

Environmental  
Corporation

**ACE  
Short Form  
Agreement  
2015**

## About ACE

As the leading business association in the sector, ACE represents the interests of professional consultancies and engineering companies large and small in the UK. Many ACE member companies have gained international recognition and acclaim and employ over 250,000 staff worldwide.

ACE members are at the heart of delivering, maintaining and upgrading buildings and structures as part of the essential economic and social infrastructure needed to sustain a vibrant and progressive economy. They provide specialist services to a diverse range of sectors including water, transportation, housing and energy.

ACE's membership acts as the bridge between engineering consultants who make an estimated contribution of £15bn to the UK economy and the wider construction market contributing a further £90bn.

Through direct contact, publications, events, our website, our sector and devolved nations & regional networks, we provide a cohesive approach and direction for our members and the wider industry. ACE listens to its members, understands the issues affecting them and their clients and takes the lead in representing their interests to decision makers and opinion formers in government, client organisations and the media.

ACE Agreements are the industry standard contract documents for consultancy appointments. To further promote best practice and better ways of working in the industry, ACE also publishes a range of briefing notes and policy statements for both clients and consultants. Full details can be found on the ACE website at [www.acenet.co.uk](http://www.acenet.co.uk).

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### Legal Advice Line

In association with our preferred providers ACE is pleased to provide 15 minutes of free legal advice to ACE members on a range of issues from standard forms of contract and collateral warranties guidance to alternative dispute resolution. For more information please visit the ACE legal section at [www.acenet.co.uk](http://www.acenet.co.uk)

### Acknowledgements

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## ACE Short Form Agreement: Notes on use

The ACE Short Form Agreement is intended for use where there is a clear description/brief of the services the Consultant is required to deliver. The Schedule of Services which forms part of the Agreement requires that any project objectives should be clearly defined and the data and information to be provided by the Client clearly identified.

The Consultant sets out in the Schedule the amounts, manner and basis on which fees and expenses are to be paid. Fees may be time based, lump sum or percentage. It is essential that it is made clear what the fee covers and what are the agreed Services (and, if appropriate, what are not). The manner of calculation and payment for additional Services may also be included. The Agreement is drafted to comply with current construction industry payment legislation.

The Agreement may be used in relation to BIM projects.

The Schedule also provides for any limit of liability or exclusions to be stated as well as the amounts of public liability and professional indemnity insurance.

The Agreement is suitable for use in Scotland.

# ACE SHORT FORM AGREEMENT

**The Client**

(Name)

(Address)

**The Consultant**

(Name)

(Address)

**PROJECT TITLE:**

The Client appoints the Consultant under this Agreement to provide the Services in accordance with this Agreement “the Services” and the Consultant agrees to accept this Agreement.

## **1 Consultant’s Obligations**

- (i) The Consultant shall provide the Services described in the attached Schedule and exercise reasonable skill and care in the performance of the Services.
- (ii) The Consultant shall use reasonable endeavours to perform the Services in accordance with any programme set out in the Schedule.
- (iii) The Consultant shall inform the Client if he considers any change or instruction from the Client is outside the scope of the Services and will cause a change to the programme and/or change to the level of fees or expenses.

## **2 Client’s Obligations**

- (i) The Client shall pay the Consultant for the performance of the Services the fees and expenses set out in the Schedule.
- (ii) The Client shall supply the Consultant with all necessary and relevant data and information in its possession or in the possession of any of its contractors or other professional advisors and all instructions, decisions, consents or approvals in good time to avoid delay to the performance of the Services.
- (iii) The Client shall make an additional payment to the Consultant if the Consultant has to carry out additional work and/or suffers delay or disruption in the performance of the Services for reasons beyond the Consultant’s control, including instructions or decisions by or on behalf of the Client. The additional payment will be calculated on the basis set out in the Schedule. The Consultant shall if requested by the Client and where practicable give an initial estimate of the additional payment likely to be charged and how it is to be calculated.

