

# Kent Downs Area of Outstanding Natural Beauty Unit- Darent Valley Landscape Partnership



## THE *CONSULTANT'S* OFFER

The *Consultant* is

Name:

Address:

Telephone:

E-mail address

**To:- The Kent County Council**

Sessions House

County Hall

Maidstone

Kent

ME14 1XQ

**The provision of professional consultancy services for the assessment and review of Natural Flood Management opportunities in the Upper Darent Catchment.**

Sir

1. The *Consultant* offers to Provide the Service in accordance with the following documents:
  - 1.1 *Conditions of contract*, being the NEC3 Professional Services Short Contract, April 2013,
    - 1.1.1 The Contract Data
    - 1.1.2 The *Consultant's* Offer and *Client's* Acceptance
    - 1.1.3 Price List
    - 1.1.4 Scope
    - 1.1.5 Conditions of Contract
    - 1.1.6 Z Clauses
    - 1.1.7 Appendix A
2. We undertake to start and complete the *service* on the dates stated in the Contract Data.
3. We understand that the total of the Prices will be calculated in accordance with the *conditions of contract* and the tendered prices.
4. We certify that this tender is made in good faith and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not, and we undertake that we will not:
  - a. Before the award of any contract for the *service*:
    - i. Communicate to any person other than the person calling for this tender or a person duly authorised by him in that behalf the amount or approximate amount of the tender or proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
    - ii. Enter into any agreement or arrangement with any person that he shall refrain from tendering or as to the amount of any tender to be submitted;
  - b. Pay, give or offer or agree to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the service, any act or thing of the sort described at (a) (i) or (ii).
5. We also certify that the principles described in paragraph (a) and (bi) above have been, or will be, brought to the attention of all sub-contractors, suppliers and associated companies providing services or materials connected with the tender and any contract entered into with such subcontractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.
6. In this certificate, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions. The word 'person' includes any persons and any body or association, corporate or unincorporated; 'any agreement or arrangement' includes any

transaction, formal or informal and whether legally binding or not; and 'the works' means the work in relation to which this tender is made.

Dated this ..... day of ..... 20 .....

Signature ..... In capacity of .....  
(eg Director, Secretary etc.)

Name.....  
(in capitals)

Duly authorised to sign tenders for and on behalf of:-  
.....

Registered Address:- .....  
Tel no: . .....  
E-mail: .....

**THE *CLIENT*'S ACCEPTANCE**

The *Client* accepts the *Consultant's* Offer to Provide the Services and to act as principal designer under CDM2015 . This constitutes a binding agreement between yourselves and the Kent County Council.

Signed on behalf of the *Client*

Name:

Position:

Signature: .....Date: .....



### Professional Services Short Contract

This contract should be used for the appointment of a supplier to provide professional services. It is an alternative to the NEC3 Professional Services Contract and is for use with contracts which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both client and consultant.

An NEC document

April 2013



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- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
- It is a clear and simple document – using language and a structure which are straightforward and easily understood.

NEC3 Professional Services Short Contract is one of the NEC family and is consistent with all other NEC3 documents. Also available are the Guidance Notes and Flow Charts.

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## Short Contract

A contract between        The Kent County Council.

and

for    The provision of professional consultancy services for the assessment  
and review of Natural Flood Management opportunities in the Upper  
Darent Catchment.

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Conditions of Contract



## Contract Data

	The <i>Client</i> is	
Name	Darent Valley Landscape Partnership Scheme	
Address	The Tea Barn Castle Farm Redmans Lane Shoreham TN14 7UB	
The <i>services</i> are	The provision of professional consultancy services for the assessment and review of Natural Flood Management opportunities in the Upper Darent Catchment including scoping of new sites and design of Natural Flood management methods	
The <i>starting date</i> is	September 2019	
The <i>completion date</i> is	18 <sup>th</sup> November <sup>st</sup> 2019 (phase 1) Feb/March 2020 (phase 2)	
The <i>delay damages</i> for late Completion are	nil	per day.
The <i>law of the contract</i> is	English.	
The <i>period for reply</i> is	Three	weeks.
The <i>defects date</i> is	26	weeks after Completion.
The <i>assessment day</i> is the	First day	of each month.
If the period for payment is not four weeks		
The period for payment is	30	days.
The interest rate on late payment is	0.2	% per complete week of delay.

## Contract Data

The *Consultant* provides the following insurance cover

Insurance against	Minimum amount of cover	Period following Completion or earlier termination
Failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£350,000 in respect of each claim, without limit to the number of claims	6 Years
Death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	£5,000,000 in respect of each claim, without limit to the number of claims	12 Months.
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	£5,000,000 in respect of each claim, without limit to the number of claims	12 Months

The *Client* provides the following insurance cover

The *Client* provides no insurances

## Contract Data

The *Consultant's* total liability to the *Client* for matters for which insurance is provided is limited to 10 times the contract value .

The *Consultant's* total liability to the *Client* for other matters is limited to to the value of the insurances other than liability for death or personal injury caused by negligence, liability for fraud, or strict liability as defined by legislation.

The *tribunal* is

Arbitration

If the *tribunal* is arbitration, the arbitration procedure is

The Latest Edition of the ICE Arbitration Procedure

The place where the arbitration is to be held is

Maidstone, Kent.

The person who will choose the arbitrator if the Parties cannot agree is

The Institution of Civil Engineers

The *conditions of contract* are the NEC3 Professional Services Short Contract (April 2013) and the following additional conditions.

Z1 additional clauses

Z6 Compliance with policies

Z8 Conflict of interest

Z9 Corruption, gifts etc

Z10 Confidentiality

Z12 Equality & Diversity Compliance

Z13 Data Protection

Z14 FOI

Z15 Local Government

Z19 Financial Procedures

Z27 Intellectual Property

Z31 Whistleblowing

### The *Consultant's* Offer

The *Consultant* is

Name .....

Address .....

.....

Telephone .....

E-mail address .....

The *Consultant* offers to Provide the Services in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of conditions*.

The name, job, qualifications and experience of *Consultant's* key people are in .....

The *staff rates* are

person or job	unit of measurement	rate
Director/Partner/ Managing Consultant.	hour	.....
Technical Director/ Project Director/Design Manager/ Team Manager/Senior Project Manager.	hour	.....
Principal Engineer/ Professional / Transport Planner	hour	.....
Senior Engineer / Professional / Transport Planner.	Hour	.....
Engineer / Professional / Transport Planner	Hour	
Graduate Engineer / Professional / Transport Planner	Hour	
Senior Technician	Hour	
Technician	Hour	
People not stated here are at open market or competitively tendered rates	Hour	

The offered total of the Prices for .....  
Phase 1 is

Signed on behalf of the  
*Consultant*

Name .....

Position .....

Signature .....

..... Date .....

### The *Client's* Acceptance

The *Client* accepts the *Consultant's* Offer to Provide the Services

Signed on behalf of the *Client* .....

Name .....

Position .....

Signature ..... Date .....

## Price List

Part A: The *Consultant* will provide a fixed price quotation for the service described in phase 1 and is to be broken down as a minimum by the activities shown below. If the Consultant so wishes they can add additional activities or sub-activities.

The *Client* shall pay a fixed price for the services detailed in these documents. Payment will be on receipt of an application for payment once the activities have been completed. The Prices shall include for everything necessary to meet this requirement for the services including all expenses and disbursements.

The fixed price shall be deemed to cover the total cost of undertaking the services described in the Scope by staff suitably qualified and experienced in this type of work. The prices shall include:

- Payment to staff
- Payments in relation to staff
- Provision of and all costs in relation to accommodation
- Travel costs and subsistence (other than the expenses)
- Insurances
- All taxes and other legal requirements
- Consumables
- Profit
- Staff to manage and administer the Contract including all key meeting and preparation of quotations and Task Orders
- Administrative staff and other support
- Equipment including all IT hardware and software
- Telephony and communication
- All management, supervisory and other overhead costs
- Allowing for attendance at 3 meetings per year to discuss progress and/or issues. Attendance shall be by the manager directly involved in the services

For the avoidance of doubt the above list is not exhaustive.

