



Professional Service Contract

29636 - River Thames Scheme – Lands Workstream Support Contract

A Call-Off contract under the Environment Agency's Estates Professional Project Support and Land Agency Services Framework (EPPSLA – 22426)

Schedule of Options

MAIN OPTIONS

Option E **Cost reimbursable contract**

RESOLVING AND AVOIDING DISPUTES

Option W2 Used when the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies

SECONDARY OPTIONS

Option X2 Changes in the law

Option X9 Transfer of rights

Option X10 Information modelling –

Option X11 Termination by the *Client*

Option X20 Key Performance Indicators

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

Option Z *Additional conditions of contract*

Note Options X14–X17 and X19 are not used

Core Clauses

1.

Actions	10	
	10.1	The Parties and the <i>Service Manager</i> shall act as stated in this contract.
	10.2	The Parties and the <i>Service Manager</i> act in a spirit of mutual trust and co-operation.
Identified and defined terms	11	
	11.1	In these <i>conditions of contract</i> , terms identified in the Contract Data are in italics and defined terms have capital initials.
	11.2	(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Service Manager</i>. The latest programme accepted by the <i>Service Manager</i> supersedes previous Accepted Programmes. (2) Completion is when the <i>Consultant</i> has - done all the work which the Scope states is to be done by the Completion Date and - corrected Defects which would have prevented the <i>Client</i> from using the <i>service</i> or Others from doing their work. If the work which the <i>Consultant</i> is to do by the Completion Date is not stated in the Scope, Completion is when the <i>Consultant</i> has done all the work necessary for the <i>Client</i> to use the <i>service</i> and for Others to do their work. (3) The Completion Date is the <i>completion date</i> unless later changed in accordance with the contract. (4) The Contract Date is the date when the contract came into existence. (5) A Corrupt Act is - the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust or - abusing any entrusted power for private gain in connection with this contract or any other contract with the <i>Client</i>. This includes any commission paid as an inducement which was not declared to the <i>Client</i> before the Contract Date. (6) A Defect is a part of the <i>service</i> which is not in accordance with the Scope or the applicable law. (7) The Early Warning Register is a register of matters which are - listed in the Contract Data for inclusion and - notified by the <i>Service Manager</i> or the <i>Consultant</i> as early warning matters. It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced. (8) The Fee is the amount calculated by applying the <i>fee percentage</i> to the amount of Defined Cost. (9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with the contract.

(10) Others are people or organisations who are not the *Client*, the *Service Manager*, the *Adjudicator*, the *Consultant* or any employee, Subcontractor or supplier of the *Consultant*.

(11) The Parties are the *Client* and the *Consultant*.

(12) To Provide the Service means to do the work necessary to complete the service in accordance with the contract and all incidental work, services and actions which the contract requires.

(13) Scope is information which

- specifies and describes the service or
- states any constraints on how the *Consultant* Provides the Service

and is either

- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with the contract.

(14) A Subcontractor is a person or organisation who has a contract with the *Consultant* to provide part of the service, except for the supply of people paid for by the *Consultant* according to the time they work.

Interpretation and the law	12
12.1	In the contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round.
12.2	The contract is governed by the <i>law of the contract</i> .
12.3	No change to the contract, unless provided for by these <i>conditions of contract</i> , has effect unless it has been agreed, confirmed in writing and signed by the Parties.
12.4	The contract is the entire agreement between the Parties.
Communications	13
13.1	Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the <i>language of the contract</i> .
13.2	If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope.
	If the Scope does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
13.3	If the contract requires the <i>Service Manager</i> or the <i>Consultant</i> to reply to a communication, unless otherwise stated in these <i>conditions of contract</i> , they reply within the <i>period for reply</i> .
13.4	The <i>Service Manager</i> replies to a communication submitted or resubmitted by the <i>Consultant</i> for acceptance. If the reply is not acceptance, the <i>Service Manager</i> states the reasons in sufficient detail to enable the <i>Consultant</i> to correct the matter. The <i>Consultant</i> resubmits the communication within the <i>period for reply</i> taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the <i>Consultant's</i> submission fully.
13.5	The <i>Service Manager</i> may extend the period for reply to a communication if the <i>Service Manager</i> and the <i>Consultant</i> agree to the extension before the reply is due. The <i>Service Manager</i> informs the <i>Consultant</i> of the extension which has been agreed.
13.6	The <i>Service Manager</i> issues certificates to the <i>Client</i> and the <i>Consultant</i> .
13.7	A notification or certificate which the contract requires is communicated separately from other communications.
13.8	The <i>Service Manager</i> may withhold acceptance of a submission by the <i>Consultant</i> . Withholding acceptance for a reason stated in these <i>conditions of contract</i> is not a compensation event.

- 13.9 The *Consultant* retains copies of drawings, specifications, reports and other documents which record the *service* for the *period for retention*. The copies are retained in the form stated in the Scope.

The Service Manager

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- 14.1 The *Service Manager's* acceptance of a communication from the *Consultant* or of the work does not change the *Consultant's* responsibility to Provide the Service.
- 14.2 The *Service Manager*, after notifying the *Consultant*, may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Service Manager* in the contract includes an action by their delegate. The *Service Manager* may take an action which they have delegated.
- 14.3 The *Service Manager* may give an instruction to the *Consultant* which changes the Scope or a Key Date. After Completion, an instruction is given only if it is necessary to Provide the Service. If information provided by the *Client* is found to be incorrect, the *Service Manager* gives an instruction correcting it.
- 14.4 The *Service Manager* does not give an instruction to the *Consultant* which would require it to act in a way that was outside its professional code of conduct.
- 14.5 The *Client* may replace the *Service Manager* after notifying the *Consultant* of the name of the replacement.

Early warning

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- 15.1 The *Consultant* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
 - delay Completion,
 - delay meeting a Key Date,
 - impair the usefulness of the *service* to the *Client* or
 - affect the work of the *Client*, a *Client's* contractor or another consultant.

The *Service Manager* or the *Consultant* may give an early warning by notifying the other of any other matter which could increase the *Consultant's* total cost. The *Service Manager* enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required.

- 15.2 The *Service Manager* prepares a first Early Warning Register and issues it to the *Consultant* within one week of the *starting date*. The *Service Manager* instructs the *Consultant* to attend a first early warning meeting within two weeks of the *starting date*.

Later early warning meetings are held

- if either the *Service Manager* or *Consultant* instructs the other to attend an early warning meeting, and, in any case,
- at no longer interval than the interval stated in the Contract Data until Completion of the whole of the *service*.

The *Service Manager* or *Consultant* may instruct other people to attend an early warning meeting if the other agrees.

A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken.

- 15.3 At an early warning meeting, those who attend co-operate in
- making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced,
 - seeking solutions that will bring advantage to all those who will be affected,

- deciding on the actions which will be taken and who, in accordance with the contract, will take them,
- deciding which matters can be removed from the Early Warning Register and
- reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them.

15.4 The *Service Manager* revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the *Consultant* within one week of the early warning meeting. If a decision needs a change to the Scope, the *Service Manager* instructs the change at the same time as the revised Early Warning Register is issued.

Requirements for instructions

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- 16.1 The *Service Manager* or the *Consultant* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of the contract. The *Service Manager* states how the ambiguity or inconsistency should be resolved.
- 16.2 The *Service Manager* or the *Consultant* notifies the other as soon as either becomes aware that the Scope includes an illegal or impossible requirement. If the Scope does include an illegal or impossible requirement, the *Service Manager* gives an instruction to change the Scope appropriately.

Corrupt Acts

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- 17.1 The *Consultant* does not do a Corrupt Act.
- 17.2 The *Consultant* takes action to stop a Corrupt Act of a Subcontractor or supplier of which it is, or should be, aware.
- 17.3 The *Consultant* includes equivalent provisions to these in subcontracts.

Prevention

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- 18.1 If an event occurs which
- stops the *Consultant* completing the whole of the *service* or
 - stops the *Consultant* completing the whole of the *service* by the date for planned Completion shown on the Accepted Programme,
- and which
- neither Party could prevent and
 - an experienced consultant would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it,
- the *Service Manager* gives an instruction to the *Consultant* stating how the event is to be dealt with.

2. THE *CONSULTANT'S* MAIN RESPONSIBILITIES

Providing the Service	20	
	20.1	The <i>Consultant</i> Provides the Service in accordance with the Scope.
	20.2	The <i>Consultant's</i> obligation is to use the skill and care normally used by professionals providing services similar to the <i>service</i> .
	20.3	The <i>Consultant</i> is not liable for a Defect unless it failed to carry out the <i>service</i> using the skill and care normally used by professionals providing services similar to the <i>service</i> .
People	21	
	21.1	The <i>Consultant</i> either provides each <i>key person</i> named to do the job stated in the Contract Data or provides a replacement person who has been accepted by the <i>Service Manager</i> . The <i>Consultant</i> submits the name, relevant qualifications and experience of a proposed replacement person to the <i>Service Manager</i> for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced.
	21.2	The <i>Service Manager</i> may, having stated the reasons, instruct the <i>Consultant</i> to remove a person. The <i>Consultant</i> then arranges that, after one day, the person has no further connection with the work included in the contract.
Working with the Client and Others	22	
	22.1	The <i>Consultant</i> co-operates with Others, including in obtaining and providing information which they need in connection with the <i>service</i> .
	22.2	Where necessary to Provide the Service, the <i>Consultant</i> holds or attends meetings with Others. The <i>Consultant</i> informs the <i>Service Manager</i> of these meetings beforehand and the <i>Service Manager</i> may attend them.
	22.3	If the <i>Service Manager</i> decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the <i>Client</i> incurs additional cost either • in carrying out work or • by paying an additional amount to Others in carrying out work on the same project, the additional cost the <i>Client</i> has paid or will incur is paid by the <i>Consultant</i> . The <i>Service Manager</i> assesses the additional cost within four weeks of the date when the Condition stated for the Key Date is met. The <i>Client's</i> right to recover the additional cost is its only right in these circumstances.
Subcontracting	23	
	23.1	If the <i>Consultant</i> subcontracts work, it is responsible for Providing the Service as if it had not subcontracted. The contract applies as if a Subcontractor's employees were the <i>Consultant's</i> .
	23.2	The <i>Consultant</i> submits the name of each proposed Subcontractor to the <i>Service Manager</i> for acceptance. A reason for not accepting the Subcontractor is that the appointment will not allow the <i>Consultant</i> to Provide the Service. The <i>Consultant</i> does not appoint a proposed Subcontractor until the <i>Service Manager</i> has • accepted the Subcontractor and, to the extent these <i>conditions of contract</i> require, • accepted the subcontract documents.
	23.3	The <i>Consultant</i> submits the proposed subcontract documents, except any pricing information, for each subcontract to the <i>Service Manager</i> for acceptance unless • the proposed subcontract is an NEC contract which has not been amended other than in accordance with the <i>additional conditions of contract</i> or • the <i>Service Manager</i> has agreed that no submission is required.

