



**Ministry
of Defence**

[REDACTED]
Commercial Manager

Dstl Porton Down
Building 106 Rm 34
Wiltshire SP4 0JQ

Tel: [REDACTED]
Email: kwinmill@dstl.gov.uk

[REDACTED]
Ridge and Partners LLP
The Cowyards
Oxford Road
Woodstock
OX20 1QR
United Kingdom

Your Reference:
IPMO1354

Our Reference:
CPS1-20884-2022

Date: 21st March 2023

Dear Mr [REDACTED],

Offer of Contract: IPMO1354 for the Provision of a Feasibility Study and Concept Design (RIBA 1- 2).

1. As you are aware, the Authority intends to enter into the above contract with you.
2. Please sign and return the enclosed final version of the Contract within 10 working days of the date of this letter to acknowledge your acceptance of the Terms and Conditions.
3. Please note that no Contract will come into force until both parties have signed it. The Authority will countersign the Contract and return a copy of the same to you.
4. Payment will be made in accordance with the attached Terms and Conditions. If your company has not already provided its banking details to the Authority, please complete and return by email the Supplier Maintenance Form attached.
5. The Authority may publish notification of the Contract and shall publish Contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition in the supply chain.
6. If you wish to make a similar announcement you must seek approval from the named Commercial Officer.

7. Under no circumstances should you confirm to any third party that you are entering into a legally binding contract for this project prior to both parties signing the Terms and Conditions, or ahead of the Authority's announcement of the Contract Award.

Yours sincerely,

A large black rectangular redaction box covering the signature of the sender.A small black rectangular redaction box covering the name of the sender.

Commercial Manager
Enabling Divisions Commercial Group

Dated 21/03/2023

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

**Secretary of State for Defence, through Defence Science and Technology
Laboratory (Dstl)**

And

Ridge & Partners LLP

For the provision of

RIBA 1-2 Feasibility Study in support of Facility IMPO 1354

THIS AGREEMENT is made the 21st day of March 2023

PARTIES:

1. **Secretary of State for Defence through Dstl** [whose offices are located at DSTL Porton Down, Salisbury, SP4 0JQ] (the "**Employer**"); and
2. **Ridge and Partners LLP** which is a company incorporated in and in accordance with the laws of England and Wales (Company No **OC309402**) whose registered office address is at [The Cowyards Oxford Road Woodstock OX20 1QR] (the "**Consultant**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Employer**"), established a framework for project management and full design team services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number **RM6165**) which is dated 1st Oct 2021 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) On the 13th December 2022 the *Employer*, acting as part of the Crown, [and in the Framework Agreement is identified as a "Contracting Employer"] invited the *Consultant* along with other framework suppliers to tender for the *Employer's* project management and full design team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).]¹
- (D) On the 3rd February 2023 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to provide the Services in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The Consultant will provide the Services in accordance with the conditions of contract identified in the Contract Data and the Contract Schedules.
3. This Call Off Contract is the entire agreement between the parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
4. Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.

5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.

6. The Contract Schedules are:

Contract Data Part 1 – inc. Employers additional conditions of contract (Z clauses)

Contract Data Part 2 – provided by Consultant

Employer's Scope of Services (inc. documents and specifications)

Activity Schedule – provided by Consultant

Programme – provided by Consultant

CDE (Common Data Environment) access details

Risk register – agreed between Consultant and Employer

Executed as a Deed

IN WITNESS, whereof the Corporate Seal of the Secretary of State for Defence has been hereunto affixed the day and year first before written.

The CORPORATE SEAL of the **SECRETARY OF STATE FOR DEFENCE** hereto affixed is hereby authenticated by:

)
) Seal
) 

Signature

Full name (BLOCK CAPITALS)

SENIOR COMMERCIAL MANAGER
Position/title (ON BEHALF OF
SOFs DEFENCE)

Witnessed by:



Signature



Full name (BLOCK CAPITALS)

SENIOR COMMERCIAL MANAGER
Position/title

RIDGE AND PARTNERS LLP

Executed as a deed for and on behalf of)

by)

[Redacted]

~~Director~~ MEMBER

[Redacted]

Full name (BLOCK CAPITALS)

PARTNER

[Redacted] on/title

~~Director/Secretary~~ MEMBER

[Redacted]

