



Professional Service Contract

This contract should be used for the appointment of a supplier to provide a professional service

June 2017

(with amendments January 2019 and during the formation of the Engineering Delivery Framework dated 21st September 2022)

Template 1 07.10.22

Template 2 28.10.22 - "period within which payments are made" amended from "14 days" to "30 days"

Template 3 25.11.22 - X18 wording amended in line with EDF framework amendments.

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 NEC4 Professional Service Contract June 2017 (with amendments January 2019)

Main Option

A

Option for resolving and avoiding disputes

W2

Secondary Options

X2: Changes in the law
X8: Undertakings to Others
X10: Information modelling
X18: Limitation of liability
Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996
Y(UK)3: The Contracts (Rights of Third Parties Act) 1999

The *service* is

Pre-Construction RIBA-4 Design Services for the B953 Water Storage Facility Project

The *Client* is

Name

Address for communications

Address for electronic communications

The *Service Manager* is

Name

Address for communications

Address for electronic communications

The Scope is in

1. Scope: General Client Requirements (General Scope 2022), and
2. Scope: Task Order Requirements (Specific Scope).

The *language of the contract* is

English

The *law of the contract* is the law of

England, subject to the jurisdiction of the courts of England and Wales

The *period for reply* is

2 weeks

except that

- The *period for reply* for

n/a

is

- The *period for reply* for

n/a

is

The *period for retention* is

12

years following Completion or earlier termination

The following matters will be included in the Early Warning Register

N/A

Early warning meetings are to be held at intervals no longer than

2 weeks

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)

N/A

(2)

N/A

(3)

N/A

If Option A is used	The <i>Consultant</i> prepares forecasts of the total <i>expenses</i> at intervals no longer than	One month
If Option C is used	The <i>Consultant</i> prepares forecasts of the total Defined Cost plus Fee and <i>expenses</i> at intervals no longer than	N/A

3 Time

	The <i>starting date</i> is	19 May 2023
	The <i>Client</i> provides access to the following persons, places and things	
	access	access date
(1)	Contract Start	19 May 2023
(2)		
(3)		
	The <i>Consultant</i> submits revised programmes at intervals no longer than	4 weeks
If the <i>Client</i> has decided the <i>completion date</i> for the whole of the <i>service</i>	The <i>completion date</i> for the whole of the <i>service</i> is	15 December 2023
If no programme is identified in part two of the Contract Data	The period after the Contract Date within which the <i>Consultant</i> is to submit a first programme for acceptance is	2 weeks

4 Quality management

The period after the Contract Date within which the <i>Consultant</i> is to submit a quality policy statement and quality plan is	4 weeks
The period between Completion of the whole of the <i>service</i> and the <i>defects date</i> is	52 weeks

5 Payment

	The <i>currency of the contract</i> is the	Pounds Sterling (£)
	The <i>assessment interval</i> is	One month
If the <i>Client</i> states any <i>expenses</i>	The <i>expenses</i> stated by the <i>Client</i> are	
	item	amount
	n/a	n/a
	The <i>interest rate</i> is	2 % per annum (not less than 2) above the
	base	rate of the Bank of England

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 of the invoice date

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

As agreed in framework

6 Compensation events

If there are additional

These are additional compensation events

Not applicable

8 Liabilities and insurance

If there are additional *Client's* liabilities

These are additional *Client's* liabilities

Not applicable

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
Liability for Negligent Design	<p>£5m</p> <p>in respect of each claim, without limit to the number of claims</p>	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	<p>Whichever is the greater of £5m or the amount required by law</p> <p>in respect of each event, without limit to the number of events</p>	12 years
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	<p>Not less than the amount required by law</p> <p>in respect of each event, without limit to the number of events</p>	The period required by law

If the *Client* is to provide any of the insurances stated in the Insurance Table

The *Client* provides these insurances from the Insurance Table

(1) Insurance against	N/A
Minimum amount of cover is	N/A
The deductibles are	N/A

The *Consultant* provides these additional insurances

(1) Insurance against	N/A
Minimum amount of cover is	N/A
The deductibles are	N/A

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

£5m

Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

To be confirmed by the ICE

Address for communications

Address for electronic communications

The *Adjudicator nominating body* is

The Institution of Civil Engineers, London

Secondary option (X) clauses

X2: Changes in the law

If Option X2 is used

The *law of the project* is

The Law of England, subject to the jurisdiction of the courts of England and Wales

X8: Undertakings to Others

If Option X8 is used

The *undertakings to Others* are provided to

Refer to the *Additional conditions of contract (Z Clauses)*

X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data, the period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is

