

## STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF CONSULTANCY SERVICES

The appointment of King's Lynn IDB trading as the Water Management Alliance (the **Consultant**) to carry out the Services for the Client shall be in accordance with these Terms and Conditions.

### 1. Definitions and Interpretation

#### 1.1 In these Terms and Conditions:

**Additional Fee** means the amount payable by the Client to the Consultant for the Additional Services under this Agreement.

**Additional Services** means any additional services over and above the Basic Services agreed between the Parties, notified to the **Consultant** after the date of this Agreement or as may otherwise be required.

**Agreement** means these Terms and Conditions and the Letter of Engagement.

**Basic Fee** means the amount payable by the Client to the Consultant for the Basic Services under this Agreement as set out in the Consultant's Letter of Engagement.

**Basic Services** means the services to be provided by the Consultant under this Agreement as set out in the Consultant's Letter of Engagement.

**Client** means the client named in the Letter of Engagement.

**Confidential Information** means information which by its nature is confidential, is marked as confidential, is clearly intended to be confidential or which is known or ought reasonably to be known to be confidential, including software products, documentation, applications, modules, source code, derivative works, inventions, know-how, ideas, trade secrets, trademark and copyright applications, technical and business plans, technical information, proposals, technical solutions, commercial terms, specifications, drawings, data, computer programs, pricing, costs, financial information, procedures, proposed products, processes, business systems, techniques, services and like technical or business information.

**Consequential Loss** means loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind and howsoever arising.

**Effective Date** means the date when the Consultant commences or commenced provision of the Services.

### MEMBER INTERNAL DRAINAGE BOARDS

Broads (2006) IDB, East Suffolk IDB, King's Lynn IDB, Norfolk Rivers IDB,  
South Holland IDB, Waveney, Lower Yare and Lothingland IDB

In association with Pevensey and Cuckmere WLMB



**Fee** means the Consultant's fee for the Services, including the Basic Fee and the Additional Fee.

**Letter of Engagement** means the letter of engagement between the Consultant and the Client which sets out the Basic Services and the Basic Fee.

**Material** means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Project** means the Project specified in the Letter of Engagement.

**Services** means the Basic Services and the Additional Services.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and includes all subordinate legislation made from time to time under it.
- 1.3 Words following the terms **include(s)**, **including** or **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding them.
- 1.4 Each of the Client and Consultant is referred to in this Agreement as a "**Party**" and collectively referred to as the "**Parties**".

## 2. **Appointment & Duration**

The Client appoints the Consultant to provide the Services in accordance with this Agreement from the earlier of the Effective Date or the date of this Agreement.

## 3. **Consultant's Obligations**

The Consultant shall provide the Services with the reasonable skill care and diligence as may reasonably be expected of appropriately qualified and experienced consultants with appropriate skill and experience of providing services of a similar scope, type, nature and complexity to the Services.

## 4. **Client's Obligations**

The Client shall without charge and in such time so as not to delay or disrupt the performance by the Consultant of the Services:

- (a) supply to the Consultant such information at such times as is reasonably required for the proper performance of the Services; and
- (b) obtain and maintain any necessary licences and consents as may be required for the performance of the Services.

## 5. **Fees & Payment**

- 5.1 The Client shall pay the Basic Fee as full remuneration for the Basic Services and the Additional Fee as full remuneration for any Additional Services. The Fee is exclusive of VAT and any disbursements or expenses which shall be payable by the Client.

- 5.2 Unless otherwise agreed in the Letter of Engagement, the Fee shall be calculated and paid in instalments at intervals of not less than one month, beginning one month after the Consultant begins performing the Services.
- 5.3 Payments to the Consultant shall become due on submission of the Consultant's invoice to the Client. The final date for payment of any invoice shall be 28 days from the due date.
- 5.4 No later than five days after the payment becomes due, the Client shall notify the Consultant of the sum that the Client considers to have been due at the payment due date and the basis on which that sum is calculated.
- 5.5 Unless the Client has served notice under Clause 5.6, it shall pay the Consultant the sum referred to in the Client's notice under Clause 5.4 (or if the Client has not served a notice, the sum referred to in the Consultant's invoice) (the "notified sum") on or before the final date for payment of each invoice.
- 5.6 Not less than seven days before the final date for payment, the Client may give the Consultant notice that it intends to pay less than the notified sum, specifying:
- (a) the sum that the Client considers to be due on the date the notice is served; and
  - (b) the basis on which that sum is calculated.

