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# NEC4 Professional Services Contract

## Lot 1

### National Property Flood Resilience Framework

<b>A contract between</b>	<b>The Environment Agency Horizon House Deanery Road Bristol BS1 5AH</b>
<b>And</b>	<b>RAB Consultants Ltd, Unit 13, St Stephens Court, Willington, Crook, Durham DL15 0BF</b>
<b>For</b>	<b>Kendal FRMS Phase 1 – PFR Survey</b>
<b>Tender Documents</b>	<b>Contract Forms:</b> <ul style="list-style-type: none"><li>- <b>This Contract Data &amp; Scope</b></li><li>- <b>The <i>Consultant's</i> Offer and <i>Client's</i> Acceptance</b></li><li>- <b>Pricing Schedule</b></li><li>- <b>Call off response template</b></li><li>- <b>Tender Evaluation</b></li><li>- <b>Supporting Info</b></li></ul>

# Schedule 2 – NEC4 Call off Contracts

## Contract Data

### PART ONE – DATA PROVIDED BY THE CLIENT

Completion of the data in full, according to the Options chosen, is essential to create a complete contract

#### 1. General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017

Main Option ☒ Option for resolving and avoiding disputes ☐

Secondary Options

The *service* is

The *Client* is

Name

Address for communications for

Address for electronic communications

The *Service Manager* is

Name

Address for communications for

Warrington  
WA4 1HT

Address for electronic  
communications

[REDACTED]

The Scope is in

Scope Lot 1

The *language of the contract* is

English

The *law of the contract* is  
the law of

England, subject to the jurisdiction of courts of England and Wales

The *period for reply* is

2 weeks

except that

- The *period for reply* for

[REDACTED]

is

[REDACTED]

- The *period for reply* for

[REDACTED]

is

[REDACTED]

The *period for retention* is

6

year(s) following Completion of earlier termination

The following matters will be included in the Early Warning Register

[REDACTED]

Early warning meetings are to be held at intervals no longer than

[REDACTED]

## 2. The *Consultant's* main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

The *key dates* and *conditions* to be met are

*condition* to be met

*key date*

(1)

(2)

(3)

If Option A is used

The *Consultant* prepares forecasts of the total expenses at intervals no longer than

4 weeks

If Option C or E is used

The *Consultant* prepares forecasts of the total Defined Cost plus Fee and expenses at intervals no longer than

n/a

## 3. Time

The *starting date* is

14/06/2021

The *Client* provides access to the following persons, places and things

*access*

*access date*

(1)

(2)

(3)

The *Consultant* submits revised programmes

4 weeks



at intervals non longer than

If the Client has decided the *completion date* for the whole of the *service*

The *completion date* for the whole of the *service* is

20/08/2021

If no programme is identified in part two of the Contract Data

The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is

2 weeks

#### 4. Quality Management

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is

4 weeks, if not previously provided by the *Consultant*

The period between Completion of the whole of the service and the *defects date* is

52 weeks

#### 5. Payment

The *currency of the contract* is the

pound sterling (£)

The *assessment interval* is

One month

If the *Client* states any expenses

The expenses stated by the Client are

item

amount

--	--

--	--

The *interest rate* is

2

% per annum (not less than 2) above the

base

rate of the

Bank of England

bank

If the period in which payments are made is not three weeks and Y(UK)2

The period within which payments are made is

n/a

is not used

If Option C or E is used  
and the *Client* states any  
locations

The locations for which the  
*Consultant* provides a charge  
for the cost of support people  
and office overhead are

n/a

If Option C is used

The Consultant's share percentages and the share ranges are

*share range*

*Consultant's share percentage*

■	■		■	■		■		■	
■	■		■	■	■	■	■	■	■
■	■		■	■	■	■	■	■	■

If Option C or E is used

The exchange rates are those published in

on

(date)

## 6. Compensation Events

If there are additional  
compensation events

These are additional compensation events

### Additional Compensation Event COVID-19

Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, until 30 June 2021.