Full name (BLOCK CAPITALS)

PARTNER

Position/title

Professional Services Contract

Contract Data

Part one – Data provided by the Employer

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, X8, X9, X10, X11, X18, Y(UK)2, and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is

Name: Dstl Porton Down

Address: Salisbury, Wiltshire, SP4 0JQ
 - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the Institution of Civil Engineers or nominated by the *Adjudicator nominating body* in the absence of agreement.
 - The *services* are a Feasibility Study in accordance with RIBA 1-2
 - The *Scope* is in Volume 3 of the ITT [will be identified in a Schedule in the Contract Document]
 - The *language of this contract* is English.
 - The *law of the contract* is the law of England and Wales
 - The *period for reply* is two weeks
 - The *period for retention* is 12 years following Completion or earlier termination.
 - The *Adjudicator nominating body* is the *Royal Institute of Chartered Surveyors*
 - The *tribunal* is arbitration
 - The arbitration procedure is the London Court of International Arbitration Rules
 - The number of arbitrators shall be one
 - The place where arbitration is to be held is London
 - The language to be used in the arbitration proceedings shall

be English

- If the parties cannot agree the identity of the arbitrator then the nominating body shall be: Royal Institution of Chartered Surveyors
- The following matters will be included in the Risk Register:

<i>Risk Title</i>	<i>Risk Description</i>
Access to site	During the design process, access to the site may not be granted or revoked at any time
Information	Information held by Dstl in relation to this project may not be available or accurate (for example charting underground services)
Change in COVID legislation	Although COVID restrictions are currently lifted, a surge in cases may require further restrictions to be imposed
Access to SME's	Availability of Dstl Subject Matter Experts

2 The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things
 - access to access date
 - Dstl Porton Down Site 21st March 2023

3 Time

- The *starting date* is planned for 21st March 2023
- The *completion date* for the whole of the *services* is 16th June 2023
- The *Consultant* is to submit a first programme for acceptance within 1 week of the Contract Date.
- The *Consultant* submits revised programmes at intervals no longer than one month.

4 Quality

- The quality policy statement and quality plan are provided within two weeks of the Contract Date.
- The *defects date* is 52 weeks after Completion of the whole of the *services*.

5 Payment

- The *assessment interval* is as per Dstl Payment Application
- The period for payment is 30 days
- The *currency of this contract* is the pound sterling (£).
- The *interest rate* is, 3% per annum above the Bank of England

base rate in force from time to time.

8 Indemnity, insurance and liability

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	Cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the services	£1,000,000 in respect of each claim, without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos or fire safety where a lower level may apply in the aggregate	from the <i>starting date</i> until 12 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	As required under Framework Schedule 14 (Annex 1 - Part A)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
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 this contract	As required under Framework Schedule 14 (Annex 1 - Part C)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

- The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £2,000,000.

Option X2 • *The law of the project* is the law of England and Wales.

Option X8 • The Consultant is required to provide the collateral warranties for all 3rd parties employed by the Consultant to provide the services.

Option X9 • The *Employer* owns the *Consultant's* rights over material prepared for this contract by the *Consultant* except as stated otherwise in the Scope. The *Consultant* obtains other rights for the *Employer* as stated in the Scope and obtains from a Subconsultant equivalent rights for the *Employer* over the material prepared by the Subconsultant. The *Consultant* provides to the *Employer* the documents which transfer these rights to the *Employer*.

Option X10 • The *Employer's Agent* is

- [REDACTED]
- Address – Dstl Porton Down, Wiltshire

Option X11 The Employer of the *Employer's Agent* is to carry out all duties of the Employer under the Contract with the exception of termination.

- The *Employer* may terminate the *Consultant's* obligation to Provide the Services for a reason not stated in this contract by notifying the *Consultant*.
- If the *Employer* terminates for a reason not stated in this contract, an additional amount is due on termination which is 5% of the difference between
 - the forecast of the final total of the Prices in the absence of termination and the total of the other amounts and costs included in the amount due on termination.

Option X18 • The Consultant's liability to the Employer for indirect or consequential loss for all matters is limited to:

- *Total of the Tendered Prices*
- The Consultant's liability to the Employer for Defects that are not found until after the defects date is:
 - £2 million
- The end of liability date is 12 years after Completion of the whole of the services

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

Definitions Y(UK)2

- Y2.1 (1) The Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
- (2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.

