



CONTRACT

between

THE HEALTH AND SAFETY EXECUTIVE

and

WHITE YOUNG GREEN

for

**PRJ1346 – Landslip onto the A484 south of Cwmdud
Carmarthenshire on 13 October 2018**

This Contract is made between:

The **HEALTH AND SAFETY EXECUTIVE** (acting as part of the Crown) of Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called 'the HSE' of the one part) and

WHITE YOUNG GREEN of 5th Floor, Longcross Court, 47 Newport Road, Cardiff, CF24 0AD (hereinafter 'the Contractor' of the other part), in accordance with the details, terms and conditions stated herein.

WHEREAS

The Contractor was selected to provide services as an independent expert and agrees to adhere to the roles and responsibilities as detailed in Appendix A (where applicable).

1 STATEMENT OF SERVICES REQUIREMENT

1.1 The Services shall be carried out in accordance with the details in Schedule A.

2 MANAGEMENT OF THE CONTRACT

2.1 The Contract Managers responsible for liaison and delivery of the services are identified at Annex 1.

3 DURATION

3.1 The Work shall commence on **02 December 2019** and shall be completed by **14 February 2020**.

4 COSTS

4.1 The maximum amount to be paid by the HSE to the Contractor under this Contract shall not, without the prior written agreement of the HSE, exceed **£14,688.93**, excluding VAT.

4.2 Where appropriate, and subject to the HSE Contract Manager's approval, actual and reasonable travel and subsistence costs shall be payable in line with the rates agreed at Annex 2.

5 LIMITATION OF LIABILITY

5.1 Subject to Clause 5.2 the liability of the Contractor for any breach of this Contract, or arising in any other way out of the subject-matter of this Contract, will not extend to loss of business or profit, or to any indirect or consequential damages or losses. In any event, the maximum liability of the Contractor under or otherwise in connection with this Agreement or its subject matter shall not exceed the Contract price excluding VAT.

5.2 Nothing in this Agreement limits or excludes the liability of the Contractor:

5.2.1 for death or personal injury resulting from negligence; or

5.2.2 for any damage or liability incurred by HSE as a result of fraud or fraudulent misrepresentation by the Contractor; or

5.2.3 for any breach of its obligations under the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) and the Data Protection Act (DPA) 2018.

6 IR35 – INTERMEDIARIES LEGISLATION

6.1 HSE has undertaken an IR35 assessment of this engagement, and the HMRC online assessment tool determined that IR35 does not apply to this engagement.

7 TAX STATUS

7.1 Where the Contractor, or its staff, is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

7.2 Where the Contractor, or its staff, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

7.3 HSE may, at any time request that the Contractor provides information which demonstrates how it, or its staff, complies with Clauses 7.1 and 7.2 above or why those Clauses do not apply to it.

7.4 A request under Clause 7.3 above may specify the information which the Contractor, or its staff, must provide and the period within which that information must be provided.

7.5 HSE may terminate this contract if

a) in the case of a request mentioned in Clause 7.3 above -

(i) The Contractor, or its staff, fails to provide information in response to the request within a reasonable time, or

(ii) The Contractor, or its staff, provides information which is inadequate to demonstrate either how it complies with Clauses 7.1 and 7.2 above or why those Clauses do not apply to it;

(b) in the case of a request mentioned in Clause 7.4 above, The Contractor, or its staff, fails to provide the specified information within the specified period, or

(c) it receives information which demonstrates that, at any time when Clauses 7.1 and 7.2 apply the Contractor, or its staff, is not complying with those Clauses.

7.6 HSE may supply any information which it receives under Clause 7.3 to the Commissioners of Her Majesty's Revenue and Customs for the purposes of the collection and management of revenue for which they are responsible.

8 INVOICING AND PAYMENTS

8.1 All invoices raised must include the relevant Purchase Order number which will be issued by HSE Procurement Unit. Failure to include the Purchase Order Number may delay payment. Invoices should be submitted electronically in PDF format to APinvoices-HAS-U@sscl.gse.gov.uk.

