

## **1 General**

- 1.1 These Terms of Appointment and the attached and/or relevant fee letter (if any) (the "**Fee Letter**") shall constitute the entire contract between the Client and Tetra Tech Limited ("**the Contract**") in respect of the relevant Services.
- 1.2 This Contract shall apply in preference to and supersede any previous terms and conditions referred to, offered or relied upon by the Client, whether in writing or otherwise, in relation to the Services.
- 1.3 This Contract shall be governed by and construed and interpreted in accordance with English law, and the parties submit to the non-exclusive jurisdiction of the English courts.

## **2 Definitions**

The following definitions shall apply to this Contract:

"**Additional Services**" means any services undertaken by the Consultant beyond the Services which are instructed by the Client pursuant to the Fee Letter and/or these Terms of Appointment.

"**Client**" means the organisation identified as the client in the relevant Fee Letter.

"**Consultant**" means Tetra Tech Limited (Company #01959704).

"**Contract**" has the meaning described in the standard described in clause 1.1

"**due date**" has the meaning described in the standard described in clause 5.2.

"**Fee Letter**" has the meaning described in the standard described in clause 1.1

"**Fees**" means the fees for the performance of the Services and Additional Services if any, as specified in the Fee Letter (or as otherwise agreed between the Consultant and the Client pursuant to the Contract).

"**final date for payment**" has the meaning described in the standard described in clause 5.2.

"**Individual**" means any employee or member of the Consultant, including any officer or director of a company.

"**Insolvency**" means either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, compounding with its creditors or having a receiver or administrative receiver or administrator appointed of the whole or any part of its assets or any analogous event.

"**Notified Sum**" has the meaning described in the standard described in clause 5.2.

"**party**" means each of the Client and/or the Consultant as applicable (and "**parties**" shall be construed accordingly).

"**pay less notice**" has the meaning described in the standard described in clause 5.2.

"**Services**" means the initial services described in the Fee Letter, together with any Additional Services instructed pursuant to the Fee Letter and/or these Terms of Appointment.

"**Standard of Care**" means the standard described in clause 3.1.

"**Site**" means the site stipulated as such on the attached Fee Letter subject to clarification at the start of the Services.

"**Terms of Appointment**" means these conditions of contract.

"**Works**" means the works, project and/or scope set out (or referred to) in the Fee Letter in connection with which the Client has engaged the Consultant to perform the Services.

## **3 Obligations of the Consultant**

- 3.1 The Consultant shall exercise reasonable skill, care and diligence in the performance of the Services (the "**Standard of Care**").
- 3.2 Except to the extent that the Consultant is prevented from doing so by to conditions beyond his reasonable control, the Consultant shall use the Standard of Care to perform the Services in accordance with the relevant programme and any subsequent programmes agreed in writing between the Consultant and the Client..
- 3.3 The Consultant may at its discretion sub-contract the performance of any of the Services to an appropriate sub-consultant. The Consultant shall be responsible for the performance of any of the Services by any sub-consultant and the payment of any such sub-consultant.

## **4 Obligations of the Client**

- 4.1 The Client shall use its reasonable endeavours to provide to the Consultant without charge and in such time so as not to delay or disrupt the performance of the Services by the Consultant all necessary and relevant data and information in the possession of the Client, its agents, servants, other consultants or contractors and give such assistance and make such decisions as shall reasonably be required by the Consultant in the performance of the Services and the Consultant shall be entitled to rely on such data, information, assistance and decisions. The Consultant shall be entitled to use in the Services and/or refer to in the Services such data and information. The Consultant shall not be responsible for such data and information or liable for defects or omissions from it.
- 4.2 The Client shall provide the Consultant with such access to the Site and any facilities as may be reasonably required by the Consultant for the purposes of performing the Services.

## **5 Payment**

- 5.1 Payment by the Client to the Consultant for the performance of the Services shall comprise the Fees and expenses as set out in the Fee Letter.
- 5.2 The Consultant shall send an invoice to the Client no more often than monthly (or such other period stated in the Fee Letter) for each instalment and/or portion of the Fees and other sums payable under this Contract. Each invoice shall specify the sum which the Consultant considers will become due on the due date and the basis on which that sum is calculated. Payment due to the Consultant under this Contract shall become due on submission of the Consultant's invoice (the "**due date**"). Unless another date is stated in the Fee Letter, the final date for payment shall be 28 days after the relevant due date (the "**final date for payment**"). Interest shall be calculated in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.
- 5.3 The Consultant's invoice under clause 5.2 shall be the payment notice for the purposes of Section 110 A(1) of the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009.
- 5.4 On or before the final date for payment the Client shall pay to the Consultant either (i) the sum stated as due in the Consultant's invoice issued under clause 5.2 (the "**Notified Sum**") or (ii) if and to the extent that an alternative sum is specified in a pay less notice issued pursuant to clause 5.5, the sum that the Client considers to be due pursuant to such pay less notice.

5.5 Not later than seven days before the final date for payment, the Client may give the Consultant a notice that it intends to pay less than the Notified Sum (a “**pay less notice**”). Any pay less notice shall specify the sum which the Client reasonably considers to be due to the Consultant on the date the notice is served and the basis on which that sum is calculated. Where a pay less notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in the pay less notice.

5.6 All Fees are exclusive of Value Added Tax, the amount of which, at the rate and in the manner prescribed by law, shall be paid by the Client to the Consultant unless agreed otherwise.

