



Professional Service Contract

Contract Data Forms

June 2017

(with amendments January 2019)

TRUST DEED

This agreement is made between the *Client*, the *Consultant* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between the Environment Agency [REDACTED].

Background

The *Client* and the *Consultant* have entered into a contract for the *service*.

The Named Suppliers have entered into contracts with the *Consultant* or a Subcontractor in connection with the *service*.

The *Consultant* has established a Project Bank Account to make provision for payment to the *Consultant* and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the *Consultant* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *Consultant* for distribution to the *Consultant* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the *Client* and *Consultant*. The agreement of the *Client* and *Consultant* is treated as agreement by the Named Suppliers who are parties to this deed,
- this deed is subject to the law of the contract for the service,
- the benefits under this deed may not be assigned.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 (with amendments January 2019)

Main Option ☒ Option for resolving and avoiding disputes ☒

Secondary Options

The *service* is

The *Client* is

Name

Address for communications

Address for electronic communications

The *Service Manager* is

Name

Address for communications

Address for electronic communications

The *Scope* is in

The <i>language of the contract</i> is	<input type="text" value="English"/>		
The <i>law of the contract</i> is the law of	<input type="text" value="England and Wales, subject to the jurisdiction of the courts of England Wales"/>		
The <i>period for reply</i> is	<input type="text" value="2 weeks"/>	except that	
• The <i>period for reply</i> for	<input type="text" value="n/a"/>	is	<input type="text" value="n/a"/>
• The <i>period for reply</i> for	<input type="text" value="n/a"/>	is	<input type="text" value="n/a"/>

The *period for retention* is year(s) following Completion or earlier termination

The following matters will be included in the Early Warning Register

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

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

	<i>condition</i> to be met	<i>key date</i>
(1)	<input type="text" value="n/a"/>	<input type="text" value="n/a"/>
(2)	<input type="text" value="n/a"/>	<input type="text" value="n/a"/>
(3)	<input type="text" value="n/a"/>	<input type="text" value="n/a"/>

If Option A is used

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

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

3 Time

The *starting date* is

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

	access	access date
(1)	n/a	n/a
(2)	n/a	n/a
(3)	n/a	n/a

The *Consultant* submits revised programmes at intervals no longer than

4 weeks

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

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

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

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

26 weeks

5 Payment

The *currency of the contract* is the

£ sterling

The *assessment interval* is

Monthly

If the *Client* states any *expenses*

The *expenses* stated by the *Client* are

item	amount
n/a	n/a

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 is not used

The period within which payments are made is

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

All UK offices

If Option C is used

The *Consultant's share percentages* and the *share ranges* are

share range

Consultant's share percentage

less than

n/a

%

n/a

%

from

n/a

% to

n/a

%

n/a

%

from

n/a

% to

n/a

%

n/a

%

greater than

n/a

%

n/a

%

If Option C or E is used

The *exchange rates* are those published in

FT

on

(date)

6 Compensation events

If there are additional

These are additional compensation events

n/a

8 Liabilities and insurance

If there are additional
Client's liabilities

These are additional *Client's liabilities*

(1) n/a

(2) n/a

(3) n/a

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

EVENT	MINIMUM AMOUNT OF COVER	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 <i>service</i>	£1 million in respect of each claim, without limit to the number of claims	6 years following Completion of the whole works or earlier termination
Loss of 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	Whichever is greater of £5 million or the amount required by law in respect of each event, without limit to the number of events	12 months
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	Whichever is greater of £5 million or the amount required by law in respect of each event, without limit to the number of events	For the period required by law

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	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(2) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(3) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a

If additional insurances are

The *Client* provides these additional insurances to be provided

(1) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(2) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(3) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a

The *Consultant* provides these additional insurances

(1) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(2) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(3) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a

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

£1 million

Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If the *tribunal* is arbitration

The *arbitration procedure* is

'to be confirmed'

The place where arbitration
is to be held is

'to be confirmed'

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 *Adjudicator* is

Name

'to be confirmed'

Address for communications

'to be confirmed'

Address for electronic communications

'to be confirmed'

