

Commercial in confidence

UNITED KINGDOM EDUCATION & RESEARCH NETWORKING ASSOCIATION



**Standard Terms and Conditions
for JANET/UKERNA Services**

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INTERPRETATION

1. In these Terms and Conditions, the following words will have the following meanings:

"Agreement"	means the Contract and any associated Schedules to which these terms and conditions apply;
"Conditions"	means these terms and conditions;
"Confidential Information"	means all information (in whatever format) designated as such by the other Party together with such information which relates to the business affairs, networks, customers, suppliers, products, developments, trade secrets, know-how and personnel of the other Party or which may reasonably be regarded as the confidential information of the disclosing Party;
"Equipment"	means the equipment (including but not limited to computer and telecommunications hardware and software) provided by UKERNA at any time for use by the Contractor in providing the Services;
"Funding Bodies"	means the UK Further and Higher Education funding councils;
"Requirement"	means the document setting out UKERNA's requirement for the Services;
"Schedule"	means a Schedule to the Contract;
"Services"	means the Services set out in the service description schedule to the contract, as may be altered in accordance with the Agreement; and
"Working Day"	means every day excluding Saturdays, Sundays and all Public Holidays. (Public Holidays being those days officially defined as Bank and Public Holidays in England and Wales).

2. Clause headings are inserted in these Conditions for convenience only and they will not be taken into account in the interpretation.

3. References in these Conditions to "Party" or "Parties" means the party or parties to the Agreement to which these Conditions apply.

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EQUIPMENT

4. Legal title to any Equipment initially provided by UKERNA, as listed in any equipment Schedule, together with its location as at the date of the Agreement will remain with UKERNA. Where Equipment has been provided, the Contractor will maintain an up to date list of the serial numbers and location of each item of Equipment and will provide a copy of this list to UKERNA at UKERNA's request, from time to time. The Contractor will not move any Equipment from its listed location without first obtaining UKERNA's written consent.
5. At UKERNA's request, the Contractor will return any Equipment within a period of 15 Working Days after receiving the request or sooner, if requested by UKERNA, provided that, in no event, will the Contractor be required to return the Equipment within 10 Working Days of UKERNA's request. UKERNA will pay the Contractor's reasonable expenses properly incurred in returning the Equipment.
6. The Contractor will not be liable for loss of, or damage to, any Equipment at its listed location, unless such loss or damage is caused by the negligence, wilful misconduct or failure to take reasonable care of the Equipment by the Contractor or its employees, subcontractors or agents. For the purposes of these Conditions, "reasonable care" includes ensuring that no modification is made to the Equipment (unless made with UKERNA's prior written approval), the Equipment is kept in a physically secure environment with access restricted to authorised personnel only, and any instructions provided by UKERNA, the Equipment manufacturers and the Equipment suppliers concerning the safe and proper use and handling of the Equipment are obeyed

WARRANTIES

7. In performing its obligations under the Agreement, the Contractor will at all times exercise reasonable skill and care and the Services will be performed by staff that are competent and are skilled, experienced and qualified in the subject areas and other matters which relate to the Services they are to provide.
8. The Contractor warrants that:
 - 8.1 it will provide the Services and will carry out its obligations in the Agreement in accordance with all applicable laws, licences and regulations; and
 - 8.2 it has the full right, power and authority to enter into and perform the Agreement in accordance with its terms, and such entry and performance does not and will not violate or infringe the intellectual property or other rights of any other persons.

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- 8.3 all software and other products provided by the Contractor in performing the Services will be fit for its purpose, comply with all statutory requirements and regulations relating to it and conform in all respects with the Requirement.

LIABILITY AND INDEMNITY

9. Nothing in the Agreement will operate to exclude either Party's liability for death or personal injury arising out of its negligence or for its fraud.
10. Subject to Clauses 9 and 11, neither Party will be liable to the other for any loss of business, revenue, profits, anticipated savings or goodwill (whether direct or indirect) or for any indirect or consequential loss arising out of or in connection with the Agreement
11. The Contractor will indemnify and keep indemnified UKERNA against all and any losses, liabilities, costs, claims, damages, awards and expenses (including, without limitation, reasonable legal and other professional fees and expenses) arising out of any claim that any part of the Services infringes any intellectual property right of whatever nature of any third party or arising out of any breach by the Contractor of any provision of the Agreement.