Dates for payment Y2.2 The date on which a payment becomes due is seven days after

the date of receipt of the *Consultant's* invoice.

The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.

A *Consultant's* invoice which is submitted on or after its assessment date is the notice of payment specifying the sum that the *Consultant* considers to be due at the payment due date (the notified sum). The *Consultant's* invoice states the basis on which the amount is calculated and includes details of the calculation in accordance with the contract.

**Notice of intention
to pay less** Y2.3

If the *Employer* intends to pay less than the notified sum, he notifies the *Consultant* of the amount which the *Employer* considers to be due not later than seven days (the prescribed period) before the final date for payment. The *Employer's* notification states the basis on which the amount is calculated and includes details of the calculation. A Party pays the notified sum unless he has notified his intention to pay less than the notified sum.

**Suspension of
performance** Y2.4

If the *Consultant* exercises his right under the Act to suspend performance, it is a compensation event.

Option Z • The *additional conditions of contract* are:

11.2(14) Insert a new definition:

"Cladding Claims shall mean any claim in respect of:

The combustibility of any Aluminium Composite Panels (and associated core/filler and insulation) which failed the BRE testing programme undertaken on behalf of The Department for Communities and Local Government in July & August 2017 or fails any BS8414 test set out in the current Building Regulations guidance"

11.2(26) Not used

11.2 (27) Not used

11.2 (28) Insert new definition:

"Information" means information of any nature, including information in the form of data, databases, software (excluding third party software), designs, models, interventions, drawings, details, plans, reports, records, calculations, schedules, specifications, bills of quantities, levels and setting out details and other documents (whether or not in hard or electronic format).

11.2(29) Insert new definition:

"Documents" means all Information of any nature whatsoever provided by or used by or on behalf of the *Consultant* in the course of performing its obligations under this contract".

11.2 (30) Insert new definition:

"Foreground Information" means all Information in Documents which is generated in the performance of the services under this contract.

11.2 (31) Insert new definition:

"Background Information" means all Information in Documents which is not Foreground Information.

11.2 (32) Insert a new defined term as follows:

"Transparency Information" shall mean the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Employer to the Consultant under the Contract

11.2(33) Insert a new definition:

"Employer's IT Systems" means the computer hardware and software and networks used by the Employer in the course of its business

11.2(34) Insert a new definition:

"Employer's Security Procedures" shall mean any security procedure specific to any Employer premises or data.

11.2(35) Insert a new definition:

"Change of Control" means where that person who "controls" the Consultant ceases to do so or where another person(s) acquires "control" of the Consultant, where "control" means the power to ensure that the affairs of the Consultant are conducted in accordance with the wishes of that person by virtue of the holding of shares, or the possession of voting powers in, or in relation to, the Consultant, or by virtue of any power or Employer conferred by the constitutional corporate, or any other documents, regulating the Consultant.

11.2(36) Insert a new definition:

"Party" means either the Employer or the Consultant.

11.2(37) Insert a new definition:

"Prohibited Materials" means materials not in conformity with the law of the contract, European and/or British standards, and codes of practice or which at the date of use are deleterious to the health and safety and/or to the durability of buildings and/or in the particular circumstances in which those materials are to be used.

11.2(38) Insert a new definition:

"Working Days" means Mondays to Fridays 0830 hours to 1700 hours excluding public bank holidays.

11.2(39) Insert the following further definitions:

11.2(40) "Data Protection Legislation" means:

- (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then
- (ii) any successor legislation to the GDPR or the Data Protection Act 1998;"

11.2(41) "Data Subject" has the meaning given to it in the Data Protection Legislation."; and

11.2(42)"Personal Data" has the meaning given to it in the Data Protection Legislation,"

12.5 Insert a new clause 12.5:

"A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or

instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it.”

13.9 Insert a new clause 13.9:

“The following communications shall be deemed to have no effect if made by electronic mail transmission:

- any notification of a wish to terminate this contract or the employment of the Consultant under it;
- any notification by the Consultant of his intention to suspend performance of his obligations under this contract;
- any invoking by either party of the procedures applicable under this contract to the resolution of disputes or differences;
- any agreement between the parties amending the provisions of this contract”.

