



Professional Service Contract

For Call-Offs over £50K under the Environment Agency's Estates Professional Project Support and Land Agency Services Framework (EPPSLA – 22426)

33727 – Thames Valley Flood Scheme Estate Support Services

Schedule of Options

MAIN OPTIONS

The strategy for choosing the form of contract starts with a decision between three main Options, one of which must be chosen.

Option A Priced contract with activity schedule

RESOLVING AND AVOIDING DISPUTES

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

SECONDARY OPTIONS

The following secondary Options should then be considered. It is not necessary to use any of them. Any combination other than those stated may be used.

Option X1	Price adjustment for inflation
Option X2	Changes in the law
Option X3	Multiple currencies – NOT USED
Option X4	Ultimate holding company guarantee – NOT USED
Option X5	Sectional Completion – NOT USED
Option X6	Bonus for early Completion – NOT USED
Option X7	Delay damages – NOT USED
Option X8	Undertakings to Others – NOT USED
Option X9	Transfer of rights
Option X10	Information modelling – NOT USED
Option X11	Termination by the <i>Client</i>
Option X12	Multiparty collaboration – NOT USED
Option X13	Performance bond – NOT USED
Option X18	Limitation of liability – NOT USED
Option X20	Key Performance Indicators

The following Options dealing with national legislation should be included if required.

Option Y(UK)1	Project Bank Account – NOT USED
Option Y(UK)2	The Housing Grants, Construction and Regeneration Act 1996
Option Y(UK)3	The Contracts (Rights of Third Parties) Act 1999 – NOT USED

Option Z	<i>Additional conditions of contract</i>
Note	Options X14–X17 and X19 are not used

Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

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

A

Option for resolving and avoiding disputes

W2

Secondary Options

X2, X9, X11, X20

The *service* is

Supply of Professional Land Agent Support to the Environment Agency Thames Valley Flood Scheme project on the Estates Workstream

The *Client* is

Name

The Environment Agency

Address for communications

Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The *Service Manager* is

Name

Address for communications

Environment Agency
Kings Meadow House
Kings Meadow Road
Reading
RG1 8DQ

Address for electronic communications

The Scope is in

33727 - TVFS Estates Service - Scope v3.0 FINAL

The *language of the contract* is

The *law of the contract* is the law of

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

condition to be met

key date

(1)

(2)

(3)

If Option A is used

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

3 Time

The *starting date* is

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

access	access date
(1) Access to records, files, information required	As per <i>starting date</i>
(2)	
(3)	

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*

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

31 Jul 2023

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

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

2 weeks

4 Quality management

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

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
As per EPPSLA Framework	

The *interest rate* is 2 % per annum (not less than 2) above the

base

rate of the

Bank of England

bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

30 days

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

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

N/A

6 Compensation events

If there are additional

These are additional compensation events

Amendments to assumptions within the Scope, as agreed and instructed by the *Service Manager*.

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 <i>SERVICE</i> OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	<div>£5 million</div> <div>in respect of each claim, without limit to the number of claims</div>	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 <i>Service</i>	<div>£5 million</div> <div>in respect of each event, without limit to the number of events</div>	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	<div>£5 million</div> <div>in respect of each event, without limit to the number of events</div>	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)	<div></div>
Address for communications	
Address for electronic communications	
Name (2)	
Address for communications	
Address for electronic communications	

The *Adjudicator* is

Name	<div></div>
Address for communications	<div></div>
Address for electronic communications	<div></div>
The <i>Adjudicator nominating body</i> is	<div></div>

X2: Changes in the law

If Option X2 is used The *law of the project* is the law of England

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

If Option X20 is used The *incentive schedule* for Key Performance Indicators is in TBC in agreement with the *Service Manager* at the contract mobilisation meeting.

A report of performance against each Key Performance Indicator is provided at intervals of 1 months

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

Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

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.

Z: Additional conditions of contract

The *additional conditions of contract* are

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 <i>Client</i> |
| Option X20 | Key Performance Indicators (not used with Option X12) - Optional |

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 | <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 *Consultant's* 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 Collateral Warranty Agreements

If Option X8 is used, delete existing X8 and insert:

17.1 Within [20] days of receiving a written request from the *Client* the *Consultant* shall enter into a deed of collateral warranty in the form of the draft deed set out in Appendix [□] (with only such amendments as the *Client* approves and/or reasonably requires) in favour of any third party nominated by the *Client*.

