

[REDACTED]

CONDITIONS OF CONTRACT FOR ENVIRONMENTAL CONSULTANCY SERVICES, Version 1.0, October 2011

The Client acknowledges that, unless otherwise expressly agreed in writing between the Parties these Conditions of Contract apply to the exclusion of any other terms and conditions.

DEFINITIONS

"**Agreement**" means these Conditions of Contract for Environmental Consultancy Services together with the Proposal.

"**Client**" means the individual or organisation with whom this Agreement is made and indicated by that Party's acceptance of the Proposal.

"**Consultant**" means [REDACTED]

"**Force Majeure**" means war, acts of foreign enemies, terrorism, revolution, riot, civil commotion, fire, flood or natural disaster, radioactive contamination or other circumstance beyond reasonable control of either Party.

"**Limit of Liability**" is the maximum amount of liability of the Consultant under this Agreement, as set out in clause 8.3.

"**Parties**" means Consultant and the Client; "**party**" shall mean either the Client or the Consultant.

"**Price**" means the set of rates or lump sum price detailed in the Proposal or as otherwise agreed in writing by the Parties.

"**Proposal**" means the proposal(s) submitted by the Consultant detailing the Services that the Consultant intends to provide for the Client.

"**Relevant Information**" means all information in the possession or control of the Client or otherwise available to the Client relating to the Services and the Site, including but not limited to structures, tanks, utilities, pipelines, discharges, spills, leachate and hazardous substances on, under or near the Site together with all plans, surveys, reports, previous geotechnical or environmental investigations and other relevant data known to the Client.

"**Report**" means the report(s) created by the Consultant describing the result of the Services and related matters.

"**Service Product**" means the Proposal, Report and all charts, tables, drawings, graphs, opinions, advice and recommendations, written or oral, made by the Consultant pursuant to the Services.

"**Services**" means the services described in the Proposal and all other work performed by the Consultant pursuant to this Agreement.

"**Site**" means the area(s) in which the Services or any part of the Services are to be provided by the Consultant and as detailed in the Proposal.

1. CONSULTANT'S DUTIES

1.1 Subject to the terms of this Agreement, the Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and in accordance with the standards of a qualified and competent environmental consultant experienced in carrying out work of similar scope and complexity to the Services and current at the time when the Services are performed.

1.2 The Consultant will perform the Services generally in accordance with the Proposal, but reserves the right to vary the Services if it appears to the Consultant reasonably necessary to do so either as a result of Site conditions, environmental or health and safety factors, or the discovery of any other information, which has a material effect on the Services. In the event of a variation in Services due to the reasons described above or in the event that the Client requests a variation, the Consultant shall notify the Client promptly of the costs of such variations and the Client shall pay such additional costs incurred at the rates set out in the Price, or for a sum as agreed between the Parties in writing.

1.3 The Consultant will take all reasonable precautions to avoid damage to property belonging to the Client or any third party, including underground services and structures, subject always to clauses 2.1 and 8.3.

1.4 The Consultant may use sub-contractors and/or sub-consultants to perform part of the Services. In such event, the Consultant shall exercise all reasonable care to ensure that such sub-contractors and/or sub-consultants are appropriately skilled and experienced in relation to the work for which they are instructed.

1.5 The Client acknowledges that the Services and the Service Products will not necessarily reveal all adverse or other material conditions at the Site that could be identified either through a different configuration of the Services or through more detailed work by the Consultant.

2. CLIENT'S OBLIGATIONS

2.1 The Client acknowledges that in agreeing to provide the Services, the Consultant has relied upon the Client to make full disclosure of all Relevant Information. The Client shall promptly provide the Consultant with any new Relevant Information which becomes available or any other information, which may materially affect the Services.

2.2 The Client shall provide free access to the Consultant to any Relevant Information and authorises the Consultant to take copies, photographs and samples of any Relevant Information for the purpose of providing the Services.

2.3 The Client shall, at its expense, provide free access to the Site or where the Client is not the Site owner, use its best endeavours to procure such access. The Client shall provide or procure permits or other clearances reasonably required by the Consultant to carry out the Services.

2.4 If the Client suspects at any time that any part of the Services is not being performed in accordance with the terms of this Agreement, the Client shall immediately notify the Consultant and allow the Consultant reasonable time to take appropriate corrective action.

3. HAZARDOUS and CONTAMINATED WASTE

Any samples taken by the Consultant in the performance of the Services and that are considered by the Consultant to contain hazardous substances or contaminated wastes shall be disposed of by the Consultant. Any other hazardous substances or contaminated wastes present at the Site shall remain the property and responsibility of the Client.

4. USE OF RELEVANT INFORMATION

All Relevant Information shall be returned to the Client after use or completion of the Services by the Consultant or termination of this Agreement under clause 11, provided the Consultant shall have the right to take copies of any Relevant Information for its own records, subject to the confidentiality obligations set out in clause 6.

5. COPYRIGHT IN SERVICE PRODUCTS, RELIANCE ON REPORTS AND ASSIGNMENT

5.1 Copyright and all intellectual property rights in Service Products shall remain vested in the Consultant at all times.

5.2 After payment of the Price, the Consultant shall grant the Client a royalty-free licence to reproduce the Report for the Client's own use, provided always that the Report shall be used exclusively for its originally intended purpose as stated by the Consultant in the Report.