Item No	Activity	Unit	Rate	Price
1	Acting as principal designer under CDM2015 for phase 1 and 2	Item		
2	Attend start up meeting with Project manager	Item		
3	Complete an assessment of the 'Assessing the potential	Item		

	application of Natural Flood management (NFM) techniques in the Upper River Darent Catchment, Kent' report	
4	Review and update the modelling within the 'Assessing the potential application of Natural Flood management (NFM) techniques in the Upper River Darent Catchment, Kent' report	Item
5	Review the series of potential natural flood management interventions, identify opportunities for additional flood management measures and provide likely build costs to take forward to design phase	Item
6	Provide flood modelling for all suggested potential flood management measures.	Item
7	Produce a draft report for comment	Item
8	Produce final report and submit paper copy and electronic copy to DVLP	Item
9	Phase 2: Informed by Phase 1 and subsequent landowner engagement. Development of detailed, modelled and engineered designs for at least 20 specific natural flood management measures identified in Phase 1. Plans should be drawn up to a standard from which delivery contractors can carry out the works in phase 3 of the project and that will meet the requirements of any consents needed to carry out the works (eg: Environment Agency Flood Drainage Consent)	Item



Part 2: The rates detailed in the *staff rates* are to be used to put forward a quotation for phase 2 of the works. The brief for phase 2 will be issued after completion of phase 1.

The *Consultant* shall price the *staff rates* in the Consultant's Offer.

The staff rates shall be deemed to cover the total cost of undertaking any additional works. The staff rates shall include:

- Payment to staff
- Payments in relation to staff
- Provision of and all costs in relation to accommodation
- Insurances
- All taxes and other legal requirements
- Consumables
- Profit
- Staff to manage and administer the Contract including all key meeting and preparation of quotations and Task Orders
- Administrative staff and other support
- Equipment including all IT hardware and software
- Telephony and communication
- All management, supervisory and other overhead costs

The definitions of the staff are given in:

- Director/Partner - Minimum 10 years post qualification
- Team Leader/Project Manager - Min five years post qualification
- Senior Engineer/Scientist - Min three years post qualification
- Engineer/Scientist - qualified
- Engineer/Scientist - trainee working towards qualification

Part 3

The *Consultant* shall use the *staff rates* in the Consultant's Offer.

The *Consultant's* offer list the *staff rates* of the key staff that are to work on this Contract and that will be used for time charge work and any Compensation Events for Phase 1 or 2 such as:

- Attendance at meetings requested by the *Client* over and above those required in the Services
- Any additional specified work by the *Client* that is above that described in the Scope
- Anything else the *Client* requires that is not part of the services but is related work



## Scope

### 1 Purpose of the *services*

Kent County Council as Lead Local Flood Authority is working in partnership with the Kent Area of Outstanding Natural Beauty (Darent Valley Landscape Partnership Scheme), Kent Countryside Partnerships, Environment Agency and Kent Highways to address flooding issues within the upper Darent catchment.

The services are divided into 3 phases:

- Phase 1: professional consultancy services for the assessment and review of Natural Flood Management opportunities in the Upper Darent Catchment area including scoping and modelling of new sites. This will be the subject of a fixed price tender.
- Phase 2: professional consultancy design resulting from the advice received from phase 1 for the design of Natural Flood management methods at the sites chosen with landowner permission. The *Consultant* will provide a quotation for this work based upon tendered *staff rates*.
- Phase 3: construction phase that will be the subject of a separate contract with a contractor(s)

### 2 Description of the *services*

#### Catchment Characteristics and Flooding Issues

The upper Darent catchment rises from a number of springs on the greensand slopes, flowing eastwards the river slowly gains in size. The gently undulating valley runs east-west between wooded scarp slopes and a series of historic villages lie along the valley floor. Surrounding the villages is predominantly mixed farmland with the steeper scarp slopes used for pasture and woodland. The valley landscape has been shaped by the establishment of historic parkland forming a key characteristic of the catchment.

During the winter of 2013-2014, the communities of the Upper River Darent Catchment, specifically those of Westerham, Brasted and Sundridge, endured several damaging flood events. This – and flooding across much of the UK – occurred as a result of a prolonged period of persistent heavy rainfall. For the UK as a whole this was the wettest winter since 1766, and South East England received over double (235%) average winter rainfall (Met Office, 2014).

Several notable issues were identified through discussion with local communities and agencies involved in flood risk management. Much of the water came from surrounding fields and was directed onto the road networks. These small lanes have limited drainage systems and silt laden surface run-off from bare fields impacted significantly on the capacity and operation of the system.

In turn the steep nature of the lane network funnelled water onto the A25 where the drainage system became inundated resulting in flooding of properties. Fluvial flooding only occurred in Westerham, with all other events occurring as a result of surface water flooding.

In response to this event Kent County Council, in partnership with the Kent Countryside Partnerships, commissioned the South East Rivers Trust to detail the flood events and consider the contributing factors. The final report *'Assessing the potential application of Natural Flood management (NFM) techniques in the Upper River Darent Catchment, Kent'* worked with the affected communities to gather evidence of the flood events that had occurred, to document the flow pathways and to identify affected properties and infrastructure. ArcGIS and ArcHydro modelling were undertaken to identify the locations for potential natural flood management interventions.

### **Development of the project**

The report has been used to help secure funding through the Interreg 2 Seas programme to deliver natural flood management measures within the upper Darent catchment. The TRIPLE-C project (Climate resilient Community-based Catchment planning and management) will deliver against the priority of *'Adaption to climate change'* and towards the specific objective to *'Improve the ecosystem-based capacity of 2 Seas stakeholders to climate change and its associated water-related effects'*. The TRIPLE-C project is led by Somerset County Council and has the overall objective to:

*'implement a set of cost effective, innovative actions to reduce flooding. A new participative approach to problem solving and implementation with landowners will be developed. Upstream implementation of the water retention and erosion control measures will reduce flooding and associated issues further downstream'.*

The TRIPLE-C project forms part of a wider delivery programme through the Heritage Lottery Funded Darent Valley Landscape Partnership Scheme (DVLPS) which will work to ensure the ongoing conservation and enjoyment of the landscape. In delivering the objectives of the DVLPS the natural flood management measures must seek to achieve flood reduction whilst respecting and enhancing the landscape character in the upper catchment of the valley between Westerham and Sevenoaks.

### **Requirements**

The TRIPLE-C project will deliver natural flood management measures across the upper Darent catchment area in partnership with landowners and farmers. In addition to the delivery of run-off attenuation features such as leaky ponds and leaky dams, the project will promote land management practices advocated by project partners.

In order to meet the objectives of the TRIPLE-C project a feasibility study for the proposed options identified within the report is required. The feasibility study will help the project team to assess the benefits of the proposed measures and ensure minimal impact on the landscape character. The feasibility study should seek to identify additional options within key locations which can deliver multiple benefits. Studies must be completed to RIBA level 4 standard.

Some of the potential sites may not be feasible options as knowledge of these sites suggest that the landowner is not willing to participate in the scheme. These sites will be discussed during the start up meeting with DVLPS along with discussing other potential sites already identified in the catchment.

The Outputs of the project overall are listed below:

- 20 NFM run-off attenuation features installed.
- 9,200m<sup>3</sup> of extra water retention capacity created that is sympathetic to landscape character.
- 1,300 ha of catchment with improved adaptation capacity through natural measures that retain landscape character.
- 45 homes protected through the implementation of Natural Flood Measures.

This project will contribute to delivering a number of these outputs

The delivery of the project will be separated into three phases; development of the feasibility study will produce a strategy for natural flood management within the Upper Darent catchment and this will identify the most appropriate measures to take forward as pilot projects with detailed design and phase 3 will comprise of carrying out the works.

Phase 1, 2 and 3 of the project should be complete by October 2020 at the latest with phased deadlines throughout the scheme as detailed on page 9 of this report.

#### **Phase one (to be complete by November 2019)**

##### ***Feasibility study objectives;***

- Complete an assessment of the '*Assessing the potential application of Natural Flood management (NFM) techniques in the Upper River Darent Catchment, Kent*' report
- Identify ways in which the NFM measures can deliver multiple benefits such as water quality improvement (in line with Water Framework Directive targets)
- Ensure No increase in flood risk to any properties
- Provide indicative 'likely' build costs for measures
- Provide indicative maintenance costs of the measures over a ten-year period
- Conserve landscape character
- Legislative requirements & any further investigative work that would be required
- A summary table of costs and benefits of each option should be included
- Identify a suitable number of potential project to satisfy the outcomes of the project overall as detailed below.

