



11/11/2016

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Study_or_Service_NOT_Design

5

Revision	Status	Originator	Reviewer	Date

Rev 1.8.4a

PROFESSIONAL SERVICE CONTRACT - Under the Client Support Framework
CONTRACT DATA

Project Name Rto PCM Project Management Services NW Projects Rob Gray

Project Number ENV0002360C

This contract is made on 19 September 2022
between the *Client* and the *Consultant*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 02nd day of July 2019 between the *Client* and the *Consultant* in relation to the Client Support Framework. The entire Agreement and the following schedules are incorporated into this contract by reference
- Schedules 1 through to 14 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference

Part One - Data provided by the *Client*

**Statements given in
all Contracts**

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 E

Option for resolving and
avoiding disputes

W2

Secondary Options

X2: Changes in the law

X9: Transfer of rights

X10: Information modelling

X11: Termination by the *Client*

X18: Limitation of liability

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

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

Z: *Additional conditions of contract*

The *service* is Supply of ECC Project Managers, Cost Management Resource and Site Supervisors as listed in the scope of requirements issued with the tender.

The *Client* is

Address for communications

Address for electronic communications

The *Service Manager* is

Address for communications

Address for electronic communications

The Scope is in
The Bravo documentation

The *language of the contract* is English

The *law of the contract* is
the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

The *period for reply* is 2 weeks

The *period for retention* is 6 years 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 weeks

2 The *Consultant's* main responsibilities

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

'none set' 'none set'

'none set' 'none set'

'none set' 'none set'

The *Consultant* prepares forecasts of the total Defined Cost plus Fee and *expenses* at intervals no longer than 4 weeks

3 Time

The *starting date* is 19th September 2022

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

The *Consultant* submits revised programmes at intervals no longer than 4 weeks

The *completion date* for the whole of the *service* is 22nd September 2023

The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is 4 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

The *expenses* stated by the *Client* are as stated in Schedule 6.

The *interest rate* is 2.00% per annum (not less than 2) above the
Base rate of the Bank of England

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

The *exchange rates* are those published in
on

6 Compensation events

These are additional compensation events

1. 'not used'

2. 'not used'
3. 'not used'
4. 'not used'
5. 'not used'

8 Liabilities and insurance

These are additional *Client's* liabilities

1. 'not used'
2. 'not used'
3. 'not used'

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

EVENT	MINIMUM AMOUNT OF	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE <i>SERVICE</i> 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
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	Which ever is the greater of £1 million or the amount required by law in respect of each claim, without limit to the number of claims	
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	Which ever is the greater of £5m or the amount required by law in respect of each claim, without limit to the number of claims	For the period required by law
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than the excluded matters is limited to		£5 million

Resolving and avoiding disputes

The <i>tribunal</i> is	litigation in the courts
The <i>Adjudicator</i> is	'to be confirmed'
Address for communications	'to be confirmed'
Address for electronic communications	'to be confirmed'
The <i>Adjudicator nominating body</i> is	The Institution of Civil Engineers

Z Clauses

Z1 Disputes

Delete existing clause W2.1

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
- Was incurred as a resulting of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit

Z5 Secondments

When appointing *Consultants* on a secondment basis only:

Add clause 19

19.1 The *Client* will from starting date to Completion Date indemnify the *Consultant* against any and all liabilities, proceedings, costs, losses, claims and demands whatsoever arising directly or indirectly out of the activities of the *Consultant* in providing the services save where such claims, in the reasonable opinion of the *Client*, arise from or are contributed to by:

19.1.1 Misrepresentation or negligence by or on behalf of the *Consultant*;

or

19.1.2 The *Consultant* has acted contrary to the *Service Manager's* reasonable instructions or wholly outside the scope of the *Consultant's* duties as defined by the *Service Manager* .

Z6 The Schedule of Cost Components

The Schedule of Cost Components are as detailed in the Framework Schedule 6.

Z7 Linked contracts

Issues requiring redesign or rework on this contract due to a fault or error of the *Consultant* under this contract or a previous contract will neither be an allowable cost under this contract or any subsequent contract, nor will it be a Compensation event under this contract or any subsequent contract under this project or programme.