5.3 The Client may without further charge make the Report available to any third party provided that such third party may not rely upon the Report unless it enters into a Reliance Agreement under clause 5.4.

5.4 No third party may make any reliance on the Report in whole or in Part unless the Consultant, at its discretion and by prior arrangement with the Client, enters into an agreement ('Reliance Agreement') with the third party who agrees, inter alia, to be bound by the same conditions and limitations as the Client, following which (subject to payment of any fees due to the Consultant by the third party) the third party shall be entitled to rely upon such Report exclusively for its originally intended purpose. The Consultant has the right to charge the Client an administration fee for entering into the Reliance Agreement.

5.5 The Client may without charge make the Report available to any person or persons for whom the Client is acting in a professional capacity in relation to the Report provided that such person or persons accepts all of these Conditions of Contract in their entirety.

6. CONFIDENTIALITY

6.1 The Parties will treat the details of this Agreement and any written or oral information about the Services, including the Service Products, as private and confidential and neither of them shall publish or disclose any detail thereof to any third party except as permitted in this Agreement, unless required by law.

7. PAYMENT

7.1 The Consultant shall submit invoices as detailed within the Proposal.

7.2 Where it has been agreed that the Consultant shall receive advance payment prior to commencement of the Services but the Client subsequently decides not to proceed, or is unable to proceed, the Consultant shall refund the advance payment less costs incurred by the Consultant.

7.3 The Client shall pay for invoices no later than thirty (30) days after the invoice date.

7.4 The Client shall be liable to pay interest on overdue accounts at two percent above the rate charged by National Westminster Bank plc.

7.5 VAT shall not be payable in addition to the Price.

8. LIABILITY OF THE CONSULTANT

8.1 Subject to the other sub-clauses of this clause 8, the Consultant's liability shall be limited to the extent of any loss, damages, injury, expenses, costs (including legal costs) that are directly caused by the failure of the Consultant or any sub-consultant or sub-contractor to carry out the Consultant's Duties in accordance with Clause 1. If the Client becomes aware of circumstances which might give rise to a claim against the Consultant, it is a condition precedent to the liability of the Consultant that the Client shall give notice of such circumstances to the Consultant within thirty (30) days of the Client becoming aware of them.

8.2 Consultant's liability under this Agreement shall end two (2) years from the date Services were completed.

8.3 The aggregate Limit of Liability arising directly or indirectly from the Services and this Agreement whether under contract, tort or any other legal basis is one million pounds (£1,000,000).

8.4 The Consultant shall not be liable for any damage to underground services and structures that are not notified to the Consultant in accordance with clause 2.1 or are not located as shown on any plans which are supplied to the Consultant by the Client or any third party and which the Consultant would be reasonably entitled to rely upon in providing the Services.

8.5 Neither Party shall be liable to the other for any loss of profit, loss of revenue, business interruption, or any indirect or consequential losses incurred by the other Party, whether caused by negligence, breach of duty (statutory or otherwise), breach of contract or otherwise and whether or not such losses were foreseeable at the time of entering this Agreement.

8.6 Nothing herein shall exclude or limit either Party's liability to the other in respect of any fraudulent misrepresentation made by it, or in respect of death or personal injury caused by its negligent errors, acts or omissions.

9. INSURANCE

The Consultant maintains professional indemnity insurance provided such insurance is available in the market at commercially reasonable rates and terms, in respect of the Services and shall upon request provide evidence that such insurance coverage is provided up to the Limit of Liability.

10. FORCE MAJEURE

10.1 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply; the party shall be entitled to a reasonable extension of its obligations.

11. TERMINATION

11.1 Either Party may by written notice terminate this Agreement if the other substantially fails to perform its obligations under this Agreement, provided that the terminating Party has first given the other Party not less than ten (10) days written notice specifying the default and referring to this clause, and the default has not been remedied prior to termination taking place.

11.2 The Consultant may by written notice terminate this Agreement immediately if the Client has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or enters into liquidation (whether voluntary or compulsory) or if any proceedings are commenced relating to the insolvency of the Client.

11.3 In the event of termination, the Consultant shall be entitled to be paid for Services performed up to the date of termination.

12. NOTICES

Any notice to be given by one Party to the other shall be served by sending such notice by post, or by hand to the addresses specified in the Proposal. Notices shall be deemed to have been received by the recipient Party as follows: (a) by post, four days after posting within the UK or (b) by hand, at the time of delivery.

13. SEVERABILITY

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the remaining parts of this Agreement shall remain in force and shall not in any way be impaired.

14. THIRD PARTY RIGHTS

This Agreement shall not confer and shall not purport to confer on any third party any benefit or any right to enforce any term of this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999 or right to rely on any Report unless the Consultant has entered into a Reliance Agreement with that third party in accordance with clause 5.4.

15. GOVERNING LAW AND DISPUTE RESOLUTION

15.1 If at any time any dispute, which cannot be settled amicably, arises between the Client and the Consultant in relation to this Agreement or in any way connection with the Services, the dispute shall be submitted to arbitration by a sole arbitrator appointed by application to the Chartered Institute of Arbitrators.

15.2 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

16. ENTIRE AGREEMENT

16.1 This Agreement constitutes the entire agreement and understanding between the Parties.

16.2 The Client acknowledges that it has had an opportunity to negotiate changes to these Conditions of Contract for [REDACTED] and has agreed to these Conditions of Contract.