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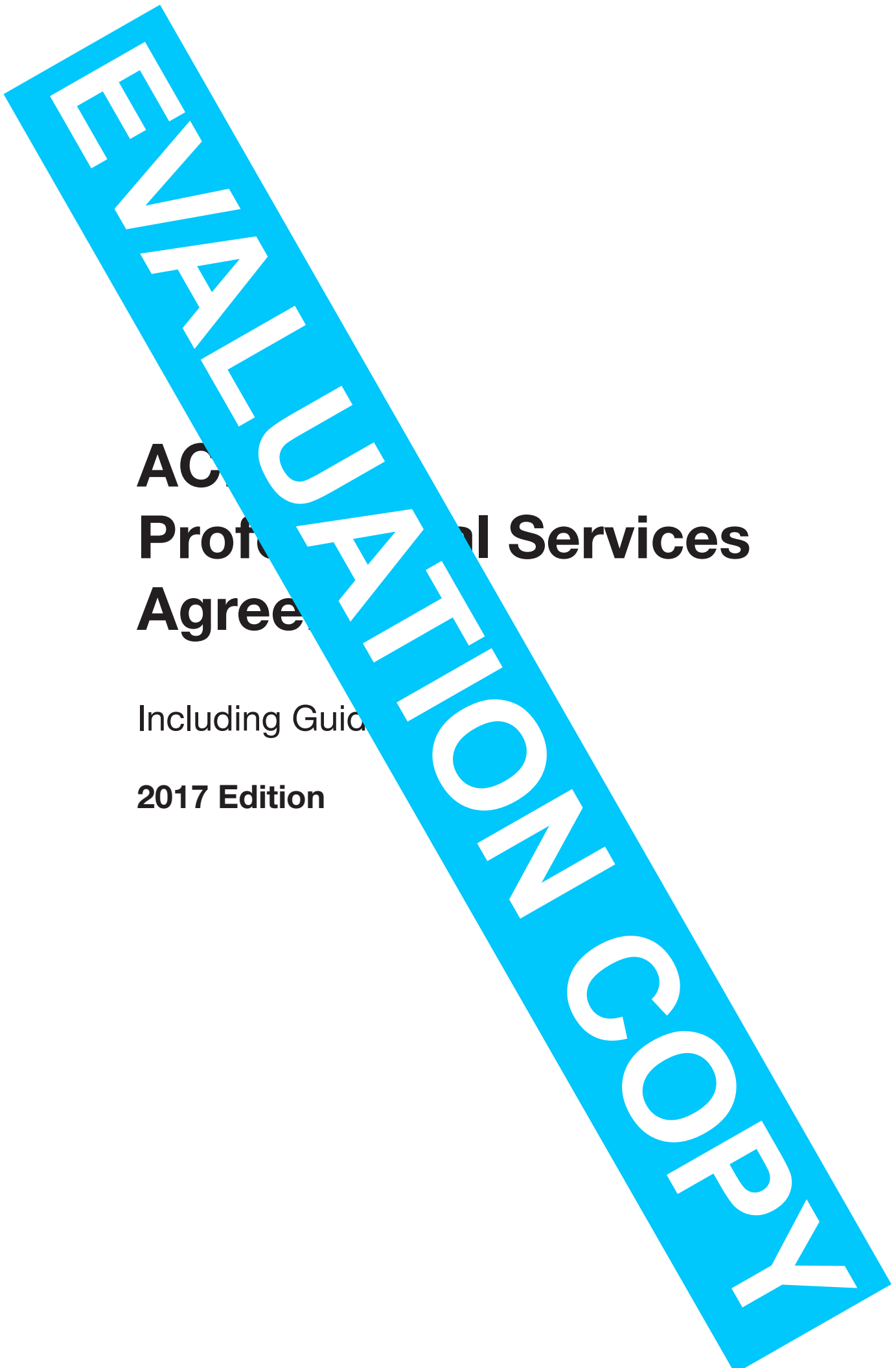
ACE Professional Services Agreement

Incidence Notes
Edition

**ACCA
Professional Services
Agreement**

Including Guidance

2017 Edition



PROFESSIONAL SERVICES AGREEMENT

The following forms of Agreement are recognised as beneficial to all within the supply chain.