## **6 Additional Payment**

6.1 If the Client (acting reasonably) requests that the Consultant perform Additional Services, and/or if the Consultant has to carry out Additional Services and/or suffers delay and/or disruption in the performance of the Services for reasons beyond the Consultant's control (including any failure by the Client to comply with clauses 4.1, 4.2 and/or 4.3 and the occurrence of any event of force majeure), the Consultant shall notify the Client of the same and the Client shall make an additional payment to the Consultant in respect of all Additional Services carried out and the reasonable additional resources employed by the Consultant as a result of such delay and/or disruption.

6.2 The additional payment described in clause 6.1 shall be made in accordance with clause 5 and shall be fair and reasonable in the circumstances. The Consultant shall where practicable and if so requested by the Client give an initial estimate of the additional payment likely to be incurred.

## **7 Limitation of Liability**

7.1 Notwithstanding anything to the contrary contained elsewhere in this Contract, and without prejudice to clause 7.2, the total aggregate liability of the Consultant under or in connection with this Contract whether in contract (including any indemnity), in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death or fraud) shall not exceed the sum that is equivalent to the lesser of either (i) the Fees or (ii) £1,000,000 (one million pounds).

7.2 The Consultant's liability in respect of asbestos, mould or pollution whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) is excluded.

7.3 Without prejudice to any other exclusion or limitation of liability (including clause 7.1 and 7.4), the Consultant's liability (if any) for any damages, loss, expense, costs or other liability under (or in connection with) this Contract shall not exceed such sum as it would be just and equitable for the Consultant to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions, that:

7.3.1 All other consultants, contractors, sub-contractors, project managers and advisers engaged in connection with the project for which the Services are supplied have provided contractual undertakings to the Client on terms no less onerous than those set out in clause 3.1 above;

7.3.2 There are no exclusions of or limitations of liability nor joint insurance or coinsurance provisions between the Client and any other party referred to in this clause 7.3 and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage; and

7.3.3 All the parties referred to in this clause 7.3 have paid to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

7.4 Other than in respect of personal injury or death, the Consultant shall not be liable to the Client, whether in contract (including any indemnity), tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for:

7.4.1 any loss of profits, loss of use, loss of goodwill, loss of revenue, incursion of financial charges or loss of contracts; and/or

7.4.2 any indirect or consequential losses or damages, under or in connection with this Contract.

7.5 No action or proceedings under or in respect of this Contract, whether in contract (including any indemnity) or in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of 6 years after the completion of the Services or the termination of this Contract if earlier.

7.5 The Client agrees not to pursue any claims in contract, tort or in negligence or for breach of statutory duties or otherwise against any Individual as a result of carrying out its obligations under or in connection with this Contract at any time whether named expressly in this agreement or not.

7.6 A failure by the Consultant to fulfill its obligations under this Contract shall not be considered to be a breach of this Contract if and/or to the extent that such failure arises due to any event beyond the Consultant's reasonable control.

## **8 Contracts (Rights of Third Parties) Act 1999**

8.1 Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **9 Copyright, Licence and Publicity**

9.1 The copyright in all design, reports, bills of quantities, calculations and other documents provided by the Consultant in connection with the services shall remain vested in the Consultant, but the Client shall have a non-exclusive, royalty-free licence to use all completed drawings and other documents issued to the Client, other consultants or contractors for the purpose of the Services. In the event of the Client being in default of payment of any Fees or other amounts due to the Consultant under this Contract, the Consultant may revoke the licence herein granted on seven days' written notice to the Client. The Consultant shall not be liable for the use by any person of any such drawings or documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

## **10 Adjudication**

10.1 Where this Contract is a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996, either party may refer any dispute arising under the Contract to adjudication in accordance with the Construction Council Model Adjudication Procedure current at the time of the referral of the dispute. The adjudicator shall be appointed at the request of either party by the Royal Institution of Chartered Surveyors. The statement of case to be sent by the referring party to the adjudicator in accordance with that Procedure shall where reasonably possible not exceed eight single-sided sheets of A4-sized paper excluding any attachments.

## **11 Termination and suspension**

11.1 In the event of a material breach of this Contract by either party the party who is not in breach may terminate this Contract upon not less than two weeks' written notice to the other party (provided that the defaulting party has not, during that notice

period but before the expiry of it, made good and/or remedied the relevant material breach). In the event of the Insolvency of one of the parties the party who is not insolvent may terminate this Contract upon written notice to the other party.

11.2 Upon such termination the Client shall pay the Consultant all monies accrued due to the Consultant up to the date of such termination following submission of the Consultant's invoice therefore and the provisions of clause 5 of this Contract shall then apply to such payment.

11.3 Termination of the Consultant's appointment under this Contract shall not prejudice or affect the accrued rights or claims of either party.

## **12 Assignment**

13.1 Neither party may assign or transfer any benefit or obligation under this Contract without the prior written consent of the other party.

## **13 Non-Solicitation**

13.1 Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or in the receipt of the Services at any time during the period in which the Services are performed by the Consultant or for a further period of 12 months after completion of the Services or the termination of this Contract whichever is earlier, other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

## **14 Collateral Warranties**

14.1 Whereas set out in the Fee Letter the Consultant has agreed to provide collateral warranties it shall be a condition of their provision that all fees due to the Consultant at the date of execution of the collateral warranty have been paid.

## **15 Compliance with Requirements**

15.1 The Client and the Consultant shall each comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

15.2 Save as required by law or as may be necessary for the performance of its duties (including the carrying out and/or sub-contracting of the Services), neither party shall during or following termination of this Agreement or thereafter disclose to any third party or make use of any confidential information relating to the Works.