- **Review the modelling within the '*Assessing the potential application of Natural Flood management (NFM) techniques in the Upper River Darent Catchment, Kent*' report**

Assess the existing data and modelling completed through a detailed desk-based review, in order to determine whether the modelling data provides a full and robust evidence base to enable the following stages to be completed.

The following methodology has been used to model flow pathways within the catchment; '*surface runoff pathways were modelled in ArcGIS (version 10.2) and Archydro (version 2.0), using Ordnance Survey Terrain 5 Digital Elevation Model (DEM) data. The Detailed River Network (DRN) was 'burnt' into the DEM layer lowering the elevation of the DEM cells by 1 metre. Flow direction was calculated using the standard D8-flow algorithm and flow direction was used to calculate flow accumulation.*'

- **Review the series of potential natural flood management interventions**

Using the reviewed modelling information complete a feasibility review of the potential natural flood management interventions identified within the report. The feasibility study will determine the following;

- The effectiveness of the measures in reducing flood risk
- Ensuring that there is no increased flood risk to properties as a result of the proposed measures
- Assess the structural viability of the proposed measures and ensure that they will be fit for purpose
- Estimate of Maintenance costs of each option over a 10 year period

- **Review and assess potential impacts on the landscape character from proposed measures**

A key component of this project will be to ensure that any natural flood management measures do not impact on the landscape character of the Darent Valley and where possible measures should seek to conserve and enhance the landscape character. The original report does not take into consideration landscape character, but the review must assess the impacts which may result from the proposed measures and identify where measures may provide opportunity to enhance the landscape.

The following documents should be used to inform this assessment;

- Darent Valley Strategic Landscape Enhancement Plan 2014
- Sevenoaks Landscape Character Assessment 2017

- **Environmental constraints and sensitivity**

Ensure that any key environmental constraints are fully acknowledged and taken into considerations in the assessment and feasibility of the proposed options. The review should consider; land use; heritage/archaeology; recreation; WFD targets; physio-chemical properties; protected species.

- **Identify opportunities for additional natural flood management measures**

Where possible the feasibility study will seek to identify additional opportunities for natural flood management measures or the expansion of measures to deliver multiple benefits.

- **Provide indicative 'likely' build costs for measures which have been identified to be taken forward to the design stage**

The findings of the feasibility study will be summarised within a table prioritising those measures which meet the objectives along with any additional measures identified as meeting the objectives.

#### **Phase two (to be complete by February/March 2020)**

Phase 2 will only be instructed after phase 1 at the discretion of the *Client*. The Client will provide a brief to the *Consultant* and the *Consultant* will provide a quotation for this work based upon the *staff rates* supplied at the time of the tender. It is expected that this work would consist of:

Development of detailed designs for natural flood management measures

On completion of the feasibility study the project team will work with the *Consultant* to identify possible work sites with landowner permission and to agree the most appropriate development of detailed drawings and specification, however the following considerations should be made;

- 1) Determine the whether the designs should;
  - Provide a standardised design for the selected features with a construction specification ensuring that the design is fit for purpose with supporting calculations to prove viability
  - Or
  - Provide bespoke design drawings and construction specification for each option identified ensuring that the design is fit for purpose with supporting calculations to prove viability
- 2) All measures must be designed to fit within the landscape character
- 3) Designs should be replicable (where possible), recognising that the project is a pilot scheme and we wish landowners to adopt this approach with additional features being installed at a later date
- 4) Where possible measures should be able to incorporate other elements of the DVLPS into projects

- 5) Designs must identify any associated risks
- 6) Designs must be to a suitable standard to meet the requirement of any consent required for the works in Phase 3 (e.g.: Flood Drainage Consent)

### Principal designer under CDM 2015.

The *Client* wishes to appoint a *Consultant* as principal designer under CDM 2015 initially for Phase 1. Should Phase 2 proceed then the *Consultant* shall provide a quotation for this phase.

The *Consultant's* role as principal designer is to plan, manage and monitor the co-ordination of the pre-construction phase, including any preparatory work carried out for the above project. You must:

- assist the client in identifying, obtaining and collating the pre-construction information
- provide pre-construction information to designers, principal contractor and contractors
- ensure that designers comply with their duties and co-operate with each other

The duties will initially be only priced for phase 1.

The duties will need to be priced for phase 2 should the Client proceed to this phase. In addition, the *Client* may require a price for acting as principal designer in phase 3 – construction phase. These will be detailed in the brief issued at the time.

The Consultant is to carry out the additional principal designer duties

- ☐ Independent impartial advice
- ☐ Act on our behalf to have an impartial overview of the project and ensure CDM Client responsibilities are being fulfilled
- ☐ Assist in producing F10
- ☐ Other .

In addition, the *Consultant* may be asked to act as principal designer during Phase 3 construction phase when the additional duties will be required:

- provide pre-construction information to designers, principal contractor and contractors.
- liaise with the principal contractor for the duration of your appointment.
- prepare the health and safety file within 4 weeks after job completion on site.

### 3 Existing information

List existing information which is relevant to the *services*. This can include documents which the *Consultant* is to further develop.

- The client under CDM 2015 is Kent County Council
- There are no existing health and safety files.
- The principal contractor will be appointed in writing when the contractor is appointed for phase 3

Documents and resources available to the contractor:

- 'Assessing the potential application of Natural Flood management (NFM) techniques in the Upper River Darent Catchment, Kent': Please contact [Mary.tate@kentdowns.org.uk](mailto:Mary.tate@kentdowns.org.uk) for access to this document via drop box
- Flood modelling for the Darent Catchment is available from the Environment Agency to the chosen contractor on request.
- Darent Valley Strategic Landscape Enhancement Plan 2014 is available on request
- Sevenoaks Landscape Character Assessment 2017 is available to download here:

[https://www.sevenoaks.gov.uk/downloads/file/1517/env004\\_sevenoaks\\_landscape\\_character\\_assessment\\_-\\_main\\_report\\_january\\_2017](https://www.sevenoaks.gov.uk/downloads/file/1517/env004_sevenoaks_landscape_character_assessment_-_main_report_january_2017)

## Scope

### 4 Specifications and standards

The Consultant is to design and/or provide advice using the latest legislation, codes of practice.

### 5 Constraints on how the *Consultant* is to Provide the Services

- Intellectual ownership of all items produced under this commission will rest with The Kent Downs Area of Outstanding Natural Beauty Unit which is an organization within KCC.
- The *Consultant* and his/her employees and sub-consultants will in all aspects of this commission act in a co-operative and professional manner bringing the full benefit of his/her knowledge and experience to bear on the issues outlined here.
- The *Consultant* shall comply with GDPR and other data/information regulations as appropriate to this project.
- The *Consultant* shall not publicise the project (e.g. submit for awards, include it in external media) without the express written permission of the Client.
- The *Consultant* shall be responsible for the quality and quantity of any new data collected and provided as part of this commission.

- The Consultant will comply with the Client's financial systems. Work shall not start until the Consultant receives a Purchase Order Number. Invoices will be submitted in accordance with payment terms in the contract.
- Work must be completed by the stated deadlines
- . The definitions of staff to be priced under *staff rates* are:

No	Typical Job Title	Description
1 SM1	Director/Partner/ Managing Consultant  Contract Manager	Extensive expertise and experience in their field, with strong business impact and part of the company's leadership. In-depth knowledge of the public sector and of current policy and political issues affecting it. Extensive experience of leading or directing major, complex and business-critical projects and contracts, bringing genuine strategic insight.
2 SM2	Technical Director/ Project Director/Design Manager/ Team Manager/Senior Project Manager	Extensive expertise and experience in their field with a strong ability to manage and lead teams to work within budgets and to programme. Understanding of the public sector and political issues affecting it. Able to implement and monitor quality management processes
3 PS3	Principal Engineer/ Professional / Transport Planner	Substantial expertise and experience in a consultancy role. Previous experience in project management, preferably on public sector projects. Able to deliver projects on time, on budget and to the required quality.  Extensive knowledge and experience of transport planning including multi-modal transport schemes, business case/bid writing and WebTAG appraisal. Experience of project and Client management covering programme, resources, finance and quality control.
4 PS4	Senior Engineer / Professional / Transport Planner	Considerable experience in their specialist field and in a consultancy. Previous experience in project management.  Broad understanding of transport appraisal methodologies with experience of contributing to a range of projects.  Able to produce clear and precise analysis and reports from transport models and transport appraisal techniques.