A reason for not accepting the subcontract documents is that

- their use will not allow the *Consultant* to Provide the Service or
- they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation.

Other responsibilities	24	
	24.1	The <i>Consultant</i> obtains approval from Others where necessary.
	24.2	The <i>Consultant</i> obeys an instruction which is in accordance with the contract and is given by the <i>Service Manager</i> .
	24.3	The <i>Consultant</i> acts in accordance with the health and safety requirements stated in the Scope.
Assignment	25	
	25.1	Either Party notifies the other Party if they intend to transfer the benefit of the contract or any rights under it. The <i>Client</i> does not transfer a benefit or any right if the party receiving the benefit or rights does not intend to act in a spirit of mutual trust and co-operation.
Disclosure	26	
	26.1	The Parties do not disclose information obtained in connection with the <i>service</i> except when necessary to carry out their duties under the contract.
	26.2	The <i>Consultant</i> may publicise the <i>service</i> only with the <i>Client's</i> agreement.

3. TIME

Starting, Completion and Key Dates	30	
	30.1	The <i>Consultant</i> does not start work until the <i>starting date</i> and does the work so that Completion is on or before the Completion Date.
	30.2	The <i>Service Manager</i> decides the date of Completion and certifies it within one week of the date.
	30.3	The <i>Consultant</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
The programme	31	
	31.1	If a programme is not identified in the Contract Data, the <i>Consultant</i> submits a first programme to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.
	31.2	The <i>Consultant</i> shows on each programme submitted for acceptance • the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date, • planned Completion, • the order and timing of the operations which the <i>Consultant</i> plans to do in order to Provide the Service, • the order and timing of the work of the <i>Client</i> and Others as last agreed with them by the <i>Consultant</i> or, if not so agreed, as stated in the Scope, • the dates when the <i>Consultant</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Client</i> and Others to do their work, • provisions for – float, – time risk allowances, – health and safety requirements and – the procedures set out in the contract, • the dates when, in order to Provide the Service in accordance with the programme, the <i>Consultant</i> will need – access to a person, place or thing if later than its <i>access date</i>, – information and things to be provided by the <i>Client</i> and – information and approval from Others,

- for each operation, a statement of how the *Consultant* plans to do the work identifying the resources which will be used and
- other information which the Scope requires the *Consultant* to show on a programme submitted for acceptance.

A programme issued for acceptance is in the form stated in the Scope.

31.3 Within two weeks of the *Consultant* submitting a programme for acceptance, the *Service Manager* notifies the *Consultant* of the acceptance of the programme or the reasons for not accepting it. A reason for not accepting a programme is that

- the *Consultant's* plans which it shows are not practicable,
- it does not show the information which the contract requires,
- it does not represent the *Consultant's* plans realistically or
- it does not comply with the Scope.

If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Consultant's* notification, it is treated as acceptance by the *Service Manager* of the programme.

Revising the programme	32
	32.1 The <i>Consultant</i> shows on each revised programme • the actual progress achieved on each operation and its effect upon the timing of the remaining work, • how the <i>Consultant</i> plans to deal with any delays and to correct notified Defects and • any other changes which the <i>Consultant</i> proposes to make to the Accepted Programme. 32.2 The <i>Consultant</i> submits a revised programme to the <i>Service Manager</i> for acceptance • within the <i>period for reply</i> after the <i>Service Manager</i> has instructed the <i>Consultant</i> to, • when the <i>Consultant</i> chooses to and, in any case, • at no longer interval than the interval stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the <i>service</i>.
Access to people, places and things	33
	33.1 The <i>Client</i> provides access to a person, place or thing to the <i>Consultant</i> as stated in the Contract Data on or before the later of its <i>access date</i> and the date for access shown on the Accepted Programme. 33.2 The <i>Client</i> provides information and things which the contract requires the <i>Client</i> to provide in accordance with the Accepted Programme.
Instructions to stop or not to start work	34
	34.1 The <i>Service Manager</i> may instruct the <i>Consultant</i> to stop or not to start any work. The <i>Service Manager</i> subsequently gives an instruction to the <i>Consultant</i> to • re-start or start the work or • remove the work from the Scope.
Acceleration	35
	35.1 The <i>Consultant</i> and the <i>Service Manager</i> may propose to the other an acceleration to achieve Completion before the Completion Date. If the <i>Service Manager</i> and <i>Consultant</i> are prepared to consider the proposed change, the <i>Service Manager</i> instructs the <i>Consultant</i> to provide a quotation. The instruction states changes to the Key Dates to be included in the quotation. The <i>Consultant</i> provides a quotation within three weeks of the instruction to do so. The <i>Service Manager</i> replies to the quotation within three weeks. The reply is • a notification that the quotation is accepted or • a notification that the quotation is not accepted and that the Completion Dates and Key Dates are not changed.

- 35.2 A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Consultant* submits details of the assessment with each quotation.
- 35.3 When a quotation for an acceleration is accepted, the *Service Manager* changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme.

4. QUALITY MANAGEMENT

Quality management system	40
40.1	The <i>Consultant</i> operates a quality management system which complies with the requirements stated in the Scope.
40.2	Within the period stated in the Contract Data, the <i>Consultant</i> provides the <i>Service Manager</i> with a quality policy statement and a quality plan for acceptance. A reason for not accepting a quality policy statement or quality plan is that it does not allow the <i>Consultant</i> to Provide the Service. If any changes are made to the quality plan, the <i>Consultant</i> provides the <i>Service Manager</i> with the changed quality plan for acceptance.
40.3	The <i>Service Manager</i> may instruct the <i>Consultant</i> to correct a failure to comply with the quality plan. This instruction is not a compensation event.
Correcting Defects	41
41.1	Until the <i>defects date</i> the <i>Service Manager</i> and the <i>Consultant</i> notifies the other as soon they becomes aware of a Defect. At Completion the <i>Consultant</i> notifies the <i>Service Manager</i> of the Defects which have not been corrected. The <i>Client's</i> rights in respect of a Defect which the <i>Service Manager</i> has not found or notified by the <i>defects date</i> are not affected.
41.2	The <i>Consultant</i> corrects a Defect whether or not the <i>Service Manager</i> has notified it. The <i>Consultant</i> corrects Defects within a time which minimises the adverse effect on the <i>Client</i> or Others. If the <i>Consultant</i> does not correct a notified Defect within the time required by the contract, the <i>Service Manager</i> assesses the cost to the <i>Client</i> of having the Defect corrected by other people and the <i>Consultant</i> pays this amount. The Scope is treated as having been changed to accept the Defect.
Accepting Defects	42
42.1	The <i>Consultant</i> and the <i>Service Manager</i> may propose to the other that the Scope should be changed so that a Defect does not have to be corrected.
42.2	If the <i>Consultant</i> and the <i>Service Manager</i> are prepared to consider the change, the <i>Consultant</i> submits a quotation for reduced Prices or an earlier Completion Date or both to the <i>Service Manager</i> for acceptance. If the quotation is accepted, the <i>Service Manager</i> changes the Scope, the Prices and the Completion Date accordingly and accepts the revised programme.

5. PAYMENT

Assessing the amount due	50
50.1	The <i>Service Manager</i> assesses the amount due at each assessment date. The first assessment date is decided by the <i>Service Manager</i> to suit the procedures of the Parties and is not later than the <i>assessment interval</i> after the <i>starting date</i> . Later assessment dates occur at the end of each <i>assessment interval</i> until - four weeks after the <i>defects date</i> or - the <i>Service Manager</i> issues a termination certificate.
50.2	The <i>Consultant</i> submits an application for payment to the <i>Service Manager</i> before each assessment date setting out the amount the <i>Consultant</i> considers is due at the assessment date. The <i>Consultant's</i> application for payment includes details of how the amount has been assessed and is in the form stated in the Scope. In assessing the amount due, the <i>Service Manager</i> considers an application for payment submitted by the <i>Consultant</i> before the assessment date.
50.3	If the <i>Consultant</i> submits an application for payment before the assessment date, the

amount due at the assessment date is

- the Price for Service Provided to Date,
- plus the amount of the *expenses* properly spent by the *Consultant* in Providing the Service,
- plus other amounts to be paid to the *Consultant*,
- less amounts to be paid by or retained from the *Consultant*.

- 50.4 If the *Consultant* does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of
- the amount the *Service Manager* assesses as due at the assessment date, assessed as though the *Consultant* had submitted an application before the assessment date, and
 - the amount due at the previous assessment date.
- 50.5 If no programme is identified in the Contract Data, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the *Consultant* has submitted a first programme to the *Service Manager* for acceptance showing the information which the contract requires.
- 50.6 The *Service Manager* corrects any incorrectly assessed amount due in a later payment certificate.

Payment
51

- 51.1 The *Service Manager* certifies a payment within one week of each assessment date. The *Service Manager's* certificate includes details of how the amount due has been assessed. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Consultant* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Consultant*. 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. Payments are in the *currency of the contract* unless otherwise stated in the contract.

- 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.

- 51.3 If an amount due is corrected in a later certificate
- in relation to a mistake or a compensation event or
 - following a decision of the *Adjudicator* or the *tribunal*,
- interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount.