2 weeks

X18: Limitation of liability

If Option X18 is used

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

£5m

The *end of liability date* is

12

years after the Completion of the whole of the *service*

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

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

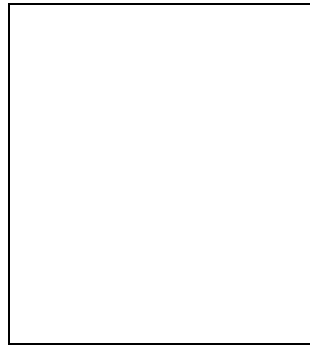
If Option Y(UK)3 is used

term

beneficiary

any term which expressly confers or purports to confer on any third party or beneficiary any benefit or any right to enforce any of the conditions or additional conditions of contract

- a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
 - Government Department,
 - Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal),
 - Non-Ministerial department, or



- Executive Agency, together and each a "Central Government Body"),
- a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Client,
- any party so selected in the relevant Task Order, and
- any other party with an interest in the whole or any part of the services, the works for the Project, the Site and/or the Project.

Z: Additional conditions of contract

Option Z: Schedule of Amendments to the core clauses and additional conditions

Z1 The following is incorporated as part of the *conditions of contract* and in the event of a conflict with any other term, the terms of this Schedule take precedence:

CORE CLAUSES

1 General

Insert new clause 10.3:

“10.3 The appointment of the *Consultant* commences from the Contract Date or from the date on which the *Consultant* starts to Provide the Services, whichever is the earlier.”

In clause 11.2(2) delete the second bullet point and replace with:

- “corrected all Defects the *Client* states they are to correct, save for any defects the *Client* agrees, at its sole discretion, can be remedied after Completion, and
- provided or procured all collateral warranties, deeds of novation, letters of reliance, bonds and guarantees that the *Consultant* is obliged to provide under the contract.”

Delete clause 11.2(4) and replace with:

“11.2(4) The Contract Date is the date specified in the Task Order”.

Delete clause 11.2(5) add insert, “number not used.”

Delete clause 11.2(6) and replace with:

“11.2(6) A Defect is

- a part of the *services* which is not in accordance with the contract,
- defective design of the *services*, or
- a failure by the *Consultant* to comply with its obligations under the contract.”

In clause 11.2(10) after “supplier” in the third line, insert “(including the Key Suppliers)”.

In clause 11.2(12) after “to do” in the first line, insert “in an efficient manner”.

In clause 11.2(14) after “A Subcontractor is” insert “Key Supplier,”.

In clause 11.2(16) after “components” insert “whether work is subcontracted or not, excluding the cost of preparing quotations for compensation events save for cost incurred pursuant to preparing quotations under Clause 65.”

In clause 11.2(20) delete “the correction of which will delay the following work”.

Insert new clauses 11.2(24) to (41):

“(24) The Act is the Housing Grants, Construction and Regeneration Act (1996), as amended from time to time.

(25) Beneficiary is

- a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
 - Government Department,
 - Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal),
 - Non-Ministerial department, or
 - Executive Agency,

together and each a "Central Government Body"),

- a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the *Client* and
- any party so selected in the relevant Task Order.

- (26) BIM Documents means any documents identified as such in the Task Order.
- (27) Business Days means a day (other than a Saturday or Sunday or Bank Holiday) on which banks are open for domestic business in the City of London.
- (28) CDM Regulations are the Construction (Design and Management) Regulations 2015, as amended from time to time.
- (29) Client Consents are those consents identified in the Task Order.
- (30) Critical Failure Event has the meaning set out in the Framework Agreement.
- (31) Documents are any and all activity schedules, algorithms, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, source code and build information for proprietary components and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the *Consultant* or any Subcontractors (whether in existence or to be created) in connection with the *services* and all such other documentation as would reasonably be required by a competent third party capable of exercising the Standard of Care contracted by the *Client* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that Provide the Service but excluding the BIM Documents.
- (32) Framework Agreement is the framework agreement between the parties dated 21st September 2022.
- (33) Key Suppliers are those parties specified as a Key Supplier in the Task Order.
- (34) Other Framework Contractors means the other contractors and/or consultants which the *Client* has entered into a framework agreement with to deliver the construction *works* and/or *services* at the *Client's* Weybridge and regional laboratories (as identified in the Framework Agreement).
- (35) Project means the *Client's* wider development plans across the Site and its other sites, including enabling works, demolition works, refurbishment and fit out works.
- (36) Project Deliverables means those deliverables set out in the Task Order.
- (37) Project Programme means that programme identified as such in the Task Order.
- (38) Standard of Care means all the reasonable skill, care, diligence, prudence, foresight and judgment to be

expected of a fully qualified and competent designer experienced in designing and performing and carrying out design providing service of a similar scope, nature, complexity and timescale to the *services*.