5 PS5	Engineer / Professional / Transport Planner	<p>Experience and knowledge of their professional field. Evidence of a range of consultancy projects and Client facing experience. Provides support to the Senior / Principal Professional but with responsibility for some areas of projects</p> <p>Wide range of experience of transport planning projects including transport modelling, business case development and scheme appraisal. Able to work as part of a team to provide technical analysis and reporting.</p>
6 PS6	Assistant Engineer / Professional	A Professional with more than 2 years' experience since graduating or other qualification, typically working as part of a team to deliver the service.
7 PS7	Graduate Engineer / Professional / Transport Planner	<p>A Professional at the beginning of their career with less than 2 years' experience, typically working as part of a team to deliver the service.</p> <p>Contribute to the delivery of a wide range of transport planning projects as part of a team.</p>
8 PS8	Senior Technician	Broad experience as a Technician on a range of infrastructure projects, working within multidisciplinary teams. Able to work to deadlines and keep within budgets.
9 PS9	Technician	A Technician with a range of experience, able to work as part of multidisciplinary teams.

- In the event of a dispute the Parties will comply with the following:

The aim is to resolve any disputes at the lowest possible level and as quickly as possible as they create unnecessary cost to both parties.

The following dispute resolution hierarchy applies to the resolution of any difference or dispute:

Stage	<i>Client's People</i>	<i>Consultant's People</i>	Period for resolution
1	<i>Client's Project Manager</i>	<i>Consultant's Manager</i> responsible for the delivery of the Package Order	No later than 14 Days from the date of referral to the <i>Employer's Project Manager</i> . Failure to resolve after this date then the matter is escalated to Stage 2.
2	KCC Strategic Contracts and Commissioning Support Manager	Equivalent director and senior manager	A dispute referred from Stage 1 shall be considered at Stage 2 or escalation to Stage 3.
3	Adjudication		Clause 93.1 applies



## Scope

### 6 Requirements for the programme

The Consultant is to provide a programme for acceptance by the Client. This should be in the form of a Gantt chart and contain as a minimum

- Start and completion date of the whole phase
- Each activity
- Any key dates and especially any key dates when the Client is to provide any information
- Start and completion of each activity.

The programme is to be updated after any agreed CE or monthly if so required

### 7 Information and other things provided by the *Client*

- 'Assessing the potential application of Natural Flood management (NFM) techniques in the Upper River Darent Catchment, Kent': Please contact [Mary.tate@kentdowns.org.uk](mailto:Mary.tate@kentdowns.org.uk) for access to this document via drop box
- Flood modelling for the Darent Catchment is available from the Environment Agency to the chosen contractor on request.
- Darent Valley Strategic Landscape Enhancement Plan 2014 is available on request

- Sevenoaks Landscape Character Assessment 2017 is available to download here:

[https://www.sevenoaks.gov.uk/downloads/file/1517/env004\\_sevenoaks\\_landscape\\_character\\_assessment\\_-\\_main\\_report\\_january\\_2017](https://www.sevenoaks.gov.uk/downloads/file/1517/env004_sevenoaks_landscape_character_assessment_-_main_report_january_2017)

- DVLP hold recently collected LiDAR Images for the whole of the Darent Valley which can be used as part of the study if required. Access to these files could be made available to the chosen contractor.



## CONDITIONS OF SUBCONTRACT

### 1 General

	Actions	10	
		10.1	The <i>Client</i> and the <i>Consultant</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
Identified and defined terms	11	11.1	In these <i>conditions of contract</i> , terms identified in the Contract Data are in italics and defined terms have capital initials.
		11.2	(1) Completion is when the <i>Consultant</i> has completed the <i>services</i> in accordance with the Scope except for correcting notified Defects which do not prevent the <i>Client</i> from using the <i>services</i> and others from doing their work. (2) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract. (3) A Defect is a part of the <i>services</i> which is not in accordance with the Scope or the applicable law. (4) The Parties are the <i>Client</i> and the <i>Consultant</i> . (5) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. (6) To Provide the Services means to do the work necessary to complete the <i>services</i> in accordance with the Scope and all incidental work, services and actions which this contract requires. (7) The Scope is information which either <ul style="list-style-type: none"> <li>• specifies and describes the <i>services</i> or</li> <li>• states any constraints on how the <i>Consultant</i> Provides the Services</li> </ul> and is either <ul style="list-style-type: none"> <li>• in the documents which the Contract Data states it is in or</li> <li>• in an instruction given in accordance with this contract.</li> </ul>
	Law	12	
		12.1	In this contract, except where the context shows otherwise, words in the singular also mean plural and the other way around and words in the masculine also mean the feminine and neuter.
		12.2	This contract is governed by the <i>law of the contract</i> .
		12.3	No change to this contract, unless provided for by the <i>conditions of contract</i> , has effect unless it has been agreed, confirmed in writing and signed by the Parties.
		12.4	This contract is the entire agreement between the Parties.
Communications	13	13.1	Each communication which this contract requires has effect when it is received in writing at the last address notified by the recipient for receiving communications.
		13.2	Each Party notifies the other of the people who are to act on their behalf.
		13.3	If this contract requires the <i>Client</i> or <i>Consultant</i> to reply to a communication, unless otherwise stated in this contract, he replies within the <i>period for reply</i> .

- 13.4 The *Client's* acceptance of a communication from the *Consultant* or of his work does not change the *Consultant's* responsibility to Provide the Services.
- Early warning 14**
- 14.1 The *Consultant* and the *Client* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
  - delay Completion,
  - impair the usefulness of the *services* to the *Client* or
  - affect the work of the *Client* or others with whom the *Client* is in contract.
- The *Consultant* may give an early warning by notifying the *Client* of any other matter which could increase his total cost. Early warning of a matter for which a compensation event has previously been notified is not required.
- 14.2 The *Consultant* and the *Client* co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced and deciding and recording actions to be taken.

## 2 The Parties' main responsibilities

- The *Client's* obligations 20**
- 20.1 The *Client* provides information and other things which this contract requires him to provide by the dates stated in the Scope or a later date if agreed.
- 20.2 The *Client* may give an instruction to the *Consultant* which changes the Scope.
- 20.3 The *Client* does not give an instruction to the *Consultant* which would require him to act in a way that was outside his professional code of conduct.
- The *Consultant's* obligations 21**
- 21.1 The *Consultant* Provides the Services in accordance with the Scope.
- 21.2 The *Consultant's* obligation is to use the skill and care normally used by professionals providing services similar to the *services*.
- 21.3 The *Consultant* obeys an instruction which is in accordance with this contract and is given to him by the *Client*.
- Subcontracting and people 22**
- 22.1 If the *Consultant* subcontracts work, he is responsible for Providing the Services as if he had not subcontracted.
- 22.2 The *Consultant* either uses each *key person* named to do the job for him stated in the Contract Data or, following acceptance by the *Client*, uses a replacement person with qualifications and experience as good as those of the person who is replaced.
- 22.3 The *Client* may, having stated reasons, instruct the *Consultant* to stop using a person to Provide the Services. The *Consultant* then arranges that, after one day, the person has no further connection with the work included in this contract.

### 3 Time

Starting and Completion	30	
	30.1	The <i>Consultant</i> does not start work until the <i>starting date</i> and does the work so that Completion is on or before the Completion Date.
	30.2	The <i>Client</i> decides the date of Completion and certifies it within one week of the date.
	30.3	The <i>Client</i> may instruct the <i>Consultant</i> to stop or not to start any work and may later instruct him that he may re-start or start it.
The programme	31	
	31.1	The <i>Consultant</i> submits programmes to the <i>Client</i> as stated in the Scope.