- 51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

- 51.5 Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract.

Defined Cost
52

- 52.1 All the *Consultant's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

Final assessment
53

- 53.1 The *Service Manager* makes an assessment of the final amount due and certifies a final payment, if any is due, no later than

- four weeks after the later of the *defects date* and the date the last Defect is corrected or
- thirteen weeks after the *Service Manager* issues a termination certificate.

The *Service Manager* gives the *Consultant* details of how the amount due has been assessed. 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. The final 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.

53.2 If the *Service Manager* does not make this assessment within the time allowed, the *Consultant* may issue to the *Client* an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Client* agrees with this assessment, the Party to which payment is due submits an invoice for the amount agreed for payment within one week of the date of the assessment. The final 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.

53.3 An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions.

If the contract includes Option W1, a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* within four weeks of the assessment being issued,
- refers any issues not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of the issues not agreed being produced or when it should have been produced and
- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

If the contract includes Option W2, a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
- refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

53.4 The assessment of the final amount due is changed to include

- any agreement the Parties reach and
- a decision of the *Adjudicator* which has not been referred to the *tribunal* within four weeks of that decision.

A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.

6. COMPENSATION EVENTS

Compensation events

60

60.1 The following events are compensation events.

- (1) The *Service Manager* gives an instruction changing the Scope except
 - a change made in order to accept a Defect or
 - a change to the Scope provided by the *Consultant* which is made
 - at the *Consultant's* request or
 - in order to comply with the Scope provided by the *Client*.
- (2) The *Client* does not allow access to a person, place or thing by the later of its *access date* and the date for access shown on the Accepted Programme.
- (3) The *Client* does not provide something which it is to provide by the date shown in the Accepted Programme.
- (4) The *Service Manager* gives an instruction to stop or not to start any work, or to change a Key Date.
- (5) The *Client* or Others do not work within the times shown on the Accepted Programme or the conditions stated in the Scope.
- (6) The *Service Manager* does not reply to a communication from the *Consultant* within the period required by the contract.
- (7) The *Service Manager* changes a decision which the *Service Manager* had previously communicated to the *Consultant*.
- (8) The *Service Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or of not correcting a Defect) for a reason not stated in the contract.
- (9) An event which is a *Client's* liability stated in these *conditions of contract*.
- (10) The *Service Manager* notifies the *Consultant* of a correction to an assumption which the *Service Manager* stated about a compensation event.
- (11) A breach of contract by the *Client* which is not one of the other compensation events in the contract.
- (12) An event which
 - stops the *Consultant* completing the whole of the *service* or
 - stops the *Consultant* completing the whole of the *service* by the date for planned Completion shown on the Accepted Programme,and which
 - neither Party could prevent,
 - an experienced consultant would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it and
 - is not one of the other compensation events stated in the contract.
- (13) The *Consultant* corrects a Defect for which it is not liable under the contract.
- (14) The *Service Manager* gives an instruction correcting information provided by the *Client*.
- (15) The *Service Manager* notifies the *Consultant* that a quotation for a proposed instruction is not accepted.
- (16) Additional compensation events stated in Contract Data part one.

Notifying compensation events	61
61.1	For a compensation event which arises from the <i>Service Manager</i> giving an instruction or notification or changing an earlier decision the <i>Service Manager</i> notifies the <i>Consultant</i> of the compensation event at the time of that communication.
61.2	The <i>Service Manager</i> includes in the notification of a compensation event an instruction to the <i>Consultant</i> to submit quotations unless - the event arises from a fault of the <i>Consultant</i> or - the event has no effect upon Defined Cost, Completion or meeting a Key Date.
61.3	The <i>Consultant</i> notifies the <i>Service Manager</i> of an event which has happened or which is expected to happen as a compensation event if - the <i>Consultant</i> believes that the event is a compensation event and - the <i>Service Manager</i> has not notified the event to the <i>Consultant</i>. If the <i>Consultant</i> does not notify a compensation event within eight weeks of becoming aware that the event has happened the Prices, the Completion Date or a Key Date are not changed unless the event arises from the <i>Service Manager</i> giving an instruction or notification or changing an earlier decision.
61.4	The <i>Service Manager</i> replies to the <i>Consultant's</i> notification of a compensation event within - one week after the <i>Consultant's</i> notification or - a longer period to which the <i>Consultant</i> has agreed. If the event - arises from a fault of the <i>Consultant</i>, - has not happened and is not expected to happen, - has not been notified within the timescales set out in these <i>conditions of contract</i>, - has no effect upon Defined Cost, Completion or meeting a Key Date or - is not one of the compensation events stated in the contract
	the <i>Service Manager</i> notifies the <i>Consultant</i> that the Prices, the Completion Date and the Key Dates are not to be changed and states the reasons in the notification. Otherwise, the <i>Service Manager</i> notifies the <i>Consultant</i> that the event is a compensation event and includes in the notification an instruction to the <i>Consultant</i> to submit quotations. If the <i>Service Manager</i> fails to reply to the <i>Consultant's</i> notification of a compensation event within the time allowed, the <i>Consultant</i> may notify the <i>Service Manager</i> of that failure. If the failure continues for a further two weeks after the <i>Consultant's</i> notification it is treated as acceptance by the <i>Service Manager</i> that the event is a compensation event and an instruction to submit quotations.
61.5	If the <i>Service Manager</i> decides that the <i>Consultant</i> did not give an early warning of the event which an experienced consultant could have given, the <i>Service Manager</i> states this in the instruction to the <i>Consultant</i> to submit quotations.
61.6	If the effects of a compensation event are too uncertain to be forecast reasonably, the <i>Service Manager</i> states assumptions about the compensation event in the instruction to the <i>Consultant</i> to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the <i>Service Manager</i> notifies a correction.
61.7	A compensation event is not notified by the <i>Service Manager</i> or the <i>Consultant</i> after the <i>defects date</i> .

Quotations for compensation events	62
62.1	After discussing with the <i>Consultant</i> different ways of dealing with the compensation event which are practicable, the <i>Service Manager</i> may instruct the <i>Consultant</i> to submit alternative quotations. The <i>Consultant</i> submits the required quotations to the <i>Service Manager</i> and may submit quotations for other methods of dealing with the compensation event which it considers practicable.
62.2	Quotations for a compensation event comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the <i>Consultant</i> . The <i>Consultant</i> submits details of the assessment with each quotation. If the programme for remaining work is altered by the compensation event, the <i>Consultant</i> includes the alterations to the Accepted Programme in the quotation.
62.3	The <i>Consultant</i> submits quotations within three weeks of being instructed to do so by the <i>Service Manager</i> . The <i>Service Manager</i> replies within two weeks of the submission. The reply is • a notification of acceptance of the quotation, • an instruction to submit a revised quotation or • that the <i>Service Manager</i> will be making the assessment.
62.4	The <i>Service Manager</i> instructs the <i>Consultant</i> to submit a revised quotation only after explaining the reasons for doing so to the <i>Consultant</i> . The <i>Consultant</i> submits the revised quotation within three weeks of being instructed to do so.
62.5	The <i>Service Manager</i> extends the time allowed for • the <i>Consultant</i> to submit quotations for a compensation event or • the <i>Service Manager</i> to reply to a quotation if the <i>Service Manager</i> and the <i>Consultant</i> agree to the extension before the submission or reply is due. The <i>Service Manager</i> informs the <i>Consultant</i> of the extension that has been agreed.
62.6	If the <i>Service Manager</i> does not reply to a quotation within the time allowed, the <i>Consultant</i> may notify the <i>Service Manager</i> of that failure. If the <i>Consultant</i> submitted more than one quotation for the compensation event, the notification states which quotation the <i>Consultant</i> proposes is to be used. If the failure continues for a further two weeks after the <i>Consultant's</i> notification it is treated as acceptance by the <i>Service Manager</i> of the quotation.
Assessing compensation events	63
63.1	The change to the Prices is assessed as the effect of the compensation event upon • the actual Defined Cost of the work done by the dividing date, • the forecast Defined Cost of the work not done by the dividing date and • the resulting Fee. For a compensation event that arises from the <i>Service Manager</i> giving an instruction or notification or changing an earlier decision, the dividing date is the date of that communication. For other compensation events, the dividing date is the date of the notification of the compensation event.
63.2	The <i>Service Manager</i> and the <i>Consultant</i> may agree rates or lump sums to assess the change to the Prices.
63.3	If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced unless otherwise stated in these <i>conditions of contract</i> .
63.4	If the effect of a compensation event is to reduce the total Defined Cost and the event is • a change to the Scope or • a correction to an assumption stated by the <i>Service Manager</i> for assessing an earlier compensation event the Prices are reduced.
63.5	A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown

on the Accepted Programme current at the dividing date.

A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme current at the dividing date.

The assessment takes into account

- any delay caused by the compensation event already in the Accepted Programme and
- events which have happened between the date of the Accepted Programme and the dividing date.

- 63.6 The rights of the *Client* and the *Consultant* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event.
- 63.7 If the *Service Manager* has stated in the instruction to submit quotations that the *Consultant* did not give an early warning of the event which an experienced consultant could have given, the compensation event is assessed as if the *Consultant* had given the early warning.
- 63.8 The assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events.
- 63.9 The assessment of the effect of a compensation event is based upon the assumptions that the *Consultant* reacts competently and promptly to the event and that any Defined Cost and time due to the event are reasonably incurred.
- 63.10 A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Scope.
- 63.11 If a change to the Scope makes the description of the Condition for a Key Date incorrect, the *Service Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.

**The Service
Manager's
assessments**

64

- 64.1 The *Service Manager* assesses a compensation event
- if the *Consultant* has not submitted the quotation and details of its assessment within the time allowed,
 - if the *Service Manager* decides that the *Consultant* has not assessed the compensation event correctly in the quotation and has not instructed the *Consultant* to submit a revised quotation,
 - if, when the *Consultant* submits quotations for the compensation event, it has not submitted a programme or alterations to a programme which the contract requires it to submit or
 - if, when the *Consultant* submits quotations for the compensation event, the *Service Manager* has not accepted the *Consultant's* latest programme for one of the reasons stated in the contract.

