

STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF WORK

The appointment of King's Lynn IDB trading as the Water Management Alliance, or Broads (2006) IDB, or East Suffolk IDB, or King's Lynn IDB, or Norfolk Rivers IDB, or Pevensey & Cuckmere WLMB, or South Holland IDB, or Waveney, Lower Yare and Lothingland IDB (the **Contractor**) to carry out the Works 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 Contractor for the Additional Works under this Agreement.

Additional Works means any additional Works over and above the Basic Works agreed between the Parties, notified to the **Contractor** 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 Contractor for the Basic Works under this Agreement as set out in the Contractor's Letter of Engagement.

Basic Works means the Works to be provided by the Contractor under this Agreement as set out in the Contractor's Letter of Engagement.

CDM Regulations means the Construction (Design and Management) Regulations 2015 (as may be updated from time to time).

Client means the client named in the Letter of Engagement.

Commencement Date means the date for commencing the Works as stated in the Letter of Engagement (as may be varied by the mutual agreement of the Parties).

Completion Date means the date for completing the Works as stated in the Letter of Engagement (as may be varied by the mutual agreement of the Parties).

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,

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



proposed products, processes, business systems, techniques, Works 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 Contractor commences or commenced provision of the Works.

Fee means the Contractor's fee for the Works, including the Basic Fee and the Additional Fee.

Insurances means any insurance policies stated in the Letter of Engagement.

Letter of Engagement means the letter of engagement between the Contractor and the Client which sets out the Basic Works 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.

Site means the location of the Project as identified in the Letter of Engagement.

Specification means the specification identified in the Letter of Engagement.

Works means the Basic Works and the Additional Works.

- 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 Contractor is referred to in this Agreement as a "**Party**" and collectively referred to as the "**Parties**".

2. Appointment & Duration

- 2.1 The Client appoints the Contractor to provide the Works in accordance with this Agreement from the earlier of the Effective Date or the date of this Agreement.
- 2.2 Each Party undertakes to the other than in relation to the Works and the Project it will duly comply with the CDM Regulations.

3. Contractor's Obligations

- 3.1 The Contractor shall carry out the Works, including the remedying of any defects in the Works, using the level of reasonable skill care and diligence as may reasonably be expected of a competent and qualified contractor experienced in performing similar works of a similar scope, type, nature and complexity to the Works.
- 3.2 The Contractor shall perform the Works regularly and diligently in a good and workmanlike manner using good quality materials and in accordance with the Specification.

3.3 The Contractor shall carry out and perform the design (but only to the extent any design is specified in the Letter of Engagement) using the legal of reasonable skill care and diligence as may be expected of a properly qualified and competent design contractor experienced in carrying out such design services in relation to a project of a similar scope, nature and complexity to the Works.

4. Client's Obligations

4.1 The Client shall without charge and in such time so as not to delay or disrupt the Contractor from carrying out the Works:

- (a) provide the Contractor with non-exclusive possession of the Site and the right of access to and from the Site until the Contractor's obligations have been performed;
- (b) supply to the Contractor such information at such times as is reasonably required for the proper performance of the Works; and
- (c) obtain and maintain any necessary licences and consents as may be required for the performance of the Works.

4.2 The Client shall be responsible for any discrepancies or ambiguities in the Specification, or in or between any of the documents forming part of the Specification.

5. Commencement and Completion

5.1 The Contractor shall commence the Works on the Commencement Date and shall complete the Works on or before the Completion Date.

5.2 The Contractor shall have no liability to the Client, and the Client shall have no claim against the Contractor, whether under or in connection with this Agreement, for any liquidated or unliquidated damages should the Contractor fail to complete the Works on or before the Completion Date.

6. Fees & Payment

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

6.2 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 Contractor begins performing the Works.

6.3 Payments to the Contractor shall become due on submission of the Contractor's invoice to the Client. The final date for payment of any invoice shall be 28 days from the due date.

6.4 No later than five days after the payment becomes due, the Client shall notify the Contractor 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.

6.5 Unless the Client has served notice under Clause 6.6, it shall pay the Contractor the sum referred to in the Client's notice under Clause 6.4 (or if the Client has not served a notice, the sum referred to in the Contractor's invoice) (the "notified sum") on or before the final date for payment of each invoice.

6.6 Not less than seven days before the final date for payment, the Client may give the Contractor 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 6.6, the obligation to pay the notified sum applies only in respect of the sum specified in the pay less notice.

- 6.7 If the Client fails to pay an amount due to the Contractor by the final date for payment and fails to give a pay less notice under Clause 6.6:
- (a) the Client shall pay interest on any overdue amount at the rate of 5% 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 Contractor may suspend performance of all or any of the Works 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 Contractor shall have the right to terminate this Agreement in accordance with Clause 12.
- 6.8 In the event of a suspension in accordance with this Agreement, the Client shall pay the Contractor an amount in respect of the costs and expenses reasonably incurred by the Contractor as a result of the suspension.
- 6.9 Upon termination of the Contractor's engagement for any reason, the Client shall pay the Contractor the Fee on a pro-rata basis for and in connection with Works performed up to and including the date of termination, whether or not invoiced.