### 4 Quality

Quality management system	40	
	40.1	The <i>Consultant</i> operates a quality management system for Providing the Services as stated in the Scope.
Notifying Defects	41	
	41.1	Until the <i>defects date</i> , the <i>Client</i> notifies the <i>Consultant</i> of each Defect as soon as he finds it and the <i>Consultant</i> notifies the <i>Client</i> of each Defect as soon as he finds it.
	41.2	At Completion, the <i>Consultant</i> notifies the <i>Client</i> of the Defects which have not been corrected.
	41.3	The <i>Client's</i> rights in respect of a Defect which the <i>Client</i> has not found or notified by the <i>defects date</i> are not affected.
Correcting Defects	42	
	42.1	The <i>Consultant</i> corrects a Defect whether or not the <i>Client</i> notifies him of it.
	42.2	The <i>Consultant</i> corrects Defects within a time which minimises the adverse effect on the <i>Client</i> or others who are using the <i>services</i> . If the <i>Consultant</i> does not correct a Defect within the time required by this contract, the <i>Client</i> assesses the cost of having the Defect corrected by others and the <i>Consultant</i> pays this amount.

### 5 Payment

Assessing the amount due	50	
	50.1	The <i>Consultant</i> assesses the amount due and, by each <i>assessment day</i> , submits an invoice to the <i>Client</i> for payment. There is an <i>assessment day</i> in each month from the <i>starting date</i> until the month after the <i>defects date</i> .

- 50.2 The *Consultant's* invoice contains details to show how the amount due has been assessed. The first invoice is for the amount due. Other invoices are for the change in the amount due since the previous invoice.
- 50.3 The amount due is
- the Price for each lump sum item in the Price List which the *Consultant* has completed,
  - where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Consultant* has completed by the rate,
  - the amount of the expenses stated in the Price List properly spent by the *Consultant*,
  - for work carried out on a time charge basis, the time expended on work which has been completed multiplied by the appropriate *staff rate* and
  - other amounts to be paid to the *Consultant* less amounts to be paid by or retained from the *Consultant*.
- Any tax which the law requires the *Client* to pay to the *Consultant* is included in the amount due.
- 50.4 The *Client* corrects any wrongly assessed amount due and notifies the *Consultant* of the correction and his reasons for each correction before payment becomes due. He pays the amount of his assessment. The *Consultant* either
- corrects the invoice to a sum agreed by the *Client* or
  - provides further information to justify the invoice.
- 50.5 The *Consultant* pays *delay damages* at the rates stated in the Contract Data for each day from the Completion Date until Completion.

#### Payment 51

- 51.1 Unless a different period is stated in the Contract Data, each payment is made within four weeks after the next *assessment day* which follows receipt of an invoice.
- 51.2 Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been made until the date when it is paid. Interest is calculated at the rate of 0.5% per complete week of delay unless another rate is stated in the Contract Data.

## 6 Compensation events

#### Compensation events 60

- 60.1 The following are compensation events.
- (1) The *Client* gives an instruction changing the Scope.
  - (2) The *Client* does not take an action within the time required by this contract.
  - (3) The *Client* gives an instruction to stop or not to start any work.
  - (4) The *Client* changes a decision which he has previously communicated to the *Consultant*.
  - (5) A breach of contract by the *Client* which is not one of the other compensation events in this contract.

#### Notifying compensation events 61

- 61.1 The *Client* and the *Consultant* notify the other of an event which has happened or which they expect to happen as a compensation event.
- 61.2 If the *Client* notifies the compensation event, he also instructs the *Consultant* to submit a quotation for the compensation event. The *Consultant* submits the

quotation within one week of being instructed to do so by the *Client*. If the *Consultant* notifies the compensation event, he submits a quotation with his notification.

- 61.3 If the *Consultant* does not notify a compensation event within four weeks of becoming aware of the event he is not entitled to a change in the Prices or rates and Completion Date unless the event arises from an instruction of the *Client*.
- 61.4 A compensation event is not notified after the *defects date*.

#### Quotations for compensation events

### 62

- 62.1 A quotation for a compensation event comprises proposed changes to the Prices or rates and Completion Date assessed by the *Consultant*. The *Consultant* submits details of his assessment with each quotation, including any assumptions he has made.
- 62.2 The *Client* replies within one week of the *Consultant's* submission. If the *Client* decides that an event notified by the *Consultant*
- arises from the fault of the *Consultant* or
  - is not one of the compensation events stated in this contract
- he notifies the *Consultant* of his decision that the Prices or rates and Completion Date are not to be changed.
- If the *Client* decides otherwise, he notifies the *Consultant* accordingly and
- notifies the *Consultant* of his acceptance of a quotation,
  - states that he does not agree with the quotation and notifies the *Consultant* of his own assessment or
  - states that the effect of the compensation event is too uncertain to be forecast reasonably and notifies the *Consultant* of the date when the compensation event assessment is to be made.
- 62.3 If the *Consultant* does not provide a quotation, the *Client* assesses the compensation event and notifies the *Consultant* of his assessment within one week of when he should have received the quotation.
- 62.4 The *Client* includes details of his assessment of a compensation event when he notifies the *Consultant* of an assessment.

#### Assessing compensation events

### 63

- 63.1 For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List.
- 63.2 For other compensation events, the changes to the Prices are assessed by forecasting the effect of the compensation event on the cost of Providing the Services or, if the compensation event has already occurred, the assessment is based upon the cost due to the event which the *Consultant* has incurred. The forecast assessment uses the *staff rates* in the Contract Data and the expenses in the Price List. The cost of preparing quotations for compensation events is not included in the assessment of compensation events.
- 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, Completion is forecast to be delayed. If a date stated in the Scope by which an item of work has to be provided is affected by the compensation event, the *Client* instructs a change to the date to take account of the effect of the event.
- 63.4 If the *Consultant* did not give an early warning of a compensation event which an experienced consultant could have given, the event is assessed as if the *Consultant* did give an early warning.
- 63.5 Assessments are based on the assumptions that the *Consultant* reacts competently and promptly to the compensation event and that any additional cost and time due to the event are reasonably incurred.
- 63.6 Assessments for changed prices for compensation events are in the form of changes to the Price List.

- 63.7 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.



## 7 Rights to material

<b>The Parties' use of material</b>	<b>70</b>	
	70.1	The <i>Client</i> has the right to use the material provided by the <i>Consultant</i> for the purpose stated in the Scope. The <i>Consultant</i> obtains from a subconsultant equivalent rights to use material prepared by a subconsultant.
	70.2	The <i>Consultant</i> has the right to use the material provided by the <i>Client</i> only to Provide the Services. The <i>Consultant</i> may make this right available to a subconsultant.
	70.3	The Parties do not disclose information obtained in connection with the <i>services</i> except when necessary to carry out their duties under this contract.
	70.4	The <i>Consultant</i> may use the material provided by him under this contract for other work unless stated otherwise in the Scope.
<b>Publicity</b>	<b>71</b>	
	71.1	The <i>Consultant</i> may publicise the <i>services</i> only with the <i>Client's</i> written permission.

## 8 Indemnity, insurance and liabilities

<b>Indemnity</b>	<b>80</b>	
	80.1	The <i>Consultant</i> indemnifies the <i>Client</i> against claims, proceedings, compensation and costs payable arising out of an infringement by the <i>Consultant</i> of the rights of others, except an infringement which arose out of the use by the <i>Consultant</i> of things provided by the <i>Client</i> .
<b>Insurance cover</b>	<b>81</b>	
	81.1	The <i>Client</i> and the <i>Consultant</i> provide the insurances stated in the Contract Data from the <i>starting date</i> until the end of the periods stated in the Contract Data.
	81.2	When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
<b>Limitation of liability</b>	<b>82</b>	
	82.1	The <i>Consultant's</i> total liability to the <i>Client</i> which arises under or in connection with this contract is limited to the amounts stated in the Contract Data. These liabilities and limits apply in contract, tort or delict or otherwise to the extent allowed under the <i>law of the contract</i> .
	82.2	The <i>Consultant's</i> liability to the <i>Client</i> is limited to that proportion of the <i>Client's</i> losses for which the <i>Consultant</i> is responsible under this contract.

## 9 Termination and dispute resolution

### Termination 90

- 90.1 Either Party may terminate the *Consultant's* obligation to Provide the Services by notifying the other Party if the other Party has become insolvent or its equivalent.
- 90.2 The *Client* may terminate by notifying the *Consultant* if
- the *Client* no longer requires the *services* or
  - the *Consultant* has substantially failed to comply with his obligations and has not put the default right within four weeks of a notification by the *Client*.
- 90.3 The *Consultant* may terminate by notifying the *Client* if the *Client* has not paid an amount due under the contract within eight weeks of the issue of a notice by the *Consultant* to the *Client* that payment is overdue.