- 64.2 The *Service Manager* assesses the programme for the remaining work and uses it in the assessment of a compensation event if
- there is no Accepted Programme,
 - the *Consultant* has not submitted a programme or alterations to a programme for acceptance as required by the contract or
 - the *Service Manager* has not accepted the *Consultant's* latest programme for one of the reasons stated in the contract.
- 64.3 The *Service Manager* notifies the *Consultant* of the assessment of a compensation event and gives details of the assessment within the period allowed for the *Consultant's* submission of its quotation for the same compensation event. This period starts when the need for the *Service Manager's* assessment becomes apparent.
- 64.4 If the *Service Manager* does not assess a compensation event within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the *Consultant* submitted more than one quotation for the compensation event, the notification states which quotation the *Consultant* proposes is to be used. If the failure continues for a further two weeks after the *Consultant's* notification it is treated as acceptance by the *Service Manager* of the quotation.

Proposed instructions

65

- 65.1 The *Service Manager* may instruct the *Consultant* to submit a quotation for a proposed instruction. The *Service Manager* states in the instruction the date by which the proposed instruction may be given. The *Consultant* does not put a proposed instruction into effect.
- 65.2 The *Consultant* submits quotations for a proposed instruction within three weeks of being instructed to do so by the *Service Manager*. The quotation is assessed as a compensation event. The *Service Manager* replies to the *Consultant's* quotation by the date when the proposed instruction may be given. The reply is
- an instruction to submit a revised quotation including the reasons for doing so,
 - the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or
 - a notification that the quotation is not accepted.
- If the *Service Manager* does not reply to the quotation within the time allowed, the quotation is not accepted.
- 65.3 If the quotation is not accepted, the *Service Manager* may issue the instruction, notify the instruction as a compensation event and instruct the *Consultant* to submit a quotation.

Implementing compensation events

66

- 66.1 A compensation event is implemented when
- the *Service Manager* notifies acceptance of the *Consultant's* quotation,
 - the *Service Manager* notifies the *Consultant* of an assessment made by the *Service Manager* or
 - a *Consultant's* quotation is treated as having been accepted by the *Service Manager*.
- 66.2 When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.
- 66.3 The assessment of an implemented compensation event is not revised except as stated in these *conditions of contract*.

7. RIGHTS TO MATERIAL

The Parties' use of material	70	
	70.1	The <i>Client</i> has the right to use the material provided by the <i>Consultant</i> for the purpose stated in the Scope. The <i>Consultant</i> obtains from a Subcontractor equivalent rights for the <i>Client</i> to use material prepared by the Subcontractor.
	70.2	The <i>Consultant</i> has the right to use material provided by the <i>Client</i> only to Provide the Service. The <i>Consultant</i> may make this right available to a Subcontractor.
	70.3	The <i>Consultant</i> may use the material provided by it under the contract for other work unless stated otherwise in the Scope.

8. LIABILITIES AND INSURANCE

Client's liabilities	80	
	80.1	The following are <i>Client's</i> liabilities. • Claims and proceedings from Others and compensation and costs payable to Others which are due to – the unavoidable result of the <i>service</i> or – negligence, breach of statutory duty or interference with any legal right by the <i>Client</i> or by any person employed by or contracted to it except the <i>Consultant</i>. • A fault of the <i>Client</i> or any person employed by or contracted to it, except the <i>Consultant</i>. • Additional <i>Client's</i> liabilities stated in the Contract Data.
Consultant's liabilities	81	
	81.1	The following are <i>Consultant's</i> liabilities unless they are stated as being <i>Client's</i> liabilities. • Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the <i>Consultant</i> Providing the Service. • Costs incurred by the <i>Client</i> which arise from a failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>service</i>. • Death or bodily injury to the employees of the <i>Consultant</i>.
Recovery of costs	82	
	82.1	Any cost which the <i>Client</i> has paid or will pay as a result of an event for which the <i>Consultant</i> is liable is paid by the <i>Consultant</i> .
	82.2	Any cost which the <i>Consultant</i> has paid or will pay to Others as a result of an event for which the <i>Client</i> is liable is paid by the <i>Client</i> .
	82.3	The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the contract.
Insurance cover	83	
	83.1	The <i>Client</i> provides the insurances which the <i>Client</i> is to provide as stated in the Contract Data.
	83.2	The <i>Consultant</i> provides the insurances stated in the Insurance Table except any insurance which the <i>Client</i> is to provide as stated in the Contract Data. The <i>Consultant</i> provides additional insurances as stated in the Contract Data.
	83.3	The insurances provide cover for events which are the <i>Consultant's</i> liability from the <i>starting date</i> until the end of the periods stated in the Contract Data.

INSURANCE TABLE	
INSURANCE AGAINST	MINIMUM AMOUNT OF COVER
Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	The amount stated in the Contract Data
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	The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately
Liability for 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	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event
Insurance policies	84
84.1	Before the <i>starting date</i> and on each renewal of the insurance policy until the <i>defects date</i>, the <i>Consultant</i> submits to the <i>Service Manager</i> for acceptance certificates which state that the insurance required by the contract is in force. After the <i>defects date</i> and on each renewal of the insurance policy until the end of the periods stated in the Contract Data for which insurance is to be maintained, the <i>Consultant</i> submits to the <i>Client</i> for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the <i>Consultant's</i> insurer or insurance broker. The <i>Service Manager</i> or the <i>Client</i> accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities. The <i>Client's</i> acceptance of an insurance certificate provided by the <i>Consultant</i> does not change the responsibility of the <i>Consultant</i> to provide the insurances stated in the Contract Data.
84.2	The Parties comply with the terms and conditions of the insurance policies to which they are a Party.
If the <i>Consultant</i> does not insure	85
85.1	The <i>Client</i> may insure an event or liability which the contract requires the <i>Consultant</i> to insure if the <i>Consultant</i> does not submit a required certificate. The cost of this insurance to the <i>Client</i> is paid by the <i>Consultant</i> .
Insurance by the <i>Client</i>	86
86.1	The <i>Service Manager</i> submits certificates for insurance provided by the <i>Client</i> to the <i>Consultant</i> for acceptance before the <i>starting date</i> and afterwards as the <i>Consultant</i> instructs. The <i>Consultant</i> accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.
86.2	The <i>Consultant's</i> acceptance of an insurance certificate provided by the <i>Client</i> does not change the responsibility of the <i>Client</i> to provide the insurances stated in the Contract Data.
86.3	The <i>Consultant</i> may insure an event or liability which the contract requires the <i>Client</i> to insure if the <i>Client</i> does not submit a required certificate. The cost of this insurance to the <i>Consultant</i> is paid by the <i>Client</i> .
Limitation of liability	87
87.1	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 the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the <i>law of the contract</i>. The excluded matters are amounts payable by the <i>Consultant</i> as stated in the contract for • delay damages if Option X7 applies,

- *Consultant's* share if Option C applies,
- an infringement by the *Consultant* of the rights of Others,
- loss of or damage to third party property and death of or bodily injury to a person other than an employee of the *Consultant*.

9. TERMINATION

Termination

90

- 90.1 If either Party wishes to terminate the *Consultant's* obligation to Provide the Service it notifies the *Service Manager* and the other Party giving details of the reason for terminating. The *Service Manager* issues a termination certificate promptly if the reason complies with the contract.
- 90.2 A Party may terminate for a reason identified in the Termination Table. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE			
TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The <i>Client</i>	R1-R15, R18 or R22	P1 and P2	A1 and A2
	R17 or R20	P1	A1
	R21	P1	A1
The <i>Consultant</i>	R1-R10, R16 or R19	P1	A1 and A3
	R17 or R20	P1	A1

- 90.3 The procedures for termination are implemented immediately after the *Service Manager* has issued a termination certificate.
- If the *Client* terminates for one of reasons R1 to R15, R18 or R22 and a certified payment has not been made at the date of the termination certificate, the *Client* need not make the certified payment unless these *conditions of contract* state otherwise.
- 90.4 After a termination certificate has been issued, the *Consultant* does no further work necessary to Provide the Service.

Reasons for termination

91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has
 - presented an application for bankruptcy (R1),
 - had a bankruptcy order made against it (R2),
 - had a receiver appointed over its assets (R3) or
 - made an arrangement with its creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it or had an administrator appointed over it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors (R10).
- 91.2 The *Client* may terminate if the *Service Manager* has notified that the *Consultant* has not put one of the following defaults right within four weeks of the date when the

Service Manager notified the *Consultant* of the default.

- Substantially failed to comply with its obligations (R11).
- Not provided a bond or guarantee which the contract requires (R12).
- Appointed a Subcontractor for substantial work before the *Service Manager* has accepted the Subcontractor (R13).

91.3 The *Client* may terminate if the *Service Manager* has notified that the *Consultant* has not stopped one of the following defaults within four weeks of the date when the *Service Manager* notified the *Consultant* of the default.

- Substantially hindered the *Client* or Others (R14).
- Substantially broken a health or safety regulation (R15).

91.4 The *Consultant* may terminate if the *Client* has not paid an amount due under the contract within thirteen weeks of the date that the *Consultant* should have been paid (R16).

91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of the contract (R17).

91.6 If the *Service Manager* has instructed the *Consultant* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within thirteen weeks,

- the *Client* may terminate if the instruction was due to a default by the *Consultant* (R18),
- the *Consultant* may terminate if the instruction was due to a default by the *Client* (R19) and
- either Party may terminate if the instruction was due to any other reason (R20).

91.7 The *Client* may terminate if an event occurs which

- stops the *Consultant* completing the whole of the *service* or
- stops the *Consultant* completing the whole of the *service* by the date for planned Completion shown on the Accepted Programme and is forecast to delay Completion of the whole of the *service* by more than thirteen weeks,

and which

- neither Party could prevent and
- an experienced consultant would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it (R21).