Z8 Requirement for Invoice

Insert the following sentence at the end of clause 51.1:

The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service Manager's* certificate.

Delete existing clause 51.2 and insert the following:

51.2 Each certified payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

If a certified payment is late, or if a payment is late because the *Service Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made

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.

Z10 Change in Control

The *Consultant* shall notify the *Client* as soon as reasonably practicable, in writing, of any agreement, proposal or negotiations which will or may result in a *Consultant* Change in Control and shall give further notice to the *Client* when any Change in Control has occurred. The *Client* may terminate this contract with immediate effect by notice in writing and without compensation to the *Consultant* within six (6) months of being notified that a Change of Control has occurred, or, where no notification has been made, the date that the *Client* becomes aware of the Change of Control, but shall not be permitted to terminate where the *Client's* prior written acceptance was granted prior to the Change in Control. A Change of Control is defined as per the Deed of Agreement, Z14.4.

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.

Secondary Options

OPTION X2: Changes in the law

The *law of the project* is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

OPTION X10: Information modelling

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

OPTION X18: Limitation of liability

The *Consultant's* liability to the *Client* for indirect or consequential loss is limited to

£1,000,000.00

The *Consultant's* liability to the *Client* for Defects that are not found until after the *defects date* is limited to

£1,000,000.00

The *end of liability date* is 6 Years after the Completion of the whole of the *service*

Y(UK2): The Housing Grants, Construction and Regeneration Act 1996

The period for payment is 14 Days after the date on which payment becomes due

Y(UK3): The Contracts (Rights of Third Parties Act) 1999

term beneficiary

PSC Scope – Cost Manager

Environment Agency NEC4 professional services contract (PSC) Scope

Project / contract information

Project name	Various
Project SOP reference	Various
Contract reference	DGC to complete
Date	9 th June 2022
Version number	V1
Author	J Farrar/A Waite

Revision history

Revision date	Summary of changes	Version number
9 th June 2022	First issue	V1

This Scope should be read in conjunction with the version of the Minimum Technical Requirements current at the Contract Date. In the event of conflict, this Scope shall prevail. The *services* are to be compliant with the version of the Minimum Technical Requirements.

Document	Document Title	Version No	Issue date
412_13_SD01	Minimum Technical Requirements	11	04/05/2021

1 Objectives of the project (project outcomes)

1.1 Objectives

Project and Contract Management (PCM) (the *Client*) are delivering a number of construction projects and packages of construction works across the North West of England, and requires cost management support for a number of these projects.

It is the intention of the *Client* to provide sufficient cost management work for this to be a 37 hours full-time role. The work can be made up from projects at appraisal, design, construction or defects stage. The workload will be kept under review by the *Client* to ensure it is manageable.

We are tendering **5 Cost Manager posts** to manage these projects and packages during the design, construction and defects stages. The total number of appointments may vary from this. We will appoint under separate 12 month contracts, with each contract having the potential for extension subject to performance and ongoing workload.

The EA invites suppliers to submit a maximum of **2 CVs per post for consideration, up to a total of 10 CVs**. CVs must be for staff that are currently employed by the supplier and have a notice period of 1 month or less.

The cost managers can work in a hybrid manner; although they will be based out of Richard Fairclough House, Warrington, WA4 1HT where the PCM team is based. Since the work being undertaken is in the northwest region, there are opportunities to work out of Lutra House, Preston, PR5 8BX and our Penrith office. There will certainly be a need to attend meetings at these locations. All candidates applying to work in the North West hub should be based in the NW of England and should include their base location in their application.

The individuals will be working on a range of capital projects to deliver flood risk management schemes or studies, and/or revenue and maintenance projects to bring existing assets up to condition.

Each role can be part-time but full-time is preferred, up to a maximum of 40 hours per week and a minimum of 3 days/week. Each post has funding for 12 months but there is an intention to extend these, subject to ongoing workload, funding, the individual's performance and any CSF retendering exercises. We reserve the right to redeploy successful candidates to different projects through the duration of each commission for the benefit of our programme delivery.

