

# Appendix 1a: Draft Conditions of Contract – Global Canopy Programme



DATED \_\_\_\_\_

**Date**

GLOBAL CANOPY FOUNDATION

and

**name**

CONSULTING AGREEMENT

**THIS AGREEMENT** is made on the **x<sup>th</sup> day of month 2017**

- (1) **Global Canopy Foundation** a company limited by guarantee in England and Wales (reg. no. 04293417) and a charity (reg. no. 1089110) trading under the name Global Canopy Programme whose registered office is at 3 Frewin Chambers, Frewin Court, Oxford, OX1 3HZ (“the Foundation”);
- (2) **name** of **[address]** (“Consultant”).

**IT IS AGREED** as follows:

## 1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise):

### “Background IP”

all (a) Intellectual Property owned by or licensed to a Party as at the Commencement Date; and (b) all Intellectual Property created by a Party following the Commencement Date otherwise than in connection with the Project;

### “Board”

the board of directors of the Foundation (including any committee of the Board duly appointed by it);

### “Commencement Date”

**xth month 2017;**

### “Confidential Information”

information (irrespective of the form in which it is recorded) relating to the business, affairs and finances of the Foundation for the time being confidential to the Foundation including, without limitation, technical information and know how related to the business of the Foundation or any of its business contacts or clients;

### “Engagement”

the engagement of the Consultant by the Foundation on the terms of this Agreement;

### “Foreground IP”

all Intellectual Property created in connection with the Project by either Party other than the Background IP;

### “Intellectual Property”

all inventions (whether patentable or not), patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), database right, copyright, and trade marks (both registered and unregistered) together with all rights to the grant of and applications for (and all associated rights to claim priority) the same and all other intellectual and industrial property including but not limited to all similar or analogous rights throughout the world and all future rights of such nature, and in each case for the full term of the relevant right;

**“Pre-Contractual Statement”**

any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the Engagement other than as expressly set out in this Agreement;

**“Programme”**

This contract is part of the Governance Programme, as one of the core strategies of the Foundation.

**“Services”**

the services described in Schedule 1;

**“Substitute “**

a substitute for the Consultant appointed under the terms of Clause 3.2;

**“Tax Authority”**

any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect tax in the United Kingdom or elsewhere;

**“Termination Date”**

the date of termination of this Agreement howsoever arising.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is enforced for the time being taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being enforced made under it.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 The schedules to this Agreement form part of (and are incorporated into) this Agreement.

**2 TERM**

- 2.1 The Engagement shall commence on the Commencement Date and shall be for a fixed period subject to early termination:-
  - 2.1.1 as provided by the terms of this Agreement; or
  - 2.1.2 by either party giving to the other not less than 4 weeks’ prior written notice.

**3 SERVICES**

- 3.1 During the Engagement the Consultant agrees to provide the Services to the Foundation and such other services consistent with the Services as the Foundation may require of the Consultant from time to time.
- 3.2 The Consultant may, with the prior written approval of the Foundation or Board and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services on his behalf, provided that that the Substitute shall be required to enter into direct undertakings with the Foundation including with regard to confidentiality. If the Foundation accepts the Substitute, the Consultant shall continue to invoice the Foundation in accordance with Clause 5 and shall be responsible for the remuneration (including any relevant tax and/ or National Insurance contributions) of the Substitute.

## 4 DUTIES

### 4.1 The Consultant agrees:

- 4.1.1 to provide the Services with all due care, skill and ability and to use his best endeavours to promote the interests of the Foundation;
- 4.1.2 unless prevented by ill health or accident, devote the days required in each calendar month to the carrying out of the Services together with such additional time, if any, as may be necessary for their proper performance; and
- 4.1.3 not directly or indirectly to accept any commission, discount, gratuity or other benefit from any person who has or is likely to have a business relationship with the Foundation.

4.2 As a visiting independent contractor, the Consultant will familiarise herself with and comply with any working practices, rules or procedures applicable, at any location where the Consultant is performing the Services (whether or not the Foundation's premises). This includes, but is not limited to, complying with all reasonable standards of safety and procedures from time to time in force at the premises where the Services are provided and to report to the Foundation any unsafe working conditions or practices.

4.3 The Consultant may use another person, firm or company to perform any administrative clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that the Foundation will not be liable to further cost of such functions.

4.4 Unless she has been specifically authorised to do so by the Foundation in writing, the Consultant shall not:

- 4.4.1 have any authority to incur any expenditure in the name of or for the account of the Foundation; or
- 4.4.2 hold herself out as having authority to bind the Foundation.