91.8 The *Client* may terminate if the *Consultant* does a Corrupt Act, unless it was done by a Subcontractor or supplier and the *Consultant*

- was not and should not have been aware of the Corrupt Act or
- informed the *Service Manager* of the Corrupt Act and took action to stop it as soon as the *Consultant* became aware of it (R22).

**Procedures on
termination**

92

92.1 On termination, the *Client* may complete the *service* and may use any material to which it has title. The *Consultant* gives to the *Client* information resulting from work carried out to date and information the *Consultant* has obtained which it has a responsibility to provide under the contract (P1).

92.2 On termination the *Client* may instruct the *Consultant* to assign the benefit of any subcontract or other contract related to performance of the contract to the *Client* (P2).

**Payment on
termination****93**

- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - Defined Cost reasonably incurred in expectation of completing the whole of the *service* and
 - any amounts retained by the *Client*.
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.
- A2 A deduction of the forecast of the additional cost to the *Client* of completing the whole of the *service*.
- A3 The *fee percentage* applied to
- for Options A and C, any excess of the total of the Prices at the Contract Date over the Price for Service Provided to Date or
 - for Option E, any excess of the first forecast of the Defined Cost for the *service* over the Price for Service Provided to Date less the Fee.

Appendices:

APPENDIX1: GENERAL DATA PROTECTION REGULATION (GDPR) REQUIREMENTS

APPENDIX 2: Schedule of Processing, Personal Data and Data Subjects.

Main Option Clauses

OPTION E: COST REIMBURSABLE CONTRACT

Identified and defined terms	11	
	11.2	(17) Defined Cost is the cost of the components in the Schedule of Cost Components less Disallowed Cost.
		(18) Disallowed Cost is cost which
		• is not justified by the <i>Consultant's</i> accounts and records, • should not have been paid to a Subcontractor or supplier in accordance with its contract, • was incurred only because the <i>Consultant</i> did not – follow an acceptance or procurement procedure stated in the Scope, – give an early warning which the contract required it to give or – give notification to the <i>Service Manager</i> of the preparation for and conduct of an adjudication or proceedings of a tribunal between the <i>Consultant</i> and a Subcontractor or supplier
		and the cost of
		• correcting Defects after Completion, • correcting Defects caused by the <i>Consultant</i> not complying with a constraint on how it is to Provide the Service stated in the Scope, • resources not used to Provide the Service (after allowing for reasonable availability and utilisation) and • preparation for and conduct of an adjudication or proceedings of the <i>tribunal</i> between the Parties.
		(21) The Price for Service Provided to Date is the total Defined Cost which the <i>Service Manager</i> forecasts will have been paid by the <i>Consultant</i> before the next assessment date plus the Fee.
		(23) The Prices are the forecast of the total Defined Cost for the whole of the <i>service</i> plus the Fee.
Providing the Service	20	
	20.5	The <i>Consultant</i> prepares forecasts of the total Defined Cost and <i>expenses</i> for the whole of the <i>service</i> in consultation with the <i>Service Manager</i> and submits them to the <i>Service Manager</i> . Forecasts are prepared at the intervals stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the <i>service</i> . An explanation of the changes made since the previous forecast is submitted with each forecast.
Subcontracting	23	
	23.4	The <i>Consultant</i> submits the pricing information in the proposed subcontract documents for each subcontract to the <i>Service Manager</i> unless the <i>Service Manager</i> has agreed that no submission is required.
Assessing the amount due	50	
	50.8	Payments of Defined Cost made by the <i>Consultant</i> in a currency other than the <i>currency of the contract</i> are included in the amount due as payments to be made to it in the same currency. Such payments are converted to the <i>currency of the contract</i> in order to calculate the Fee using the <i>exchange rates</i> .
	50.9	The <i>Consultant</i> notifies the <i>Service Manager</i> when the Defined Cost for a part of the <i>service</i> has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The <i>Service Manager</i> reviews the records made available, and no later than thirteen weeks after the <i>Consultant's</i> notification

- accepts that part of Defined Cost as correct,
- notifies the *Consultant* that further records are needed or
- notifies the *Consultant* of errors in its assessment.

The *Consultant* provides any further records requested or advises the correction of the errors in its assessment within four weeks of the *Service Manager's* notification. The *Service Manager* reviews the records provided, and within four weeks

- accepts that part of Define Cost as correct or
- notifies the *Consultant* of the correct assessment of that part of Defined Cost.

If the *Service Manager* does not notify a decision on that part of Defined Cost within the time stated, the *Consultant's* assessment is treated as correct.

Defined Cost	52
52.3	The <i>Consultant</i> keeps these records • accounts of payments of Defined Cost and <i>expenses</i>, • proof that the payments have been made, • communications about and assessments of compensation events for Subcontractors and • other records as stated in the Scope.
52.4	The <i>Consultant</i> allows the <i>Service Manager</i> to inspect at any time within working hours the accounts and records which it is required to keep.

Resolving and Avoiding Disputes

OPTION W2

Used when the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies.

Resolving Disputes

W2

W2.1

(1) If the Parties agree, a dispute arising under or in connection with the contract is referred to the *Senior Representatives*. If the dispute is not resolved by the *Senior Representatives*, it is referred to and decided by the *Adjudicator*. A Party may replace a *Senior Representative* after notifying the other Party of the name of the replacement.

(2) The Party referring a dispute notifies the *Senior Representatives*, the other Party and the *Service Manager* of the nature of the dispute it wishes to resolve. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties.

(3) The *Senior Representatives* attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks. At the end of this period the *Senior Representatives* produce a list of the issues agreed and issues not agreed. The *Service Manager* and the *Consultant* put into effect the issues agreed.

(4) No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before the *Adjudicator* or the *tribunal*.

The *Adjudicator*

W2.2

(1) A dispute arising under or in connection with the contract is referred to and decided by the *Adjudicator*. A Party may refer a dispute to the *Adjudicator* at any time whether or not the dispute has been referred to the *Senior Representatives*.

(2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

(3) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *starting date*.

(4) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(5) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or becomes unable to act

- the Parties may choose an adjudicator jointly or
- a Party may ask the *Adjudicator nominating body* to choose an adjudicator.

The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.

(6) A replacement *Adjudicator* has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The *Adjudicator* deals with an undecided dispute as if it had been referred on the date of appointment as replacement *Adjudicator*.

(7) A Party does not refer a dispute to the *Adjudicator* that is the same or substantially the same as one that has already been decided by the *Adjudicator*.

(8) The *Adjudicator*, and the *Adjudicator's* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

The adjudication

W2.3

(1) Before a Party refers a dispute to the *Adjudicator*, it gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which it wishes the *Adjudicator* to make. If the *Adjudicator* is named in the Contract Data, the Party sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three days of the receipt of the notice of adjudication, the *Adjudicator* informs the Parties that the *Adjudicator*

- is able to decide the dispute in accordance with the contract or
- is unable to decide the dispute and has resigned.

If the *Adjudicator* does not so inform within three days of the issue of the notice of adjudication, either Party may act as if the *Adjudicator* has resigned.

(2) Within seven days of a Party giving a notice of adjudication it

- refers the dispute to the *Adjudicator*,
- provides the *Adjudicator* with the information on which it relies, including any supporting documents and
- provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the other Party.

Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and Parties agree.

(3) If a matter disputed by the *Consultant* under or in connection with a subcontract is also a matter disputed under or in connection with the contract, the *Consultant* may, with the consent of the Subcontractor, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor.

(4) The *Adjudicator* may

- review and revise any action or inaction of the *Service Manager* related to the dispute and alter a matter which has been treated as accepted or correct,
- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time and
- instruct a Party to take any other action which is considered necessary to reach a decision and to do so within a stated time.

(5) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.

(6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Consultant*, the assessment is made in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven days after the date of the decision.

(8) The *Adjudicator* decides the dispute and informs the Parties and the *Service Manager* of the decision and reasons within twenty eight days of the dispute being referred. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties. The *Adjudicator* may in the decision allocate the *Adjudicator's* fees and expenses between the Parties.

(9) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties and the *Service Manager* proceed as if the matter disputed was not disputed.

(10) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the contract, the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.

(11) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if

neither Party has notified the other within the times required by the contract that it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*.

(12) The *Adjudicator* may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

The <i>tribunal</i>	W2.4 (1) A Party does not refer any dispute under or in connection with the contract to the <i>tribunal</i> unless it has first been decided by the <i>Adjudicator</i> in accordance with the contract. (2) If, after the <i>Adjudicator</i> makes a decision, a Party is dissatisfied, that Party may notify the other Party of the matter which is disputed and state that it intends to refer the disputed matter to the <i>tribunal</i>. The dispute may not be referred to the <i>tribunal</i> unless this notification is given within four weeks of being informed of the <i>Adjudicator's</i> decision. (3) The <i>tribunal</i> settles the dispute referred to it. The <i>tribunal</i> has the powers to reconsider any decision of the <i>Adjudicator</i> and to review and revise any action or inaction of the <i>Service Manager</i> related to the dispute. A Party is not limited in <i>tribunal</i> proceedings to the information, evidence or arguments put to the <i>Adjudicator</i>. (4) If the <i>tribunal</i> is arbitration, the <i>arbitration procedure</i>, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data. (5) A Party does not call the <i>Adjudicator</i> as a witness in <i>tribunal</i> proceedings.
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Secondary Option Clauses

OPTION X2:

Changes in the law

X2

- X2.1 A change in the *law of the project* is a compensation event if it occurs after the Contract Date. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

OPTION X9:

Transfer of rights

X9

- X9.1 The *Client* owns the *Consultant's* rights over material prepared for the contract by the *Consultant* except as stated otherwise in the Scope. The *Consultant* obtains other rights for the *Client* as stated in the Scope and obtains from a Subcontractor equivalent rights for the *Client* over the material prepared by the Subcontractor. The *Consultant* provides to the *Client* the documents which transfer these rights to the *Client*.

OPTION X11: TERMINATION BY THE CLIENT

Termination by the Client

X11

- X11.1 The *Client* may terminate the *Consultant's* obligation to Provide the Service for a reason not identified in the Termination Table by notifying the *Service Manager* and the *Consultant*.
- X11.2 If the *Client* terminates for a reason not identified in the Termination Table the termination procedure followed is P1 and the amounts due on termination are A1 and A3.

