

## **MIDDLE LEVEL COMMISSIONERS**

### **ENGINEERING CONSULTANCY SERVICES**

#### **STANDARD CONDITIONS OF ENGAGEMENT**



- 1 The appointment of the Middle Level Commissioners (“the Consultant”) to carry out engineering consultancy services (“the Appointment”) shall be in accordance with the appropriate Agreement of the Association for Consulting and Engineering (“ACE Agreement”) referred to in the Fee Letter accompanying and relating to the Appointment (“the Fee Letter”) as expanded or varied by the Fee Letter, the detailed description of services provided and this Document. The order of precedence for interpretation and resolution of any ambiguities shall be first, the Fee Letter; secondly, the detailed description; thirdly these Standard Conditions and fourthly, the appropriate ACE Agreement. Copies of the ACE Agreements are available for inspection at the Consultant’s Offices

PROVIDED THAT where it is proposed by the Consultant to rely on working practices already established and in place with the Client, this shall be stated, with sufficient reference and detail to clarify such practices, in the Fee Letter.

- 2 Unless stated to the contrary in the Fee Letter, the description of services or this Document, words and phrases used shall have the meaning ascribed to them in the ACE Agreement.
- 3 The Appointment of the Consultant is not to be as Lead Consultant unless the Fee Letter expressly states that this is to be the case.
- 4 The Consultant’s Services shall mean the services set out in the Fee Letter and any detailed description. Additional Services shall mean any other services requested by the Client which the Consultant agrees to perform.
- 5 Fees for the Consultant’s Services shall be charged in accordance with the Consultant’s current schedule of fees available on the Consultant’s website at [www.middlelevel.gov.uk](http://www.middlelevel.gov.uk) or on request from the Consultant or as set out in the Fee Letter. Fees are subject to review in the event of delay, suspension or material extension of the time frame envisaged for the services agreed under the Appointment. Fees for additional services will be charged on a time and expenses basis.
- 6 Where the Appointment or part of it is on a time and expenses basis, invoices will be calculated according to the time charge costs together with disbursements for reasonable expenses. Time charge and disbursement rates are subject to review on an annual basis.
- 7 Invoices shall be submitted either as set out in the Fee Letter or quarterly and VAT will be applied at the Standard Rate on all invoices. Unless revised payment terms have been agreed in a specific case, payment is due within 28 days of invoice and, if any such invoice is not so settled, all other invoices submitted to the Client will immediately become payable NOTWITHSTANDING any agreed period for payment. Interest will be calculated on overdue invoices at the statutory rates in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Any queries relating to an invoice must be raised with the Consultant by the Client in accordance with the terms of the relevant ACE Agreement, failing which the invoice will be deemed to be accepted by the Client.

- 8 Warranties in favour or for the benefit of third parties are not to be provided unless agreed before the Appointment commences and, if given, shall be in Form CIC/ConsWa 2003 or later edition.
- 7 The Consultant does not limit its liability arising from its fraud or liability for death or personal injury caused by its negligence, or in any way exclude or restrict liability other than as permitted by law.
- 8 Unless such liability has been expressly accepted by the Consultant and such acceptance is expressly set out in the Fee Letter, the liability of the Consultant for any claim or claims arising out of or in connection with pollution, terrorism and/or contamination, including asbestos, is excluded. The Consultant has no responsibility to advise on the present or future risks or circumstances relating to the presence of pollution and/or contamination, the presence of asbestos or of any direct or indirect effects of asbestos or the risks of terrorism.
- 9 Professional Indemnity Insurance shall be maintained by the Consultant from the commencement of the Appointment until the expiration of 6 years following the completion, expiry or termination of the Appointment at a level of £5million unless otherwise agreed and stated in the Fee Letter or unless cover is not available at commercially acceptable rates. Cover against risks arising in respect of terrorism and toxic mould is at present excluded from professional indemnity insurance and cover for such risks relating to asbestos is severely restricted.
- 10 The period of the Consultant's liability shall start from the commencement of the Appointment and shall end 6 years after the date of completion, expiry or termination of the Appointment.
- 11 The extent of the Consultant's liability under the Appointment whether in contract or in tort, in negligence, for breach of statutory duty or otherwise shall not exceed 10 times the Fee set out in the Fee Letter.
- 12 In no event will the Consultant have any liability for consequential, incidental, indirect or punitive loss, damage or expenses or for business interruption, lost business, loss of profits or savings even where the Consultant has been advised of their possible existence.
- 13 It is agreed and declared that it is not intended to confer any rights on any third party pursuant to the Contract (Rights of Third Parties) Act 1999.
- 14 Without prejudice to any provision in the Appointment where liability is excluded or limited to a lesser amount and regardless of anything to the contrary contained in the Appointment, the liability for the Consultant for any claim under or in connection with the Appointment, 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 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.
- 15 Where the Consultant's Intellectual Property Rights are to be licensed to the Client, the Client's right to copy 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.

- 16 Information contained in the Appointment may be commercially sensitive and such information is given in confidence to the Client. The Client must advise the Consultant as soon as requests are made under the Freedom of Information Act 2000 to disclose information given by the Consultant relating to the Appointment. The Client will not disclose any commercially sensitive information given by the Consultant, including technical solutions and commercial terms and information and will consult with the Consultant before any act of disclosure is contemplated. Disclosure of such information will be substantially prejudicial.
- 17 The Appointment as specified in and in accordance with the documents specified in Condition 1 above shall constitute the entire agreement between the parties relating to the services to be provided and supersedes any previous agreements or arrangements and undertakings between the parties in respect of the provision of services. The Client acknowledges that, in entering into the Appointment, it has not relied on any representation, warranty or undertaking, save as set out in the Appointment. Neither the Client nor the Consultant will have any claim in misrepresentation against the other save in respect of any warranty, representation or undertaking set out in the Appointment or made fraudulently by the other party.
- 18 The Middle Level Commissioners, whether acting as the Consultant or otherwise, are a statutory corporation and nothing in these conditions or the Appointment or the provision of services in any way purports to hold them out as employees, partners in a partnership or directors in a company.
- 19 The Appointment is governed by the law of England and Wales and the parties agree to submit irrevocably to the exclusive jurisdiction of the courts of England and Wales.
- 20 The Appointment may be covered by the CDM Regulations, as amended. Clients have specific duties under these Regulations and, while the Consultant will endeavour to inform Clients as to these duties, Clients should take their own advice where necessary.