

This Agreement dated

is made between:

- 1. The Engineering Construction Industry Training Board** of Blue Court, 1 Church Lane, Kings Langley, Hertfordshire WD4 8JP (**"ECITB"**); and
- 2. <Insert Company Name>** (company registration number: <Insert No.> whose registered office is at <Insert Register Office Address> (**"the Contractor"**) hereinafter collectively referred to as the "Parties."

WHEREAS

The Contractor has agreed to conduct surveys and provide reports upon the terms and conditions of this Agreement.

NOW IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings:

- 1.1 "Services" means the services to be provided by the Contractor as described in the Schedule.
- 1.2 "Programme" means the programme for the provision of the Services set out in the Schedule.
- 1.3 "Additional Services" means any additional services requested by ECITB to be provided by the Supplier that are not included within the description of the Services.
- 1.4 "Price" means the fixed, all-inclusive price for the provision of the Services as detailed in the Schedule.
- 1.5 "Rates" means the rates payable in respect of the Additional Services as detailed in the Schedule.
- 1.6 "Confidential Information" means all or any written material, documentation, illustrations, photographs, designs, drawings, data, technical, business and similar information of a confidential nature relating to the business of ECITB or its clients including all readable or computer or other machine readable data.
- 1.7 "Intellectual Property" means any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, computer software, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including without limitation:
 - 1.7.1 any renewals, revisions and extensions created or provided by the laws of any country;
 - 1.7.2 all rights of action and remedies in relation to past infringements; and
 - 1.7.3 the right to apply for registration of any such rights in any country of the world.

- 1.8 “Documents” means all records, reports, documents, papers, media and other materials whatsoever created by ECITB or on behalf of ECITB or originated by or upon behalf of the Contractor pursuant to this Agreement.
- 1.9 The Contractor’s Intellectual Property means any documents, records, reports, documents, papers, images, media, software or any other materials created or owned by the Contractor prior to this Agreement.
- 1.10 “Expenses” means the expenses which the Contractor shall be entitled to be paid as set out in the Schedule.
- 1.11 ‘Works’ shall mean any documents, reports and any other materials or media which are produced or created by the Contractor for ECITB.
- 1.12 “Key Personnel” means the person or persons as defined in the Schedule.
- 1.13 ‘Project Manager’ means the person or persons as defined in the Schedule.

2. The Contractor’s Work

- 2.1 The Contractor shall provide the Services in accordance with the Programme.
- 2.2 The Contractor shall provide the Additional Services.
- 2.3 The Contractor shall provide the Services and the Additional Services to ECITB at such times and at such locations as ECITB shall reasonably direct.
- 2.4 Whilst providing the Services and the Additional Services the Contractor may give the impression that it is a representative of ECITB provided that the Contractor shall not hold him/herself out as being able to bind ECITB.
- 2.5 The Contractor shall, in the provision of the Services and the Additional Services, liaise with and report to the Project Manager or such other individual nominated by ECITB.

3. Standard of the Contractor’s Work

- 3.1 In the provision of the Services and the Additional Services, the Contractor shall use the skill care and knowledge to be expected of an expert in his/her profession. The Contractor shall undertake any training as deemed necessary by ECITB in order to perform his/her duties.
- 3.2 The Contractor shall not be entitled to assign any of his/her obligations hereunder, nor to engage the services of any subcontractor to carry out any of his/her obligations hereunder, without the prior written consent of the Project Manager.
- 3.3 The Contractor shall comply with such conditions, policies and procedures as shall be notified by ECITB to the Contractor from time to time.
- 3.4 The Contractor shall project a professional image and demonstrate commitment to the work of ECITB at all times.
- 3.5 If in the reasonable opinion of ECITB there is any unsatisfactory or incomplete work it shall be made good at the Contractor’s own expense and within an agreed timescale.

- 3.6 The Contractor shall ensure that all of its personnel engaged in the provision of the Services and the Additional Services:
- 3.6.1 have the necessary skills, expertise, qualifications and diligence to undertake such work and will conform to the professional standards generally observed for similar services; and
 - 3.6.2 comply with the provisions in this Agreement relating to Confidential Information; and
- 3.7 The Contractor agrees that the Services and the Additional Services will be carried out by the Key Personnel.
- 3.8 The Contractor agrees that the Key Personnel shall not be replaced before the completion of the Services and the Additional Services without notice to ECITB, unless:
- 3.8.1 the individual to be replaced is prevented by ill-health from carrying out his or her duties in connection with this Agreement for a significant period;
 - 3.8.2 the individual resigns from employment with the Contractor;
 - 3.8.3 the contract of employment of the individual is terminated; or
 - 3.8.4 ECITB makes a reasonable written request to the Contractor to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Contractor's obligations under this Agreement.
- 3.9 If any such person is replaced, the Contractor shall consult with ECITB about the identity of a suitable replacement.

