



# Professional Service Contract

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## Contract Data Forms

June 2017

(with amendments January 2019)



# Contract Data

## PART ONE – DATA PROVIDED BY THE *CLIENT*

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

### 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

E

Option for resolving and avoiding disputes

W2

Secondary Options

X2, X9, X10, X11, X18, Y(UK)2, Y(UK)3

The *service* is

Provision for a Cost Manager to support delivery of large EA construction projects.

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

- Psc scope template - ecc project manager and cost manager Midlands

The *language of the contract* is

English

The *law of the contract* is the law of

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

The *period for reply* is

2 weeks

except that

- The *period for reply* for

n/a

is

n/a

- The *period for reply* for

n/a

is

n/a

The *period for retention* is 6 year(s) following Completion or earlier termination

The following matters will be included in the Early Warning Register

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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)

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(2)

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(3)

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If Option A is used

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

4 weeks

If Option C or E is used

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

4 weeks

## 3 Time

The *starting date* is

15/01/2024

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

access	access date
(1) <input type="text"/>	<input type="text"/>
(2) <input type="text"/>	<input type="text"/>
(3) <input type="text"/>	<input type="text"/>

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

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

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

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

#### 4 Quality management

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

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

#### 5 Payment

The *currency of the contract* is the

The *assessment interval* is

If the *Client* states any *expenses*

The *expenses* stated by the *Client* are

item	amount
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

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

rate of the

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

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

If Option C is used

The *Consultant's share percentages* and the *share ranges* are

<i>share range</i>		<i>Consultant's share percentage</i>
less than	80 %	0 – below this threshold any further savings are allocated 100% to the Client %
from	80 % to 120 %	50 %
from	% to %	%
greater than	120 %	0 %

If Option C or E is used

The *exchange rates* are those published in

Financial Times

on (starting date) (date)

## 6 Compensation events

If there are additional

These are additional compensation events

## 8 Liabilities and insurance

If there are additional  
*Client's liabilities*These are additional *Client's liabilities*

- (1) Not Used
- (2)
- (3)

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

EVENT	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE SERVICE OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	<div></div> in respect of each claim, without limit to the number of claims	6 years following Completion of the whole works or earlier termination
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	<div>Whichever is greater of or the amount required by law</div> in respect of each event, without limit to the number of events	12 months
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	<div>Whichever is greater of or the amount required by law</div> in respect of each event, without limit to the number of events	For the period required by law

The *Consultant* provides these additional insurances

(1) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(2) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(3) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than the excluded matters is limited to	
<div></div>	

Resolving and avoiding disputes

The *tribunal* is 

Litigation in the courts

If the *tribunal* is arbitration      The *arbitration procedure* is 

'to be confirmed'

The place where arbitration  
is to be held is 

'to be confirmed'

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)  
  
Address for communications  
  
  
  
  
Address for electronic communications

Name (2)  
  
Address for communications  
  
  
Address for electronic communications

The *Adjudicator* is

Name 

'to be confirmed'

  
  
Address for communications 

'to be confirmed'

  
  
  
Address for electronic communications 

'to be confirmed'

  
  
The *Adjudicator nominating body* is 

Institution of Civil Engineers



**X2: Changes in the law**

If Option X2 is used	The <i>law of the project</i> is	The law of England and Wales, subject to the jurisdiction of the courts of England and Wales
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**X5: Sectional Completion**

If Option X5 is used	The <i>completion date</i> for each section of the <i>service</i> is		
	<i>section</i>	<i>description</i>	<i>completion date</i>
	(1)	<input type="text"/>	<input type="text"/>
	(2)	<input type="text"/>	<input type="text"/>
	(3)	<input type="text"/>	<input type="text"/>
	(4)	<input type="text"/>	<input type="text"/>