The pay for this opportunity will be within the scope of the negotiated rates as found in the lot 2 CSF framework

There will be no EA Laptop or Mobile telephone provision during this contract.

Tender Evaluation will be undertaken against the Curriculum Vitae(s) submitted and the proposed rate for that individual. We will reserve the right to video interview those candidates that are shortlisted to confirm the information provided in the CVs and assess their suitability for working with the EA, and specifically in PCM. If an interview is completed, the results of the interview will supersede the results of the initial quality-cost tender evaluation.

We do welcome a video call with any of our suppliers to discuss any questions they have regarding these posts.



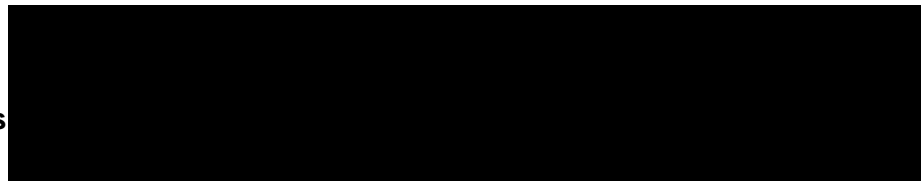
1.2 Role

The Cost Manager role is flexible by the nature of the intention of the *Client* for this to be a full-time position. The Cost Manager will nominally report by a single Line Manager from the *Client* to ensure Safety, Health, Wellbeing and workload are being managed. However, direct requirements for each project the Cost Manager is involved in will be provided by the relevant *Client* Project Manager. The Cost Manager will be an integral part of each project team they are working with and will assist in financial management duties and reporting.

For this overall engagement the *Client's* representative and Environment Agency Line Manager is:

Name:

Contact Details



1.3 Responsibilities

The Cost Manager will be responsible for providing a range of duties which may include:

- Monitoring project expenditure and reviewing against budget and authorised expenditure limits – including forecast and actual expenditure
- Assessment of supplier expenditure forecasts
- Assessment of applications for payment from suppliers and contract Compensation Events
- Leading on discussions with suppliers in relation to assessment of applications for payment and contract Compensation Events
- Preparation of financial management information
- Working with the *Client's* Cost and Carbon Lead to develop target costs for project appraisal, project design and project construction contracts.
- supports the Client and project teams in the assessment of construction tenders

The Cost Manager will work closely with the relevant members of each project team to ensure their individual requirements are understood, agreed and achieved.

1.4 Outcome Specification

The Cost Manager's role is task based, as required of each *Client* Project Manager for each project/programme. The level of detail and acceptability of outputs from the Cost Manager will be as described and verified by the respective *Client* Project Manager.

2 Project team

- 1 The *Contractor* may be different for each project. However it will be a supplier selected from one of the *Client's* Frameworks. The *Contractor* will be appointed using the NEC4 Engineering and Construction Contract option C most normally but can be Option E or another version of the NEC4 suite of contracts (e.g. smaller projects may use the NEC4 Engineering and Construction Short Form contract)
- 2 The *Supervisor*, where applicable, will be delegated to undertake the role by the *Client* and may be a different person for each project.
- 3 The *ECC Project Manager* under the NEC4 Engineering and Construction Contract, where applicable, will be delegated to undertake the role by the *Client* and may be a different person for each project.
- 4 The EA Project Manager (*Client*) may be a different person for each project
- 5 The EA Programme Manager (*Client*), where applicable, may be a different person for each project.