## 5 FEE

5.1 The Foundation shall, within 30 days of receipt of an invoice submitted in accordance with Clause 5.3, pay fees to the Consultant as laid out in Schedule 1.

5.2 The Foundation shall be entitled to deduct from the fee (and any other sums) due to the Consultant any sums that the Consultant may owe to the Foundation at any time.

5.3 The Consultant will invoice the Foundation on the dates as laid out in Schedule 1.

## 6 EXPENSES

The Foundation shall reimburse all reasonable expenses properly and necessarily incurred by the Consultant in the course of the Engagement, subject to the production of receipts or other appropriate evidence of payment to be included in his invoices submitted at the end of each month and except where the amount of any expenses claimed is disputed by the Foundation, the Foundation will reimburse the Consultant within 30 days of receipt of the invoice.

## 7 OTHER ACTIVITIES

7.1 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 Engagement provided that:

- 7.1.1 such activity does not cause a breach of any of the Consultant's obligations under this Agreement; and

7.1.2 the Consultant shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the business of the Foundation without the prior written consent of the Foundation.

7.2 In order to protect the integrity of the Project, where the Consultant is engaged in other activities the Consultant agrees to notify the Foundation in writing of any potential conflict of interest between those activities and the Project (including but not limited to the Project scoring process) immediately upon the Consultant becoming aware of a potential conflict of interest.

## **8 CONFIDENTIAL INFORMATION**

8.1 The Consultant shall not (except in the proper course of his duties) either during the Engagement or at any time after the Termination Date, use or disclose to any person, firm or company (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information:-

8.1.1 Concerning the Foundation's business or status which comes to the Consultant's knowledge during the course of or in connection with the provision of the Services; and

8.1.2 Any information concerning the business or status of any person having dealings with the Foundation and which is obtained directly or indirectly in circumstances where the Foundation are subject to a duty of confidentiality.

8.2 This restriction does not apply to:

8.2.1 any use or disclosure authorised by the Foundation or required by law; or

8.2.2 any information which is already in or comes into the public domain otherwise than through the Consultant's unauthorised disclosure with effect from the time that information enters the public domain.

8.3 All documents, manuals, hardware, software and other embodiments of Confidential Information provided for the Consultant's use by the Foundation and any data or documents (including copies) produced, maintained or stored on the Foundation's computer systems or other electronic equipment (including mobile phones provided by the Foundation) remain the property of the Foundation.

## **9 INTELLECTUAL PROPERTY**

9.1 All Background IP is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom its right to use the Background IP has derived).

9.2 Each Party hereby grants a royalty free non-exclusive non-transferable licence to the other Party to use its Background IP during the currency of this Agreement in connection with the Contribution and/or Project in accordance with the terms of this Agreement.

9.3 As between the Foundation and the Consultant, all Foreground IP and Project Materials shall vest in and be owned absolutely by the Foundation.

9.4 To the extent that any Foreground IP vests in the Consultant by operation of law or otherwise, the Consultant hereby assigns (by way of present assignment of existing and future rights) with full title guarantee all such Foreground IP to the Parties. If a further assignment is required or if the Consultant is unable to assign such Foreground IP as there are differences between the laws of England and Wales and the applicable law, the Consultant shall forthwith execute all documents that may be necessary to effect the transaction that most closely resembles the commercial intent of an assignment and is permitted in the relevant territory. Pending the above assignments and remaining formalities relating to such assignments, the Consultant shall hold all such Foreground IP on trust for the Parties.

9.5 The Consultant shall:

- 9.5.1 notify the Foundation in writing giving full details of any Foreground IP promptly on its creation by the Consultant;
  - 9.5.2 keep any and all Foundation Background IP and all Foreground IP confidential at all times as Confidential Information;
  - 9.5.3 deliver any Project Materials in its possession or control to the Foundation on request; and
  - 9.5.4 not register nor attempt to register any of the Foreground IP unless requested to do so by the Foundation.
- 9.6 The Consultant shall procure that the authors of all Foreground IP shall to the extent necessary waive any and all moral rights in the Foreground IP arising under Chapter IV of the Copyright, Designs and Patents Act 1988 together with all similar and analogous rights in other territories to the extent permissible under the relevant legislation in the relevant territory.
- 9.7 The Consultant shall, if requested by the Foundation and at the Foundation's cost, execute all documents and do all things which are necessary or desirable for perfecting the assignment of Foreground IP set out in Clause 9.4 and obtaining the best possible protection in respect of all Foreground IP in territories specified by the Foundation.

## 10 DATA PROTECTION

Each party warrants that it shall comply with the provisions of applicable data protection laws in the performance of their obligations under this Agreement.