### Procedures on termination 91

- 91.1 On termination, the *Client* may complete the *services* himself or employ other people or organisations to do so and use any material to which he has title. The *Consultant* does no further work necessary to Provide the Services.
- 91.2 After the final payment has been made, the *Consultant* gives to the *Client* information which he has obtained or prepared which he has a responsibility to provide under this contract.

### Payment on termination 92

- 92.1 A final payment is made as soon as possible after termination. The amount due on termination includes
- an amount due assessed as for normal payments and
  - other costs reasonably incurred by the *Consultant* in expectation of completing the *services* and to which the *Consultant* is committed.
- 92.2 If the *Client* terminates for insolvency or a default by the *Consultant*, the amount due on termination also includes a deduction of the forecast additional cost to the *Client* of completing the *services*.

### Dispute resolution 93

- 93.1 If a procedure for dispute resolution is included in this contract, the Parties follow the procedure before referring a dispute to the *tribunal*.
- 93.2 A Party may not refer a dispute to the *tribunal* less than four weeks after he has notified the other Party of his intention to do so. The Party may only issue the notice after the conclusion of any procedure for dispute resolution stated in this contract.

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### Option Z: Additional conditions of contract

Additional conditions of contract	Z1	The <i>additional conditions of contract</i> stated in the Contract Data are part of this contract
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### Part A - Kent County Council Z Clauses

Compliance with Policies	Z6 Z6.1	In providing the Services, the <i>Consultant</i> shall comply with all relevant <i>Client's</i> policies as specified and detailed in the Scope. For the avoidance of doubt, the <i>Client</i> reserves the right to amend the <i>Client's</i> policies from time to time without seeking the <i>Consultant's</i> consent or approval.
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Conflict of Interest	Z8 Z8.1	The <i>Consultant</i> acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the Services or the <i>Client</i> , save to the extent fully disclosed to and approved in writing by the <i>Client</i> .
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	Z8.2	The <i>Consultant</i> undertakes ongoing and regular conflict of interest checks and in any event not less than once in every six months and notifies the <i>Client</i> in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the Services under this Contract or the <i>Client</i> and shall work with the <i>Client</i> to do whatever is necessary (including the separation of staff working or, and data relating to, the Service from the matter in question) to manage such conflict to the <i>Client's</i> satisfaction. provided that, where the <i>Client</i> is not so satisfied (in its absolute discretion) it shall be entitled to terminate this contract with immediate effect.
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	Z8.3	If the Parties are unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the <i>Client</i> has the right (In its absolute discretion) to terminate the contract whereupon the provisions of clause 90.2 of the conditions of contract apply to the termination as though the termination had been in respect of reason R11.
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Corruption, Gifts, Fraud and the Payment of Commission	Z9 Z9.1	<p>The <i>Consultant</i> does not and warrants that in entering into this Contract it has not done any of the following and ensures that its Employees, agents and Subcontractors do not and have not done any of the following:</p> <ul style="list-style-type: none"> <li>• offer or give or agree to the giving to any person in the service of the <i>Client</i> any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the <i>Client</i> or for showing or forbearing to show favour or disfavour of any person in relation to this or any other contract with the <i>Client</i>; or</li> <li>• enter into this or any other contract with the <i>Client</i> in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless full details of any such arrangements have been disclosed in writing to the <i>Client</i> before execution of this Contract committed any offence under the Bribery Act 2010.</li> </ul>
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- Z9.2 If any fraudulent activity comes to the attention of the *Consultant* in relation to this Contract the *Consultant* notifies the *Client* by the most expeditious means available. The *Consultant* cooperates with the *Client* in the investigation of any fraudulent activity and implements any changes in the procedures or working practices employed under this Contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The *Consultant* ensures that no fraudulent activity is committed by the *Consultant*, its agents, employees or Subcontractors.
- Z9.3 The *Client* has the right to audit any and all such records necessary to confirm compliance with this clause at any time the contract has not expired or has not been terminated and during the twelve (12) year period following expiry or termination of this Contract. Breach of this clause shall entitle the *Client* to terminate this Contract and any other contracts between the *Consultant* and the *Client* with immediate effect. whereupon the provisions of clause 90.2 of the conditions of contract apply to the termination as though the termination had been in respect of reason R11
- Z9.4 In every contract with a Subcontractor the *Consultant* incorporates such provisions in order to impose on the Subcontractor liabilities similar to those imposed on the *Consultant* by this clause Z9 and such provisions as will entitle the *Consultant* to terminate the subcontract on terms equivalent to those contained in clause Z9.3. In the event of any breach by the Subcontractor of any such provision the *Consultant* shall without prejudice to any of his obligations under this Contract take action in accordance with the terms of the subcontract to exercise his rights against the Subcontractor. Failure by the *Consultant* to take action shall constitute a reason for the *Client* to exercise his right under clause Z9.3 to terminate the Contract whereupon the provisions of clause 90.2 of the conditions of contract apply to the termination as though the termination had been in respect of reason R11. When the *Consultant* exercises his rights against a Subcontractor in accordance with this clause he has no entitlement to make a claim or agree to any claim being made on his behalf against the *Client* in respect of any consequential delays and extra costs arising from this Contract.
- Z9.5 In the event of any breach of this clause by the *Consultant* the *Client* recovers any loss liability or damage incurred or suffered as a result of the breach of this clause by the *Consultant* from the Consultant.

Confidentiality and	Z10
Publicity	Z10

- Z10.1 The *Consultant* acknowledges and agrees that in Providing the Services he may receive, obtain, prepare or create Confidential Information. The *Consultant* ensures that he and his Employees and Subcontractors:
- 1) receive and/or maintain the Confidential Information in strictest confidence and acknowledge that such information is of a proprietary and confidential nature;
  - 2) do not use the Confidential Information for any purposes whatsoever (and in particular do not use the Confidential Information to the detriment of the *Client*) other than for the purpose of Providing the Services;

- 3) do not disclose the Confidential Information to any third party without the prior written consent of the *Client* except that the *Consultant* is entitled to the extent strictly necessary to disclose the Confidential Information:
  - a) to such of the *Consultant's* personnel who need to know the Confidential Information to Provide the Services provided that the *Consultant* is responsible for any breach of its obligations occasioned by any act or omission of such personnel;
  - b) or to the *Consultant's* auditors and any other person or body having a legal right or duty to know the Confidential Information in connection with the *Consultant's* business provided that prior to such disclosure the *Consultant* consults with the *Client* as to the proposed form of such disclosure;
  - c) informs each of the persons referred to in (a) and (b) above and to whom Confidential Information is disclosed of the restrictions as to use and disclosure of the Confidential Information and uses its best endeavours to ensure that each of them observe such restrictions;
  - d) at the *Client's* request and in any event upon the termination or expiry of this contract, promptly delivers to the *Client* or destroys as the *Client* directs all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information and if instructed by the *Client* in writing, removes all electronically held Confidential Information, including (without limitation) the purging of all disk-based Confidential Information and the reformatting of all disks; and
  - e) does not, except with the prior written consent of the *Client*, disclose to any third party the nature or content of any discussions or negotiations between the Parties relating to the Confidential Information.

Z10.2 The obligations set out in the clause above do not apply to any Confidential Information which:

- 1) the *Consultant* shows by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the *Consultant* by the *Client*; or
- 2) is lawfully disclosed to the *Consultant* without any obligations of confidence, by a third party who has not derived it directly or indirectly from the *Client*; or
- 3) is or has come into the public domain through no fault of the *Consultant* or its personnel; or
- 4) is required by law or by order of a court of competent jurisdiction to be disclosed.

Z10.3 The *Consultant* does not advertise or announce this Contract or the Service without the prior written consent of the *Client* and provides the *Client* with any advertisement or announcement for approval.

- Z10.4 The *Consultant* does not and ensures that his Employees and Subcontractors do not give information concerning the Service for publication in the press or on radio, television, screen or any other media without the prior written consent of the *Client*. In order to obtain such consent the *Consultant* provides the *Client* with a full copy of the information to be released for approval by the *Client*. The *Consultant* does not and ensures that his Employees and Subcontractors do not, without the prior written approval of the *Client*, take any photographs of the works for use in any publicity or advertising.
- Z10.5 No advertisement will be erected within the *Client's* highways network or work site by the *Consultant* or any Subcontractor without the written approval of the *Client*. All advertisements will be removed within three (3) months of the completion of the relevant service or scheme, unless the *Client* agrees in writing for any advertisement to remain for a further period.