Where a pay less notice is given in accordance with this Clause 5.6, the obligation to pay the notified sum applies only in respect of the sum specified in the pay less notice.

- 5.7 If the Client fails to pay an amount due to the Consultant by the final date for payment and fails to give a pay less notice under Clause 5.6:
- (a) the Client shall pay interest on any overdue amount at the rate of 2% above the prevailing base rate of the Bank of England, which interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount and all interest that has accrued; and/or
  - (b) the Consultant may suspend performance of all or any of the Services and other obligations under this Agreement by giving 7 days' notice to the Client of its intention to do so and stating the ground or grounds on which it intends to suspend performance.
  - (c) the Consultant shall have the right to terminate this Agreement in accordance with Clause 10.
- 5.8 In the event of a suspension in accordance with this Agreement, the Client shall pay the Consultant an amount in respect of the costs and expenses reasonably incurred by the Consultant as a result of the suspension.
- 5.9 Upon termination of the Consultant's engagement for any reason, the Client shall pay the Consultant the Fee on a pro-rata basis for and in connection with Services performed up to and including the date of termination, whether or not invoiced.

## **6. Variation or Additional Services**

- 6.1 The Consultant shall notify the Client as soon as reasonably practicable if it becomes apparent that Additional Services are required.
- 6.2 The Fee shall be adjusted and/or increased if the performance of the Services is materially delayed or disrupted due to a change in the scope, size, complexity or duration of the Project, and/or if the Consultant is required to provide Additional Services.

- 6.3 Either Party may request a change to the scope or execution of the Services. The Consultant has no obligation to perform any varied or Additional Services unless the Parties have agreed any adjustments to the Fee or Additional Fees. Unless the Parties agree otherwise, any adjustment to the Fee shall be in accordance with the rates set out in the Letter of Engagement. However, failure to agree the Fee and/or Additional Fees prior to the Consultant performing varied or Additional Services shall not bar the Consultant from claiming an adjustment to the Fee or Additional Fees at a later date.

## **7. Intellectual Property Rights**

- 7.1 The Consultant owns all intellectual property rights (including copyright) relating to the Material it produces.
- 7.2 Where the Consultant grants intellectual property rights to the Client, any grant shall be:
- (a) subject to the provisions in Clause 7.2.(b), an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project; and
  - (b) the Client's right to copy Ordnance Survey (**OS**) or other external data is excluded. The Consultant will however, at the Client's expense, at the request of the Client, use all reasonable endeavours to procure the grant of a licence in the Client's name for the use of the relevant OS or other external data.
- 7.3 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided and shall have no liability to any third party for such Material.

## **8. Confidentiality**

- 8.1 Each Party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by Clause 8.2.
- 8.2 Each Party may disclose the other party's Confidential Information:
- (a) as may be necessary to perform its obligations and exercise its rights under this Agreement.
  - (b) to its employees, officers, representatives, contractors, subcontractors or advisors as may be necessary for the purposes of exercising the Party's rights or carrying out the party's obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisors to whom it discloses Confidential Information comply with this Clause 8.
  - (c) as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3 No Party shall use the other's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 8.4 The Client shall advise the Consultant as soon as any request is made under the Freedom of Information Act 2000 to disclose information given by the Consultant relating to this Agreement.

## **9. Liability & Insurance**

- 9.1 The Consultant shall not be liable to the Client under or in connection with this Agreement for any:
- (a) Consequential Losses;