(39) Statutory Requirements are:

- all planning and/or other permissions, consents, approvals, permits, licences and certificates ("Consents") which are necessary lawfully to design, construct, complete, commission, maintain and use the *services*,
- any statute, regulation or subordinate legislation, the common law and (to the extent applicable) any treaty or European Union law or treaty or law of the United Kingdom which is of equivalent standard which relates to the protection of the environment or health and safety whether administrative, civil or criminal,
- any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the *services* or the performance of any of the obligations under the contract or Government guidelines,
- any regulation or bye-law of any local authority, statutory undertaker or similar body or organisation which has any jurisdiction with regard to the *services* or with whose systems the *services* are, or are to be, connected, including any statutory provisions and any decision of a relevant authority under them which controls the right to develop the Site and
- the Consents required in relation to any third-party agreement and of all persons who have rights or interests in or over the *services* or the Site who by the lawful exercise of their powers in the absence of such Consents could delay or disrupt the carrying out or progress of the *services* or the use or enjoyment of the Site.

(40) Task Order is a task order issued under the Framework Agreement.

(41) Third Party Agreements means those agreements made or to be made between the *Client* and any third party concerning the *services*, the Site and/or the Project and as identified in the Task Order."

In clause 12.4 at the end of the sentence, insert "as specified in the Task Order".

Insert new clauses 12.5 to 12.6:

- "12.5 References in this contract to the *Consultant* include his employees, and suppliers and Subcontractors and their employees and suppliers.
- 12.6 A reference to any Act of Parliament, Statutory Instrument or any specific provision in such legislation is deemed to include a reference to any subsequent re-enactment or amendments or to any replacement enactment covering the same or substantially the same subject matter."

Delete clause 13.4 and replace with:

- 13.4 "The *Service Manager* replies to a communication submitted or resubmitted by the *Consultant* for acceptance. If the reply is that the *Consultant's* communication is not accepted, the *Consultant* resubmits the communication within the *period for reply* taking into account the reasons (if any) provided by the *Service Manager*."

In clause 13.8 delete the second sentence.

In clause 14.3 after "Key Date" insert, "or requires the *Consultant* to correct a Defect so that a condition stated for a Key Date is met by that Key Date".

In the first bullet point of clause 15.2 after "meeting" insert, "as soon as reasonably practicable after such instruction taking into the account the nature of the risks identified in the notice,".

Delete clause 16.1 and replace with:

“16.1 The *Service Manager* or the *Consultant* notifies the other as soon as either becomes aware of an ambiguity, discrepancy, omission, mistake or inconsistency in or between the Documents which are part of the contract. The *Service Manager* states how the ambiguity, discrepancy, omission, mistake or inconsistency should be resolved. Such ambiguity, discrepancy, omission, mistake or inconsistency does not give rise to a compensation event and the *Consultant* is fully responsible for such ambiguity, discrepancy, omission, mistake or inconsistency and there is no effect upon Defined Cost, Completion or any obligation to meet a Key Date.”

Insert at the end of clause 16.2: “Any such *Service Manager*’s instruction does not give rise to a compensation event and there is no effect upon Defined Cost, Completion or any obligation to meet a Key Date.”

Delete clause 17 and insert, “number not used.”

2 The Consultant’s Main Responsibilities

In clause 20.1 after “Scope” insert, “the contract, the Environmental Objectives (as defined in the Framework Agreement), all Statutory Requirements and the Standard of Care.”

In clause 20.2 delete “skill and care” and replace with, “Standard of Care”.

In clause 20.3 delete “carry out the *service* ... similar to the *service*” and insert “comply with this clause 20”.

In clause 21.2 delete “the *Service Manager*” and replace with “the *Client*”.

In clause 22.3 delete the last sentence.

In clause 23.1 insert at the start: “The *Consultant* does not subcontract work or design forming part of the *services* or under the contract without the consent of the *Client*.”

In clause 23.3 delete the first bullet point. In the second list of bullet points insert the following new bullet point:

- “they include terms which restrict the duty of care owed to the *Consultant*, restrict the copyright available, restrict the terms of any professional indemnity insurance required and/or include a net contribution clause or cap on liability.”

Insert new clauses 23.4 to 23.10:

- “23.4 The *Consultant* performs its obligations under the contract so that no act, omission or default of the *Consultant*, any Subcontractor, or any Key Supplier causes or contributes to any breach by the *Client* of any third-party agreement.
- 23.5 Save as provided in clause 23.9 the *Consultant* ensures in respect of any Key Supplier (such person to be approved in advance by the *Client*) that it is appointed by deed in such terms as the *Client* approves (such approvals not to be unreasonably withheld or delayed).
- 23.6 No more than fourteen (14) days after the appointment of any Key Supplier the *Consultant* supplies the *Client* with a copy of such appointment with commercially sensitive information redacted.
- 23.7 The *Consultant* ensures that each Key Supplier within thirty (30) days of its appointment pursuant to clause 23.5 executes and delivers a deed of warranty in favour of the *Client* substantially in the form of the warranty contained in Part C of Appendix 2 to the Framework Agreement. Such warranties are provided at the same time as the appointment pursuant to clause 23.6.
- 23.8 Within thirty (30) days of a request in writing from the *Client*, the *Consultant* ensures that each Key

Supplier executes and delivers a deed of collateral warranty and/or a letter of reliance in favour of any Beneficiary substantially in the form contained in Part C of Appendix 2 to the Framework Agreement.