8.2 Invoices should also include details of work satisfactorily carried out and any VAT properly chargeable.

8.3 HSE shall make payment of agreed costs, in arrears, within 30 days of the acceptance of the invoice.

8.4 The Contractor shall send a copy invoice along with details of any work satisfactory carried out to the HSE Contract Manager identified at Annex 1.

9 ACCESS TO HSE PREMISES

9.1 It shall be the Contractor's responsibility to ensure that, where access to HSE Premises or HSE confidential information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Security Standard.

9.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out. Guidance on pre-employment checks may be found at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/hmg-personnel-security-controls.pdf>

10 CONFIDENTIALITY

10.1 The Contractor shall not at any time divulge any information or material acquired during the performance of this Contract to any third party without prior permission in writing of the Executive, except where required in the course of any legal proceedings.

10.2 The Contractor shall keep documents and other materials produced or acquired in the course of the contract in accordance with The Criminal Procedure and Investigations Act 1996 (CPIA).

10.3 HSE may disclose the Confidential Information of the Contractor:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 10.3(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause.

11 PUBLICATION

- 11.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. HSE shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 11.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.
- 11.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

12 GDPR DATA PROTECTION

- 12.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor.

- 12.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 12.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, 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.
- 12.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- a) unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer 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 Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - c) ensure that :
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor 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 Customer 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) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor 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 Customer in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 12.5 Subject to clause 12.6, the Contractor shall notify the Customer 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 or 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.
- 12.6 The Contractor's obligation to notify under clause 12.5 shall include the provision of further information to the Customer in phases, as details become available.
- 12.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 12.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
 - a) the Customer with full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - c) the Customer, at its request with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by the Customer following any Data Loss Event;
 - e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 12.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
 - a) the Customer determines that the processing is not occasional;
 - b) the Customer 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 Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 12.9 The Contractor shall allow for audits of its Data Processing activity by the

Customer or the Customer's designated auditor.

- 12.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 12.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- a) notify the Customer in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Customer;
 - c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 12.11 such that they apply to the Sub-processor; and
 - d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonable require.
- 12.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 12.13 The Customer 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).
- 12.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer 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.

13 VARIATION TO CONTRACT

- 13.1 Except where expressly stated in this contract, no change, amendment or modification shall be effective unless in writing and signed by the duly authorised representatives of both parties.
- 13.2 Any agreed changes to the Contract or Schedule A (Programme of Work) will be in the form of a Contract Change Note (CCN), which will be raised and issued by the HSE Procurement Unit.

14 GOVERNING LAW

- 14.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

15 TERMINATION

- 15.1 This contract may be terminated by either party by giving one weeks notice. In the event of termination by HSE, the contractor shall provided with any reimbursement of costs, actually and reasonably incurred, up to the date of termination, subject to the limit specified in Clause 4 above.

As Witnessed at the Hands of the Parties

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN AGREED :

Signature _____

Name in Capitals _____

Position _____

Date _____

Duly authorised to sign on behalf of

WHITE YOUNG GREEN (WYG)

5th Floor, Longcross Court, 47 Newport Road, Cardiff, CF24 0AD

Signature _____

Name in Capitals _____

Position Procurement Manager

Date _____

Duly authorised to sign on behalf of the

HEALTH AND SAFETY EXECUTIVE

Procurement Unit, Building 2.3, Redgrave Court, Merton Road, Bootle, Merseyside
L20 7HS

Schedule A

STATEMENT OF SERVICES REQUIREMENT

Undertaking a slope stability back analysis calculation is a complex task requiring field data to be gathered in a controlled manner to identify soil and slope parameters. These parameters will be used by a suitably qualified engineer to perform a failure analysis of the slope. The undertaking and reporting of the back analysis calculation requires the qualified engineer to have experience in this specialist line of geotechnical engineering work and the credibility to potentially present the field data collection exercise and calculation outputs before a court.

WYG are requested to

Filed works:

Field data collection to include trial hand pitting and sampling.
Undertake a topographic survey.

Laboratory Testing:

Geotechnical testing of samples to include classification tests and shear strength tests.

DELIVERABLES

1. Undertake a geotechnical desk top study.
2. Undertake slope stability analysis
3. Preparation of a geotechnical report
4. If applicable, attendance at court/inquest to provide evidence.