OPTION X20:

Incentives

X20

- X20.1 A Key Performance Indicator is an aspect of performance by the *Consultant* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with the contract.
- X20.2 From the *starting date* until the *defects date*, the *Consultant* reports to the *Service Manager* its performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.
- X20.3 If the *Consultant's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, it submits to the *Service Manager* its proposals for improving performance.
- X20.4 The *Consultant* is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.
- X20.5 The *Client* may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.

Option Y

OPTION Y(UK)2:

The Housing Grants, Construction and Regeneration Act 1996	Y(UK)2	
Definitions	Y2.1	In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
Dates for payment	Y2.2	The date on which a payment becomes due is seven days after the assessment date. The date on which the final payment becomes due is • if the <i>Service Manager</i> makes an assessment after the <i>defects date</i> or the date the last Defect is corrected, five weeks after the <i>defects date</i> or the date the last Defect is corrected, whichever is the later, • if the <i>Service Manager</i> does not make an assessment after the <i>defects date</i> or the date the last Defect is corrected, one week after the <i>Consultant</i> issues its assessment or • if the <i>Service Manager</i> has issued a termination certificate, fourteen weeks after the issue of the certificate. The final date for payment is the later of • fourteen days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data and • seven days after receipt by the Party making payment of an invoice, issued in accordance with <i>these conditions of contract</i>. The <i>Service Manager's</i> certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the <i>Service Manager</i> does not make an assessment after the <i>defects date</i> or the date the last Defect is corrected, the <i>Consultant's</i> assessment is the notice of payment.
Notice of intention to pay less	Y2.3	If either Party intends to pay less than the notified sum, it notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract.
	Y2.4	If the <i>Client</i> terminates for one of reasons R1 to R15, R18 or R22 and a certified payment has not been made at the date of the termination certificate, the <i>Client</i> makes the certified payment unless • it has notified the <i>Consultant</i> in accordance with the contract that it intends to pay less than the notified sum or • the termination is for one of reasons R1 to R10 and the reason occurred after the last date on which it could have notified the <i>Consultant</i> in accordance with the contract that it intends to pay less than the notified sum.
Suspension of performance	Y2.5	If the <i>Consultant</i> exercises its right under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 to suspend performance, it is a compensation event.

Schedule of Cost Components

This schedule is part of these *conditions of contract* only when Option C or E is used. An amount is included

- only if it does not form part of the *expenses*,
- only in one cost component and
- only if it is incurred in order to Provide the Service.

People

- 1 The following components of the cost of each person who is directly employed by the *Consultant* and who is providing a part of the *service*.
- 11 A cost calculated by dividing the total of the following payments by the total time recorded, with the resulting amount multiplied by the time recorded for work on the contract. Time recorded is that shown in the *Consultant's* time recording system.
 - Payments made to the person, excluding any amounts listed in items (a) to (j) in component 12.
 - Payments made in relation to the person in accordance with their employment contract, excluding any amounts listed in items (a) to (j) in component 12 for
 - (a) contributions, levies or taxes imposed by law
 - (b) pensions and life assurance
 - (c) death benefit
 - (d) occupational accident benefits
 - (e) medical aid and health insurance
 - (f) a vehicle
- 12 Payments related to work on the contract and made to the person, or in relation to the person, in accordance with their employment contract for
 - (a) bonuses and incentives
 - (b) enhanced or increased amounts paid for overtime and unsocial hours in addition to the rate paid for normal time
 - (c) severance
 - (d) protective clothing
 - (e) safety training
 - (f) relocation
 - (g) medical examinations
 - (h) passports and visas
 - (i) travel insurance
 - (j) items (f) to (i) for dependants
- 13 The following components of the cost of people who are not directly employed by the *Consultant* but are paid for by it according to the time properly spent on work in the contract.

Amounts paid by the *Consultant*.

Subcontractors	2	The following components of the cost of Subcontractors.
	21	Payments to Subcontractors for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the <i>Consultant</i> , which would result in the <i>Client</i> paying or retaining the amount twice.

Charges	3	The following components of the cost of support people and office overhead.
	31	A charge for support people and office overhead costs calculated by applying the <i>overhead percentage</i> stated in the Contract Data to the total of people items 11, 12 and 13. The charge includes provision and use of people, accommodation, equipment, supplies and services required to provide the office and to support people providing the service.

Insurance	4	The following are deducted from cost
		• the cost of events for which the contract requires the <i>Consultant</i> to insure and • other costs paid to the <i>Consultant</i> by insurers.

Contract Data

PART ONE –

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 a) NEC4 Professional Service Contract June 2017 (with amendments January 2019) in conjunction with b) Estates Professional Project Support and Land Agency Services framework (Project_22426). In the event of a conflict between terms, the terms cited under a) above shall apply.

Main Option	E	Option for resolving and avoiding disputes	W2
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Secondary Options	X2, X9, X11, X20
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The <i>service</i> is	Supply of Professional Land Agent Support to the Environment Agency River Thames Scheme Project on the Lands Workstream
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The *Client* is

Name	The Environment Agency
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Address for communications	KINGS MEADOW HOUSE KINGS MEADOW ROAD READING BERKSHIRE RG1 8DQ
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Address for electronic communications	REDACTED
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The *Service Manager* is

Name	Redacted
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Address for communications	KINGS MEADOW HOUSE KINGS MEADOW ROAD READING BERKSHIRE RG1 8DQ
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Address for electronic communications	redacted
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The Scope is in	English
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The <i>language of the contract</i> is	English
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The <i>law of the contract</i> is the law of	England
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The *period for reply* is except that

- The *period for reply* for is
- The *period for reply* for is

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) To be agreed at the start of the contract with the Service Manager	TBA
(2)	
(3)	

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

<i>access</i>	<i>access date</i>
(1) Details of the study area, outline design, RAMS, maps, and all other site information	14/9/2020
(2) Office Space – the Project Manager will be expected to work with the team at the EA's Kings Meadow office (or another EA office on agreement) 1 day per week (post COVID-19)	TBC (COVID dependent)
(3) Day-to-day management will be provided by the Service manager	14/9/20

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

Monthly

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

If no programme is identified in part two of the Contract Data

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

13th September 2021
(unless extended)

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

1 month

4 Quality management

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is

N/A

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

12 months

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

Project Manager's return travel to Kings Meadow House, Reading or another EA office as agreed – once per week (post COVID-19 restrictions) – limited to the rates defined in the Framework. All other travel is strictly by prior approval from the Service Manager.

£33.30 per return trip

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
If Option C or E is used and the *Client* states any locations

The period within which payments are made is

30 days

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

N/A (overheads to be included in hourly rates)

6 Compensation events

These are additional compensation events

CEs not anticipated as this is an Option E full cost recovery contract.

8 Liabilities and insurance

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 service	£5 million in respect of each claim, without limit to the number of claims	12 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	£5 million 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	£5 million in respect of each event, without limit to the number of events	For the period required by law

The *Client* provides NO INSURANCES

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 an aggregate of £5 million per individual contract.

Resolving and avoiding disputes

The *tribunal* is

Litigation in the Courts

If the *tribunal* is arbitration

The *arbitration procedure* is

N/A

The place where arbitration is to be held is

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)

Brian Hoyle

Address for communications

Via email.

Address for electronic communications

REDACTED

Name (2)

REDACTED

Address for communications

KINGS MEADOW HOUSE
KINGS MEADOW ROAD
READING
BERKSHIRE
RG1 8DQ

Address for electronic communications

REDACTED

The *Adjudicator* is

Name

Address for communications

Address for electronic communications

The *Adjudicator nominating body* is

X2: Changes in the law

If Option X2 is used

The *law of the project* is

English Law

X20: Key Performance Indicators (not used with Option X12)

If Option X20 is used

The *schedule* for Key Performance Indicators is

Delivery KPIs to be agreed with Service Manager at contract mobilisation meeting.

A report of performance against each Key Performance Indicator is provided at intervals of

1

month

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

30

days after the date on which payment becomes due

Additional conditions of contract

The conditions of contract are a) the core clauses and the clauses for the Options set out below of the NEC4 Professional Service Contract June 2017 (with amendments January 2019) in conjunction with b) Estates Professional Project Support and Land Agency Services framework (Project_22426).

In the event of a conflict between terms, the terms cited under a) above shall apply.

Option X2	Changes in the law
Option X9	Transfer of rights
Option X11	Termination by the Client
Option X20	Key Performance Indicators (not used with Option X12)
Note	Options X14–X17 and X19 are not used
	The following Options dealing with national legislation should be included if required.
Option Y(UK)2	The Housing Grants, Construction and Regeneration Act 1996
Option W2	Dispute Resolution Procedure (use when Housing Grants, Construction and
Regeneration Act 1996 applies)	

OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT

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

Option Z	<i>Z1 - Z16 are amended conditions of contract</i> <i>Z17 - Z21 are additional conditions of contract</i>
Z1	Clause 11 Identified and defined terms - additions 11.2(15) CDM Regulations means the Construction (Design and Management) Regulations 2015 (SI 2015/51). 11.2(16) Confidential Information shall mean any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the Data Protection Act 2018) 11.2(17) Deleterious Materials are any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the <i>Consultant's</i> trade and/or the construction industry: • to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person • to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the works or any part thereof and/or to other structures, finishes, plant and/or machinery • to reduce or possibly reduce the normal life expectancy of works of a type comparable to the works • to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the works • not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices and/or

- [to be supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) or the Construction Products Directive (89/109/EC)]

11.2(18) **Documents** means all designs, drawings, specifications, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Consultant* in relation to this Contract.

11.2(19) **Intellectual Property Rights** means any and all patents, trade marks, service marks, copyright, moral rights, design rights and all or any other intellectual or industrial property rights whether or not registered and whether subsisting in the United Kingdom or any other part of the world.