4. Payment

- 4.1 In consideration of the Contractor providing the Services, ECITB shall pay to the Contractor the Price which shall be invoiced to ECITB upon the achievement of the specified milestones set out in the Programme and subject to the terms set out in clause 5.
- 4.2 In consideration of any Additional Services, ECITB shall pay to the Contractor the amounts invoiced by the Contractor to ECITB calculated in accordance with the Rates and subject to the terms set out in clause 5.
- 4.3 The reasonable expenses (whether in respect of travelling or other out-of-pocket expenses) of the Contractor directly incurred in carrying out the Services or the Additional Services shall be payable by ECITB in accordance with the guidelines appearing in the Schedule subject to all such expenses having been approved in writing by ECITB prior to being incurred.
- 4.4 The Contractor shall maintain records of time spent, and invoices shall be prepared in such detail as ECITB may require, in order to enable ECITB to verify the amount claimed for payment.

5. Invoicing and Payment

- 5.1 The Contractor shall be entitled to submit an invoice on the achievement of the milestones in the Programme.
- 5.2 The Contractor shall be entitled to submit an invoice on the achievement of the Additional Services in accordance with the Rates.

5.3 ECITB will pay each invoice (a VAT invoice if appropriate) within 30 days of its receipt, subject to ECITB being satisfied as to the quality of the Services provided and the stage of completion of milestones.

5.4 The Services being provided by the Contractor may not be subject to VAT.

6. Confidentiality and Intellectual Property Rights

6.1 The Contractor shall secure and keep safe any Confidential Information and Intellectual Property which it may obtain or create during the course of providing the Services relating to ECITB's business or activities and shall not, during the course of this Agreement or any time thereafter, disclose such information to any other person.

6.2 On the ending of the Agreement the Contractor shall return to ECITB all Confidential Information, the Documents and any other documents, data in whatever form, or drawings with which it may have been supplied by ECITB and any copies of the same which it may have made during the course of providing the Services.

6.3 The obligations of confidence referred to in Clause 6.1 shall not apply to any Confidential Information or documents or any other information which:

6.3.1 is in the possession of and is at the free disposal of the Contractor, or is published or is otherwise in the public domain prior to the date of this Agreement;

6.3.2 is, or becomes, publicly available on a non-confidential basis through no fault of the Contractor;

6.3.3 is received in good faith by the Contractor from a third party who, on reasonable enquiry by the Contractor, claims to have no obligations of confidence to ECITB in respect of it and who imposes no obligations of confidence upon the Contractor.

6.4 The ownership of and copyright in the Intellectual Property, the Documents, the Works and any reports, or data in any form which the Contractor may prepare during the provision of the Services, shall belong to ECITB and shall not be reproduced or disclosed by the Contractor.

6.5 The Contractor shall not without the prior written consent of ECITB:

6.5.1 Sell, hire rent or otherwise deal with, part with possession of or distribute the Intellectual Property, the Documents, the Works or any work in progress, reports or data in any form which the Contractor may prepare during the provision of the Services.

6.5.2 Permit the Intellectual Property, the Documents, the Works or any work in progress, reports or data in any form which the Contractor may prepare during the provision of the Services to be copied or made available to any third party.

6.5.3 Use the Intellectual Property, the Documents, the Works or any work in progress, reports or data in any form which the Contractor may prepare during the provision of the Services to create any derivative works or other works therefrom.

