\_\_

*Position*

## SCHEDULE 1

### **Description of the services**

*[Insert detail of the works and services to be provided, including location(s) where the services are to be performed]*

*The Services are to be performed by [name] personally. The Consultant is not entitled to replace said person without the prior approval from ESS. Should [name] choose to himself/herself leave his/her position, the Consultant shall inform ESS without delay and suggest a suitable replacement. Should ESS not accept the replacement, ESS is entitled to terminate the Agreement with immediate effect.*

ESS will, through its Authorised Representative as defined herein, from time to time in writing order specific work in relation to the needs listed above. The Consultant shall in response to such order provide a detailed description of work, an estimated number of hours needed for the work, total fee, a time schedule for completion and any other information reasonably requested by ESS, which are to be approved by ESS in writing prior to the commencement of work. ESS approved order of specific work will then constitute the basis for payment under Schedule 2 of this Agreement.

### **Reporting procedure**

*[insert detail]*

### **Time schedule and milestones for completion**

*[if applicable, insert time schedule and/or milestones for the provision of the services]*

### **Additional special conditions**

*[if applicable, insert detail]*

## SCHEDULE 2

### FINANCIAL PROVISIONS

#### Fees

ESS will pay the consultant an hourly rate of [*insert amount*] SEK (excluding VAT) payable on a monthly basis according to the terms stated in Clause 4 of this Agreement. No additional payments such as travel, travel time, accommodation or other shall be made unless agreed in writing. The maximum fee payable will be based on each ESS' approved order of work.

#### Expenses

In cases where the Consultant is required to travel on behalf of ESS for performing the Services outside the premises of ESS, the following shall apply:

Prior authorization by ESS is required for travel made under this Agreement for which reimbursement is requested, in which case, ESS shall reimburse up to the ESS-authorized amount all reasonable expenses properly and necessarily incurred by the Consultant in the performance of the Services, subject to production of receipts or other appropriate evidence of payment by the Consultant, and provided that all air travel and accommodation will be undertaken at the most economic rates reasonably available and in accordance with ESS' Travel Policy. Whenever practical, travel arrangements shall be made by ESS.

If the Consultant is required to travel abroad in the course of the Services, the Consultant shall be responsible for any necessary insurance, inoculation and immigration requirements.