3 Services the consultant will provide

- 1 Carry out the duties of Cost Manager as described in Section 1.3. The Cost Manager is to maintain close contact with the *Client* in order that their actions reflect the *Client's* objectives for the project.
- 2 The Cost Manager is to carry out their duties strictly in accordance with the *Client's* version of the Contract. This is particularly important when dealing with Early Warnings and Compensation Events.
- 3 If the Cost Manager believes it is necessary to act other than strictly in accordance with the Contract they must seek and obtain written confirmation in advance from the *Client's* representative line manager (section 1.2).
- 4 The Cost Manager is to report monthly on the tasks they have undertaken and time to be charged for that month and provide a forecast of the final cost for their services all as detailed in the *Client's* NEC4 Professional Services Contract.
- 5 The Cost Manager is also required, where appropriate, to provide the following additional services for this project:

- Partake in lessons learnt meetings & report after completion
- Partake in updating efficiency registers and reporting monthly during construction

4 Definition of completion and defects

- 1 Completion is only achieved when all of the *services* have been provided and accepted by the *Client*.
- 2 A defect is part of the *services* which is not in accordance with the Scope or the applicable law. A flaw/inconsistency/error in outputs from the Cost Manager is considered to be a defect.

5 Constraints on how the *Consultant* provides the *services*

The Consultant:

- 1 is not to delegate their duties or powers without prior written agreement from the *Client*.
- 2 is required to be flexible in their working location across the north west of England. Working locations may include, but not limited to, the *Client's* offices in Warrington, Bamber Bridge, Preston and Penrith, supplier offices and construction site offices.
- 3 will be expected to attend Client offices, construction sites or suppliers offices as required
- 4 shall not work more than [40 hours per week] without prior approval from the Service Manager
- 5 shall agree any time deemed necessary for the Consultant's line management by the Consultant's Employer, including training and development and will be non-chargeable
- 6 shall agree any time deemed necessary for the Consultant to line manage or undertake any other tasks for the Consultant's Employer and this will be non-chargeable
- 7 will be entitled to take annual leave, based on the Consultant's terms of employment with the Consultant's Employer, and statutory holiday entitlement. These costs will be non-chargeable
- 8 shall provide the *services* in compliance with the Client's 'Environment Agency Operational Instructions' and policies]

6 Standards to be achieved

6.1 Health and safety

Health, safety and welfare is of paramount importance to the *Client* and one of the objectives for the contract is that the *Services* should be undertaken in a manner that achieves highest

possible standards. Health, safety and welfare provisions must be seen as integral parts of carrying out the works and not as stand-alone considerations. The project cost manager shall support the Client and project team in achieving these standards].

6.3 Specifications or standards to be used

The Cost Manager is to make full use of the *Client's* web based project collaboration tool. Whenever practical all contract records are to be distributed and stored using this project collaboration tool.

7 Requirements of the programme

- 1 A Programme is not required for this contract

8 Services and other things provided by the *Client*

8.1 Contract to be administered

On request, the *Client* will provide a bound copy of the contract to be administered to the Cost Manager. This will include the ECC Scope. Other information referred to in the contract will be available on the Project Collaboration Tool (Asite).

8.2 Training to be provided by the *Client*

The *Client* will provide access to and training on their web based Project Collaboration Tool, Asite and Fastdraft as required.

8.3 Data and information management and intellectual property rights

All of the data listed as being supplied to the *Consultant* as part of this study remains the Intellectual Property of the *Client*.

8.4 Data custodianship

The data custodian for project deliverables from this commission will be the area PSO team.

8.5 Licensing information

Not required for this contract.

8.6 Metadata

Not required for this contract

8.7 Data security

The *Consultant* shall comply with the data security requirements of the *Client*. Further details regarding security measures will be discussed at the start-up meeting for this commission

8.8 Timesheets

Timesheets as normally utilised by the *Consultant* shall be submitted with fee notes unless otherwise agreed with the *Client's* representative line manager (section 1.2). Electronic submissions are acceptable.

8.9 Payment procedure

Payment is subject to the procedure agreed in or under the framework

8.10 Quality

The quality management system complies with the requirements of ISO9001 and ISO14001.

Appendices



Appendix 2 Candidate Specification

BEng, BSc or MSc in Quantity Surveying or equivalent.

A minimum of 5 years' Cost Management experience working in the construction industry and attained the position of Cost Manager or above.

Advantageous if candidates have worked on flood risk management schemes, especially for the Environment Agency.

MRICS or working towards although not essential.