- 6.6 The Contractor agrees to assign to ECITB all right, title and interest in and to any Confidential Information and Intellectual Property made, originated or developed during the course of the Services, together with any other Intellectual Property rights arising from the provision of the Services. For the avoidance of doubt, title to all new Intellectual Property (including but not limited to copyright) arising from the conduct of the Services shall wholly vest in or be wholly vested in ECITB (unless subject to third party rights).
- 6.7 For the avoidance of doubt The Intellectual Property rights in the Contractor's Intellectual Property shall be and remain vested in the Contractor.
- 6.8 All Intellectual Property subsisting in the Documents is the property of ECITB.
- 6.9 ECITB hereby grants the Contractor a non-exclusive terminable licence to use the Documents, and the Intellectual Property subsisting in the Documents during the term of this Agreement, such use shall be limited to what is required to fulfil the Contractor's obligations under this Agreement.
- 6.10 Immediately following the date of this Agreement the Contractor grants to ECITB a non-exclusive, perpetual, royalty free, irrevocable, non-transferable right to use all the Contractor's Intellectual Property which form part of the Works for any purpose.
- 6.11 All Intellectual Property subsisting in the Works during the term of this Agreement other than the Contractor's Intellectual Property forming part of the Works is hereby assigned by the Contractor to ECITB.
- 6.12 The Contractor hereby unconditionally and irrevocably waives, in respect of the Works and any updates or revisions to such Works made by the Contractor, all rights to be identified as the author of the Works and all rights to object to derogatory treatment of the Works to which the Contractor may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time and under all similar legislation from time to time in force anywhere in the world.
- 6.13 The Contractor agrees and undertakes not to reproduce or include in the Documents or the Works any Intellectual Property owned by any other party.
- 6.14 The provisions of this clauses 6.6 to 6.14 inclusive shall apply during the continuance of this contract and after its termination howsoever arising.

7. Status of the Contractor

- 7.1 The parties acknowledge that under the terms of this Agreement the Contractor has been engaged as an independent consultant and this Agreement constitutes a contract for the provision of services and not a contract of employment. Accordingly, nothing in this Agreement will make the Contractor an employee, agent or partner of ECITB and the Contractor will not hold itself out as such.
- 7.2 As the Contractor is not an employee it will not be entitled to receive from ECITB any salary, bonus or sick pay, holiday pay, pension contributions or any other employee benefits.
- 7.3 Unless a company the Contractor warrants and represents to ECITB that it is a self-employed person for national insurance and tax purposes. The Contractor shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of the fees paid by ECITB in accordance with clause 4.1

herein and ECITB shall not make any deductions from the fees payable to the Contractor unless required to do so by law. The Contractor agrees to indemnify ECITB forthwith against any loss, costs, interest, liability, damages or proceedings howsoever arising out of or in connection with any non-payment by the Contractor of any income tax and/or national insurance liabilities relating to the Services.

- 7.4 In respect of the Services provided to ECITB, the Contractor agrees that an amount equal to the amount of tax (if any) so assessed by a tax authority and paid by ECITB to the relevant tax authority may be deducted from any fees payable to the Contractor under this Agreement.
- 7.5 The Contractor will account for any applicable VAT to the appropriate authorities.
- 7.6 The Contractor shall adhere to the principles of all ECITB's policies and procedures whilst on ECITB's business and at all ECITB offices. The Project Manager will be able to advise on these matters. Failure to comply with ECITB's policies and procedures will result in the termination of the Contractor's business relationship and contract for Services.

8. Termination

- 8.1 Either party shall be entitled to terminate this Agreement. One month's written notice of termination shall be given by either party.
- 8.2 Either party shall be entitled to terminate this Agreement forthwith if the other party shall be in serious or continued breach of its obligations. Without limitation ECITB may, by notice in writing, immediately terminate this Agreement if the Contractor shall:
 - 8.2.1 be in breach of any of the terms of this Agreement which in the case of a breach capable of remedy is not remedied by the Contractor within 21 days of receipt by the Contractor of a notice from ECITB specifying the breach and requiring its remedy;
 - 8.2.2 be incompetent, guilty of gross misconduct and/or serious or persistent negligence in respect of his/her obligations hereunder;
 - 8.2.3 fail or refuse after written warning to carry out the duties reasonably and properly required of him/her hereunder.
- 8.3 ECITB shall have the right to terminate this Agreement in the event:
 - 8.3.2 that the Contractor breaches the terms of any licence provided under this Agreement;
 - 8.3.3 that the Contractor infringes the intellectual property of ECITB;
 - 8.3.4 that an order is made or a resolution is passed for the winding up of the Contractor, or circumstances arise which entitle a court of competent jurisdiction to make a winding up order of the Contractor; or
 - 8.3.5 that an order is made for the appointment of an administrator to manage the affairs, business and property of the Contractor, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Contractor, or notice of intention to appoint an administrator is given by the

Contractor or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

8.3.6 that a receiver is appointed of any of the Contractor's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Contractor or if any other person takes possession of or sells the Contractor's assets; or

8.3.7 that the Contractor makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

8.3.8 that the Contractor ceases, or threatens to cease, to trade; or

8.3.9 of any other reason in the reasonable discretion of ECITB.

8.4 Notwithstanding the foregoing, ECITB may not terminate this Agreement solely for the reason of the Contractor's inability to provide the Services through illness or injury, unless such illness or injury prevents the Contractor providing any Services to ECITB for a consecutive period of six weeks or for an aggregate period of six weeks in any period of 12 calendar months.