- (b) Delay or failure by the Consultant to perform or comply with its obligations under this Agreement to the extent such delay or failure is attributable to any act or omission of the Client or any of its employees, agents, contractors or consultants;
  - (c) Liability howsoever arising in connection with pollution, terrorism and contamination, including asbestos and the Consultant has no responsibility to advise on the present or future risks or circumstances relating to the presence of pollution and/or contamination including asbestos.
- 9.2 The Consultant's maximum aggregate liability to the Client under or in connection with this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, shall in no circumstances exceed the Basic Fee.
- 9.3 Without prejudice to Clauses 9.1 and 9.2, the liability of the Consultant for loss or damage suffered by the Client shall be the amount that is reasonable for the Consultant to pay having regard to the contractual responsibility for any such loss and damage of any consultants, specialists or others appointed by or on behalf of the Client on the assumption that they have been appointed on terms generally similar to this Agreement (having regard to the differing nature of their respective functions in relation to the Project).
- 9.4 Neither Party shall commence any legal action against the other under or in connection with this Agreement after the expiry of six years from the date of completion of the Services.
- 9.5 Nothing in this Agreement shall exclude or in any way limit the Consultant's liability for death or personal injury caused by the Consultant's negligence or fraud or fraudulent misrepresentation.
- 9.6 The Consultant shall make reasonable efforts to maintain professional indemnity insurance at a level of £1 million unless otherwise agreed and stated in the Letter of Engagement from the Effective Date until a period ending six years from the date of completion of the Services, subject always to the availability of such insurance on commercially reasonable terms and at commercially reasonable rates.
- 9.7 Without prejudice to any provision in this Agreement where liability is excluded or limited to a lesser amount and regardless of anything to the contrary contained in this Agreement, the liability for the Consultant for any claim under or in connection with this Agreement, whether in contract or in tort, in negligence, for breach of statutory duty or otherwise shall not exceed the amount, if any, recoverable by the Consultant by way of indemnity against the claim in question under the professional indemnity insurance taken out by the Consultant up to the required amount and in force at the time that the claims or, (if earlier), the circumstances that may give rise to the claim is or are reported to the insurers in question.

## **10. Termination**

- 10.1 Without prejudice to the Parties' other rights or remedies, either Party may immediately terminate the Consultant's engagement under this Agreement by giving written notice to the other Party if:
- (a) The other Party is in material breach of its obligations under this Agreement (including late or non-payment of the Fee by the Client) and fails to remedy that breach within 14 days of receiving written notice requiring it to do so; or
  - (b) The other Party ceases or threatens to cease to trade (either in whole, or as to any part of division involved in the performance of this Agreement), or becomes or is deemed insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its business or assets, makes or commences negotiations in relation to any composition or arrangements with its creditors or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent

amalgamation or reconstruction), or takes or suffers any analogous procedure, action or event in any jurisdiction.

- 10.2 Termination of the Consultant's engagement under this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued prior to the date of termination, including the right to claim damages in respect of any breach of this Agreement.

## **11. Force Majeure**

- 11.1 The Consultant shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (a **Force Majeure Event**).
- 11.2 The obligations of the Consultant to the Client shall be suspended during the period of the Force Majeure Event.
- 11.3 If the Force Majeure Event prevails for a continuous period of more than 60 days, either Party may terminate the Consultant's engagement under this Agreement by giving 14 days' written notice to the other Party. On the expiry of this notice period, the Consultant's engagement will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

## **12. Variation**

No variation to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

## **13. Waiver**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of a right or remedy shall preclude or restrict the further exercise of such right or remedy.

## **14. Severance**

If any term, condition or provision of this Agreement is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the remainder of this Agreement.

## **15. Entire Agreement**

- 15.1 This Agreement constitutes the entire agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.
- 15.2 Each party agrees that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

## **16. Assignment & Subcontracting**

- 16.1 Subject to Clause 16.2, neither Party shall assign, charge or transfer the benefit of this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

16.2 The Consultant may subcontract the whole or any part of the Services without the consent of the Client.

**17. No Partnership or Agency**

The King's Lynn IDB trading as the Water Management Alliance, whether acting as the Consultant or otherwise, is a statutory corporation and nothing in this Agreement is intended to, or shall be deemed or operate to establish any partnership between the Parties, constitute any Party the agent of the other or in any way purports to hold them out as employees or directors in a company.

**18. Rights of Third Parties**

A person who is not a Party to this Agreement shall not have any rights under or in connection with it. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

**19. Notices**

19.1 Any notices under this Agreement shall be in writing and sent by pre-paid first class post or delivered by hand to the address of each Party as set out in this Agreement or as may be notified by the Parties from time to time. Notices sent by first class post shall be deemed to have been delivered two days after posting. If delivered by hand, the delivery shall be deemed to have occurred on the same day.

19.2 Routine, administrative or operational communications (excluding notices) may be made by e-mail or other electronic means.

**20. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with English law and subject to Clause 21 the English courts shall have exclusive jurisdiction over any dispute or difference that may arise under or in connection with it.

**21. Disputes**

21.1 Either Party may at any time refer a dispute or difference arising under this Agreement to adjudication. The Adjudication shall be conducted in accordance with the TeCSA Adjudication Rules from time to time in force.

21.2 The Adjudicator shall be a parson agreed by the Parties or failing such agreement, then upon the application of either Party, the Chairman of TeCSA shall appoint an Adjudicator.

Signature .....

Name .....

Capacity .....

Client .....

Date .....