ACCESS TO INFORMATION

12. In addition to the information which is to be provided as part of any reporting arrangements referred to in the Agreement, the Contractor will make available, on request by UKERNA or its agents, any information about the configuration and operation of the Services which is reasonably necessary in order to enable UKERNA to assess the effectiveness of the Services, or to relocate them

CONFIDENTIALITY

13. Subject to Clauses 14, 15, 16 and 17, each Party will:
- 13.1 only use Confidential Information for the purposes of the Agreement;
- 13.2 only disclose Confidential Information to a third party with the prior written consent of the other party (except that each party may disclose Confidential Information to its professional advisors or auditors to the extent necessary and as set out in Clauses 15, 16 and 17); and
- 13.3 ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking in the terms of Clauses 13, 14, 15, 16 and 17.
14. The provisions of Clause 13 will not apply to any Confidential Information which:
- 14.1 is in or comes into the public domain other than by breach of Clause 13; or

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- 14.2 is or has been independently generated by the recipient Party or was in the possession of the recipient Party prior to the date of the disclosure.
15. UKERNA may disclose the Confidential Information of the Contractor to its Funding Bodies.
16. UKERNA may disclose any information relating to the performance of the Services to any third party that uses the JANET service.
17. Each Party may disclose the Confidential Information pursuant to a statutory obligation, an order of a court of competent jurisdiction or the requirement of a competent regulatory body, provided that it notifies the other Party as soon as the requirement to notify arises and will use its reasonable endeavours to ensure that any such disclosure is made in a manner which ensures the confidentiality of the Confidential Information.

INTELLECTUAL PROPERTY

18. All copyright, design right, database rights, patents, trade marks and registered designs (and the right to apply for any of these) in any document, software, invention, discovery, design, development, data or any other works of any description made, created, designed, invented, conceived or acquired by the Contractor in the course of or in connection with the provision of the Services ("Works") are owned by UKERNA. The Contractor will (both during or after the termination of the Agreement) at the request of UKERNA do everything (including executing documents) that may be required by UKERNA to protect, perfect or enforce all such rights granted or confirmed to UKERNA.
19. Provided that the Contractor complies with its obligations under the Agreement, UKERNA will grant a non-exclusive, royalty-free, non-transferable, revocable licence to the Contractor to use any Work(s) (or any part of them) for its internal academic and research purposes only. If the Contractor wishes to use any Work(s) (or any part of them) for any other purposes then they must obtain UKERNA's prior written consent.
20. In the case of a Work which is, or contains details of, an invention capable of being patented ("Invention"), if the Contractor intends to publish that Invention before the publication of a patent application which covers that Invention, the Contractor will submit the material to UKERNA in writing in advance of the submission for publication. UKERNA may require the Contractor to delay submission for publication if in UKERNA's opinion that delay is necessary in order to secure patent or similar protection for the Invention in question.

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TERMINATION

21. If UKERNA is served with notice by its Funding Bodies of the termination of the Funding Memorandum between UKERNA and the Funding Bodies, or of their intention to withdraw funding for UKERNA, UKERNA may terminate the Agreement by giving the Contractor not less than five months' prior written notice.
22. Either Party ("the First Party") may terminate the Agreement with immediate effect by giving written notice to the other ("the Second Party") if the Second Party should:
 - 22.1 commit a breach of the Agreement that is not capable of remedy;
 - 22.2 commit a breach of the Agreement which is capable of remedy but is not remedied within one calendar month of receipt of written notice from the First Party, specifying the breach and requesting remedy; or
 - 22.3 if the other Party has a receiver, administrative receiver, administrator or other similar officer appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other Party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by section 123 of the Insolvency Act 1986 to be unable to pay its debts, or undergoes or is subject to any analogous acts or proceedings under any foreign law, including, but not limited to, bankruptcy proceedings
23. On expiry or termination (however arising) of the Agreement the Contractor, on request from UKERNA, will deliver up all materials of any sort, including but not restricted to documents, papers, drawings, software, data, specifications, reports, notes, programs, equipment, identity cards and keys which were supplied by UKERNA to the Contractor.
24. Expiry or termination of the Agreement (however arising) will not affect any rights or liabilities that have accrued prior to the date of termination.
25. On expiry or termination of the Agreement (however arising), the Contractor will provide such reasonable assistance in terms of man power and resources as may reasonably be required by UKERNA in order to achieve an orderly transfer of the provision of the Services from the Contractor to UKERNA or another service provider nominated by UKERNA. Both Parties will use all reasonable endeavours to complete the transfer as soon as reasonably practicable. The Contractor will provide such assistance free of charge, unless the notice of termination has been given by the Contractor under Clause 22, in which case the Contractor will be entitled to make a reasonable charge for such assistance.

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26. The expiry or termination of the Agreement (however arising) will not affect the coming into force or continuation in force of any provision of the Agreement that is expressly or by implication intended to come into or continue in force on or after termination.

AMENDMENTS TO SCHEDULES

27. Where UKERNA or the Contractor identifies the need to change the Services, the Parties will follow the Change Control Procedure identified in the Agreement.
28. In the event that any change is made to the Service Level Agreement in place from time to time between UKERNA and the Joint Information Systems Committee of the Funding Bodies, that has an impact on the Agreement, UKERNA will inform the Contractor of the required change in writing. If the Contractor fails to implement or agree a timetable to implement such required change within 30 days after receiving UKERNA's request, UKERNA may terminate the Agreement by giving the Contractor three months' written notice.
29. UKERNA will have the right to amend the Service description Schedule by informing the Contractor in writing. The Parties will discuss the proposed date on which the amendment should become effective. However, in the absence of any other agreement, the amendments will take effect within no more than 15 Working Days after UKERNA informed the Contractor of the change.