9 Assignment

9.1 Neither party may assign or otherwise transfer this Agreement without the prior written consent of the other party. In the event that consent for assignment is given, the terms of this Agreement will be binding upon each party's respective successor.

10 Payment on Termination

10.1 If this Agreement shall be terminated because of the default of the Contractor then the Contractor shall indemnify ECITB against costs, losses or damages suffered by ECITB as a result of such default.

11. Indemnity

11.1 The Contractor shall indemnify and hold ECITB harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by ECITB as a result of or in connection with:

(a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Services;

(b) any claim made against ECITB in respect of any liability, loss, damage, death, injury, professional negligence, cost or expense sustained by ECITB's employees or agents or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Agreement by the Contractor.

11.2 The Contractor shall insure against the claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar

losses), costs proceedings, damages and expenses (including legal and other professional fees and expenses) described in clause 11.1. hereof.

12. Notices

- 12.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served by one party on the other if it is either delivered personally or is sent by prepaid first class post and addressed to the party to whom it is to be given, in the case of the Contractor and at the last known residence of the Contractor and in the case of ECITB at its head office, and any such notice so posted shall be deemed to have been served on the date (excluding Sundays and public holidays) following that on which it was posted.

13. Changes to the Agreement

- 13.1. All changes to this Agreement must be approved in writing by authorised officials of both parties and follow the procedure set out in clauses 13.2 to 13.5 of this Agreement.
- 13.2. The party wishing to initiate a change (“the initiator”) must advise the other party (“the recipient”) of the proposed change in writing (by post or by email).
- 13.3. The recipient will consider and assess the proposal and if necessary enter into dialogue with the initiator in order to formulate its response.
- 13.4. The recipient will respond to the initiator’s proposal in writing (by post or by email) and include related information such as variations in fees which may arise as a consequence of the proposed change.
- 13.5. The parties will use their reasonable endeavours to reach agreement concerning the proposed change.

14. Severability

- 14.1 The provisions of this Agreement shall be deemed severable, and the unenforceability of any one of the provisions shall not affect the enforceability of other provisions. In the event that a provision is found to be unenforceable, the parties shall substitute that provision with an enforceable provision that preserves the original intent and position of the parties.

15. Entire Agreement

- 15.1 This document constitutes the entire agreement between the parties and supersedes all other prior agreements between the parties for the provision of such services.

16. Law and Jurisdiction

- 16.1 This Agreement shall be governed by and construed in accordance with the law of England and each party agrees to submit to the exclusive jurisdiction of the courts of England.

Signed
for ECITB

Signed
for the Contractor

Date

Date

Signed
for ECITB

Date

This agreement should be returned within 14 days of the date of issue.

The Schedule

1. Definitions:

In this Schedule the following expressions shall have the following meanings:]
[Delete or incorporate as appropriate]

2. The Services

[]

3. The Programme

The Programme and the Price agreed by the Parties are set out in the following table, which shows the achievement milestones which must be achieved in order to release payment of the Price.

Milestone	Achievement	By (date):	Subtotal	Invoice total
1				
2				
3				
Total price (subject to VAT at prevailing rate – currently 20%):				

The Price is exclusive of VAT.

4. The Rates

Day rates charged by the Contractor for additional services as required:

Rate/Level	Daily rate
Director	
Associate Director	
Research Manager	
Research Executive	
Associate	

The Rates are exclusive of VAT.

5. Key Personnel

The Key Personnel are:

Name:

Name:

6. Expenses

Guidelines relating to the reimbursement of Expenses of the Contractor. Any Expenses incurred by the Contractor in the performance of this Agreement, such as hotel costs and air/rail travel, will only be reimbursed by ECITB if:

- 5.1 they are reasonable
- 5.2 they are agreed in advance with the Project Manager
- 5.3 Claims for such expenses are accompanied by valid receipts.

Agreed exceptional expenses must be inclusive of VAT.

It is ECITB's policy to agree exceptional expenses on the following basis:

- Rail journeys - Standard Class
- Car mileage - Not to exceed 45p per mile, all inclusive
- Airfares - economy class
- Taxis/Hire Cars should only be used if other forms of public transport are not available. (Hire cars, if used, must not be retained unless retention is a cheaper option than any necessary use of taxis)
- Hotels - Up to 3 star.
- Other expenses will only be paid if agreed in advance with the Project Manager.

7. The Project Manager is [INSERT NAME]