17.2 Should the deed(s) of collateral warranties pursuant to clause X8.1 from the *Consultant* not be executed by the *Consultant* and delivered to the *Client* within [20] days of a written request from the *Client* then the *Client* shall be entitled to withhold [all future payments] to the *Consultant* until such time as the relevant collateral warranty has been delivered.

17.3 Where the *Client* consents to the use of Subcontractors then each of the Subcontractors shall be appointed by deed, and within [14] days after the appointment of a Subcontractor the *Consultant* supplies a complete copy of the subcontract to the *Client*.

17.4 The *Consultant* procures that each Subcontractor enters into a deed of collateral warranty in the form of the draft deed set out in Appendix [□] (with only such amendments as the *Client* approves and/or reasonably requires) within [20] days of a written request from the *Client* in favour of:-

- [the *Client*;
- any purchaser of the whole or any part of the site;
- any tenant of the whole or part of the site; or
- any organisation providing finance in relation to the whole or any part of the site
- any other third party as the *Client* may direct.]

17.5 Should the deed(s) of collateral warranties pursuant to clause X8.4 from each Subcontractor not be executed by the relevant Subcontractor and delivered to the *Client* within [20] days of a written request from the *Client* then the *Client* shall not be liable to pay any amount in respect of the elements of the services to which the default relates while such breach remains to be rectified.

17.6 [The *Client* reserves the right to request that letters of reliance shall be provided by companies executing surveys, in favour of a building contractor and any other third

parties as directed. Subject to the *Client* making such a request and the *Consultant* having appointed the relevant surveying company the *Consultant* shall use reasonable endeavours to procure a letter of reliance from such companies in favour of a building contractor in a form acceptable to a building contractor acting reasonably. For the avoidance of doubt, clause X8.5 shall not apply to any delay in the provision of any such letter of reliance.]

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 [[☐] date] 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 [[☐]]) 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 [☐] 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 [[☐]].

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.

¹ Delete if not applicable.

PART TWO – DATA PROVIDED BY THE *CONSULTANT*

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

1 General

The *Consultant* is

Name

Ardent Management Limited

Address for communications

147A High Street
Waltham Cross
Hertfordshire
EN8 7AP

Address for electronic communications

tenders@ardent-management.com

The *fee percentage* is

N/A %

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

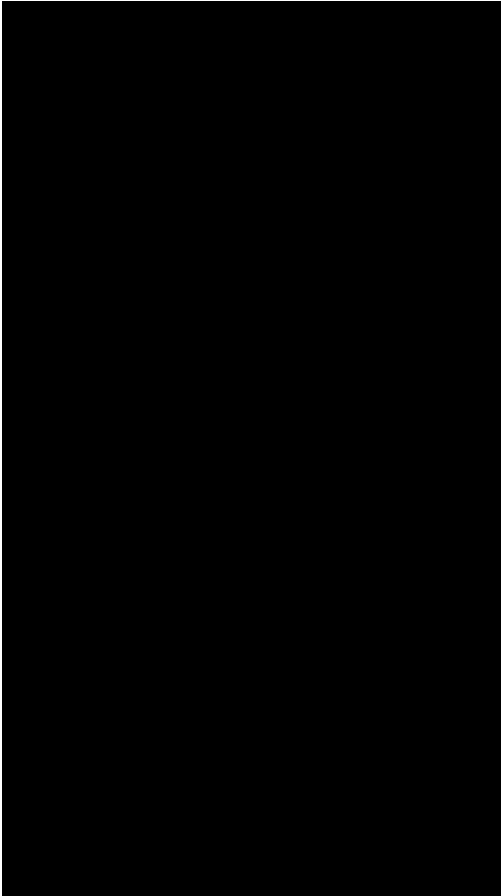
Name (3)

Job

Responsibilities

Qualifications

Experience



Name (4)

Job

Responsibilities

Qualifications

Experience

Name (5)

Job

Responsibilities

Qualifications

Experience

Name (6)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

Note variation of EA programme timing

2 The *Consultant's* main responsibilities

If the *Consultant* is to provide Scope

The Scope provided by the *Consultant* is in

N/A

3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

TBC

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 (as authorised in advance)	London £140
	Bristol £100
	Warrington £90
	Reading, York and Sheffield £85
	Everywhere else £70
Dinner during overnight stays	£20

If Option A or C is used

The *activity schedule* is

As per 33727 - TVFS Pricing Schedule FINAL.xls

The tendered total of the Prices is

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

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

The *people rates* are

category of person	unit	rate
As per 33727 - TVFS Pricing Schedule FINAL.xls		

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:

(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.

Contract Execution

Client execution