### 3 Payment

The Client shall pay the Consultant in the following manner:

- (i) The Consultant shall send an invoice to the Client for each instalment of the fees and other sums payable under this Agreement. Each invoice shall specify the sum that the Consultant considers will become due on the payment due date under Clause 3(ii) and the basis on which that sum is calculated.
- (ii) Payment shall be due on the date the Consultant submits the invoice. The final date for payment shall be 30 days from the due date or such shorter period as specified in the Schedule.
- (iii) The Consultant's invoice under Clause 3(i) shall be the payment notice for the purposes of Section 110A of the Housing Grants, Construction and Regeneration Act 1996 (as amended).
- (iv) On or before the final date for payment the Client shall pay to the Consultant either the sum stated as due in the Consultant's invoice issued under Clause 3(i) ("the Notified Sum") or the sum that the Client considers to be due as specified in any Pay Less Notice under Clause 3(v).
- (v) Not later than seven days before the final date for payment the Client may give the Consultant a Notice that it intends to pay less than the Notified Sum (a "Pay Less Notice"). Any Pay Less Notice shall specify the sum that the Client considers to be due on the date the Notice is served and the basis on which that sum is calculated.
- (vi) All sums due under this Agreement are exclusive of VAT which shall be paid in addition.

### 4 Liability and Insurance

- (i) Notwithstanding anything to the contrary contained in this Agreement but without prejudice to any of its provisions by which liability is excluded or limited to a lesser amount the total liability of the Consultant under or in connection with this Agreement whether in contract, tort, negligence, breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed in aggregate the sum set out in the Schedule.
- (ii) Save in respect of personal injury or death the Consultant's liability in respect of the following matters (the "Excluded Matters") whether in contract, tort, negligence, breach of statutory duty or otherwise is limited or excluded as set out in the Schedule namely
  - asbestos
  - terrorism, and
  - pollution and contamination

If the Consultant's liability in respect of any of the Excluded Matters is excluded, the relevant Excluded Matters are outside the scope of this Agreement and the Consultant shall have no responsibility for advising or providing any Services in connection with the relevant Excluded Matters and shall not have any duty to consider the relevant Excluded Matters.

- (iii) No action or proceedings under or in respect of this Agreement shall be commenced against the Consultant after the expiry of the period stated in the Schedule which date shall not replace or override any earlier statutory limitation period.
- (iv) The Consultant shall maintain public liability and professional indemnity insurance in the amounts set out in the Schedule and for the length of time sufficient to cover the Consultant's liabilities under this Agreement provided that in either case such insurance is available on reasonable terms and at reasonable commercial rates.

### 5 Copyright, Licences and Confidentiality

- (i) The copyright in all drawings and other documents (including material in electronic form) provided by the Consultant to the Client remains vested in the Consultant. The Client shall have a licence to copy and use such material for the purposes for which they were provided and the

Consultant shall not be liable for their use by any person for any purpose other than for which they were provided. If the Client is in default of payment of any amount under this Agreement the Consultant may revoke any licence granted by giving seven days' notice.

- (ii) Neither party shall disclose to any other person any private or confidential information concerning the business of the other party unless authorised by that party or if disclosed to either party's professional advisors or insurers or as required or permitted by law.

## **6 Termination**

- (i) The Client may terminate the appointment of the Consultant in the event of a breach of this Agreement or if the Consultant becomes insolvent by giving two weeks' notice and the Consultant may terminate this Agreement and in the same manner if the same circumstances arise in relation to the Client. In the event of any such termination the Client shall pay the Consultant a fair and reasonable amount on account of fees due under this Agreement commensurate with the services performed to the date of termination and any outstanding expenses.
- (ii) If circumstances arise for which the Consultant is not responsible (including non payment of fees and expenses due under this Agreement) and which the Consultant considers make it irresponsible to continue to perform all or any of the Services the Consultant may terminate the appointment by giving two weeks' notice. In such event the Client shall pay the Consultant a fair and reasonable amount on account of the fees due (under the Schedule) and in respect of any Services to which the Consultant is irrevocably committed together with any outstanding expenses.
- (iii) Termination of the Consultant's appointment under this Agreement shall not prejudice the accrued rights or claims of either party.

## **7 Disputes and Differences**

- (i) The parties shall attempt in good faith to settle any dispute by mediation.
- (ii) Where this Agreement is a construction contract within the meaning of the Housing Grants Construction and Regeneration Act 1996 (as amended) any dispute arising shall be referred to adjudication in accordance with the procedure stated in the Schedule or if none is so stated the CIC Model Adjudication Procedure current at the time of the referral. If either party so requests the adjudicator shall be nominated by the ACE.