7. Variation or Additional Works

- 7.1 The Contractor shall notify the Client as soon as reasonably practicable if it becomes apparent that Additional Works are required.
- 7.2 The Fee shall be adjusted and/or increased if the performance of the Works is materially delayed or disrupted due to a change in the scope, size, complexity or duration of the Project, and/or if the Contractor is required to provide Additional Works.
- 7.3 Subject to Clause 7.4, the Client may request a change to the scope of the Works prior to the completion of the Works, either by an instruction or by a request for the Contractor to submit a proposal.
- 7.4 The Contractor has no obligation to perform any varied or Additional Works 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 Contractor performing varied or Additional Works shall not bar the Contractor from claiming an adjustment to the Fee or Additional Fees at a later date.

8. Defects

- 8.1 The Client shall give notice to the Contractor if it considers that there is a defect in the Works.
- 8.2 The Contractor shall execute all work required to remedy defects in the Works within six months of the completion of the Works.
- 8.3 If a defect is not due to a failure by the Contractor to comply with its obligations under this Agreement, the remedial work required to remedy the defect shall be deemed to be Additional Works and the Contractor shall be entitled to an adjustment to and/ or increase to the Fee under Clause 7.
- 8.4 The Contractor shall have no liability to the Client for any defects (whether patent or latent) after six months from completion of the Works.

9. Intellectual Property Rights

- 9.1 The Contractor owns all intellectual property rights (including copyright) relating to the Material it produces.
- 9.2 Where the Contractor grants intellectual property rights to the Client, any grant shall be:
- (a) subject to the provisions in Clause 9.2.(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 Contractor 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 Contractor 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.
- 9.3 The Contractor 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.

10. Confidentiality

- 10.1 Each Party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by Clause 10.2.
- 10.2 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 10.
 - (c) as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 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.
- 10.4 The Client shall advise the Contractor as soon as any request is made under the Freedom of Information Act 2000 to disclose information given by the Contractor relating to this Agreement.

11. Liability & Insurance

- 11.1 The Contractor 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 Contractor 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 subcontractors;
 - (c) Liability howsoever arising in connection with pollution, terrorism and contamination, including asbestos and the Contractor has no responsibility to advise on the present or future risks or circumstances relating to the presence of pollution and/or contamination including asbestos.
- 11.2 The Contractor'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.

- 11.3 Without prejudice to Clauses 11.1 and 11.2, the liability of the Contractor for loss or damage suffered by the Client shall be the amount that is reasonable for the Contractor to pay having regard to the contractual responsibility for any such loss and damage of any Contractors, 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).
- 11.4 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 Works.
- 11.5 Nothing in this Agreement shall exclude or in any way limit the Contractor's liability for death or personal injury caused by the Contractor's negligence or fraud or fraudulent misrepresentation.
- 11.6 If the Letter of Engagement specifies design services to be performed by the Contractor, the Contractor 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 Works, subject always to the availability of such insurance on commercially reasonable terms and at commercially reasonable rates.
- 11.7 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 Contractor 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 Contractor by way of indemnity against the claim in question under the professional indemnity insurance taken out by the Contractor 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.
- 11.8 Without prejudice to its obligations under this Agreement or otherwise at law, the Contractor shall effect the Insurances and any other usual insurances normally required for works and projects of a similar size, scope, nature, complexity and cost to the Works and the Project or as may be required by the applicable laws. The Contractor shall keep in force, promptly paying all premiums, such insurances from the Commencement Date until the Completion Date, provided that such insurances are available at commercially reasonable rates.

12. Termination

- 12.1 Without prejudice to the Parties' other rights or remedies, either Party may immediately terminate the Contractor'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.
- 12.2 Termination of the Contractor'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.

13. Force Majeure

- 13.1 The Contractor 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**).
- 13.2 The obligations of the Contractor to the Client shall be suspended during the period of the Force Majeure Event.
- 13.3 If the Force Majeure Event prevails for a continuous period of more than 60 days, either Party may terminate the Contractor's engagement under this Agreement by giving 14 days' written notice to the other Party. On the expiry of this notice period, the Contractor'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.

14. 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.

15. 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.

16. 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.

17. Entire Agreement

- 17.1 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.
- 17.2 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.

18. Assignment & Subcontracting

- 18.1 Subject to Clause 18.2, 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).
- 18.2 The Contractor may subcontract the whole or any part of the Works without the consent of the Client.

19. No Partnership or Agency

The King's Lynn IDB trading as the Water Management Alliance, Broads (2006) IDB, East Suffolk IDB, King's Lynn IDB, Norfolk Rivers IDB, Pevensey & Cuckmere WLMB, South Holland IDB or Waveney, Lower Yare and Lothingland IDB, whether acting as the Contractor 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.

20. 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.

21. Notices

21.1 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.

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

22. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English law and subject to Clause 23 the English courts shall have exclusive jurisdiction over any dispute or difference that may arise under or in connection with it.

23. Disputes

23.1 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.

23.2 The Adjudicator shall be a person 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