23.9 The amount to be inserted in any warranty provided pursuant to clauses 23.7 or 23.8 in respect of professional indemnity insurance is such reasonable amount approved by the *Service Manager* (such approval not to be unreasonably withheld or delayed).

23.10 The *Consultant* does not without the written consent of the *Client*:

23.10.1 vary any appointment of a Key Supplier,

23.10.2 waive or release any of the Key Supplier's obligations, or

23.10.3 terminate or do or omit to do any act or thing which would entitle a Key Supplier to regard its respective appointment as terminated."

Delete clause 25 and replace with:

"25.1 The *Consultant* may not assign or transfer the benefit of the contract or any rights under it without the prior written consent of the *Client*."

Delete clause 26 and insert, "number not used."

Insert new clause 27:

"Deleterious Materials"

27.1 Exercising the Standard of Care, the *Consultant* shall not use or permit to be used in the *services* and/or the Project any materials, substance, building practice or technique which:

- by their nature or application contravene any British Standard, EU equivalent, code of practice or agreement certificate issued by the British Board of Agreement,
- contravene the recommendations of the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011",
- are generally considered to be deleterious within the building design professions in the UK or
- are generally known within the construction industry at the time of use to be hazardous to the health and safety of any person and/or which may threaten the long-term integrity of the Project."

Insert new clause 28:

"Consultant's Design"

28.1 To the extent that the *Consultant* is responsible for the design of any element of the *services* (as identified in the Scope, Task Order and or the Contract Data) the *Consultant* carries out and completes the design using all the Standard of Care.

28.2 The *Consultant* submits the particulars of its design as the contract requires to the Client for acceptance. A reason for not accepting the *Consultant's* design is that:

- it does not comply with the Scope, the contract, any Statutory Requirements and/or the Standard of Care,
- it may increase the cost of operating or maintaining the *services*,
- it requires an additional consent to be obtained,
- it may have an adverse effect on Others, or

- that more information is required.

The *Consultant* does not proceed with the relevant service until the Client has accepted its design.

The Client's acceptance of the *Consultant's* design (or any part of it) does not change or remove the *Consultant's* responsibility to Provide the Service or the *Consultant's* liability for the design of the *services*.

- 28.3 The *Consultant* ensures that all Plant and Materials are in accordance with the Scope, the contract and Statutory Requirements and are of satisfactory quality and fit for the purposes of the *services*."

3 Time

Delete clause 30.1 and replace with:

- "30.1 The *Consultant's* appointment under this contract shall commence from the date of this contract or from the date on which the *Consultant* began to perform the *services*, or any additional *services*, whichever is the earlier, and this contract shall be deemed to apply to the performance by the *Consultant* of the *services* and any additional *services* from the date of commencement of the *Consultant's* appointment."

Insert a new clause 30.4:

- "30.4 The *Consultant* proceeds regularly and diligently with the *services* and in accordance with the Accepted Programme."

In clause 31.2 after the sixth bullet point, insert the following bullet points:

- "the resources planned to be used, and the resources actually used in whole or in part for each operation,
- compliance with the Project Programme and
- compliance with the Project Deliverables."

In clause 31.2 delete "Scope" in the final sentence and replace with "the Contract Data and the *Consultant* prepares and maintains each programme using such software (including version) as may be specified in the Contract Data or as otherwise agreed with the *Client*."

4 Quality Management

Delete clause 40.2 and replace with:

- "40.2 Within the period stated in the Contract Data, the *Consultant* provides the *Service Manager* with a quality plan for acceptance. The quality plan sets out the *Consultant's* proposals for the management and resourcing of the *services*. A reason for not accepting a quality plan is that:

- it does not allow the *Consultant* to Provide the Services,
- it is inadequately prepared or is not practicable,
- it does not incorporate the information which the Scope requires,
- it does not represent a realistic approach for the *services* or
- it does not comply with the Project Programme.

If any changes are made to the quality plan, the *Consultant* provides the *Service Manager* with the changed quality plan for acceptance."

