



LICENCE AGREEMENT FOR THE USE OF NEC CONTRACT DOCUMENTS

THE INSTITUTION OF CIVIL ENGINEERS

and

THOMAS TELFORD LIMITED

and

the **Greater London Authority**

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PARTIES:

- (1) **The Institution of Civil Engineers (210252)** whose registered office is at One Great George Street, London SW1P 3AA (**Licensor**);
(the Licensor will enter into this Agreement through their agent Thomas Telford Limited)
- (2) **THOMAS TELFORD LIMITED** (company number 02556636) whose registered office is at 1-7 Great George Street, Westminster, London SW1P 3AA (**Publisher**); and
- (3) **The GREATER LONDON AUTHORITY** whose registered office is at City Hall, The Queen's Walk, London SE1 2AA (**Licensee**).

Preliminary

- (A) The Licensor is the owner of the rights in the Contracts.

The Licensor has agreed to licence the Copyright in the Contracts to the Licensee and its Subsidiary, and the Licensee and its Subsidiary wishes to be granted a licence to use the Contracts on the terms set out in this agreement.

- (B) For the purpose of this Licence, the Publisher will act as the Licensor's agent in relation to the grant of the Licence to the Licensee and its Subsidiary as set out in this agreement.
- (C) The Licensee and its Subsidiary wish to work with and amend, enhance and/or modify the Contracts on the terms set out in this agreement.

1. Definitions and Interpretation

The definitions and interpretative provisions in Schedule 1 apply to this agreement.

2. Term

The Term will begin on the Commencement Date and will continue ongoing unless the Licensee ceases to pay the Annual Fee to the Publisher when due in accordance with 6.1 or unless and until terminated in accordance with this agreement.

3. Contracts

- 3.1 As soon as reasonably practicable following the signature of this agreement, the Publisher will supply the Contracts to the Licensee for the Term.
- 3.2 The parties acknowledge that the Licensee and its Subsidiary will be entitled to use, reproduce, amend, enhance and/or modify the Contracts for the Term.
- 3.3 The Licensee and its Subsidiary will securely store the Contracts in their original form in any word processing system and/or any storage device as appropriate and make any backup copies.

4. Intellectual Property

- 4.1 Subject to the terms of this agreement, the Licensor grants to the Licensee and its Subsidiary a non-exclusive, non-assignable licence in the Territory for the Term

to use, reproduce, amend, enhance and/or modify the Contracts or any part of the Contracts in return for the payment by the Licensee of the Annual Fee.

- 4.2 Title to and ownership of all Copyright, database and all other intellectual property rights embodied by or otherwise incorporated in the Contracts will remain with the Licensor. Except as expressly provided in this agreement, nothing will be construed to grant to the Licensee any right, title or interest in or to the Contracts or any part of them.
- 4.3 The Licensor will indemnify and hold harmless the Licensee and its Subsidiary from and against all losses, liabilities, judgments, suits, actions, proceedings, damages and costs including legal fees resulting from or arising out of any claim brought by a third party against the Licensee and/or its Subsidiary alleging that the use of the Contracts by the Licensee or its Subsidiary infringes the intellectual property rights of a third party.
- 4.4 The provisions of clause 4.3 will not apply if any such claim arises by reason of any alteration or modification made to the Contracts by the Licensee and/or its Subsidiary. The Licensor and the Publisher will have the right to replace or modify all or any part of the Contracts in order to avoid any infringement without the Licensee's prior approval and on written notice as soon as is practicable to the Licensee.

5. Grant of Licence

- 5.1 The licence granted under clause 4.1 permits the Licensee and its Subsidiary to:
 - 5.1.1 search, view, copy and/or print out the Contracts or any of them for their business purposes;
 - 5.1.2 use, reproduce, amend, enhance and/or modify the Contracts or any of them for the purposes of any matter involving the Greater London Authority and/or its Subsidiary;
 - 5.1.3 make available to others copies of materials that contain any part of the Contracts on a reasonable basis, subject to crediting the Licensor or the Publisher where such material is attributed to them;
 - 5.1.4 publish contracts into the public domain to meet the transparency commitments of the Licensee and its Subsidiary, to comply with Legislation and/or in the case of a dispute.
- 5.2 The Licensee and its Subsidiary may make any amendments to the wording of the Contracts appropriate to business requirements provided that the changes are clearly identified and made available to tenderers/suppliers. For the avoidance of doubt, it is not required that such changes continue to be identified once the contract has been agreed and finalised, nor that the changes are identified in the contract which is awarded, executed and/or published by the Licensee and/or its Subsidiary. The Licensee shall include the following acknowledgment on the first page of the Amended Contract: "This amended contract is based on the NEC family of contracts, the copyright of which belongs to The Institution of Civil Engineers" or such similar acknowledgement.
- 5.3 It is acknowledged and accepted that there may be some contracts including framework contracts awarded prior to the signature date of this agreement which

do not comply with 5.2 insofar as changes to the original Contracts are/were not clearly identified by the Licensee or its Subsidiary.