11.2(20) **The Aggregated Total of the Prices** is sum of

- the total of the Prices and
- the total of the Prices in the partner contract

11.2(21) **The Aggregated Price for Service Provided to Date** is the sum of

- the Price for Service Provided to Date and
- the Price for Service Provided to Date or the Price for Work Done to Date in the partner contract.

Z2 **Clause 13 – Communications (additions)**

Insert new clause 13.10 – 13.13:

13.10 All communications between the *Service Manager* and the *Consultant* required by or authorised under this Contract must comply with NEC4 PSC clause 13 but is deemed to be duly given or made:

13.10.1 two working days after being sent by prepaid special delivery post; or

13.10.2 when delivered by hand if a signature acknowledging its receipt has been obtained.

13.11 In each case the notice must:-

13.11.1 refer to this Contract, and

13.11.2 be marked for the attention of the appropriate officer, person or department as notified to the other party in writing.

13.12 Each Party notifies the other in writing within five working days of any change in its address for service.

13.13 Any notice served on a non-working day or outside of normal working hours is deemed to be served on the following working day.

Z3 **Clause 16 – Requirements for Instructions (addition)**

16.2 In the case of any ambiguity or inconsistency between two or more of the documents forming this Contract, each prevails over or is subordinate to the other(s) in descending order as follows:

- Option Z – Additional Conditions of Contract (z clauses)
- the conditions of contract other than the z clauses
- the Contract Data provided by the *Client*
- the programme
- the Early Warning Register
- the Scope
- the Contract Data provided by the *Consultant*
- any other contract documents

Z4 **Clause 20 Providing the Service**

Insert new clauses:

20.4 Subject always to the Contract Standard referred to in clause 20.5, the *Consultant* warrants to the Employer that to the extent it either is obliged to specify or approve materials, products or goods for use in the Project or does so specify or approve, it shall not specify or approve anything that is Deleterious.

20.5 Notwithstanding the requirements of NEC4 PSC clause 20.2, the *Consultant's* obligation is to use the reasonable skill, care and diligence to be expected of a properly qualified and competent member of the *Consultant's* profession experienced in carrying out similar services, duties and obligations for services of a similar nature, scope,

character, and complexity as the services, herein referred to as the "Contract Standard".

Z5 **Clause 22 Working with the Client and Others**

Insert new clauses:

22.4 If any difference arises between the *Consultant* and Others, the *Consultant* uses all reasonable endeavours to achieve a reconciliation. If the reconciliation is not achieved and is not likely to be achieved before such difference becomes detrimental to the delivery of the services, the *Consultant* refers the matter or difference to the *Client* for instructions at the *Client's* cost (save where the difference is between the *Consultant* and any party with whom the *Consultant* intends to enter into contract with, in which case the costs will be met by the *Consultant*). The *Client* shall give such instructions in a timely matter to enable the *Consultant* to comply with its obligations.

22.5 Where Others are appointed by the *Client*, the *Consultant* co-operates fully with those Others in order to ensure that production of the *Consultant's* drawings, design information or other relevant documents or information is fully co-ordinated with the work of the Others.

Z6 **Clause 24 - Other responsibilities**

Insert new clauses:

24.4 The *Consultant* discloses to the *Client* any actual or potential conflict of interest arising from the *Consultant's* provision of the services as soon as practicable after becoming aware of such actual or potential conflict.

24.5 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 anticipates may justify the *Client* taking action to protect its interests.

24.6 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the *Client* has the right to terminate this Contract whereupon the provisions of NEC4 PSC clause 93.2 apply to the termination.

24.7 The *Consultant* complies with all applicable environmental laws and regulations in force from time to time in relation to the services and promptly provides evidence of compliance when reasonably requested by the *Client*.

24.8 The *Consultant* satisfies all reasonable requests by the *Client* for information regarding the environmental impact of the services."

Z7 **Clause 25 Assignment**

Delete and insert:

25.1 The *Consultant* does not assign transfer or charge any benefit arising under or out of this contract without the prior written consent of the *Client* (at its absolute discretion).

25.2 The *Client* may without the *Consultant's* consent assign transfer and/or charge the benefit of all or any of the *Consultant's* obligations under this contract and/or any benefit arising under or out of this contract:

- as security to any funder (and such rights may be re-assigned on redemption)
- by absolute assignment to any [government department] ; and
- by absolute assignment on two other occasions.

Z8 **Clause 54 Consultant's Share**

Delete existing clauses 54 and 93.3 and replace with:

54.1 The *Service Manager* assess the *Consultant's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Service Provided to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a share range are the Aggregated Price for Service Provided to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Consultant's* share equals the sum of the products of the increment within each share range and the corresponding *Consultant's share percentage*.

54.2 If the Aggregated Price for Service Provided to Date is less than the Aggregated Total of the Prices, the *Consultant* is paid its share of the saving. If the Aggregated Price for Service Provided to Date is greater than the Aggregated Total of the Prices, the *Consultant* pays its share of the excess.

54.3 If, prior to the Completion Date, the Price for Service Provided to Date exceeds 110% of the total of the Prices, the amount in excess of 110% of the total of the Prices is retained from the *Consultant*.

54.4 The *Service Manager* makes a preliminary assessment of the *Consultant's* share at Completion of the Whole of the *service* using forecasts of the final Aggregated Price for Service Provided to Date and the final Aggregated Total of Prices. This share is included

in the amount due following Completion of the whole of the *services*.

54.5 The *Service Manager* makes a final assessment of the *Consultant's* share, using the final Aggregated Price for Service Provided to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.3 If there is a termination except if Z16 applies, the *Service Manager* assesses the *Consultant's* share after certifying termination. The assessment uses as the Aggregated Price for Service Provided to Date the sum of

- the total of
 - the Defined Cost which the *Consultant* has paid and
 - which it is committed to pay for work done before termination
- and
- the total of
 - the Defined Cost which the *Consultant* or *Contractor* has paid and
 - which it is committed to pay

in the *partner contract* before the date the termination certificate is issued under this contract.

The assessment uses as the Aggregated Total of the Prices the sum of

- the total of
 - the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed
- and
- the total of
 - the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed

in the *partner contract* before the date the termination certificate is issued under this contract.

Z9 **Clause 61 Notifying Compensation Events**

61.3 In line 5 delete "eight" and insert "four". In line 6 after "event has happened" insert "or of the date when the Consultant ought to have become aware of the event."

61.4 Delete the third bullet point (line 5) and insert: "arises by reason of any act, error, omission, negligence, breach or default of the *Consultant* or Sub-consultants or any of their employees or agents,".

Z10 **Clause 63 - Assessing compensation events**

63.5 Delete the third paragraph and insert:

"The assessment takes into account:

- any delay caused by the compensation event already in the Accepted Programme; and
- events which have happened between the date of the Accepted Programme and the dividing date."

63.10 Delete

Z11 **Clause 70 – Rights to Material**

Insert New Clauses

70.4 Copyright

The *Client* may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the *Consultant* and which concern this Contract, but no such examination relieves the *Consultant* of any responsibility for the services to be provided under this Contract.

70.5 The Intellectual Property Rights in the Documents remain vested in the *Consultant*. The *Consultant* grants an irrevocable, perpetual, royalty-free, non-exclusive licence or procures the grant of such a licence to the *Client* to use the Intellectual Property Rights and to reproduce the Documents for any purpose relating to the works to which the services relate including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of those works. The *Consultant* shall not be liable for the consequences of any use by the *Client* of the Documents or the Intellectual Property Rights for any purpose other than that for which they were originally prepared by or on behalf of the *Consultant*. Such licence enables the *Client* to use the Intellectual Property Rights for any extension of the works to which the services relate but shall not include a licence to reproduce the Intellectual Property Rights in the documents in any extension of the works to which the services relate.

70.6 The *Consultant* warrants that the use of the Documents for the purposes of this

Contract will not infringe the rights of any third party.

70.7 The *Consultant* supplies copies of the Documents to the *Client* and to the *Client's* other consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Contract or related works.

70.8 After the termination or conclusion of the *Consultant's* employment hereunder, the *Consultant* supplies the *Client* with copies and/or computer discs of such of the Documents as the *Client* may from time to time request and the *Client* pays the *Consultant's* reasonable costs for producing such copies or discs.

Z12

Clause 71 – Confidentiality

71.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each party shall do each of the following:

71.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

71.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

71.2 Clause 71.1 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:

71.2.1 such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000, Code of Practice on Access to Government Information or the Environment Information Regulations 2004 pursuant to clause 28 (Freedom of Information);

71.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

71.2.3 such information was obtained from a third party without obligation of confidentiality;

71.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; and

71.2.5 it is independently developed without access to the other party's Confidential Information.

71.3 The *Consultant* may only disclose the *Client's* Confidential Information to the *Consultant* personnel who are directly involved in the provision of the services and who need to know the information, and shall make sure that such *Consultant* personnel are aware of and shall comply with these obligations as to confidentiality.

71.4 The *Consultant* shall not, and shall procure that the *Consultant* personnel do not, use any of the *Client's* Confidential Information received other than for the purposes of this Contract.

71.5 At the written request of the *Client* and if reasonable in the circumstances to make that request, the *Consultant* shall procure that those members of the *Consultant's* key people identified in the Contract Data Part Two involved in the provision of the services sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

71.6 Nothing in this Contract shall prevent the *Client* from disclosing the *Consultant's* Confidential Information in any one or more of the following circumstances:

71.6.1 to any Crown body or any other contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the *Client*. All crown bodies or such contracting authority receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or other contracting authority;

71.6.2 to any other person engaged by the *Client* on the basis that the information is confidential and is not to be disclosed to a third party;

71.6.3 for the purpose of the examination and certification of the *Client's* accounts; and/or

71.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources."

Z13

Clause 83 – Insurance Cover

Insert new clauses;

83.4 All insurances required to be effected or maintained by the insuring party under

NEC4 PSC clause 83 are placed with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

83.5 If, without the approval of the *Client*, the *Consultant* fails to effect and maintain any insurance that it is required to effect and maintain under NEC4 PSC clause 83 or obtains a different policy of insurance or fails to provide a copy of certificates when required to do so, the *Client* may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the *Consultant* under this Contract, or recover such sum from the *Consultant* as a debt.