**X7: Delay damages**

If Option X7 is used without Option X5	Delay damages for Completion of the whole of the <i>service</i> are	<input type="text"/>	per day
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If Option X7 is used with Option X5	Delay damages for each <i>section</i> of the <i>service</i> are		
	<i>section</i>	<i>description</i>	<i>amount per day</i>
	(1)	<input type="text"/>	<input type="text"/>
	(2)	<input type="text"/>	<input type="text"/>
	(3)	<input type="text"/>	<input type="text"/>
	(4)	<input type="text"/>	<input type="text"/>
	The delay damages for the remainder of the <i>service</i> are		<input type="text"/>

**X8: Undertakings to Others**

If Option X8 is used	The <i>undertakings to Others</i> are provided to
	<input type="text"/>
	<input type="text"/>

**X9: Transfer of Intellectual Property Rights****X10: Information modelling**

If Option X10 is used

If no <i>information execution plan</i> 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 Information Execution Plan for acceptance is	<input type="text" value="2 weeks"/>
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**X11: Termination by the Client****X13: Performance bond**

If Option X13 is used

The amount of the performance bond is

X18: Limitation of liability

If Option X18 is used

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

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

The *end of liability date* is

6

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

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

If Option X20 is used

The *incentive schedule* for Key Performance Indicators is in

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

months

Y(UK)1: Project Bank Account

Charges made and interest paid by the *project bank*

The *Consultant* **is not** to pay any charges made and to be paid any interest paid by the *project bank* (Delete as applicable)

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 

14

 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	<i>beneficiary</i>
	<div></div>	<div></div>
	<div></div>	<div></div>
	<div></div>	<div></div>

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3	term	<i>beneficiary</i>
	<div>The provisions of Options Y(UK)1</div>	<div>Named Suppliers</div>

## Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

### Z1 Disputes:

Option W2 subclause W2.1(4) is deleted. The Parties agree that adjudication under Clause option W2 should only commence if the dispute resolution procedure has been exhausted and that the dispute resolution procedure in the Scope, takes precedence over Option W2.

### Z2 Prevention

The text of clause 18 Prevention is deleted.

Delete the text of clause 60.1(12) and replace with:

The service is affected by any of the following events

- War, civil war, rebellion, revolution, insurrection, military or usurped power;
- Strikes, riots and civil commotion not confined to the employees of the *Consultant* and sub consultants,
- Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel,
- Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device,
- Natural disaster,
- Fire and explosion,
- Impact by aircraft or other aerial device or thing dropped from them.

### Z3 Disallowed Costs

In second bullet of 11.2 (18) add:

(including compensation events with the Subcontractor, i.e. payment for work that should not have been undertaken).

Add the following additional bullets after 'and the cost of ' :

- Mistakes or delays caused by the *Consultant's* failure to follow standards in Scopes/quality plans.
- Reorganisation of the *Consultant's* project team.
- Additional costs or delays incurred due to *Consultant's* failure to comply with published and known guidance or document formats.
- Exceeding the Scope without prior instruction that leads to abortive cost
- Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors.
- Production or preparation of self-promotional material.
- Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value)
- Any hours exceeding 8 per day unless with prior written agreement of the *Service Manager*
- Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the *Service Manager*
- Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the *Service Manager*
- Costs associated with the attendance at additional meetings after programmed Completion, if delay is due to *Consultant* performance.
- Costs associated with rectifications that are due to *Consultant* error or omission.
- Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the *Consultant's* involvement
- Was incurred due to a breach of safety requirements, or due additional work to comply with safety requirements
- Was incurred as a result of the *Client* issuing a Yellow or Red Card to prepare a Performance Improvement Plan.

### Z5 Secondments

When appointing Consultants on a secondment basis only:

Add clause 19

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

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

or

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

### Z7 Linked contracts

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

### Z8 Requirement for Invoice

Insert the following sentence at the end of clause 51.1:

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

Delete existing clause 51.2 and insert the following:

51.2 Each certified payment is made by the later of

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

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

## **Z9 Conflict of Interest**

The Consultant immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* (including without limitation its reputation and standing) and/or the *Client* of which it is aware or which it anticipates may justify the Client taking action to protect its interests. Should the Parties be unable to remove the conflict of interest to the satisfaction of the *Client*, the *Client*, in its sole discretion, may terminate this Contract.