Possibly MCIPS, but again, not essential

Possibly NEC Accredited, but again not essential

Ideally Construction Site Certification Scheme (CSCS) card holder

Full clean UK driving licence

Experience in:

Commercial and cost management (including constructive challenge)

Tendering and procurement advice and evaluation

NEC3 and 4 Contracts

Contract change control

Measurement and preparation of Bills of Quantities

Risk management

Value engineering

Experience of working in Frameworks

Experience of working in collaborative teams

Knowledge of civil engineering construction practices and techniques

Experience of working alongside NEC ECC PM and other specialists

Part Two - Data provided by the *Consultant*

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

1 General

The *Consultant* is
Name and company number

Address for communications

Address for electronic communications

The *fee percentage* is

The *key persons* are

Name (1)
Job
Responsibilities
Qualifications
Experience

The *key persons* are

Name (2)
Job
Responsibilities
Qualifications
Experience

The *key persons* are

Name (3)
Job
Responsibilities
Qualifications
Experience

The *key persons* are

Name (4)
Job
Responsibilities
Qualifications
Experience

The *key persons* are

Name (5)
Job
Responsibilities
Qualifications
Experience

The *key persons* are

Name (6)
Job
Responsibilities
Qualifications
Experience

The *key persons* are

Name (7)
Job
Responsibilities
Qualifications

Experience

The following matters will be included in the Early Warning Register

3 Time

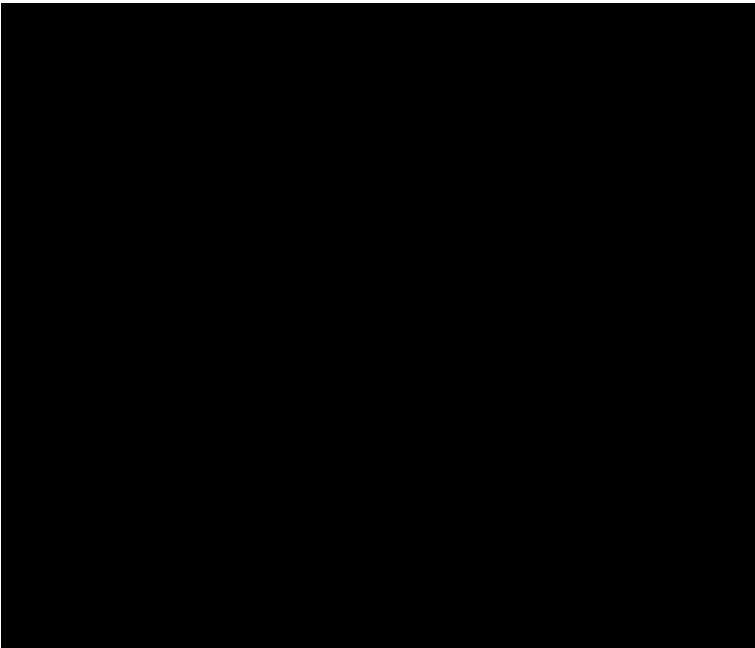
The programme identified in the Contract Data is