IMPROVEMENT PLAN PROCESS

30. The Improvement Plan process is the means by the Parties will seek to address and resolve any failure to provide the Services in accordance with the Agreement or any dispute or problem arising in connection with the Services ("an issue"). Notwithstanding the foregoing, nothing in Clauses 30 to 38 will prejudice either Party's right to seek injunctive relief from the English Courts at any time.

31. Identification of need

- 31.1 Either Party may evaluate the performance of the Contractor in providing the Services set out in the Agreement.
- 31.2 If an issue is identified, UKERNA may request an Improvement Plan by providing details in writing to the Contractor. Details will include identification of the problem and supporting evidence.

32. Production of Improvement Plan

If UKERNA has requested an Improvement Plan, the following process will be followed.

32.1 The Contractor will produce an Improvement Plan that contains the following:

- identification of the cause of the issue; and
- a plan, (which may include both the Contractor and UKERNA personnel), to rectify the cause including actions, timing and success criteria.

32.2 The Contractor and UKERNA will meet to discuss the Improvement Plan to:

- agree the actions that will be taken;
- make changes to the Improvement Plan by mutual agreement;
- agree meetings to monitor the progress of the Improvement Plan; and
- agree funding of the Improvement Plan, where the actions are beyond any funding provided in the Agreement.

33. If UKERNA and the Contractor do not agree on the first Improvement Plan for a particular issue, UKERNA will accept the Improvement Plan produced by the Contractor.

34. If the Improvement Plan fails to resolve the issue, UKERNA and the Contractor will meet to discuss the appropriate further action. If UKERNA and the Contractor fail to agree on a subsequent Improvement Plan, UKERNA and the Contractor will appoint an independent third party expert to determine the further action required.

35. If UKERNA and the Contractor cannot agree on the appointment of the expert, then the Contractor will be obliged to accept the decision of UKERNA in this respect. The expert will be appointed to work with the Parties and to produce a subsequent Improvement Plan that both Parties will be obliged to follow. Both Parties will give the expert any information reasonably requested by the expert to enable the production of a subsequent Improvement Plan. The costs of the expert will be divided equally between the Parties, unless the expert allocates the costs to one of the Parties.

36. Implementation of Improvement Plan

The Contractor will be obliged to implement the Improvement Plan. During such implementation, both the Contractor and UKERNA will track progress and meet at the agreed intervals to monitor progress. (Such meetings may be the service review meetings supplemented by additional meetings as necessary).

37. Closure of Improvement Plan

The Improvement Plan will be closed once both the Contractor and UKERNA agree that the plan has been executed satisfactorily and that the cause of the issue is resolved.

38. Failure of Improvement Plan Process

The Improvement Plan Process will be deemed to have failed if both the two Improvement Plans drawn up and implemented according to the above procedure fail to meet the agreed success criteria. In such an event, UKERNA may terminate the Agreement by giving the Contractor three months' written notice.

ASSIGNMENT

39. UKERNA may assign the Agreement, in whole or in part, to any other organisation empowered or required by its Funding Bodies to take responsibility for the networking programme of the education and research community in the United Kingdom. Apart from this, neither Party may assign all or any of the Agreement without the prior written consent of the other.

FORCE MAJEURE

40. If the performance by either Party of any of its obligations under the Agreement is prevented by circumstances beyond its reasonable control, then such Party will be excused from performance of that obligation for the duration of the relevant event, provided that that Party uses all reasonable endeavours to mitigate the effects of that event on the performance of such obligations.
41. If performance of the obligations of either Party is substantially prevented for a continuous period of 60 days or more by virtue of circumstances beyond its reasonable control, then the other Party may terminate the Agreement, without any liability for such termination, on written notice.

NOTICES

42. All notices which are required to be given under the Agreement must be in writing and sent to the other Party's contact, as identified in the Agreement, or any other person or address in the United Kingdom which the other Party's contact may designate in writing.
43. Any notice must be delivered personally, by recorded delivery letter or by fax, and will be deemed to have been served; if by hand when delivered, if by recorded delivery on the date recorded for the delivery by the delivery agent, or if by fax, 24 hours after faxing.

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GENERAL

44. The Contract, any attached Schedules and these Terms and Conditions, together constitute the entire Agreement between the Parties relating to the subject matter of the Agreement. Notwithstanding the foregoing sentence, nothing in the Agreement will limit or exclude either Party's liability for its fraud. Except as provided in Clauses 28 and 29, no variation will be effective unless it is in writing and signed by the representatives of each Party.
45. If any provision of the Agreement is held by a court or any governmental agency or authority to be invalid, void, or unenforceable the remainder of the Agreement will nevertheless remain legal, valid and enforceable.
46. Failure by either Party to exercise or enforce any right or benefit conferred by the Agreement will not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
47. The relationship between the Parties is that of independent contractors and at no time will either Party hold itself as being the partner or agent of the other.
48. No person who is not a Party to the Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999, or otherwise.
49. The Agreement will be governed by English law, and, subject to Clauses 30 to 38, the English Courts will have exclusive jurisdiction to deal with any dispute that may arise out of or in connection with the Agreement.