## 8. Liabilities and Insurance

If there are additional  
*Client's* liabilities

These are additional *Client's* liabilities

(1)

(2)

(3)

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT COVER	OF	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE SERVICE OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> ) in respect of each claim, without limit to the number of claims		<input type="text"/>
Loss or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i> ) arising from or in connection with the <i>Consultant</i> Providing the Service.	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> in respect of each claim, without limit to the number of claims		<input type="text"/>
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> in respect of each claim, without limit to the number of claims		<input type="text"/>

If the Client is to provide any of the insurances stated in the Insurance Table

The Client provides these insurances from the Insurance Table

(1) Insurance against

Minimum amount of cover is

The deductibles are

(2) Insurance against

Minimum amount of cover is

The deductibles are

---

(3) Insurance against

Minimum amount of cover is

The deductibles are

The Client provides these additional insurances

If additional insurances are to be provided

(1) Insurance against

Minimum amount of cover is

The deductibles are

(2) Insurance against

Minimum amount of cover is

The deductibles are

(3) Insurance against

Minimum amount of cover is

The deductibles are

The Consultant's total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters is limited to

## Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If the tribunal is arbitration The *arbitration* procedure is

---

The place where arbitration  
is to be held is

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

The *Senior Representatives* of the *Client* are

Name (1)		
Address for communications		
Address for electronic communications		
Name (2)		
Address for communications		
Address for electronic communications		
The <i>Adjudicator</i> is		
Name		
Address for communications		
Address for electronic communications		
The <i>Adjudicator nominating body</i> is	Institution of Civil Engineers, London	

## X2: Changes in the law

If Option X2 is used The *law of the project* is

England

## X5: Sectional Completion

If Option X5 is used The completion date for each section of the service is

*section*

*description*

*completion date*

(1)

(2)

(3)

(4)

#### X6: Bonus for early Completion

If Option X6 is  
used without  
Option X5

The bonus for the whole of the *service* is

per day

If Option X6 is  
used with X5

The bonus for each section of the *service* is

*section*

*description*

*amount per day*

(1)

(2)

(3)

(4)

The bonus for the remainder of the *service* is

#### X7: Delay damages

If Option X7 is  
used without  
Option X5

Delay damages for Completion of the whole of the  
*service* are

per day

If Option X7 is  
used with X5

Delay damages for each section of the *service* are

*section*

*description*

*amount per day*

(1)	<input type="text"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>
(4)	<input type="text"/>	<input type="text"/>

The delay damages for the remainder of the *service* are

#### **X8: Undertakings to Others**

If Option X8 is used

The *undertakings to Others* are provided to

  


#### **X9: Transfer of Rights**

#### **X10: Information Modelling**

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is

#### **X11: Termination by the Client**

#### **Y(UK) 1: Project Bank Account**

Charges made and interest paid by the *project bank*      The *Consultant* is to pay any charges made and to be paid any interest paid by the *project bank* (Delete as applicable)

**Y(UK) 2: The Housing Grants, Construction and Regeneration Act 1996**

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due      The period for payment is  days after the date on which payment becomes due

**Y(UK)3: The Contracts (Rights of Third Parties) Act 1999**

If Option Y(UK)3 is used      term      beneficiary

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

If Y(UK)3 is used with (Y(UK)1 the following entry is added to the table for Y(UK)3      term      beneficiary

The provisions of Options Y(UK)1	Named Suppliers
----------------------------------	-----------------

**Z: Additional conditions of contract**

If Option Z is used      The *additional conditions of contract* are

**Z 1 Disputes:**

Option W2 subclause W2.1(4) is deleted. The Parties agree that adjudication under Clause option W2 should only commence if the Framework dispute resolution procedure has been exhausted and that the dispute resolution procedure in the Agreement, takes precedence over Option W2.

**Z 2 Prevention**

The text of Cl 18 Prevention is deleted.



Delete the text of Cl 60.1(12) and replaced by:

The *services* are affected by any of the following events

- War, civil war, rebellion, revolution, insurrection, military or usurped power;
- Strikes, riots and civil commotion not confined to the employees of the *Consultant* and sub consultants,
- Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel,
- Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device,
- Natural disaster,
- Fire and explosion,
- Impact by aircraft or other aerial device or thing dropped from them.