- 5.4 The Licensee retains all rights to the Amended Contract and the Licensors shall have no title to the amendments made by the Licensee. The Licensors shall retain all rights in the original Contracts.
- 5.5 The Licensee is responsible for configuring its information technology, computer programmes and platform in order to receive the Contracts and for ensuring that the Contracts are stored at all times on a secure network as set out in clause 3.3.

6. Fees

- 6.1 The Annual Fee will be payable to the Publisher from the Commencement Date and annually thereafter on each anniversary of the Commencement Date for the duration of the Term.
- 6.2 The Publisher acknowledges that any monies received from the Licensee pursuant to this agreement from the Licensee will be held on account of the Licensors.
- 6.3 The Publisher will invoice the Licensee for the Annual Fee annually in advance.
- 6.4 Unless the subject of a genuine dispute, the Licensee will pay the Annual Fee in full and cleared funds within 30 days of receipt of a valid invoice (subject to 6.5).
- 6.5 The Licensee is not obliged to pay the Annual Fee before it is due (see 6.1).

7. Warranties

- 7.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this licence.
- 7.2 The Licensors warrants to the Licensee that the Contracts:
 - 7.2.1 do not in the Territory infringe any third party's intellectual property rights, other proprietary rights or rights of privacy;
 - 7.2.2 do not violate any law, statute, ordinance or regulation in the Territory;
 - 7.2.3 do not violate any Territory laws regarding unfair competition, anti-discrimination or false advertising.
- 7.3 The Publisher warrants that it has taken all steps consistent with good industry practice to ensure that the Contracts as supplied to the Licensee will be free of viruses, Trojan Horses, malware or similar code, and will not contain any element designed to corrupt data or adversely impact on the contracts, or any of them.
- 7.4 This agreement sets out the full extent of each of the Licensors' and the Publisher's obligations and liabilities in respect of the supply of the Contracts. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement by each of the Licensors and the Publisher.

8. Limitation of remedies and liability

- 8.1 Neither the Licensors nor the Publisher will be liable to the Licensee for:
- 8.1.1 any damage to software;
 - 8.1.2 damage to or loss of data;
 - 8.1.3 loss of profit;
 - 8.1.4 loss of anticipated profits;
 - 8.1.5 loss of revenues;
 - 8.1.6 loss of anticipated savings;
 - 8.1.7 damage to reputation or loss of goodwill or business opportunity; and/or
 - 8.1.8 for any indirect or consequential loss or damage.
- 8.2 Nothing in this agreement excludes the Licensors or the Publisher's liability for:
- 8.2.1 death or personal injury caused by the Publisher's negligence; or
 - 8.2.2 fraud or fraudulent misrepresentation.
- 8.3 Any liability of the parties under this agreement shall in no circumstances exceed the Annual Fee payable by the Licensee under this agreement in that calendar year.
- 8.4 Neither the Licensors nor the Publisher gives any warranty or assurance, except as set out in clause 7.
- 8.5 The Contracts are general in nature and may not apply to the specific facts and circumstances of individual transactions, projects and cases.
- 8.6 Neither the Licensors nor the Publisher gives any warranty or assurance that the Contracts and their means of delivering them are compatible with the Licensee's software or computer configuration.
- 8.7 Except as expressly and specifically provided in this agreement, the Licensee assumes sole responsibility for any use of the Contracts and for conclusions drawn from such use. Neither the Licensors nor the Publisher will have any liability for any damage or loss caused by errors or omissions in any of the Contracts provided by the Publisher.