2 The Parties’ main responsibilities

21. Amend as follows:

21.2 Delete and replace with:

“The *Consultant* in exercising its responsibilities for the design of the *works*, exercises (and warrants that it has exercised) all the reasonable skill, care and diligence to be expected of a competent and appropriately qualified engineer, or architect or, if relevant, other appropriately qualified designer experienced in exercising such responsibilities in relation to work of the same type, complexity, value and timescale as the *works*. Where the *Consultant* is to fulfil the role of Principal Designer those undertaking the role will possess the skills, knowledge, experience and training to deliver the appointment.” In performing non-design services the Consultant shall exercise the reasonable skill, care and diligence to be expected of a competent consultant of the relevant discipline undertaking the relevant role who is experienced in providing similar services in connection with projects of a similar size, scope and complexity to the services”.

21.3 Delete this clause

21.4 Insert a new clause 21.4:

“The *Consultant* performs the Services in accordance with relevant laws and regulations, statutory and other requirements (“Laws”) and (to the extent that the *Consultant* can control the same) such that the product of the Services complies with all relevant Laws.”

21.5 Insert a new clause 21.5

“The *Consultant* warrants to the *Employer* that the *Consultant* has complied and will comply with the requirements of the Construction (Design and Management) Regulations 2015 (the ‘CDM Regulations’) in so far as they relate to the performance of the *Consultant*’s duties under this contract.”

22.4 Add a new clause 22.4:

“The Employer may refuse admission to their premises or require the removal of any person engaged in the performance of the services. The decision of the Employer on whether any person is to be refused admission or removed shall be final and conclusive and the Employer shall not be obliged to give reason for its decision. If the Employer’s decision is unlawful or manifestly unreasonable having regard to the

competence, conduct and performance of the person concerned the Employer's actions shall be treated as a Compensation Event."

23.4 Add a new sub clause:

"The Consultant shall carry out the services and, to the extent reasonably practical considering their nature, the services so as to cause minimum disruption to the Employer's activities on their premises and elsewhere. If the Consultant anticipates any such disruption, the Consultant will issue an early warning notice to enable the Employer to plan in advance, if necessary, for such disruption."

23.5 Add a new sub clause:

"The Consultant shall co-operate with the requirements of all Employer boards of inquiry and shall use all reasonable endeavours to procure the attendance of such of its employees, agents or Subconsultants who may be invited by the Employer to attend as witnesses at boards of inquiry or similar proceedings. This obligation shall survive the expiry or early termination of the services. The Employer shall reimburse the Consultant their reasonable external costs of such attendance."

23.6 Add a new sub clause:

"The Consultant acknowledges that it will not have exclusive rights to occupy any accommodation provide by the Employer or the Employer and that any such accommodation will only be used for the purpose of the services."

23.7 Add a new sub clause:

"All fossils, antiquities, and other objects having antiquarian, artistic, historic, archaeological or monetary value, which may be found on, or at the Employer premises shall remain the property of the Employer."

24.5 Insert a new clause 24.5:

"The *Consultant*, in subletting of any part of the *services*,

- procures that the relevant sub-contract contains such obligations as necessary to ensure that it is in all respects compatible with the terms of this contract and, without limitation, steps down the obligation to use the degree of skill and care specified in clause 21 and that requires collateral warranties in favour of the *Employer* to be provided Appendix 4, such agreement not to be unreasonably withheld or delayed and compliance with any public procurement requirements or best practice will allow the *Employer* to withhold agreement.
- procures that all relevant sub-contracts shall be executed and delivered as a deed;
- provides to the *Employer* a certified copy of any sub-contract (save for particulars of the cost of such sub-contract *services* unless other provisions of this contract oblige the *Consultant* to disclose them)".

24.6 Add a new sub clause 24.6:

"Each Subconsultant contract shall contain equivalent contractual obligations as are imposed on the Consultant pursuant relating to fraud, Employer's Security Procedures, use of Employer's IT Systems, intellectual property rights confidentiality, publicity and law of the contract."