The *Adjudicator nominating body* is

The Institution of Civil Engineers

X2: Changes in the law

If Option X2 is used	The <i>law of the project</i> is	The law of England and Wales, subject to the jurisdiction of the courts of England and Wales
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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 <i>Consultant</i> is to submit a first Information Execution Plan for acceptance is	4 weeks
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X18: Limitation of liability

If Option X18 is used	The <i>Consultant's</i> liability to the <i>Client</i> for indirect or consequential loss is limited to	£1 million
	The <i>Consultant's</i> liability to the <i>Client</i> for Defects that are not found until after the <i>defects date</i> is limited to	£1 million
	The <i>end of liability date</i> is	6 years after the Completion of the whole of the <i>service</i>

Y(UK)1: Project Bank Account

Charges made and interest paid by the <i>project bank</i>	The <i>Consultant</i> is not to pay any charges made and to be paid any interest paid by the <i>project bank</i>
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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	14	days after the date on which payment becomes due
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Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

If Option Y(UK)3 is used	term	beneficiary
	'not used'	'not used'
	'not used'	'not used'
	'not used'	'not used'
	'not used'	'not used'

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

Z1 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.

Z2 Prevention

The text of clause 18 Prevention is deleted.

Delete the text of clause 60.1(12) and replace with:

The service is 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.

Z3 Disallowed Costs

In second bullet of 11.2 (18) add:

(including compensation events with the Subcontractor, i.e. payment for work that should not have been undertaken).

Add the following additional bullets after 'and the cost of ' :

- 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.
- Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value)
- Any hours exceeding 8 per day unless with prior written agreement of the Service Manager
- Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the Service Manager
- Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the Service Manager
- 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
- Was incurred due to a breach of safety requirements, or due additional work to comply with safety requirements
- Was incurred as a result of the Client issuing a Yellow or Red Card to prepare a Performance Improvement Plan

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.

Z9 Conflict of Interest

The Consultant immediately notifies the Client of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the Consultant (including without limitation its reputation and standing) and/or the Client of which it is aware or which it anticipates may justify the Client taking action to protect its interests. Should the Parties be unable to remove the conflict of interest to the satisfaction of the Client, the Client, in its sole discretion, may terminate this Contract.

Z12 Waiver

No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party by the Service Manager in writing in accordance with the Contract, and with express reference to Clause Z12. The failure of either party to insist upon strict performance of the Contract, or any failure or delay in exercising any right or remedy shall not constitute a waiver or diminution of the obligations established by the Contract.

Z13 Amendments to Option E:

Identified and defined terms

Z13.1 Delete Clauses 11.2(17) & 11.2(18) and replace with the following:

“11.2(17) Defined Cost is the cost of the components in the Short Schedule of Cost Components

11,2(18) The People Rates are the *people rates* unless later changed in accordance with the contract.”

Z 13.2 At clause 52.3 delete the first two bullets and replace with the following:

- accounts of *expenses* and payments made to Subcontractors
- time sheets to support the total time spent on work in the contract

Z13.3 Schedule of Cost Components on page 51 does not apply

Z13.4 Make the following changes in the Short Schedule of Cost Components

- In the first sentence delete “only when Option A is used”
- Delete Insurance Section 3 in its entirety



PART TWO –

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

1 General

The *Consultant* is

Name

Address for communications

Address for electronic communications

matters will be included in the Early Warning Register



2 The *Consultant's* main responsibilities

If the *Consultant* is to provide Scope

The Scope provided by the *Consultant* is in

3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

If the *Consultant* is to decide the *completion date* for the whole of the *service*

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

5 Payment

If the *Consultant* states *expenses*

The *expenses* stated by the *Consultant* are any

item

amount

If Option A or C is used

The *activity schedule* is

The tendered total of the Prices is

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is

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Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *project bank* is

--

named suppliers are

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Data for the Schedule of Cost Components (used only with Options C or E)

The *overhead percentages* for the cost of support people and office overhead are

location

overhead percentage

[REDACTED]

Data for the Short Schedule of Cost Components (used only with Option A)

The *people rates* are

category of person

unit

rate

Category	City	State	Rate
[REDACTED]			