9. Termination

- 9.1 The Publisher may terminate this agreement immediately by notice in writing if the Licensee:
- 9.1.1 commits a material breach of any of the terms of this agreement and, if such breach is capable of remedy, fails to remedy the breach within 30 days of receiving notice from the terminating party specifying the breach and requiring the breach to be remedied;

- 9.1.2 enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);
 - 9.1.3 becomes insolvent;
 - 9.1.4 ceases or threatens to cease to carry on business; or
 - 9.1.5 has a bankruptcy or receiving order made against him, or makes any arrangement with his creditors.
- 9.2 The Licensee may terminate this agreement at any time by giving 30 days' written notice to the Publisher and will be entitled to a pro rata return of the Annual Fee (to the extent that such Annual Fee has been paid).
- 9.3 The expiry or termination of this agreement for any reason will not affect any rights and/or obligations:
- 9.3.1 accrued before the date of termination or expiry; or
 - 9.3.2 expressed or intended to continue in force after and despite expiry or termination.
- 9.4 On termination of this agreement, with the exception of the exclusions outlined in 9.5, the licence to use the Contracts will automatically terminate and the Licensee and its Subsidiary will immediately:
- 9.4.1 stop all activities licensed hereunder;
 - 9.4.2 make all outstanding payments to the Publisher;
 - 9.4.3 using best endeavours, destroy all documents, disks and any other media bearing all or any of the Contracts, and provide confirmation to the Publisher that all such documents and data have been destroyed; and
 - 9.4.4 using best endeavours, delete all copies and versions of the Contracts from the memories of the Licensee's and its Subsidiary's computer(s) and from any storage devices, and certify in writing within seven days of the date of termination that such deletion and destruction have taken place.
- 9.5 Notwithstanding the provisions in clause 9.4, after termination the Licensee and its Subsidiary may continue to possess and use copies of the Contracts and Amended Contracts (or any part[s] thereof) in the same way as previously permitted under this agreement for reference and retention purposes, and to enable contracts properly awarded during the Term to be managed through to completion including - but not limited to - allowing for any Compensation Events and/or framework call-offs, and for any other similar such contract administration purposes which may arise in relation to those awarded contracts. The Licensee and its Subsidiary are also permitted to retain copies of the Contracts and Amended Contracts and to publish them as required in order to comply with their transparency obligations, Legislation and in any dispute situation.

- 9.6 Following termination of this agreement, the Publisher will be under no obligation under this agreement to make available any NEC contract documents for any purpose to the Licensee.

10. Confidentiality

- 10.1 Each party will keep confidential all Confidential Information of the other and will not (and will procure that it/he, its/his employees and/or officers will not) copy, use or disclose any such information to any third party, other than as may be necessary to comply with its obligations under this agreement.
- 10.2 The obligation of confidence will not apply where the Confidential Information:
- 10.2.1 is required to be disclosed by operation of law;
 - 10.2.2 was in the possession of the recipient prior to disclosure by the other party;
 - 10.2.3 is subsequently acquired from a third party without any obligation of confidence;
 - 10.2.4 is or becomes generally available to the public through no act or default of the recipient.
- 10.3 This clause 10 will continue in force notwithstanding the expiry or termination of this agreement, whatever the reason for such termination.

11. Force Majeure

No party will be liable for any breach of this agreement directly or indirectly caused by circumstances beyond the reasonable control of that party and which prevent that party from performing its obligations to the other.

12. Notices

- 12.1 Notices between the parties relating to this agreement must be in writing and must be delivered personally or sent by prepaid first class post, prepaid air mail post or facsimile transmission to the address or fax number set out in clause 12.2. Alternative details may be notified by a party for the purposes of this clause 12.
- 12.2 Notices will be treated as received as follows: if delivered by hand, when delivered; if sent by first class post, 48 hours after posting; if sent by air mail post, 72 hours after posting; if sent by fax, when sent. Any notices that would be treated as received out of Business Hours will be deemed given on the next Business Day.

Thomas Telford Limited

Address: 1-7 Great George Street, Westminster, London SW1P 3AA, attention NEC Digital Co-ordinator.

Greater London Authority

Address: c/o Transport for London, Windsor House, 42-50 Victoria Street, London SW1H 0TL, attention Paul Plummer, Commercial Services team, 16th Floor.