Insert new clauses 40.4 and 40.5:

- “40.4 Any Key Supplier appointed by the *Consultant* operates a quality system enabling them to comply with the quality plan.
- 40.5 The *Consultant* warrants:
- that the representations contained in the quality plan are accurate in every respect and may be fully relied upon by the *Client* where the standards represented exceed the minimum originally specified by the *Client* and
 - that the quality plan does not constitute a qualification to its tender. Should any discrepancy arise between the quality plan and other contractual documents, the Scope takes precedence.”

In clause 41.2 replace the words “the time required by the contract” with the words “within a reasonable time”. Insert after “Scope”, “and the contract”.

In clause 42.1 insert the following prior to the full stop: “but the *Client* is not obliged to consider or accept any such proposal.”

5 Payment

In clause 50.2 after “assessment date” in the third line insert, “The *Consultant* shall also give the *Client* the supporting documents and information that the *Client* reasonably requires to enable it to evaluate the application for payment.”

Insert at the end of clause 50.5: “and such programme has been accepted by the *Service Manager*”.

In clause 51.1 delete “one week” in the first line and replace with “two weeks”.

In clause 51.2 at the start of the clause insert: “Provided that there has been no double counting.” Delete “three weeks” in the first line and replace with “four weeks”.

In clause 51.5 delete “tax” and replace with “Value Added Tax at the applicable rate”.¹

In clause 53.1 in the third bullet point delete “one week” and replace with: “three weeks”.

In clause 53.2 delete “agrees with this assessment” in the third line and insert “notifies in writing that the assessment is agreed”. In the first bullet point, delete “one week” and replace with “four weeks”. In the second bullet point, delete “three weeks” and replace with “four weeks”.

In clause 53.3 delete “the final amount due under or in connection with this contract” and replace with “all and any such compensation events, if any, as are due under clause 60”.

In clause 53.4 delete the final sentence.

6 Compensation Events

Delete clause 60.1(1) and replace with:

- “(1) The *Service Manager* gives an instruction changing the Scope except:
- a change made in order to accept a Defect and/or arising as a result of a Defect,
 - a change to the Scope which is made either at the *Consultant*’s request or to comply with the contract,

¹ Note: Contractors will be required to provide CIS number to DEFRA.

- a change resulting from the *Service Manager* issuing an instruction under clause 16.2 of the contract,
- removing a requirement in the Scope for the *Consultant* to use a specified or named Subcontractor or Key Supplier,
- a change relating to an item which is a *Consultant* responsibility under the contract or
- a change required in order to achieve a consent which is the *Consultant's* responsibility to secure and comply (including Client Consents)."

In clause 60.1(4) after the words "gives an instruction" insert, "except an instruction given because of a Defect" and insert prior to the full stop "and it is not one of the other compensation events stated in the contract".

Delete clause 60.1(5) and replace with:

"(5) The *Client*:

- does not work within the times shown on the Accepted Programme, or
- does not work within the *conditions* state in the contract,

except where such work is required to correct a Defect or to ensure that a *condition* stated for a Key Date is met by that Key Date."

In clause 60.1(7) insert prior to the full stop "unless it was reasonable in the circumstances to change the decision".

Delete clause 60.1(9) and replace with: "An event expressly referred to in clause 80.1."

In clause 60.1(14) insert prior to the full stop the words "other than information for which the *Consultant* accepts liability or is otherwise responsible under the contract".

Delete clause 60.1(15) and insert, "number not used."

In clause 60.1(20) insert at the end: "but only to the extent that the quotation relates to an instruction issued pursuant to clause 65."

In clause 61.2 delete "from a fault of the *Consultant*" and insert:

"from a fault, act or omission of the *Consultant* (which includes the fault, act or omission of any Key Supplier, Subcontractor or any employee or supplier of the *Consultant*),

- arises from any act or omission by the *Consultant*, any Key Supplier, or any Subcontractor or employee or supplier of the *Consultant* under any separate contract with the *Client* to do anything on or adjacent to the site (whether concurrent with the *Consultant* Providing the Service or otherwise),
- is a *Consultant* responsibility under the contract".

In clause 61.3 after "has happened" insert, "(or, if earlier, within eight weeks of the date an experienced contractor would reasonably have become aware of the event)".

In clause 61.4 delete the words "from a fault of the *Consultant*" and insert:

"from a fault, act or omission of the *Consultant* (which includes the fault, act or omission of any Key Supplier, Subcontractor or any employee or supplier of the *Consultant*)

- arises from any act or omission by the *Consultant*, any Key Supplier, or any Subcontractor or employee or supplier of the *Consultant* under any separate contract with the *Client* to do anything on or adjacent to the Site and/or pursuant to any other Task Order (whether concurrent with the *Consultant* Providing the Service or otherwise),
- is a *Consultant* responsibility under the contract”.