## 11 REPORTING

The Consultant's work shall be overseen by **name**, the Foundation's **job title** throughout the project of work. The Consultant will report weekly on progress.

## 12 PUBLICATIONS

- 12.1 The Consultant shall not publish anything about the Services without the prior written permission of the Foundation such consent not to be unreasonably withheld.
- 12.2 The Foundation recognises that the Consultant may wish to submit for publication, for example, in a lecture or an article in a magazine, newspaper, trade journal or in a thesis, some or all of the Foundation Intellectual Property for educational or other purpose (the "Publication"). If the Consultant wishes to submit a Publication, the Consultant shall obtain the prior written consent of the Foundation and this consent will not be unreasonably withheld.
- 12.3 The Foundation has the right to review and recommend changes to any Publication prior to its submission. The Consultant shall incorporate all the recommended changes into the Publication.
- 12.4 The Consultant shall acknowledge the support of the Foundation and donors to the Project in the Publication wherever possible.
- 12.5 The Consultant shall include the Project logo or name credit, and when required the Global Canopy Programme logo, on all Publications in the form and manner as specified by the Foundation from time to time.

## 13 INSURANCE AND LIABILITY

- 13.1 The Consultant shall have personal liability for any loss, liability or cost (including reasonable legal costs) incurred by the Foundation in connection with the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive insurance policies in respect of the provision of the Services.

- 13.2 The Consultant shall ensure that the insurance policies are taken out with reputable insurers acceptable to the Foundation and that the level of cover and other terms of insurance are acceptable to and agreed by the Foundation.
- 13.3 The Consultant shall on request supply to the Foundation copies of such insurance policies and evidence that the relevant premiums have been paid.
- 13.4 The Consultant shall notify the insurers of the Foundation's interests and shall cause such interest to be noted on the insurance policies (together with a provision to the effect that if any claim is brought or made by the Foundation against the Consultant in respect of which the Consultant would be entitled to receive indemnity under any of the insurance policies the relevant insurer will indemnify the Foundation directly against such claim and only charge his costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Foundation the Consultant shall use all insurance monies received by him to indemnify the Foundation in respect of any claim and shall make good any deficiency from his own resources).
- 13.5 The Consultant shall comply with all terms and conditions of the insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Foundation without delay.

#### 14 **TERMINATION**

- 14.1 Notwithstanding the provisions of Clause 2, the Foundation may terminate the Engagement with immediate effect with no liability to make any further payment to the Consultant (other than in respect of amounts accrued prior to the Termination Date) if at any time the Consultant:
- 14.1.1 is guilty of any fundamental breach affecting the business of the Foundation; or
  - 14.1.2 commits any serious or repeated breach or non observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Foundation; or
  - 14.1.3 is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non custodial penalty is imposed); or
  - 14.1.4 is in the reasonable opinion of the Board negligent and incompetent in the performance of the Services; or
  - 14.1.5 is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a County Court administration order made against him under the County Court Act 1984; or
  - 14.1.6 is incapacitated (including by reason of illness or accident) from providing the Services or becomes of unsound mind and within 7 days of the relevant event no Substitute is nominated by the Consultant and approved by the Foundation in accordance with Clause 3.2; or
  - 14.1.7 is guilty of any fraud or dishonesty or acts in any manner which is in the opinion of the Foundation brings or is likely to bring the Consultant or the Foundation into disrepute or is materially adverse for the interests of the Foundation.

#### 15 **OBLIGATIONS UPON TERMINATION**

- 15.1 On the Termination Date the Consultant shall:
- 15.1.1 immediately deliver to the Foundation all documents, books, materials, records, correspondence, papers and information (on whatever media and wherever

located) relating to the business or affairs of the Foundation (or its or their business contacts) any keys and any other property of the Foundation which is in his possession or under his control;

15.1.2 irretrievably delete any information relating to the business of the Foundation stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Foundation; and

15.1.3 provide a signed statement that he has complied fully with his obligations under this Clause 15.

## 16 STATUS

16.1 The relationship of the Consultant with the Foundation will be that of independent contractor and nothing in this Agreement shall render him an employee, worker, agent or partner of the Foundation and the Consultant shall not hold herself out as such.

16.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Foundation for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services where such recovery is not prohibited by law. The Consultant shall further indemnify the Foundation against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Foundation in connection with or in consequence of any such liability, deduction, contribution, assessment or claim (other than where the latter arises out of the Foundation's negligence or wilful default).

16.3 The Foundation may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

16.4 The Consultant undertakes that tax on or in respect of any fees paid or to be paid to the Consultant pursuant to Clause 5 of this Agreement:

16.4.1 will be self-assessed; or

16.4.2 will not be self-assessed but will be paid:

(a) as a self-assessment payment on account under section 59A of the Taxes Management Act 1970; or

(b) as a sub-contractor deduction under section 559A of the Income and Corporation Taxes Act 1988 or section 62 of the Finance Act 2004.