The Agreement is part of a suite of standard forms of Agreement which has been developed by ACE representatives. The Agreement includes a form of Collateral Warranty designed for use with the Agreement requested. Guidance Notes (which do not form a part of the Agreement and are not intended to assist users to both complete the Agreement and gain a broad understanding of its use. The Agreement can accommodate any agreed BIM protocol.

The Agreement can be used where a Consultant intends to appoint a Consultant to design permanent Works and subsequently employ a Contractor to construct or install such permanent Works and also where a Contractor employs a Consultant to design permanent Works designed by that Consultant. It can be used where the applicable law is that of England and Wales, Northern Ireland or Scotland and separate attestation clauses are included to facilitate its use.

ACE also publishes Schedules of Work for Structural engineering and Mechanical and Electrical engineering for use with the Agreement.

ABOUT ACE

ACE represents the business interests of the consulting industry in the UK with members of all sizes operating across many different disciplines. For more information on ACE, its activities and its membership see www.acenet.co.uk or contact:

Association for Consultancy and Engineering
Alliance House, 12 Caxton Street, London, SW1H 0QL
Tel: 020 7222 6557 or consult@acenet.co.uk

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For details of amendments and updates contact ACE as above.

ACE can accept no liability in respect of any use to which the Agreement is put.

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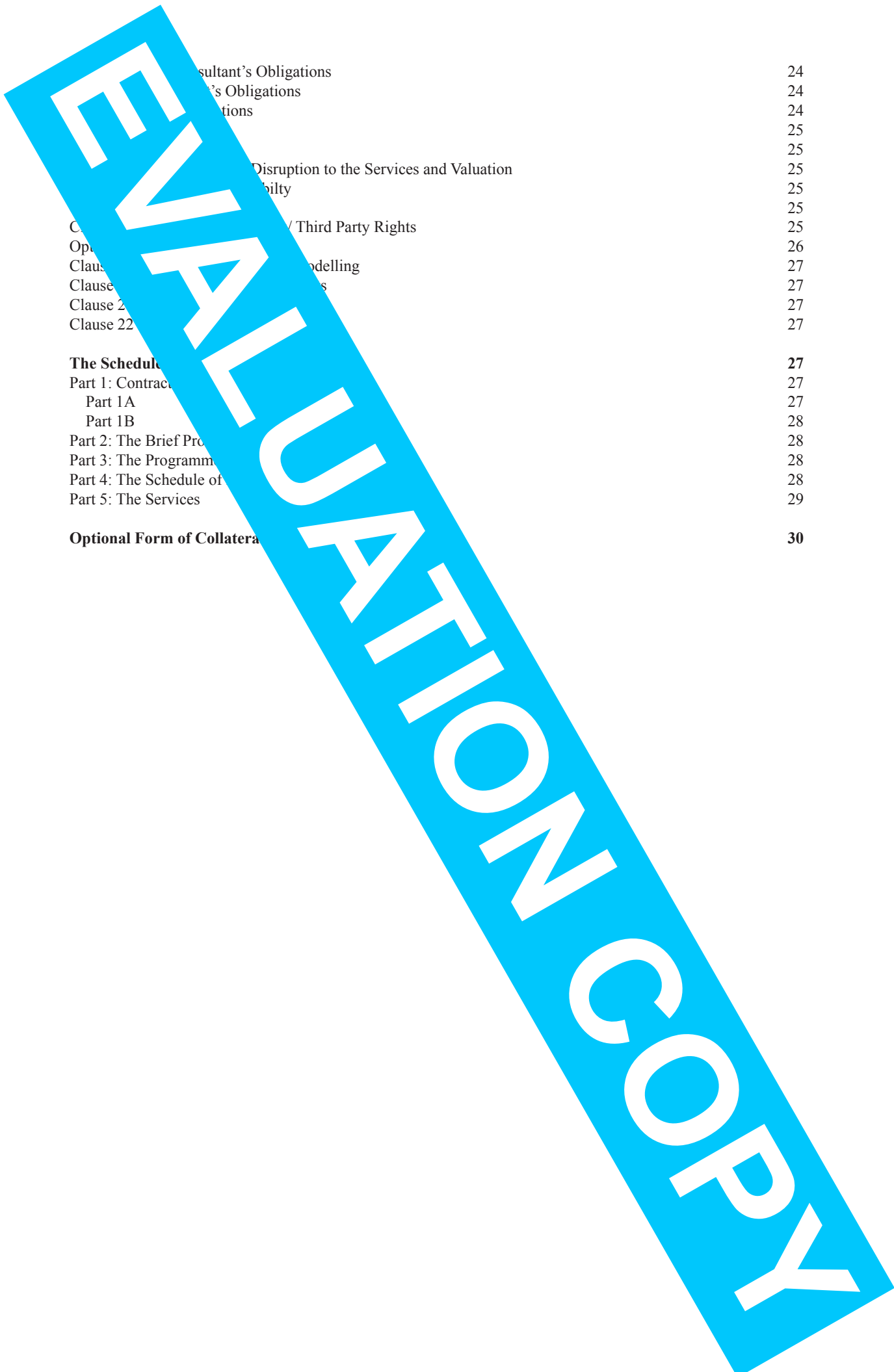
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Table of Contents