Insert at the end clause 62.2:

“If the *Service Manager* accepts the *Consultant*’s quotation the *Consultant* provides a revised programme within one week of such acceptance.”

In clause 62.6 delete “two weeks” and replace with “three weeks”.

At the beginning of clause 63.1, delete “The” before “change to the Prices” and replace with:

“The changes to the Prices are assessed using rates for activities from the Activity Schedule:

- where the additional or substituted work is of a similar character to, is executed under similar *conditions* as, and does not significantly change the quantity of work set out in the Scope, the rates and prices for the work set out in the Activity Schedule determines the valuation,
- where the additional or substituted work is of similar character to work set out in the Scope but is not executed under similar *conditions* thereto and/or significantly changes its quantity, the rates and prices for the work set out in the Activity Schedule is the basis for determining the valuation and the valuation includes a fair allowance for such difference in *conditions* and/or quantity, or
- where additional or substituted work is not of similar character to work set out in the Scope the work is valued at market rates and prices,

and such rates and prices shall be added to the Price List and notwithstanding this, where the *Client* and *Consultant* agree, the”.

In clause 63.3, delete “the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract*” and replace with “the total of the Prices, the total of the Prices is so reduced”.

Delete clause 63.4 and insert, “number not used.”

In clause 63.8, at the end of the clause insert “but excluding inefficiencies within the *Consultant*’s organisation.”

In clause 63.9 after “*Consultant*” in the first line insert “, all Subcontractors and Key Suppliers” and, in the second line, delete “Defined Cost” and replace with “changes to the Prices and any costs to the extent they are recoverable under this contract”.

Delete clause 63.10 and insert, “number not used.”

Insert new clauses 63.12 to 63.15:

- “63.12 Any extension to the Completion Date and/or to a Key Date and increase in Prices are reduced by the extent to which the *Consultant*, any Subcontractor, supplier and or Key Supplier contributed to the effect of the compensation event.
- 63.13 Any compensation event under clauses 60.1(7) and 60.1(12) does not give rise to any changes to the Prices and the *Consultant* is only entitled to an extension to the Completion Date and/or to a Key Date.
- 63.14 There is no extension to the Completion Date and/or any Key Date where the compensation event relates to work for which the *Consultant* has been required by the Scope to make due allowance for in any Accepted Programme save that this clause shall not prevent any float and/or time risk allowance

provided for in an Accepted Programme from being taken into account when assessing the effect of any compensation event (where relevant).

- 63.15 The Consultant shall only be entitled to a compensation event under clauses 60.1(2) to 60.1(16) to the extent that such compensation event prevents the *Consultant* from carrying out a material part of the *service*.

7 Rights to Material

Delete clauses 70.2 and 70.3 and insert, "number not used".

8 Liabilities and Insurance

Delete clause 81.1 and replace with:

- "81.1 From the *starting date*, the liabilities which are not specified in the Contract Data to be the *Client's* liabilities are carried by the *Consultant*."

In clause 82.2 at the end insert, "provided that the *Consultant* has notified the *Client* of such cost and the *Client* has approved such cost in writing."

In clause 83.3 delete the first row of the table and add new row to the table:

Liability for negligent design	The amount specified in the Contract Data from the date the <i>Consultant</i> starts to Provide the Service for a period of twelve years from Completion with a well-established insurance office or underwriter of repute based in the European Union, provided that such insurance remains available on commercially reasonable terms and rates having regard to the premiums required and policy terms available. Any increased or additional premium required by insurers by reason of the <i>Consultant's</i> own claims record or other acts, omissions or matters particular to the <i>Consultant's</i> shall be deemed to be within commercially reasonable rates and terms."
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The *Contractor* shall notify the *Client* immediately if the insurance referred to in the new row of clause 83.3 ceases to be available to the *Contractor* at reasonable premium rates or on reasonable commercial terms. If this happens:

- the *Client* and the *Contractor* shall discuss and agree on the best means of protecting themselves and
- the *Client* may require the *Contractor* to take out and maintain insurance at the best premium rates and on the best commercial terms available to the *Contractor*. If the *Client* exercises this right, it shall reimburse to the *Contractor* the difference between the premium paid and the premium that would have been reasonable."

In clause 84.1 after "complies with the contract" insert the words "with a well-established United Kingdom insurance office".

Delete clause 87.1 and insert, "number not used."

9 Termination

In clause 90.1 replace "the *Service Manager* and" in line 2 and in line 3 replace "the *Service Manager*" with "the *Client*".

In clause 90.2 replace "A" at the start with "Save for so far as the Corporate Insolvency and Governance Act 2020 applies, a".