### **Z 3A Disallowed Costs**

Add clause 11.2 (24) Disallowed costs

Disallowed costs are:

- Not justified by the *Consultant's* accounts and records.
- Should not have been paid to a sub consultant in accordance with his Sub contract (including compensation events with the sub consultant, i.e. payment for work that should not have been undertaken)
- Incurred because the *Consultant* did not follow a stated procedure in the Scope.
- Mistakes or delays caused by the *Consultant's* failure to follow standards in Scopes/quality plans.
- Reorganisation of the *Consultant's* project team.
- Additional costs or delays incurred due to *Consultant's* failure to comply with published and known guidance or document formats.
- Exceeding the Scope without prior instruction that leads to abortive cost
- Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors.
- Production or preparation of self-promotional material.
- Correction of a Defect before or after Completion
- Staff not approved to work on a project
- Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value)
- Any hours exceeding 7.5 per day unless with prior agreement with the *Client*.

- Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the *Client*.
- Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the *Client*.
- Costs associated with the attendance at additional meetings after programmed completion, if delay is due to *Consultant* performance.
- Costs associated with rectifications that are due to *Consultant* error or omission.
- Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the *Consultant's* involvement

### **Z 3C Disallowed Costs**

In Clause 63.1, second bullet, replace full stop with comma and append:

- less Disallowed Costs

### **Z 4 Liabilities and Risks**

The *Consultant* shall ensure that there are sufficient warranties in place to support the *Client* or Homeowner in the event that a claim needs to be made against the *Supplier* of the products.

### **Z5 Reporting**

Z5.1 The *Consultant* shall ensure that the *Client* is updated with progress at all times. As a minimum the *Consultant* shall provide a weekly update to the *Client* and/or at fixed stages within the *Services* at a time and frequency as agreed between the *Consultant* and the *Client*.

Z5.2 The report shall be provided in a format agreed with the *Client*.

### **Z7 Assignment**

The text of Clause 25 is deleted and replaced with the following:

Z7.1 The *Consultant* does not assign his interest in or any rights arising under this contract without the consent of the *Client*.

Z7.2 The *Client* may assign his interest in this contract or any rights arising under it at any time without the consent of the *Consultant*. The *Client* notifies the *Consultant* of any such assignment.

### **Z8 Compliance with Legislation**

Z8.1 The *Consultant* Provides the *Services* :

- in a proper and workmanlike manner, and
- in compliance with
  - all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the *works* or performance of any obligations under this contract, and
  - any regulation, bye-law, permission or approval of any local authority or statutory undertaker having jurisdiction in relation to the *works* or with whose systems the *works* are, or are to be, connected.

## **Z9 Data Protection**

Z9.1 Schedule 11 – Data Protection Schedule of the Deed of Agreement shall be incorporated into this Agreement.

Z9.2 A request or instruction pursuant to Schedule 11 by the *Service Manager* shall be treated as being a request or instruction by the *Client*.

Z9.3 For the avoidance of doubt, reference to Supplier in Schedule 11 is reference to the *Consultant*.

## **Z10 Confidentiality**

Z10.1 **Personal Data** is information collected by the *Consultant* on behalf of the *Client* in relation to this contract, which relates to living individuals who can be identified

- from that information or
- from that information combined with other details in (or likely to come into) the possession of the *Client*.

Z10.2 Delete clauses 29.1 and 29.2 and replace with the following:

"29.1 The *Consultant* keeps (and ensures that its employees and Subcontractors keep) confidential and does not disclose to any person

- the terms of this contract and
- any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Works

except that the *Consultant* may disclose information

- to its legal or other professional advisers,
- to its employees and Subcontractors as needed to enable the *Consultant* to Provide the Works,
- where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that (unless the *Consultant* is prohibited by law from doing so) prior to disclosure the *Consultant* consults the *Service Manager* and takes full account of the *Client's* views about whether (and if so to what extent) the information should be disclosed,
- which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,

- which is in the public domain at the time of disclosure other than due to the fault of the *Consultant* or
- with the consent of the *Service Manager*.