1. Agreement	1
1.1. Details, project title and appointment of Consultant)	1
2. Project	2
2.1. Description of the Project	2
2.2. Location	3
2.3. Duration	4
2.4. Objectives	5
2.5. Scope of Work	5
2.6. Services	5
2.7. Payment	6
2.8. Variation of Services and Valuation	6
2.9. Intellectual Property	7
2.10. Liability	7
2.11. Insurance	8
2.12. Assignment	8
2.13. Commencement	9
2.14. Collateral Warranties	10
2.15. Notices	10
2.16. Disputes and Difficulties	10
2.17. Building Information	11
2.18. Anti-Bribery Requirements	11
2.19. General	11
2.20. Entire Agreement	11
2.21. Form of Agreement	12
2.22. Supplementary Clauses	12
Execution (signing) of Agreement	12
Alternative for Execution in Scotland	14
Schedule	15
Part 1A: Contract Details (for use where the Contract is to be executed in England, Wales and Northern Ireland)	15
Part 1B: Contract Details (for use where the Contract is to be executed in Scotland)	17
Part 2: The Brief Provided by the Client	19
Part 3: The Programme for the Services	20
Part 4: The Fees	20
Section 1 – Payment of fees on a time basis	20
Section 2 – Payment of fees on a lump sum basis	21
Section 3 – Payment of fees on a percentage basis	21
Section 4 – Payment of fees shall be on the following basis	22
Section 5 – Payment of fees for additional work or disruption	22
Section 6 – Payment of fees if the Consultant arranges for the provision of	22
others of Services set out in Part 5 of the Schedule	22
Section 7 – Reimbursement of Local Authority charges	22
Section 8 – Payment of expenses	22
Section 9 – Collateral warranties	23
Part 5: The Services	23
Guidance Notes	24
Completing the Agreement and Information on the Project	24
The Terms of the Contract	24

Consultant's Obligations	24
Client's Obligations	24
Indemnification	24
Force Majeure	25
Termination / Disruption to the Services and Valuation	25
Liability	25
Assignment / Third Party Rights	25
Optional Form of Collateral	26
Clause 1.1 - Introduction	27
Clause 1.2 - Definitions	27
Clause 2.1 - Services	27
Clause 2.2 - Performance	27
The Schedule	27
Part 1: Contract	27
Part 1A	27
Part 1B	28
Part 2: The Brief Project	28
Part 3: The Programme	28
Part 4: The Schedule of Services	28
Part 5: The Services	29
Optional Form of Collateral	30



PROFESSIONAL SERVICES AGREEMENT

..... day of 20.....*

DE BETWEEN

..... (“the Client”)

Wh

and

..... (“the Consultant”)

Whose address is

PROJECT TITLE:

The Client appoints the Consultant to provide the (Agreement) and the Consultant accepts the appointment subject to and in accordance with the terms of the Agreement.

**Not required if Agreement executed in Scotland*



1.1 DEFINITIONS OF THE CONTRACT

1.1.1 INTERPRETATION

1.1

The following definitions shall apply throughout this Agreement and have the meanings assigned to them unless otherwise stated.