**Equality and Diversity  
Compliance**

**Z12**

**Z12.1**

Without limiting the generality of any other provision of this Contract, the *Consultant*:

- does not unlawfully discriminate;
- procures that its personnel do not unlawfully discriminate; and
- uses reasonable endeavours to procure that its Subcontractors do not unlawfully discriminate in relation to the Services within the meaning and scope of:
  - the Employment Equality (Sexual Orientation) Regulations 2003;
  - the Employment Equality (Religion or Belief) Regulations 2003;
  - the Employment Equality (Age) Regulations 2006
  - the Equality Act 2010;
  - the Commission for Race Equality's Statutory Code of Practice on Race Equality in Employment
  - and any other relevant enactments in force from time to time relation to discrimination in employment (the Acts).

**Z12.2**

The *Consultant* acknowledges that the *Client* is under a duty under Section 149 of the Equality Act 2010 ("the Act") to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act, advance equality of opportunity between persons who share a relevant protected characteristic ("Characteristic") and persons who do not share it, foster good relations between persons who share a Characteristic and persons who do not share it.

Characteristics are:

Age;  
 Disability;  
 Gender reassignment;  
 Pregnancy and maternity;  
 Race;  
 Religion or belief;  
 Sex;  
 Sexual orientation;

- Z12.3 In the performance of this Contract, the *Consultant* exercising public functions under this Contract, must, in the exercise of these functions, have due regard to the matters mentioned in Z12 and assists, cooperates and uses his reasonable endeavours to procure that his Subcontractors cooperate with the *Client* where possible in complying with this duty.
- Z12.4 The *Consultant* acknowledges that the *Client* is under a duty to have due regard to the need to:
- advance equality of opportunity between persons who share a Characteristic and persons who do not share it which includes having due regard, in particular, to the need to:
    - (a) remove or minimise disadvantages suffered by persons who share a Characteristic that are connected to that Characteristic;
    - (b) take steps to meet the needs of persons who share a Characteristic that are different from the needs of persons who do not share it;
    - (c) encourage persons who share a Characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  - Foster good relations between persons who share a Characteristic and persons who do not share it in particular, to the need to:
    - (a) tackle prejudice, and
    - (b) promote understanding
  - and the *Consultant* assists and co-operates and uses reasonable endeavours to procure that its Subcontractors assist and co-operate with the *Client* where possible to enable the *Client* to satisfy its duty.
- Z12.5 The *Client's* Workplace Policy requires the *Client's* own staff and those of its Subcontractors to comply fully with the Workplace Policy to eradicate harassment in the workplace. The *Consultant*:
- ensures that its staff, and those of its Subcontractors who are engaged in the performance of this contract are fully conversant with the requirements of the Workplace Policy;
  - fully investigates allegations of workplace harassment in accordance with the Workplace Policy; and
  - ensures that appropriate effective action is taken where harassment is found to have occurred.
- Z12.6 The *Consultant* notifies the *Client* in writing as soon as it becomes aware of any investigation of or proceedings brought against the *Consultant* under any one or more of the Acts.
- Z12.7 The *Consultant* shall comply with the National Minimum Wage Act 1998 (as amended) in relation to the payment of its staff. For the avoidance of doubt and where applicable the *Client* reserves the right to request the *Consultant* to comply with the National Living Wage as determined and in force from time to time in the United Kingdom.



**Identified and Defined terms**

Z13.1

(1) Data Protection Laws is the laws as applicable and binding on the *Client*, the *Consultant* and Services:

- in the United Kingdom:
  - the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or
  - the GDPR, and/or any corresponding or equivalent national laws or regulations;
  - in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and
  - any applicable law replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

(2) Data Protection Impact Assessment is the assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

(3) Data Subject, Controller, Processor, Personal Data, Data Protection Officer is defined in the Data Protection Laws

(4) Data Loss Event is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data

(5) Data Subject Access Request is a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their Personal Data

(6) GDPR is the General Data Protection Regulation (EU) 2016/679

(7) Processing and process is defined by the Data Protection Laws and for the purposes of this Contract, it shall include both manual and automated processing.

(8) Sub-processor is any third Party appointed to process Personal Data on behalf of the *Consultant* related to this Contract

Z13.2

The *Consultant* (and shall ensure that all of its Staff) complies with any notification requirement under the Data Protection Laws and the *Client* and the *Consultant* duly observe all their obligations under the Data Protection Laws which arise in connection with this Contract.

Z13.3

The *Consultant* complies with all of its obligations under the Data Protection Laws in performance of its obligations under this Contract and in processing Personal Data on behalf of the *Client*.

Z13.4

The *Consultant* provides all reasonable assistance to the *Client* and *Client* in the preparation of any Data Protection Impact Assessment prior to commencing any data processing in accordance with this Contract

Z13.5

Insofar as the *Consultant* processes Personal Data on behalf of the *Client*, the *Consultant*, in relation to any Personal Data processed in connection with its obligations under this Contract:

- processes that Personal Data only for the Provision of the Services only in accordance with the *Client's* documented instructions set out in the Scope, and updates provided from time to time by the written agreement of the Parties (Processing Instructions)

- agree that the processing carried out by the *Consultant* under this Contract comprises the processing set out in the Scope (Data Processing Details ), and such other processing as agreed by the Parties in writing from time to time.
- if the Law requires it to process Personal Data other than in accordance with the Processing Instructions, the *Consultant* notifies the *Client* and *Client* of any such requirement before processing the Personal Data.
- notifies the *Client* immediately if it considers that any of the *Client's* instructions or Processing Instructions infringes the Data Protection Laws.
- ensures that it implements and maintains, at its cost and expense, appropriate technical and organisational measures in relation to the processing of Personal Data which are submitted for acceptance by the *Client* to ensure a level of security in respect of the Personal Data processed by it that is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

Z13.6 The *Consultant* ensures that access to Personal Data is limited to the authorised persons who need access to it to provide the Services:

- The *Consultant* ensures that the Staff do not process Personal Data except in accordance with this Contract and in the manner which has been agreed with the *Client*
- it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
  - the Staff are aware of and comply with the *Consultant's* duties under this clause;
  - the Staff are subject to appropriate confidentiality undertakings with the *Consultant* or any Sub-processor;
  - the Staff are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the *Client* or as otherwise permitted by this Contract; and
  - the Staff have undergone adequate training in the use, care, protection and handling of Personal Data; and
- The *Consultant* does not cause or permit the transfer Personal Data to a country or territory outside the European Economic Area. outside of the EU unless the prior written consent of the *Client* has been obtained.

Z13.7 The *Consultant* notifies the *Client* immediately (and if applicable, immediately notifies in stages as the details become available) if it:

- receives a Data Subject Access Request (or purported Data Subject Access Request);
- receives a request to rectify, block or erase any Personal Data;
- receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- becomes aware of a Data Loss Event.

Z13.8 The *Consultant* does not respond to any Data Subject Access Request or request or complaint or communication without the *Clients* prior written acceptance and it maintains complete and accurate records and information to demonstrate its compliance with this clause Z13.

- Z13.9 The *Consultant* (at no costs to the *Client*) allows for audits of its Data Processing activity and the *Consultants* Personnel by the *Client* or the *Client's* designated auditor.
- Z13.10 The *Consultant* designates a data protection officer if required by the Data Protection Legislation.
- Z13.11 The *Consultant* keeps the *Client* fully indemnified against all actions claims costs expenses and damages suffered by the *Client* arising out of any breach of this Z13 (save to the extent that such matters are not due to any act neglect or default of the *Client* its agents or employees).
- Z13.12 The *Client* remains solely responsible for determining the purposes and manner in which Personal Data is to be processed. Before allowing any Sub-processor to process any Personal Data related to this Contract, the *Consultant* must
- notify the *Client* in writing of the intended Sub-processor and processing;
  - obtain the written consent of the *Client*
  - Enter into a written agreement with the subcontractor which requires the Sub – processor to:
    - only process Personal Data in accordance with the Data Processing Details set out in the Scope, and such other processing as agreed by the Parties in writing from time to time.; and
    - comply with the same Data Protection Laws that the *Consultant* is required to comply with under this contract.
- Z13.13 The *Consultant* remains fully liable for all acts or omissions of any Sub-processor.
- Z13.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Client* may on not less than 30 Working Days' notice to the Consultant amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- Z13.15 The provision of this Z 13 applies during the duration of this Contract and indefinitely after its expiry.