83.6 For the avoidance of doubt, it is agreed that nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this Contract.

83.7 In the Insurance Table provided in NEC4 PSC clause 83.2, the first paragraph under the heading of "Insurance against" is deemed to be amended to read:

"Liability of the *Consultant* for claims made against him arising out of his failure to use the skill, care and diligence required by the Contract Standard".

Z14 **Clause 88 – Professional Indemnity Insurance**

Insert new clauses

88.1 The *Consultant* maintains professional indemnity insurance:

- upon customary and usual terms and conditions prevailing for the time being in the insurance market
- with reputable insurers lawfully carrying on such insurance business in the United Kingdom
- with a limit of indemnity of not less than £5 million for any one occurrence or series of occurrences arising out of any one event
- for a period beginning not later than the Contract Date and ending 12 (twelve) years after Completion of the whole of the works [or the termination of this contract for any reason, including breach by the *Client*, whichever is earlier]

provided that such insurance is available generally in the market at commercially reasonable rates.

88.2 Such terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.

88.3 For the purposes of this clause 88, "commercially reasonable rates" means such level of premium rates at which other consultants of a similar size and financial standing as the *Consultant* at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other act, error, omission, negligence, breach, default, matters or things particular to the *Consultant* are deemed to be within commercially reasonable rates.

88.4 The *Consultant* immediately informs the *Client* if such insurance ceases to be available at commercially reasonable rates so that the *Consultant* and the *Client* can discuss means of best protecting the respective positions of the *Client* and the *Consultant* in respect of the services.

88.5 The *Consultant's* obligations in respect of professional indemnity insurance continue after termination of this contract (for any reason).

Z15 **Clause 91 – Reasons for termination**

Delete Clause 91.4 and insert

91.7 The *Client* may terminate if the *Service Manager* certifies that a *Force Majeure* Event that is preventing the *Consultant* from or is delaying the *Consultant* in Providing the Service has caused or will cause completion of the whole of the service to be delayed by not less than 12 weeks.

Z16 **Clause 93 – Payment on termination**

For Option A - Delete A3 and insert

A3 A deduction by or payment to the *Client* of the additional cost to the *Client* of

Providing the Service other than by the contract and the amount of any other cost, loss, damage or liability incurred or to be incurred by the *Client* resulting from the termination, and/or from the reason for termination and/or from any other act, error, omission, negligence, breach or default of the *Consultant*".

For Option C – delete existing clause 93.3 and 93.4 and replace with:

93.3 In the event of termination in respect of a contract relating to services there is no Consultant's share'

Z17 – Z21 are additional conditions of contract

Z17 **Not used**

Z18 **CDM Regulations**

The *Consultant* performs all the functions and duties of a Designer [and Principal Designer]¹ as defined in the CDM Regulations, to the extent that the CDM Regulations apply to the *Consultant's* duties under this Contract

Z19 19.1 For the purposes of this clause, "**Third Party Agreements**" means any and all agreements relating to or affecting the works and/or Site or the completed works (including the execution of the works and their design) or any part of the works and/or Site, which have been entered into or may be entered into by the Client from time to time and disclosed to the *Consultant* (whether on or before the date of this contract or after the date of this contract once the *Client* has entered into the same) including:

•[insert list of any 3rd party agreements of which the parties are aware at the date of the contracts]

and any other agreements referred to as such in the Scope.

19.2 The *Consultant* is deemed to have read the Third Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the *Client* under them.

19.3 The *Consultant* performs and assumes, as part of its obligations under this contract, the *Client's* obligations, liabilities and risks contained within the Third Party Agreements that relate to the carrying out of the works as if they were expressly referred to in this contract as obligations, liabilities and risks of the *Consultant*, all other things being equal.

19.4 The *Consultant* ensures that no act, error, omission, negligence, breach or default on its part or on the part of any Subcontractor in relation to the performance by the *Consultant* of its obligations under this contract causes, contributes or otherwise gives rise to any breach by the *Client* of any of its obligations under the Third Party Agreements.]

Z20 **Retrospective effect of contract**

20.1 Entered into by the Parties on 14/9/20 overrides or modifies this contract, and this contract and its terms are deemed to govern any works and/or services provided by or on behalf of the *Consultant* to the *Client* in relation to the works, whether carried out before or after the date of this contract (including under any such previous instructions) and all such works and/or services are deemed to be part of the works and are deemed to have been performed under the terms of this contract.

20.2 All payments made by the *Client* to the *Consultant* pursuant to the contract are deemed to have been made as part of the Price and the *Client* has no further liabilities (including any liability to make any payments) under the contract.

Z21 **Rights of Third Parties**

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999. This clause Z20 shall not affect or prevent any assignees who take the benefit of this contract pursuant to clause 25 or successors in title to the *Client* from enforcing the provisions of this contract.

CONTRACT DATA - 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

Dalcour Maclaren Ltd

Address for communications

1 Staplehurst Farm,
Weston on the Green
Bicester
Oxfordshire
OX25 3QU

Address for electronic communications

REDACTED

The *fee percentage* is

0 %

The *key persons* are (as updated 2/3/21) - REDACTED

Name	Role	Rate
	Project Manager (Associate)	£
	Senior Supplier (Partner)	£
	DCO Technical Advisor (Partner)	£
	Project Manager (Associate)	£
	Land Surveyor 1	£
	Land Surveyor 2	£
	Referencing Manager	£

The following matters will be included in the Early Warning Register

Requests to change named individuals or any planned absences/unavailability or changed availability of the same.

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 The *expenses* stated by the *Consultant* are limited as stated in the Framework to

item	amount
Travel by private vehicle	45p per mile
Train travel	By standard class
Overnight subsistence (B&B)	London £140
(as authorised in advance)	Bristol £100
	Warrington £90
	Reading, York and Sheffield £85
	Everywhere else £70
Dinner during overnight stays	£20

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)

Redacted

Address for communications

1 Staplehurst Farm,
Weston on the Green
Bicester
Oxfordshire
OX25 3QU

Address for electronic communications

Redacted

Name (2)

Address for communications

Address for electronic communications

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
	%
	%
	%



Appendix 1: General Data Protection Regulation (GDPR) Requirements

Additional Definitions

Agreement : this contract;

Consultant Personnel : means all directors, officers, employees, agents, Consultants and Contractors of the Consultant and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

Data Protection Legislation : (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer take the meaning given in the GDPR.

Data Loss Event : any event that results, or may result, in unauthorised access to Personal Data held by the Consultant under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Access Request : a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018 : Data Protection Act 2018

GDPR : the General Data Protection Regulation (Regulation (EU) 2016/679)

LED : Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Consultant related to this Agreement.

Data Protection Requirements

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant is the Processor. The Consultant processes data only as authorised in Appendix 2 (Schedule of Processing, Personal Data and Data Subjects) by the Client and may not be determined by the Consultant.

1.2 The Consultant notifies the Service Manager immediately if it considers that any of requirement of the documents forming part of this contract infringe the Data Protection Legislation.

1.3 The Consultant provides all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include: (a) a systematic description of the envisaged processing operations and the purpose of the processing; (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services; (c) an assessment of the risks to the rights and freedoms of Data Subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 In relation to any Personal Data processed in connection with its obligations under the documents forming part of this contract the Consultant:

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(a) processes that Personal Data only in accordance with Appendix 2 (Schedule of Processing, Personal Data and Data Subjects), unless otherwise required by Law. If it is so required the Consultant shall promptly notify the Client before processing the Personal Data unless prohibited by Law;

(b) ensures that it has in place Protective Measures, which have been reviewed and approved by the Employer as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensures that:

(i) the Consultant Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Consultant's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Consultant or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) do not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

(i) the Client or the Consultant has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and (iv) the Consultant complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

(e) at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Agreement unless the Consultant is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Consultant shall notify the Service Manager immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

1.6 The Consultant's obligation to notify under clause 1.5 shall include the provision of further information to the Client in phases, as details become available.

1.7 Taking into account the nature of the processing, the Consultant shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

(a) the Client with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Client following any Data Loss Event;
- (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.

1.6 The Consultant's obligation to notify under clause 1.5 shall include the provision of further information to the Client in phases, as details become available.

1.7 Taking into account the nature of the processing, the Consultant shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

- (a) the Client with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Client following any Data Loss Event;
- (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.

1.8 The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Consultant employs fewer than 250 staff, unless:

- (a) the Client determines that the processing is not occasional;
- (b) the Client determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Consultant shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.

1.10 The Consultant shall designate a data protection officer if required by the Data Protection Legislation.

1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Consultant must:

- (a) notify the Client in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Client;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
- (d) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.

1.12 The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.

1.13 The Client may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Appendix 2: Schedule of Processing, Personal Data and Data Subjects

1. The Consultant shall comply with any further written instructions with respect to processing by the Client.
2. Any such further instructions shall be incorporated in to this Schedule.

Description	Details
Subject matter of the processing	The Consultant processes data only as required to provide the Services in accordance with the conditions of contract, including Contract Data Part 1 and Part 2.
Duration of the processing	The Consultant processes the data as required to provide the Services or any additional works or services required under the terms of this contract until the later of Completion, the Defects Date, or the end of a warranty period to which the processing of the personal data relates. Where personal data is required for more than one purpose under the terms of the contract, it is retained until the later of the Completion, Defects Date or end of a warranty period.
Nature and purposes of the processing	The nature and purpose of the processing is limited to the Consultants retention or replacement of professionally competent Key People, Subcontractors or sub-consultants where this contract requires the Client to provide an acceptance of a Key People, Subcontractor or sub-consultant.
Type of personal data	The types of personal data processed under this contract is limited to name, role description, qualifications (academic achievements and professional accreditations) and experience.
Categories of personal data	The Consultant is not permitted to retain any special categories of personal data as defined under the GDPR.
Plan for the return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Consultant processes the data until the date detailed above (duration of the processing) where after the Consultant immediately destroys the personal data.