16.5 The Consultant undertakes that she will:

16.5.1 co-operate fully with any request by the Foundation relating to any matter arising in connection with its tax compliance procedures to the extent that it relates or may relate to the arrangements contemplated by this Agreement or this Clause 16;

16.5.2 provide full and accurate details of any tax paid/self-assessed or to be paid/self-assessed pursuant to Clause 16.4 as may be requested by the Foundation from time to time; and

16.5.3 authorise, request or procure the disclosure of information from the relevant Tax Authority to the Foundation as the Foundation may request in the event of an enquiry by such a Tax Authority relating to or in connection with the arrangements contemplated by this Agreement or this Clause 16.



## 17 NOTICES

- 17.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at (in the case of the Foundation) its registered office for the time being and (in the case of the Consultant) his last known address or by sending it by fax to the fax number notified by the relevant party to the other party or by sending it by email to the email address notified by the relevant party to the other party. Any such notice shall be deemed to have been received:
- 17.1.1 if delivered personally, at the time of delivery;
  - 17.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting;
  - 17.1.3 in the case of fax, at the time of transmission; and
  - 17.1.4 in the case of email, at the time of receipt.
- 17.2 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the relevant party.

## 18 ENTIRE AGREEMENT

- 18.1 Each party on behalf of itself acknowledges and agrees with the other party that:
- 18.1.1 this Agreement (together with any documents referred to in it) constitutes the entire agreement and understanding between the Consultant and the Foundation and supersedes any previous agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);
  - 18.1.2 in entering into this Agreement neither party has relied on any Pre-Contractual Statement; and
  - 18.1.3 the only remedy available to either party for breach of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other party in respect of any Pre-Contractual Statement. Nothing in this Agreement shall however operate to limit or exclude any liability for fraud.

## 19 VARIATIONS

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## 20 GOVERNING LAW AND JURISDICTION

- 20.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter on formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law.
- 20.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales over any claim or matter arising under or in connection with this Agreement (including non-contractual disputes or claims).

This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a DEED by Global Canopy Foundation acting by Tom Espley, CFO:

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Tom Espley, CFO, GCP

Signed as a DEED by:

in the presence of:

-----  
[name, Consultant]  
-----

-----  
[name], Witness  
-----

**TERMS OF REFERENCE**

**1. Title**

**2. Outputs/Deliverables**

**3. Agreement Period**

- Commencement date :
- Termination date :
- Total days worked :

**4. Hours and place of work**

- Workplace : GCP’s office at 3 Frewin Chamber, Frewin Court, Oxford, OX1 3HX

**5. Fee**

- Daily rate : £x (including VAT if applicable)
- Total fee due : £x (including VAT and all applicable taxes)
- Payment : partial payment will be made monthly upon submission of invoice

Partial payments are made monthly upon delivery of Outputs and their approval by GCP sub-contract supervisor. Invoices should be sent to [accounts@globalcanopy.org](mailto:accounts@globalcanopy.org) for payment.

Please note that any costs arising from exchange to another currency or any forex losses from exchange rate fluctuations would be incurred by the Consultant.

## ADMINISTRATIVE DETAILS

<b>Consulting agreement details</b>	
Title of Service:	
Sub-Agreement type:	Sub-contract
Sub-Contractor type:	Individual
Organisation type:	
<b>GCP administration details</b>	
GCP Programme:	
GCP Project:	
GCP Work Package:	
GCP GLA:	
GCP Grant:	
<b>GCP contract supervisor</b>	
Name:	
Position:	
Phone:	01865 742333
Email:	
<b>GCP contract manager details</b>	
Name:	Ellen Griffiths
Position:	Operations Manager
Address:	Global Canopy Programme, 3 Frewin Chambers, Frewin Court, Oxford, OX1 3HZ, UK
Phone:	+44 (0)1865 724333
Email:	<a href="mailto:e.griffiths@globalcanopy.org">e.griffiths@globalcanopy.org</a>
<b>Consultant details</b>	
Name:	
Address:	
Phone:	
Email address:	
<b>Consultant's bank details</b>	
Bank Name:	
Bank Address:	
Account Name :	
Sort Code:	
Account Number:	
SWIFT Code:	
Intl Bank Account No. (IBAN):	
<b>Contract approval process</b>	
Approved by project manager:	
Approved by Finance:	
Approved by Programmes Director:	
Procurement rules :	
Right to work in the UK documentation:	