**Freedom of Information Z14**

- Z14.1 Notwithstanding any other provision in this Contract regarding confidentiality the *Consultant* agrees and the *Client* reserves the right to disclose information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 1992 as amended or the DPA or the Audit Commission Act and the Accounts and Audit Regulations 2003 and the Local Government Act 2000 and Part IV of the Local Government Act 1974 as the *Client* considers appropriate and that for such purposes information that would otherwise be regarded as confidential by either Party may be disclosable under these provisions and may include information provided by the *Consultant* to the *Client*
- Z14.2 Without prejudice to any other provision in this Contract the *Consultant* shall assist and co-operate with the *Service Manager* (at the *Consultant's* expense) to enable the *Client* to comply with its information disclosure requirements under the FOIA and the Environmental Protection Regulations ("Information Disclosure Requirements)
- Z14.3 The *Consultant* shall and shall procure that its sub-Consultants shall:
- transfer any request for information received from a person seeking information under Information Disclosure Requirements to the *Client* as

- soon as practicable after receipt and in any event within two Days of receiving it;
  - provide the *Client* with a copy of all information in its possession or power, relating to any request for information received under 4.3.1 above, in the form that the *Client* requires, within five Days (or such other period as the *Client* may specify) of the *Client* requesting that information; and
  - provide all necessary assistance as reasonably requested by the *Client* to enable the *Client* to respond to a request for information under Information Disclosure Requirements within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations
- Z14.4 The *Client* shall be responsible for determining at its absolute discretion whether the commercially sensitive information and/or any other information:
- is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
  - is to be disclosed in response to a request for information under Information Disclosure Requirements and in no event shall the *Consultant* respond directly to such a request for information unless expressly authorised to do so by the *Client*.
- Z14.5 The *Consultant* shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the *Client* to inspect such records as requested from time to time.
- Z14.6 The *Client* acknowledges that the *Consultant* may wish to assert that information which is subject to disclosure may be exempt from disclosure in circumstances where disclosure is likely to affect its interests. The *Client* agrees to observe paragraph 27 of the Code of Practice
- Z14.7 Notwithstanding any other provision of this Contract, the *Consultant* hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- Z14.8 In preparing a copy of this Contract for publication the *Client* may consult with the *Consultant* to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the *Client's* absolute discretion.
- Z14.9` The *Consultant* must assist and co-operate with the *Client* to enable the *Client* to publish this Contract.
- Z14.10 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the *Client* may disclose information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the *Consultant's* name and the monthly Periodic Payment paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information

		The <i>Consultant</i> is aware that he could be subject to investigation by the Ombudsman if a complaint is made about his actions when undertaking work on behalf of the <i>Client</i> . The <i>Consultant</i> co-operates fully in any such investigation.
	Z15.2	In the event that following any investigation the Ombudsman finds maladministration and/or injustice as a result of fault by the <i>Consultant</i> the <i>Consultant</i> reimburses the <i>Client</i> on demand for any payments made by the <i>Client</i> to a complainant.
	Z15.3	Similarly the <i>Consultant</i> reimburses the <i>Client</i> for any payments made under the terms of a settlement agreed without a formal investigation and report of a complaint made to the Ombudsman
Financial Procedures and Cost Capture	Z19	
	Z19.1	The <i>Consultant</i> complies with the requirement of the Scope.
Intellectual Property Rights	Z27	
	Z27.1	The <i>Consultant</i> hereby assigns with full title guarantee to the <i>Client</i> all Intellectual Property in all photographs taken by or on behalf of the <i>Consultant</i> in relation to this contract and provides to the <i>Client</i> upon request copies of all such photographs in such format as the <i>Client</i> requires.
	Z27.2	Intellectual Property in all Documents in any medium which have been created and/or developed or further developed by the <i>Consultant</i> in the course of performing its obligations under this contract will vest in the <i>Client</i> .
	Z27.3	Intellectual Property in any medium, including but not limited to software, systems, data, databases, additions and algorithms, which have been created and/or developed or further developed by the <i>Consultant</i> in the course of performing its obligations under this Contract will vest in the <i>Client</i> .
	Z27.4	The <i>Consultant</i> grants and/or agrees to grant to the <i>Client</i> with effect from the Contract Date (or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property), a perpetual, irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of this contract) to use the Intellectual Property in the Documents and any medium created and/or developed by the <i>Consultant</i> in the course of performing its obligations under this contract and to reproduce such Documents and medium for any purpose whatsoever relating to the <i>Client's</i> business. Such licence carries the right to grant sub-licences and is be transferable to third parties.
	Z27.5	The <i>Consultant</i> warrants that the Documents and medium (except to the extent that duly authorised Subcontractors have been used to prepare the same) are the <i>Consultant's</i> own original works and that in any event their use will not infringe the rights of any third party. The <i>Consultant</i> further warrants that where duly authorised Subcontractors are used their work will be original and the <i>Consultant</i> will obtain the necessary consents in relation to the above clause.
	Z27.6	The <i>Consultant</i> does not grant to any third party the right to use any of the Documents and mediums except under any warranty it is obliged to give under this contract or as otherwise required to enable it to fulfil its obligations under this contract.
	Z27.7	The <i>Consultant</i> agrees on reasonable request at any time and following reasonable prior written notice to give to the <i>Client</i> , or those authorised by the <i>Client</i> , access to the Documents and mediums and to provide copies (including

copy negatives and CAD disks) of the Documents and mediums in a format which is compatible with the *Client's* systems.

Z27.8 Intellectual Property in all items supplied and owned by the *Client* to the *Consultant* remains the property of the *Client*.

Z27.9 The *Client* grants to the *Consultant* a non-exclusive, non-transferable, revocable licence to use all Intellectual Property owned (or capable of being so licensed) by the *Client* and required by the *Consultant* in order to Provide the Service. Any such licence is granted for the duration of this contract solely to enable the *Consultant* to comply with its obligations under this contract.

Z27.10 The *Consultant* promptly notifies the *Client* upon becoming aware of an infringement, alleged infringement or potential infringement of any Intellectual Property (including any claims and demands relating to the same) which affects or may affect the Provision of the Service.

Z27.11 Subject to the *Client's* proper observance of its obligations under this contract, the *Consultant* indemnifies the *Client* against all actions, claims, demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property.

Z27.12 The *Client*, at the request of the *Consultant*, gives the *Consultant* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Consultant* reimburses the *Client* for all costs and expenses (including legal costs) incurred in doing so. The *Consultant* conducts any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Consultant* consults with the *Client* in respect of the conduct of any claim, demand or action and keeps the *Client* regularly and fully informed as to the progress of such claim, demand or action.

#### Whistleblowing Z31

Z31.1 The *Consultant* shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the *Consultant*) and shall establish and where necessary update from time to time a procedure for the *Consultant's* personnel encouraging those personnel to report to the *Consultant* any incidents of malpractice within the *Consultant* or *Client*. In this context "malpractice" shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration.

## ANNEX 1

## Schedule of Processing, Personal Data and Data

1. The *Consultant* shall comply with any further written instructions with respect to processing by the *Client*.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the Processing	It is envisaged that no personal data will be collected or transferred between the parties to this contract. Should this change either party will be required to notify the other.
Duration of the Processing	Should personal data be collected it could be required for the periods defined in the insurances page of the Contract Data.
Nature and purposes of the processing	<p>Further information can be found at <a href="http://www.kent.gov.uk/business/grow-your-business/doing-business-with-kent-county-council/how-we-buy-goods-and-services/gdpr">http://www.kent.gov.uk/business/grow-your-business/doing-business-with-kent-county-council/how-we-buy-goods-and-services/gdpr</a></p> <p>and</p> <p><a href="http://www.kent.gov.uk/about-the-council/contact-us/access-to-information/gdpr-privacy-notice/highways,-transportation-and-waste">http://www.kent.gov.uk/about-the-council/contact-us/access-to-information/gdpr-privacy-notice/highways,-transportation-and-waste</a></p>
Type of Personal Data	
Categories of Data Subject	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	

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