5 Payment

The *activity schedule* is

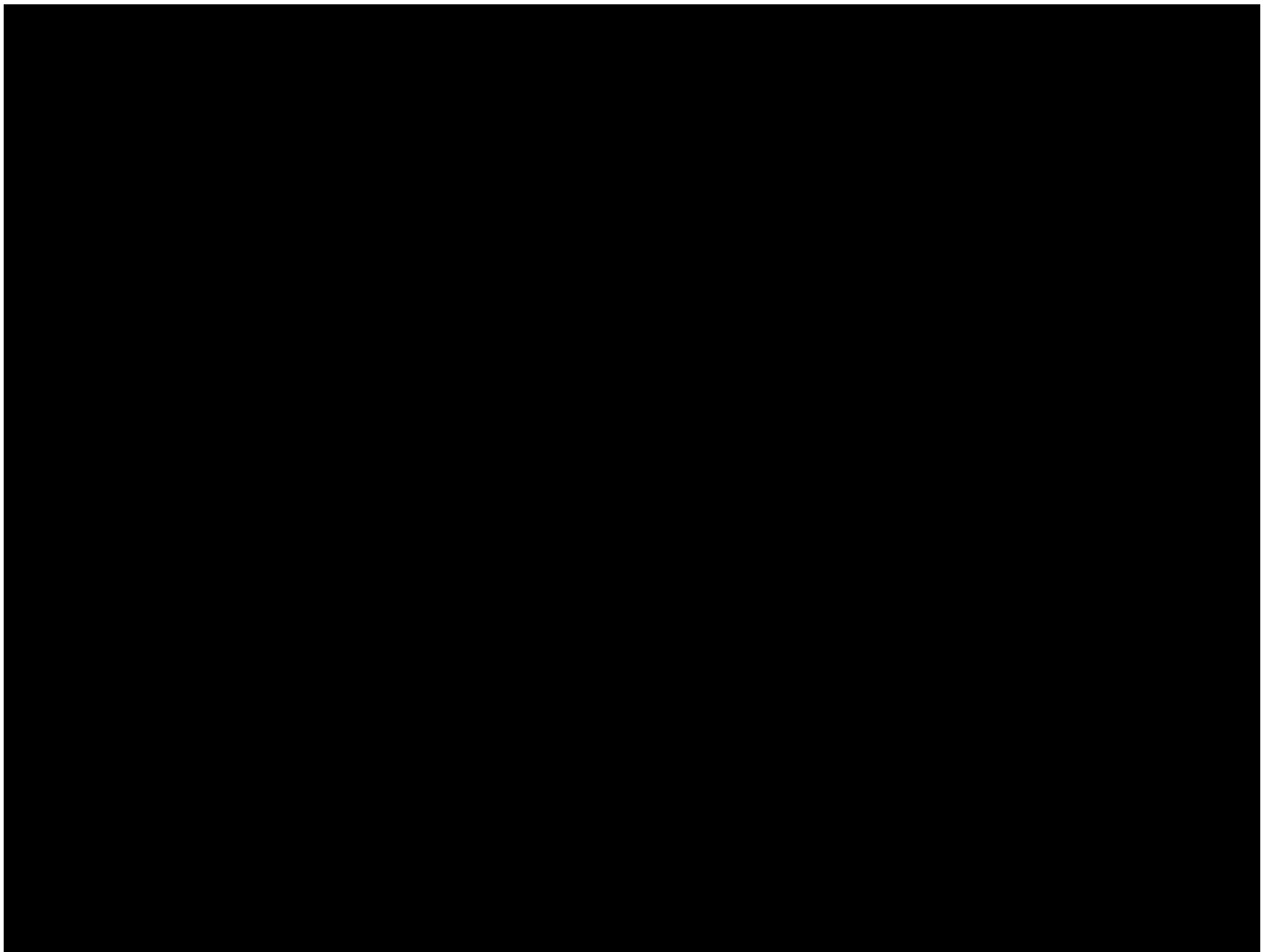


Resolving and avoiding disputes



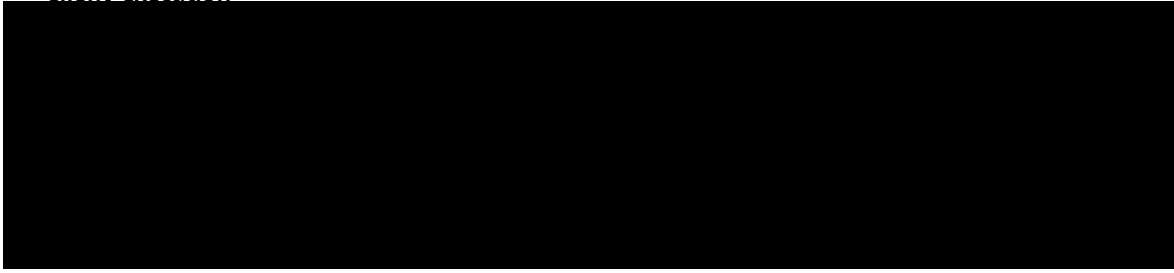
X10: Information Modelling

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



Contract Execution

Client execution



Consultant execution

Signed Underhand by **[PRINT NAME]**

for and on behalf of