26 Add a new clause 26 as follows:

'The *Consultant* and/or their Subconsultants shall enter a novation with a works contractor appointed under a design and build contract by the *Employer* within 14 days of being asked to do so by the *Employer* in writing and shall, within 14 days of being provided with an engrossment, execute and return to the *Employer* the *collateral warranty agreement* in favour of the Employer, but with such amendments as the *Consultant*, Subconsultant, *Employer* and works contractor may agree, such agreement not to be unreasonably withheld or delayed.'

5 Payment

50.3 Amend as follows:-

Add at the end of the 1st bullet point "and"

Delete 2nd bullet point "the amount of *expenses* properly spent by the *Consultant* in Providing the Services and"

51.6 Insert a new clause as follows:

"In addition to any other legal rights and remedies of the *Employer*, whenever any sum of money is recoverable from or payable by the *Consultant* under this contract that sum may be deducted from any sum then due, or which at any time thereafter becomes due to the *Consultant* under this contract provided that the *Employer* notifies the *Consultant* in writing not later than three days before the final date for payment of the amount to be paid and the basis on which it is calculated".

7 Rights to material

70 Delete and replace with:

70.1 All Foreground Information and intellectual property rights therein shall vest in and be the property of the *Employer* on their creation.

70.2 To the extent that any intellectual property rights in any of the Foreground Information does not automatically vest in the *Employer*, the *Consultant* shall with full title guarantee, assign or procure the assignment to the *Employer* of all intellectual property rights in such Foreground Information free from lien, charge or encumbrance.

70.3 The *Employer* hereby grants to the *Consultant* for the contract period and free of charge a non-exclusive royalty free licence, together with a sub-licence to Subconsultants, to use such of the Foreground Information as the *Consultant* reasonably requires for the purposes of performing the *services*.

70.4 The *Consultant* hereby grants to the *Employer*, subject to the rights of third parties, a perpetual, irrevocable and royalty free licence to use the Background Information and any intellectual property rights therein as required to use the Foreground Information and/or the Documents for any purpose.

70.5 The *Consultant* shall highlight to the Employer any third party intellectual property rights which appear to be relevant to the Employers use of the Foreground Information and/or the Documents, and following consultation with the Employer and insofar as reasonably practicable the Consultant shall secure a licence on behalf of the Employer to use the third party intellectual property rights.

70.6 The *Consultant* shall, following consultation with the *Employer* and insofar as reasonably practicable, secure a licence on behalf of the *Employer* to use any third party software (except for commonly used and commercially available software) used by the *Consultant* and its Subconsultants in performing the *services*,

70.7 All licences shall be purchased in consultation with the *Employer* so that licence terms appropriate to the intended use of such intellectual property rights or software are obtained.

70.8 The *Consultant* shall indemnify the *Employer* and keep the *Employer* fully indemnified against all losses which the *Employer* may sustain or incur that arise out of allegations that the *Employer* has infringed the intellectual property rights of any third party in using the Documents in accordance with this Clause.

70.9 The *Consultant* shall mark any copyright works comprising Foreground Information with the legend © Crown Copyright (insert year of generation of the works)

72 Insert new clause 72 "Disclosure":

72.1 Except with the written consent of the *Employer*, the *Consultant* shall not disclose the *services* to any person other than a person employed by the *Consultant* or a Subconsultant. Disclosure shall be confined to those members of staff whose access to the information is essential for performance of the *services*.

72.2 Subject to clause 72.5, 72.6 and 72.7, each Party:

- a) shall treat in confidence all Information it shall receive from the other;
- b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that the *Consultant* may disclose Information in confidence, without prior consent, to such persons as and to such extent as may be necessary for the performance of the *services*;
- c) shall not use any of that information otherwise than for the purpose of performing the *services*; and
- d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this agreement.

72.3 The *Consultant* shall take all reasonable precautions necessary to ensure that all the Information disclosed to the *Consultant* by or on behalf of the *Employer* under or in connection with this agreement:

- a) is disclosed to its employees and Subconsultants only to the extent necessary for the performance of the *services*;
- b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for performing work or having work performed for the *Employer* under this agreement or any subconsultancy agreement.
- c) is returned to the *Employer* by the *Consultant* on Completion of the whole of the *Services*

72.4 The *Consultant* shall ensure that its employees, and its Subconsultants and their employees, are aware of its arrangements for discharging the obligations under clause 72.1, 72.2 and 72.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

72.5 Clause 72.2 and 72.3 shall not apply to the Information to the extent that either Party:

- a) exercises rights of use or disclosure granted otherwise than in consequence of, or, this agreement;
- b) has the right to use or disclose the Information in accordance with other conditions of this agreement
- c) can show:
 - i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this agreement or any other agreement between the Parties;
 - ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the *services*;
 - iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or
 - iv) from its records that the same information was derived independently of that received under or in connection with the *services*; provided the relationship to any other Information is not revealed.