13. General

- 13.1 No party will assign, transfer, subcontract, charge, create a trust over or otherwise deal in its rights and/or obligations under this agreement (or purport to do so) without the other parties' prior written consent which will not be unreasonably withheld or delayed.
- 13.2 Save that the Licensee's Subsidiary may be entitled to enforce the provisions of this agreement, it is not intended that any provision of this agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this agreement.
- 13.3 This agreement may be executed in any number of counterparts, each of which when executed will be an original, but all the counterparts together will constitute one document.
- 13.4 A failure or delay by any party to exercise any right or remedy under this agreement will not be construed or operate as a waiver of that right or remedy nor will any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy.
- 13.5 This agreement represents the entire terms agreed between the parties in relation to its subject matter and supersedes all previous contracts or arrangements (including any usage or custom and any terms arising through any course of dealing) of any kind between the parties relating to its subject matter.
- 13.6 This agreement may be amended by agreement in writing signed by the parties.
- 13.7 Each of the provisions contained in this agreement will be construed as independent of every other such provision, so that if any provision of this agreement will be determined by any court or competent authority to be illegal, invalid and/or unenforceable then such determination will not affect any other provision of this agreement, all of which other provisions will remain in full force and effect.
- 13.8 This agreement will be governed by and construed in accordance with English law.
- 13.9 The courts of England and Wales shall have exclusive jurisdiction to determine any disputes which may arise out of, under, or in connection with this agreement.

Signed on behalf of Thomas Telford Limited:

Name:

Job Title:

Signature:

Date:

Signed on behalf of the Greater London Authority:

Name:

Job Title:

Signature:

Date:

Schedule 1
Definitions and interpretation
 (Clause 1)

1. In this agreement including the schedules the following words and expressions have the following meanings:

Amended Contract	any substantial amendment or alteration to any of the Contracts made by the Licensee and/or its Subsidiary which substantially changes the meaning and original format of the Contract in question so as to make the amended contract distinguishable from the Contracts. Any changes are to be made in accordance with the terms of this agreement.
Annual Fee	<p>for a licence to cover the listed NEC3 Contracts (only), the fee of REDACTED (pounds) plus VAT plus an annual percentage increase equal to the Retail Price Index percentage increase.</p> <p>REDACTED per annum to cover the Greater London Authority's subsidiary, GLA Land and Property Ltd (GLAP).</p> <p>A 5% discount applies where an up front single payment is made to cover the Annual Fees for a minimum two year period.</p> <p>Providing main licences are in place for both TfL and the GLA, additional GLA functional bodies and/or subsidiaries have the option of obtaining separate licences on these terms should they wish to in the future, at a cost per entity of REDACTED plus VAT per annum.</p>
Business Day	a day other than Saturday or Sunday when banks are generally open for normal business in London.
Business Hours	between 9.00 a.m. and 5.00 p.m. on a Business Day.
Commencement Date	28 January 2015
Confidential Information	all information disclosed (whether in writing, orally or by other means either directly or indirectly) by a party (Disclosing Party) to the other party (Receiving Party) whether before or after the date of this agreement including, without limitation, information relating to the Disclosing Party's products, services, operations, processes, plans or intentions, project information, knowhow, intellectual property, trade secrets, market opportunities and business affairs, and whether or not such information is marked in writing or designated orally as "confidential".
Copyright	all copyright and rights in the nature of copyright subsisting in the Contracts, in any part of the World to which the Licensor is, or may become, entitled.
Contracts	<p>the electronic versions (including updates and revisions) in Word format of the following material to be supplied by the Publisher:</p> <ol style="list-style-type: none"> 1. NEC3: Engineering and Construction Contract; 2. NEC3: ECC Option A Priced contract with activity schedule;

3. NEC3: ECC Option B Priced contract with Bill of Quantities;
4. NEC3: ECC Option C Target contract with activity schedule;
5. NEC3: ECC Option D Target contract with Bill of Quantities;
6. NEC3: ECC Option E Cost reimbursable contract;
7. NEC3: ECC Option F Management Contract;
8. NEC3: Engineering and Construction Subcontract;
9. NEC3: Professional Services Contract;
10. NEC3: Professional Services Short Contract;
11. NEC3: Engineering and Construction Short Contract;
12. NEC3: Engineering and Construction Short Subcontract;
13. NEC3: Adjudicators Contract;
14. NEC3: Term Service Contract;
15. NEC3: Framework Contract;
16. NEC3: Term Service Short Contract;
17. NEC3: Supply Contract;
18. NEC3: Supply Short Contract.

Any subsequent editions not listed here are expressly excluded.

Legislation

any and all as in force from time to time:

- (a) laws, by-laws, codes, common law or other laws or legislation made by a competent authority; and
- (b) any authoritative judicial or legally effective administrative interaction of each of the foregoing.

Subsidiary

means GLA Land and Property Ltd (GLAP).

Term

the period during which this agreement continues in force set out in clause 2.

Territory

the United Kingdom.

VAT

Value Added Tax at the prevailing rate.

2. The schedules form part of this agreement and references to this agreement include the schedules.
3. In this agreement, unless otherwise specified, any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time.