Brief A description of the requirements for the Works (which may also include information on the Project), detailed in Part 2 of the Schedule.

Client As identified in Part 1 of the Schedule.

Consultant As identified in Part 1 of the Schedule.

Consultant's Intellectual Property

Any and all intellectual and industrial property (including (without limitation) patents, trademarks, service marks, registered designs, copyright, design rights, moral rights or know-how, howsoever arising, whether or not registered) and rights in any country and any applications for the registration or protection of such rights in any country, created, developed, embodied in or in connection with any work or information prepared by or on behalf of the Consultant in the performance of the Services.

Consultant's Personnel

Any employee or member of the Consultant, director of a company or a member of a limited liability partnership or self-employed person acting for the Consultant.

Contractor

Any contractor appointed by the Client to manage, execute or procure the execution of all or part of the Project and/or the Works and to coordinate and procure the co-ordination and supervision of such execution as identified in Part 1 of the Schedule.

Employer

The person or firm, if any, identified in Part 1 of the Schedule.

Insolvency

Either party becoming bankrupt, going into liquidation (either as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, ceasing to exist or having a receiver, an administrative receiver or an administrator appointed (or to appoint an administrator) in respect of the whole or any part of its assets or having proceedings taken, with respect to it in any jurisdiction to which it is subject that has an effect similar to any of the events mentioned in this Clause.

Lead Consultant

The person or firm identified as Lead Consultant in Part 1 of the Schedule.

Notice

A Notice given in accordance with Clause 15.

Other Consultants

Persons or firms (other than the Consultant and the Lead Consultant if the Consultant is not a company) appointed or to be appointed by the Client to perform professional services in relation to the Works.

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the Client and the Consultant and Party means either of them.

attached to or included in Part 3 of the Schedule to this Agreement which may be updated by

of the Schedule.

which forms part of this Agreement.

As described in Part 3 of the Schedule.

Site

As described in Part 3 of the Schedule.

Site Staff

Any person employed by the Consultant in accordance with Clause 6 including any staff of the Consultant employed on Site or in premises outside the Site to perform work in connection with the Project and/or the Works on a full time or part time basis.

Works

As described in Part 3 of the Schedule.

2. CONSULTANT'S OBLIGATIONS

Skill and Care

2.1(i) The Consultant shall provide the Services in accordance with this appointment. In providing the Services the Consultant shall exercise the reasonable skill and care appropriate to a consultant qualified in the relevant discipline engaged in the performance of similar nature, size and complexity to the Project.

2.1(ii) Exercising the reasonable skill, care and attention required in Clause 2.1(i) the Consultant shall not specify or approve for use any products or materials known by consultants of the Consultant's discipline to be deleterious, in the particular circumstances specified for use, to health and safety and/or the durability of buildings or structures.

Programme/Timeliness

2.2 The Consultant shall use reasonable endeavours to complete the Services in accordance with any Programme or any variation to that Programme agreed with the Client. If there is no such Programme then in accordance with any programme submitted to and accepted by the Client.