72.6 Neither Party shall be in breach of this Clause 72 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosures shall in no way diminish the obligations of the Parties under this Clause.

72.7 The *Employer* shall not be in breach of this Clause 72 where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance with the Act or the Regulations, the *Employer* shall consult the *Consultant* where the *Employer* is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the *Consultant* of any decision to disclose the Information. The *Consultant* acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the *Employer* shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this condition shall affect the *Consultant's* rights at law.

72.8 Nothing in this Clause shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

8 Indemnity insurance and liability

81.1 Amend the insurance table:

In respect of the first entry in the left hand column that starting "Liability of the *Consultant*..." amend so that it reads:

"Liability of the *Consultant* for claims made against him arising out of his failure to use the skill and care required by this contract."

81.3 Insert a new clause 81.3

81.3.1 "The *Consultant* shall maintain professional indemnity insurance covering (inter alia) its potential liability under this contract upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than **£1,000,000.00 (One million pounds)** (or such higher amount as is stated in the Contract Data) in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, save that there may be lower and/or annual aggregate limits of cover in respect of asbestos, fire safety, pollution and contamination related claims and similar where such limited cover is the norm for a period beginning now and ending 12 years after the date of Completion or termination of the Contract if earlier, provided always that such insurance is generally available the norm for a period beginning now and ending 12 years after the date of Completion or termination of the Contract if earlier, provided always that such insurance is generally available in the market at commercially affordable rates and on terms such that prudent building consultants who undertake similar work to the *Consultant* generally carry such insurance ('**Reasonable Rates and Terms**').

81.3.2 Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* shall be deemed to be within Reasonable Rates and Terms.

81.3.3 The *Consultant* shall immediately inform the *Employer* if such insurance ceases to be available upon Reasonable Rates and Terms in order that the *Consultant* and the *Employer* can discuss means of best protecting their respective positions in respect of this contract and the service in the absence of such insurance.

81.3.4 The *Consultant* shall co-operate fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above Reasonable Rates and Terms.

81.3.5 When reasonably requested to do so by the *Employer* the *Consultant* shall produce promptly for inspection and or provide a copy of satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.

81.3.6 The *Consultant* shall notify the *Employer* in writing from time to time of any change in its professional indemnity insurance arrangements which take it outside the requirements of this contract and within seven days of the *Employer's* request at any time the *Consultant* will produce for inspection documentary evidence as to compliance with this Clause.

81.3.7 If the *Consultant* fails to comply with its obligations under this Clause the *Employer* may take out insurance to cover some or all of the loss or damage which could result from a breach of the *Consultant's* obligations under this contract and may recover the costs and expenses of taking out such insurance from the *Consultant* as a debt.

81.3.8 If the *Employer* is entitled to terminate under clause 90.1 of the Delivery Agreement the *Employer* may deduct from any sums due to the *Consultant* under this or any other contract between them a sum equal to the cost of up to twelve years latent defects insurance in respect of the *service* (and such deduction may be made whether the *Employer* actually buys such insurance or provides for or takes on the risk in some other way).'

90 Termination

90.3 Add new bullet:
"any Change of Control"

90.5 Add new clause as follows:

"The Parties shall continue to perform their obligations under this contract, notwithstanding the serving of a termination notice, until the termination of the contract becomes effective in accordance with the provisions of the relevant Clause."

90.6 Add new clause as follows:

Save as otherwise expressly provided in this contract, termination of this contract shall be without prejudice to any accrued rights and obligations under this contract at the date of termination.