CONTACT LIST

HSE Contacts	Contractor Contacts
Contractual Queries	
Contract Managers / Technical Queries	

Annex 2

HSE UK TRAVEL AND SUBSISTENCE RATES

Car Mileage Rates (for using your own vehicle) – All engine types and sizes

Up to 10,000 mile per financial year 45p per mile

Over 10,000 miles per financial year 25p per mile

NB: Your vehicle must be insured for Business Use

Public Transport Fares

Second Class Rail travel, Air fares (within UK only), Bus fares etc will be payable at cost on production of receipts, provided that the most economical means of transport has been used.

SUBSISTENCE RATES

All receipts **must** be retained to support your claim.

Day Subsistence

More than 5 hours and up to 10 hours Actual costs up to £6.00

More than 10 hours and up to 12 hours Actual costs up to £10.00

More than 12 hours Actual costs up to £16.00

Night Subsistence

Booked via HSE Accommodation Booking Agency :

The 24 hour overnight subsistence allowance consists of 2 components :

Meal One Actual costs up to £6.00

Meal Two Actual costs up to £15.00

This is payable as a “24 hour” rate and amounts incurred over any individual component will not be reimbursed by HSE. The rates are agreed with HMRC to obtain dispensation from tax liability.

Booked making your own Commercial Arrangements

Actual cost of bed and breakfast up to a maximum of: £93.00 per night in London
or
£70.00 per night elsewhere

Appendix A

It is important that you understand the obligations placed upon you as an independent expert. Expert evidence in criminal investigations is governed by procedural rules of court. Under these rules an expert must help the court deal with criminal cases justly by giving objective, unbiased opinion on matters within his/her expertise.

As an expert witness you have an overriding duty to assist the court and, in this respect, your duty is to the court and not to the Competent Authority instructing you. Your duty also includes obligations relating to disclosure.

The obligations, which apply to you as an expert, are to assist in ensuring that the Competent Authority can comply fully with their statutory disclosure obligations. These obligations take precedence over any internal codes of practice or other standards set by any professional organisations to which you may belong.

Your obligations are set out below but can be summarised in the key actions of retain, record and reveal.

A failure to comply with the guidelines in this letter may have a number of adverse consequences, which could include:

- A prosecution being halted or delayed
- The appellate courts finding that a conviction is unsafe
- The tribunal making an adverse judicial comment about you as an expert. Such an adverse judicial comment could seriously undermine your credibility as an expert and consequently your fitness to be instructed in future cases.
- Professional embarrassment, including possible action by a professional body, loss of accreditation and the potential for civil action by an accused.

Conversely, your credibility as an expert will be enhanced by the considered application of the guidance contained within this letter and your appropriate management of the materials within the investigation.

Disclosure obligations under the criminal law

The regime for disclosure is set out in the Criminal Procedure and Investigation Act 1996 and the Code of Practice, issued under it. This is designed to ensure that there is a fair system for the disclosure of unused material which assists the Defence in the timely preparation of its case, does not overburden the parties and enables the court to focus on all the important issues in the trial.

The meaning of unused material

During the course of any investigation material is generated. Some of it is used as evidence and other material is not used. The material that is not used as evidence is known as unused material, to which the disclosure regime applies.

Unused material is material that is relevant to the investigation but which does not actually form part of the case for the prosecution against the accused. Even though

the material may not be used as evidence, it is important that for the purposes of disclosure this material is retained.

It is not for you to determine whether the material generated in the course of an investigation is relevant to the investigation.

Discharging your obligations

There are three key obligations arising for you, as an expert, as the investigation progresses. Your understanding of these obligations and delivering them is the key to you adequately fulfilling your disclosure obligations. The relevant steps are to **retain**, to **record**, and to **reveal**.

Retain

You should retain everything, including physical, written and electronically captured material, until otherwise instructed and the Competent Authority has indicated the appropriate action to take.

The period of time for which materials are required to be retained will vary from case to case and will depend on a number of factors. Examples include the nature of the offence; the stage and status of any legal proceedings and whether the case is of special interest. It must also be remembered that the retention requirement may alter as a result of a change of circumstances during the course of the investigation.