## **Z12 Waiver**

No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party by the *Service Manager* in writing in accordance with the Contract, and with express reference to Clause Z12. The failure of either party to insist upon strict performance of the Contract, or any failure or delay in exercising any right or remedy shall not constitute a waiver or diminution of the obligations established by the Contract.

## **Z125 Limitation of Liability**

Under clause 87.1; after the fourth bullet point; insert the additional bullet points:

- loss of or damage to the *Client's* property, to the sum that the *Consultant* is required to insure under the contract in respect of such loss or damage,
- death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with the contract, to the sum that the *Consultant* is required to insure under the contract in respect of such death or bodily injury.

## **Z 130 Rate adjustment**

Z130.1 The Defined Cost for People Rates shall be increased by the same proportion and on the same date as the appropriate *Framework Prices*.

Z130.2 (Option C ONLY) The Prices are adjusted for the outstanding portion of the Prices for the amendment to rates in Z130.1.

## **Z 131 Change to the Schedule of Cost Components**

Add clause 11.2(19) The People Rates are the *people rates* unless later changed in accordance with the contract and provided that at all times and under any circumstance howsoever arising the People Rates do not exceed the equivalent and directly comparable Framework Price as set out in Crown Commercial Services (CCS) Construction Professional Services Framework RM6165.

In the Schedule of Cost Components delete the section titled **People** and replace with:

### **People**

1 The following components of the cost of people.

11 Amounts calculated by multiplying each of the People Rates by the total time appropriate to that rate properly spent on work on the contract.

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

Address for communications

Address for electronic communications

The *fee percentage* is

0

%

The *key persons* are

name


service


The following matters will be included in the Early Warning Register

No expenses included in the forecast, these will be charged in accordance with the Framework requirements.

2 The *Consultant's* main responsibilities

If the <i>Consultant</i> is to provide Scope	The Scope provided by the <i>Consultant</i> is in	<div>N/A</div>
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5 Payment

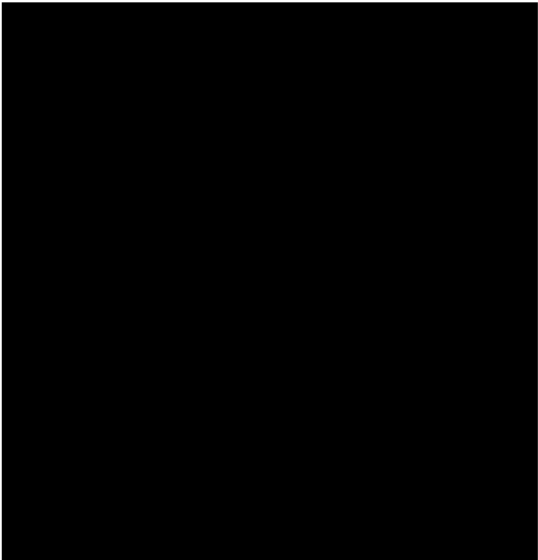
If the <i>Consultant</i> states expenses	The <i>expenses</i> stated by the <i>Consultant</i> are any	
	item	amount
	<div>Travel</div>	<div>At cost</div>
	<div>Accommodation</div>	<div>At cost</div>
	<div>Subsistence</div>	<div>At cost</div>

If Option A or C is used	The <i>activity schedule</i> is	<div></div>
If Option E is used	The forecast of the prices is	<div></div>

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

N/A

**Y(UK)1: Project Bank Account**

If Option Y(UK)1 is used

The *project bank* is*named suppliers* are**Data for the Schedule of Cost Components (used only with Options C or E)**The *overhead percentages* for the cost of support people and office overhead are

location	overhead percentage	
Administration National	5	%
<input type="text"/>	<input type="text"/>	%
<input type="text"/>	<input type="text"/>	%

**Data for the Short Schedule of Cost Components (used only with Option A)**The *people rates* are

category of person	unit	rate
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Data for the Schedule of Cost Components (used only with Options C and E)**The *people rates* are

category of person	unit	rate
Cost Manager	£/hour	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>