29.2 The *Consultant* does not (and ensures that its employees and Subcontractors do not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works.

29.3 The *Consultant* may publicise the works only with the *Client's* agreement.

## **Z11 Disclosure of Information**

The text of Clause 26 retained and the following is added as Clause 26.3:

26.3 The *Client* and *Consultant* acknowledge that the *Client* may bound by the Freedom of Information Act 2000, the Environmental Information Regulations 2004, (and any other applicable legislation governing access to information, together “**Freedom of Information Legislation**”) and may be obliged to provide information, on request, to third parties that relates to this Agreement. In the event that the *Client* receives a request for information relating to this Agreement falling within the scope of Freedom of Information Legislation, the *Client* shall be entitled to disclose such information as reasonably necessary in order to ensure its compliance with the Freedom of Information Legislation provided that :-

- 26.3.1 In the case of the disclosure of Confidential Information, the *Client* shall first use its reasonable endeavours to consult with the *Consultant* who disclosed the Confidential Information as to whether such information should be disclosed under the Freedom of Information Legislation.
- 26.3.2 No Party shall be liable for any loss, damage, harm or other detriment suffered by the other Party arising from the disclosure of any information falling within the scope of the Freedom of Information Legislation.

## **Z12 Discrimination**

Z12.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Acts 1995 and 2005 or the Equality Act 2010 (the "Discrimination Acts").

Z12.2 Where possible in Providing the Works, the *Consultant* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of

opportunity between persons of different racial groups and between disabled people and other people.

Z12.3 Where an employee or Subcontractor employed by the *Consultant* is required to carry out any activity alongside the *Client's* employees in any premises, the *Consultant* ensures that each such employee or Subcontractor complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z12.4 The *Consultant* notifies the *Service Manager* in writing as soon as it becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and

- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
- attends (and permits a representative from the *Client* to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- co-operates fully and promptly with the investigatory body, court or tribunal.

Z12.5 The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.

Z12.6 The *Consultant* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

### **Z13 Quality Management and Audit**

Z13.1 The *Consultant* operates a quality management system for Providing the Services which

- complies with the relevant parts of [ISO 9001:2015 **OR** ISO 9001:2008 [and ISO 9001:2008/Cor 1:2009]],
- incorporates an environmental management system consistent with [ISO 14001:2015 **OR** ISO 14001:2004],
- includes processes for delivering continual improvement following the guidance in ISO 9004:2009,
- has third party certification from a UKAS approved accreditation body (or its equivalent) or is operating in preparation for accreditation within 12 months of the Contract Date

and complies with good industry practice.

Z13.2 The *Consultant* provides to the *Service Manager*, within four weeks of the Contract Date, a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Scope and are sufficiently detailed to

demonstrate how the *Consultant* will Provide the Works in accordance with this contract.

Z13.3 The *Consultant* keeps a controlled copy of the quality plan available for inspection by the *Service Manager* at all times.

Z13.4 The *Consultant* complies with an instruction from the *Service Manager* to

- change the quality plan so that it complies with the requirements of this contract or
- correct a failure of the *Consultant* to comply with the quality plan.

Z13.5 The *Service Manager* and other persons authorised by him may carry out periodic audits of the *Consultant's* quality management system as specified in the Scope. The *Consultant* allows access to the Working Areas and other premises used by the *Consultant* to Provide the Works and provides all facilities and assistance necessary to enable such audits to be carried out.

#### **Z14 Liabilities and Insurance**

Z14.1 Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.



# Contract Data

## The *Consultant's* Offer and *Client's* Acceptance

The *Consultant* offers to Provide the Services in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the Prices is

Enter the total of the Prices from the Price List.

Signed on behalf of the *Consultant*

Name

Position

Signature

Date 02/06/2021

The *Client* accepts the *Consultant's* Offer to Provide the Services

Signed on behalf of the *Client*

Name

Position

Signature

Date 05/08/21