You should, therefore, obtain advice from the Competent Authority for the retention period that applies to this particular investigation and always before contemplating destruction of any material.

Record

The requirement for you to commence making records begins at the time you receive instructions and continues for the whole of the time you are involved.

You should keep records of all the work you have carried out and any findings you make in relation to the investigation. The guidance provided below reflects best practice and your records, as a minimum, should contain information relating to:

The collection and movement of items

including

- the date on which you take or receive material (physical items and information) and the date of subsequent movement of the material to another party
- from who or where and to whom or where material is moved
- the means by which you receive or pass material from/to another party

The examination of materials

- your notes, and those of any assistant should be signed, dated, attributable to the individual and produced contemporaneously whenever practicable
- the notes should be sufficiently detailed and expressed in such a manner that another expert, in your field can follow the nature of the work undertaken, any assumptions made and the inferences you have drawn from the work

Verbal and other communications

- you should keep your own notes of all meetings you attend
- you should keep your own notes of telephone conversations and it is important that points of agreement, or disagreement and agreed actions are recorded
- you should ensure that a record of all e-mails and other electronic transmissions (e.g. images), sent or received, is kept
- you should keep clear notes of any witness accounts or explanations that you have been provided with, or any other information received

How to record

The media you use for making your records should be capable of meeting all the requirements given above, be durable and provide a means of retrieval.

Your notes, in whatever form, should also be structured in a manner that facilitates review. Any updates, alterations or comments should be clear. It is important that your notes are clear and comprehensive.

This will allow another person who may subsequently review them to have a full understanding of the position at any given time.

Reveal

You are required to reveal everything you have recorded.

It is a necessary and important part of your disclosure obligations to make the Competent Authority aware of all the material you have in your possession in relation to the investigation. This will then enable them to make informed decisions, as to what material is relevant, and then what material satisfies the disclosure test.

There are three ways in which you will reveal material to the Competent Authority:

The Report

Your report(s) should contain information relating to the following:

- (a) details of your qualifications, relevant experience and accreditation;
- (b) details of any literature or other information which you have relied on in making the report;

- (c) contain a statement setting out the substance of all facts given to you which are material to the opinions expressed in the report or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within your own knowledge;
- (e) say who carried out any examination, measurement, test or experiment which you have used for the report and –
 - (i) give the qualifications, relevant experience and accreditation of that person,
 - (ii) say whether or not the examination, measurement, test or experiment was carried out under your supervision, and
 - (iii) summarise the findings on which you rely;
- (f) where there is a range of opinion on the matters dealt with in the report –
 - (i) summarise the range of opinion, and
 - (ii) give reasons for your own opinion;
- (g) if you are not able to give opinion, without qualification, state the qualification;
- (h) contain a summary of the conclusions reached;
- (i) contain a statement that you understand your duty to the court, and have complied and will continue to comply with that duty; and
- (j) contain the same declaration of truth as a witness statement.

Statements

In addition to all of the above you may be required to make a formal statement. The statement should contain all of the above and the following;

- a declaration which confirms that you understand your duty to the court in respect of disclosure
- an acknowledgement that you will inform all parties and, where appropriate the court, in the event that your view changes on any material issue.

When compiling your report/statement you should ensure that due regard is given to any information that points away from, as well as towards, the defendant(s).

You must not give expert opinion beyond your area of expertise.

The Index of Unused Material

In order to reveal material to the Competent Authority, it is necessary that you complete an index of unused material, (the Index) describing all the unused material in your possession. All the material not identified in your report/statement should be placed on the Index.

The Index is designed to enable you to provide to the Competent Authority a description of all the unused material in your possession in a structured, comprehensive and informative manner.

You will need to tailor the descriptions of the materials to meet your specific case requirements. Your descriptions, however, must be full enough for others to clearly understand the nature of the material. Please note that this example is neither exhaustive nor exclusive.

You should not attempt to make judgments on the significance of material when producing the Index.

Where you believe material may be confidential or sensitive, for example for commercial reasons, then this should be placed on a separate schedule and discussed with the Competent Authority.

Disclosure to the Competent Authority does not necessarily mean disclosure to the Defence.