In clause 90.2 delete the Termination Table and replace with:

Termination Table			
Terminating Party	Reason	Procedure	Amount Due
The <i>Client</i>	A reason other than R1-R22	P1, P2, P3 and P4	A1 and A3
	R1-R15, R18 or R22-R25	P1, P2, P3 and P4	A1, A2 and A4
	R17 or R20	P1, P2, P3 and P4	A1
	R21	P1, P2, P3 and P4	A1
The <i>Consultant</i>	R1-R10B, R16 or R19	P1, P2, P3 and P4	A1 and A3
	R17 or R20	P1, P2, P3 and P4	A1
-	-	In relation to P1, P2, P3 and P4 in each case to the extent specified in the relevant instruction.	-

In clause 90.3 replace “the *Service Manager* with “the *Client*”.

In clause 91.1 delete the fourth sub-bullet point of the second main bullet point and replace with:

- “had an administration order made against it, or an administrator appointed and/or an administration application made against it or a notice of intention issued to appoint an administrator by the company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the 1986 Act) (R8)”.

In clause 91.1 at the end of the second main bullet point, after (R10) delete the full stop and insert the following additional two sub-bullet points:

- provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or re construction (R10A), or
- applied to the court for, or obtained, a moratorium under Part A1 of the Insolvency Act 1986 (R10B).”

In clause 91.2 delete “four weeks” and replace with “two weeks”. Delete the third bullet point and replace with:

- “Appointed a Subcontractor for substantial work or a Key Supplier before the *Service Manager* has accepted the Subcontractor or Key Supplier (R13).”

In clause 91.2 at the end of the clause insert:

- “Failed to comply with its statutory obligations as set out in the Special Conditions (R23).”

Insert new clauses 91.9 and 91.10:

- “91.9 The *Client* may terminate the *Consultant’s* obligation to Provide the Services if the *Client* terminates another Task Order and/or the Framework Agreement (R24).
- 91.10 The *Client* may terminate the Task Order immediately if the *Client* considers that a Critical Failure Event has occurred (R25).”

Insert at the end of clause 92.2:

- “P3 The *Consultant* promptly and in an orderly manner delivers to the *Client* all Documents on termination.
- P4 Where the contract is terminated the *Consultant* shall provide all reasonable assistance to assist with the orderly transition of the *services* to a replacement contractor and the provision of information concerning the *services* which the *Client* may request free of charge.”

Insert at the end of clause 93.2:

“A4 A deduction of the costs, damages, expenses and losses suffered or incurred by or on behalf of the *Client* as a result of termination of the contract. Where this clause A4 applies then the third bullet point in 93.1 shall not apply”

Insert new clauses 93.2A and 93.2B:

“93.2A No other payments are made by the *Client* in consequence of the termination.

93.2B On termination of the contract, the *Client* is not liable for any loss of profits, bonuses or incentives.”

MAIN OPTION CLAUSES

Resolving and Avoiding Disputes

Option W2

In clause W2.3(11) delete the final sentence.

Delete clause W2.4(1) and replace with:

“(1) A Party may refer a dispute under or in connection with the contract to the tribunal at any time.”

Insert new clause W2.5:

“W2.5 Any Party may at any time ask that additional parties shall be joined in the adjudication. Joinder of additional parties shall be subject to the agreement of the Adjudicator and the existing and additional parties. An additional party shall have the same rights and obligations as the other Parties, unless otherwise agreed by the Adjudicator and the parties. The Adjudicator shall not agree to the joinder of additional parties unless the original parties to the dispute agree an amended timetable for the adjudication which is, in all the circumstances, reasonable.”

SECONDARY OPTION CLAUSES

Option X1: Price Adjustment for inflation

Option X2: Changes in the law

In clause X2.1 after “change in the law of the country” insert, “that could not be reasonably foreseen by an experienced *Consultant*”.

Option X7: Delay Damages

Option X8: Undertakings to the *Client* or Others

If Option X8 is selected to apply in the Contract Data, delete and replace with:

- X8.1 “The *Consultant* provides within 14 days of a request in writing by the *Client* an executed deed of collateral warranty in favour of any Beneficiary substantially in the form of the warranty contained in Part C of Appendix 2 to the Framework Agreement, provided always that the *Consultant* shall not be required to execute more than five (5) (or such amount as set out in the Task Order) collateral warranties under this clause X8.1.
- X8.2 Where selected to apply in the relevant Task Order, the *Consultant* provides within 14 days of a request in writing by the *Client*:
- X8.2.1 an executed deed of novation substantially in the form of the novation contained in Part C of Appendix 2 to the Framework Agreement, and
- X8.2.2 a deed of warranty in favour of the *Client* in the form set out in Part C of Appendix 2 to the Framework Agreement.
- X8.3 The third party rights set out in Part C of Appendix 2 to the Framework Agreement shall vest in the *Consultant* and/or any Key Supplier on the date on which the *Client* issues a written notice to the *Consultant* identifying such person and the nature of their interest in the *works* or the Site provided always that the *Client* shall only be entitled to vest third party rights in five (5) Beneficiaries, or such other amount as set out in the Task Order.
- X8.4 Where the third-party rights have vested in any Key Supplier then the *Client* and *Consultant* shall not be entitled, without the consent of that Key Supplier, to amend or vary the express provisions of this clause X8.4, or the third-party rights but, subject to clause X8.5, the rights of the *Client* and/or the *Consultant* shall not be subject to the consent of any Key Supplier.
- X8.5 Where the third-party rights set out in Part C of Appendix 2 to the Framework Agreement have been vested in a Key Supplier, then neither the *Client* nor the *Consultant* shall agree to rescind the contract, and the rights of the *Consultant* to terminate their employment under this contract or to treat it as repudiated shall in all respects be subject to the provisions of the third-party rights set out in Part C of Appendix 2 to the Framework Agreement.”

Option X10: Information Modelling

In X10.2 after “collaborates” insert “and co-operates”.

In X10.4(2) at the end of the first bullet point delete the word “or” and at the end of the second bullet point delete the full stop and add new bullet points as follows:

- “the plans which it shows are not practicable,
- it does not represent the *Contractor*’s plans realistically,
- it does not comply with the Scope and/or the Contract,
- it has or may have a material adverse effect upon the business and/or reputation of the *Client* and/or any third parties within the Site (where applicable) or
- it has or may have a material adverse effect upon the operations, *works* and/or *services* being carried out and/or completed by any third parties and/or the Other Framework Contractors at the Site (where applicable).”

In X10.6 delete “except as stated otherwise in the Information Model Requirements”.

Delete X10.7(1) and replace with “number not used”.

Delete X10.7(2) and replace with “number not used”.

Option X11: Termination by the *Client*

Option X18: Limitation of liability

Delete clauses X18.1 to X18.4 and replace with “not used”.

Insert new clauses X18.5 and X18.6:

“X18.5 The *Consultant’s* total liability to the *Client* for all matter arising under or in connection with the contract other than the excluded matters, is limited to the amount stated in the Task Order and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.

The excluded matters are amounts payable by *the Consultant* 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 right of Others, and
- loss of or damage to third party property and death of or bodily injury to a person other than an employee of the *Consultant*.

X18.6 The *Consultant* is not liable to the *Consultant* for a matter unless details of the matter are notified to the *Consultant* before the end of liability date.”

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

In the second bullet point of clause Y2.2 delete “one week” and replace with “30 days”.

In the fourth and fifth bullet points delete “fourteen days” and “seven days” respectively and insert “23 days”.

In clause Y2.2 after “zero” in the second line of the final paragraph, insert “or a negative amount”. In clause Y2.3 in the first sentence replace “seven days” with “five days”. In the second sentence delete “A Party” and insert “Subject to clauses Y2.4 and Y2.4A, a Party”.

In clause Y2.4 replace “R10” with “R10B”.

Insert new clause Y2.4A:

“Y2.4A If the *Consultant* becomes insolvent (as set out in R1 to R10B of clause 91.1) 5 days or less before the final date for payment for an amount due under the contract, the *Client* is not required to pay the *Consultant* the amount due, or any part of the amount due.”

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

Delete clause Y(UK)3.1 and Y(UK)3.3 in its entirety.

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

Willmott Dixon Construction Limited

Address for communications

Address for electronic communications

The *fee percentage* is

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

2 The *Consultant's* main responsibilities

If the *Consultant* is to provide Scope The Scope provided by the *Consultant* is in

1.

Scope: General Client Requirements (General Scope 2022), and
2.

Scope: Task Order Requirements (Specific Scope)

3 Time

If a programme is to be identified in the Contract Data The programme identified in the Contract Data is

29 Weeks

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

15 December 2023

5 Payment

If the *Consultant* states *expenses* The *expenses* stated by the *Consultant* are any

item	amount

If Option A or C is used The *activity schedule* is

In the Task Order Proposal

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

X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

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

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

The *people rates* are

Category of person	unit	rate
Senior Design Manager	Week	
M&E Manager	Week	
Senior Site Manager	Week	
Managing Quantity Surveyor	Week	

The *Consultant's* Offer and *Client's* Acceptance

The *Consultant* offers to Provide the Services in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The contract is made on

19th day of May 2023

Between the *Client* and the *Consultant*.

The contract is made pursuant to the Engineering Delivery Framework Agreement.

The offered total of the prices is

Signed on behalf of the *Consultant*

Name

Position

Signature

Date

The *Client* accepts the *Consultant's* Offer to Provide the Services

Signed on behalf of the *Client*

Name

Position

Signature

Date