90.7 Add new clause as follows:

Termination of this contract shall not affect the continuing rights and obligations of the Employer and the Consultant with respect to warranties and disclaimers, Compensation Events, Payment, Indemnification and Insurance, Use of Information Technology and Intellectual Property Rights, Dispute Resolution, Confidentiality and Publicity , Transfer, Mitigation, Governing Law, No Consequential Loss, Limit of Liability, Sole Remedy and under any other provision of this contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

Option Z Additional conditions of contract

Z1.1 The additional conditions of contract stated in the Contract Data are part of this contract.

Z1A The Consultant warrants that they have not done and will not do anything that would result in a breach of the Employer's Security Procedures or the Official Secrets Act.

Z2 The Consultant warrants that it has not done and will not do any of the following (hereafter referred to as "Prohibited Acts"):

- a) offered, given or agreed to give to any Crown servant any gift or consideration of any kind as an inducement or reward;
 - i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
 - ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown;
- b) entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Employer, and in

respect of any breach of any of the above warranties and undertakings the Consultant acknowledges that the Employer will be entitled to claim damages against the Consultant.

Z3 In performing the services the Consultant shall not use Prohibited Materials or produce designs that may use Prohibited Materials.

Z4 The Consultant shall inform the Employer, as soon as practicable, in writing of any Change of Control.

Z5 In accordance with Clause 10.1 and without affecting either Party's statutory rights, in the event of a dispute the Parties will meet to agree if a formal dispute resolution is required and which procedure will be used.

Z6 Where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Consultant, its agents or Subconsultants, or key people, and where there is a finding against the relevant party in such investigation or proceedings, the Consultant shall indemnify the Employer and the Employer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Employer may have been ordered or required to pay to a third party.

Z7 The Consultant shall ensure at no extra cost to the Employer that for the purposes of carrying out any audit, the Employer's internal and nominated external auditors are given access to inspect and examine such documents as may reasonably be required which are owned, held or otherwise within the control of the Consultant. The Consultant shall also promptly provide such oral and written explanations as it is considered necessary in order to assist the auditors referred to above to carry out their functions.

Z8 The Consultant shall for the purpose of carrying out any audit provide, at no additional cost to the Employer, such facilities for representatives of the Employer as the Employer may reasonably require.

Z9 The Consultant shall, hold harmless and indemnify the Employer on demand from and against all Losses incurred by or imposed upon the Employer as a result of:

- 1) death or personal injury;
- 2) loss, damage to or loss of use of property or assets (including property or assets belonging to the Employer or for which it is responsible);
- 3) breach of statutory duty;
- 4) any third party claims arising out of, or in consequence of, the performance or non-performance by the Consultant, arising from any breach of contract, tort (including negligence) or breach of statutory duty by the Consultant.

Z10 Fraud

At all stages of its involvement under and in connection with the services, the Consultant shall take all practicable steps to prevent fraud and/or the risk of fraud arising. If in the reasonable opinion of the Employer the Consultant commits any fraud (as defined by the Law of the Contract) in relation to the services or any contract with the Employer or any other public body then the Employer may terminate the services for the Consultant's default by giving 10 Working Days' notice to the Consultant. The Consultant shall, keep and maintain all relevant records, invoices, approvals, notes; minutes of meetings and all such other original

documents as may be required to verify the services carried out by the Consultant and its Subconsultants so that they may be provided upon request by the Employer. The Consultant shall immediately report to the Employer any circumstances giving rise to fraud within its own organisation, that of its Subconsultants, the Employer or otherwise in relation to the services and shall provide all such relevant information which may assist the Employer in dealing with such report efficiently and effectively. The Employer shall be entitled to set-off, deduct, abate or recover as a debt against the Consultant all losses howsoever arising in connection with or sustained as a consequence of fraud including all associated investigation costs.

Z11 Continued effect

Notwithstanding any breach of this contract by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this contract as being in full force and effect and to enforce its rights under this contract. The failure of either Party to exercise any right under this contract, including any right to terminate this contract and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

Z12 Use of Information Technology (IT)