## **8 General**

- (i) Neither party may assign or transfer any benefit or obligation under this Agreement without the prior written consent of the other party.
- (ii) Nothing in this Agreement confers or purports to confer on any third party any benefit or any right pursuant to the Contracts (Rights of Third Parties) Act 1999 or any other applicable law or statute to enforce any term of the Agreement.
- (iii) This Agreement shall be governed by and construed in all respects in accordance with the laws of the country set out in the Schedule.
- (iv) In this Agreement a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time as at the date of the signing of this Agreement.

## **9 Notices**

Any notice under this Agreement shall be in writing, shall be sent to the address shown in the Schedule and shall take effect when it has been received by the Client or the Consultant as the case may be. It may be in any form, including electronic, provided that a permanent record exists. Any such notice shall be assumed to have been received within two days of issue.

**10 Building Information Modelling**

The Client and the Consultant shall comply with their respective obligations set out in any BIM protocol referred to in the Schedule. The parties shall have the benefit of any rights granted to them in the protocol and of any limitation or exclusion of liability contained within it.

**11 Entire Agreement**

This Agreement represents the entire agreement between the Client and the Consultant and supersedes any previous agreement or discussions relating to the Services the subject of this Agreement.

Signed by or on behalf of the Client

Date

(print name and position)

Signed by or on behalf of the Consultant

Date

(print name and position)

## SCHEDULE OF SERVICES

The Date of this Agreement is the ..... day of ..... 20.....

### GENERAL:

#### Client contact details:

Address .....

Telephone.....

Email .....

#### Consultant contact details:

Address .....

Telephone.....

Email .....

**SCHEDULE OF SERVICES**

**SERVICES:**

The Services to be provided are (Clause 1(i)) <sup>a</sup>

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## SCHEDULE OF SERVICES

Data and Information (Clause 2(ii)) <sup>b</sup>

Programme (Clause 1(ii)) <sup>c</sup>

Commencement Date.....

**FEES AND EXPENSES:**

Payment of fees and expenses for the Services shall be (Clause 2(i)) <sup>d</sup>

.....  
.....

Calculation of any additional payment (Clause 2(iii)) <sup>e</sup>

.....  
.....  
.....

**PAYMENT:**

Final date for payment (Clause 3(ii)).....

**LIMITATION OF LIABILITY AND INSURANCE:**

The total aggregate limit of liability of the Consultant shall not exceed (Clause 4(i)) (£ ).....

**EXCLUDED MATTERS (Clause 4(ii))**

The Consultant's liability in respect of

Asbestos.....shall not exceed (£ ) in the aggregate/is excluded

Terrorism.....Shall not exceed (£ ) in the aggregate/is excluded

Pollution and Contamination.....Shall not exceed (£ ) in the aggregate/is excluded

Length of liability period (Clause 4(iii)).....

Amount of public liability insurance (Clause 4(iv)) (£ ).....

Amount of professional indemnity insurance (Clause 4(iv)) (£ ).....

**ADJUDICATION PROCEDURE**

The Adjudication Procedure is (Clause 7(ii)) .....

**JURISDICTION**

Governing Law – Law of the Agreement (England\Scotland\Other) (Clause 8(iii)).....

Any applicable third party law or statute (Clause 8(ii)).....

**NOTES:**

<sup>a</sup> A clear description of the Services the Consultant is required to deliver under the Agreement and their intended use should be provided

Project objectives should be clearly defined and Client need made clear. If a risk assessment is necessary details of resources to deliver the assessment should be provided

Highlight any obligations relating to handover, post occupancy evaluation, operational input and aftercare in use. Clarify what they cover and whether they form part of the Services. This should include the amount of attendance, number of site visits (if required) and client meetings. Identify any named individuals and specified resource that will be needed.

<sup>b</sup> *Data and information to be provided by the Client should be identified here*

<sup>c</sup> *Any programme for the performance of the Services and agreed with the Consultant should be described here or attached*

<sup>d</sup> *State whether the fee is to be a lump sum and the amount of that sum, a percentage of the construction cost and how this is to be paid or a time charge (identifying the hourly or daily rates for those performing the Services). Also itemise any expenses, disbursements and additional Services not included in the fee*

<sup>e</sup> *Set out the basis of calculation of any additional payments made under Clause2(iii)*

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