The Consultant and its Subconsultants may use any of the Employer's IT Systems including connections to the internet or intranet services, with express permission from the Employer, and appropriate security clearance and only for the performance of the services. Use of a third party's computer equipment and software, including any connections to the internet or intranet services, on the Employer's premises, is subject to the approval of the Employer and said third party. The Consultant shall procure that its employees, and its Subconsultants and their employees, comply with the Employer's policies, procedures and instructions in respect of computer hardware and software, including any connections to the internet or intranet services. The Employer may on reasonable notice from time to time make reasonable or necessary amendments to such policies, procedures and instructions. The Consultant shall take all reasonably practicable precautions to ensure that its employees, and its Subconsultants and their employees, do not use computer hardware or software, including any connections to the internet or intranet services, unlawfully or for unlawful purposes. The Consultant shall not cause or allow any of its employees, or its Subconsultants and their employees, to bring the reputation of the Employer or Employer into disrepute by any action, activity or behaviour in connection with computer hardware or software. Failure by the Consultant to comply with this Clause shall constitute a material breach of this agreement which may lead to termination.

Z13 Transfer

Neither Party to this contract shall give, bargain, sell, assign, or otherwise dispose of this contract or any part thereof, or the benefit or advantage of this contract or any part thereof, without the previous consent in writing of the other Party.

Z14 Mitigation

Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss which the relevant Party is entitled to recover from the other Party pursuant to this contract.

Z15 Disputes

In accordance with Clause 10.1 and without affecting either Party's statutory rights, in the event of a dispute the Parties will meet to agree if a formal dispute resolution is required and which procedure will be used.

Z16 The Public Contracts Regulations 2015

The Employer may terminate the Consultant's obligation to provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply. If the Employer terminates under the provisions of paragraph 73(1) (b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Consultant at the Contract Date, the procedures and amounts due on termination are the same as if the Consultant has substantially failed to comply with his obligations. If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Employer no longer requires the services. The Consultant does not appoint a Subconsultant or supplier if there are compulsory grounds for excluding the Subconsultant or supplier under regulation 57 of the Public Contracts Regulations 2015.

The Consultant includes in any subcontract awarded by him provisions requiring that

- payment due to the Subconsultant or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Consultant to make earlier payment to the Subconsultant or supplier,
- invoices for payment submitted by the Subconsultant or supplier are considered and verified by the Consultant in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.

Z17 Data Protection

17.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. These clauses are in addition to, and does not relieve, remove or replace, each Party's obligations under the Data Protection Legislation. It is agreed that:

17.2 Without prejudice to the generality of clause 19.1, both Parties will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to each other for the duration and purposes of this agreement.

17.3 Without prejudice to the generality of clause 19.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:

17.3.1 process that Personal Data only on the written instructions of the Employer and only as required for the purpose of the performance of this agreement;

17.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely

manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

17.3.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

17.3.4 not transfer any Personal Data outside of the European Economic Area;

17.3.5 assist the Employer, at the Contractor's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

17.3.6 notify the Employer without undue delay on becoming aware of a Personal Data breach;

17.3.7 at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the agreement; and

17.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Employer or the Employer's designated auditor.

17.4 The Employer does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement."

Z18 Electronic Communications

'The following communications shall be deemed to have no effect if made by electronic mail transmission:

- any notification of a wish to terminate this contract or the employment of the *Contractor* under it;
- any notification by the *Contractor* of his intention to suspend performance of his obligations under this contract;
- any invoking by either party of the procedures applicable under this contract to the resolution of disputes or differences;
- any agreement between the parties amending the provisions of this contract'.

Z19 – Cyber

The Consultant shall comply with all of the requirements in Appendix 17 (see attached) in relation to Cyber Security.

Part two – Data provided by the Consultant

**1 Statements given
in all contracts**

- The *Consultant* is

Name Ridge and Partners LLP

Address Blenheim Park, Woodstock, Oxon, OX201QR

- The *key people* are

(1) Name – [REDACTED]

Job – Partner

Responsibilities – Structural & Civil Engineering

Experience - 20 years+

- The *key people* are

(2) Name – [REDACTED]

Job – Partner

Responsibilities – Architecture

Experience - 20 years+

- The *staff rates* are:

Name/job title	Rate (£/day)
Partner	[REDACTED]
Associate	[REDACTED]
Senior	[REDACTED]
Professional	[REDACTED]
Assistant	[REDACTED]

- The following matters will be included in the Risk Register:

Provision of accurate buried services and site survey information prior to investigation works

- The programme identified in the Contract Data is as provided in the tender response document

- The *activity schedule* is as provided in the tender response document
- The tendered total of the Prices is £ [REDACTED]