Client Instructions

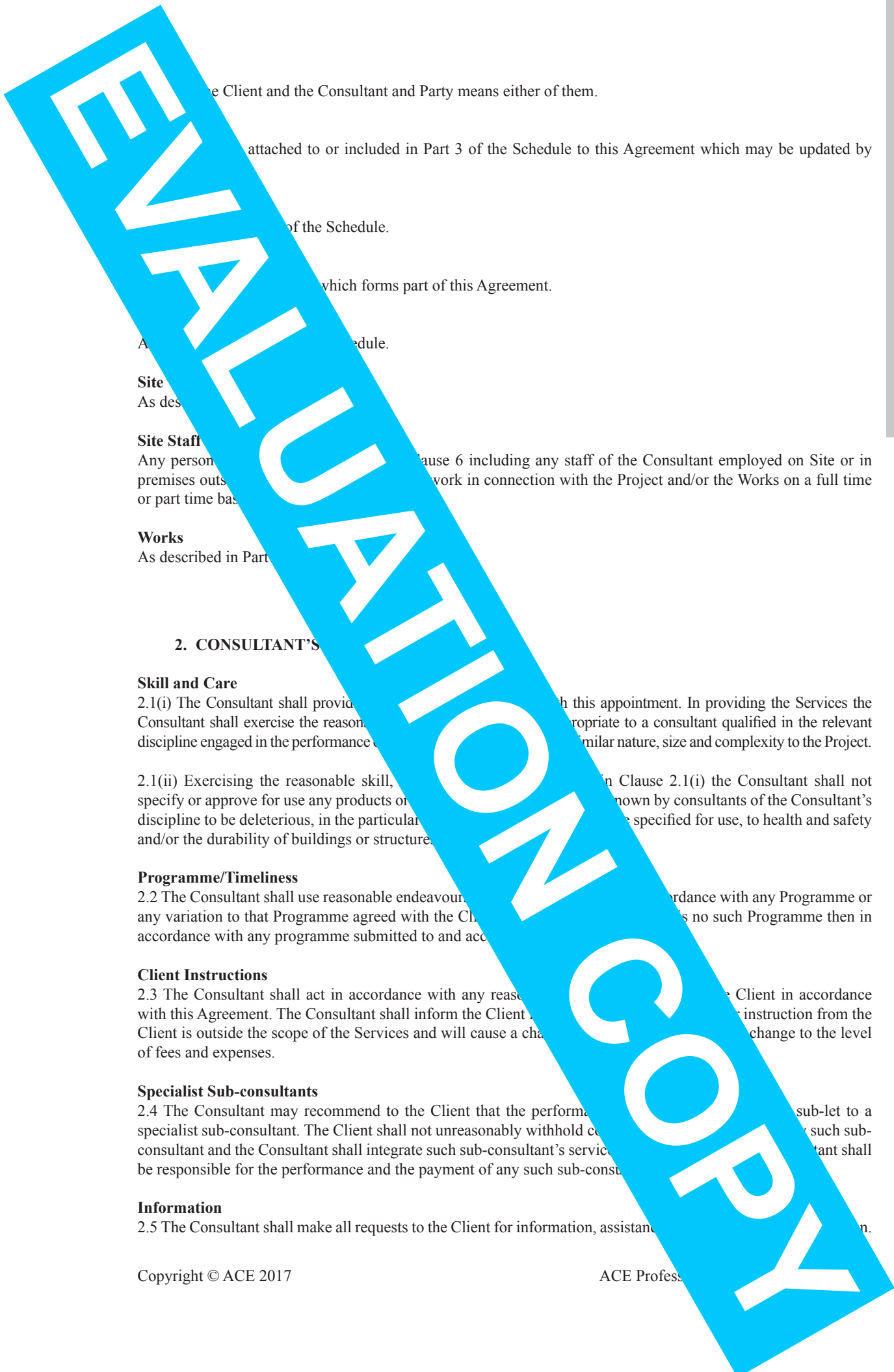
2.3 The Consultant shall act in accordance with any reasonable instructions of the Client in accordance with this Agreement. The Consultant shall inform the Client if an instruction from the Client is outside the scope of the Services and will cause a change to the level of fees and expenses.

Specialist Sub-consultants

2.4 The Consultant may recommend to the Client that the performance of the Services be sub-let to a specialist sub-consultant. The Client shall not unreasonably withhold consent to such sub-consultant and the Consultant shall integrate such sub-consultant's services into the Services. The Consultant shall be responsible for the performance and the payment of any such sub-consultant.

Information

2.5 The Consultant shall make all requests to the Client for information, assistance and resources.



shall not alter the design to any material extent once the design has been approved by the Consultant's further written approval. Except in an emergency the Consultant shall not, without the Client's consent, issue instructions the effect of which would be to alter any design already approved by the Client or to incur additional cost to the Client in connection with the execution of the Project or to exceed the limits set out in the Schedule on any one occasion beyond any limits set out in the Schedule.

2.7 The Client shall appoint a Consultant's Representative who shall be named in Part 1 of the Schedule who shall have authority to act on behalf of the Consultant.

The Consultant shall by notice inform the Client if any authority is to be delegated and to whom but shall not do so without the Client's consent which shall not be unreasonably delayed or withheld.

Consultant's Representative
2.8 The Consultant shall, without prior agreement to act as agent for the Client in arranging for the performance by any person or persons of any of the services specified in the Schedule stated to be arranged by the Consultant. The Client shall pay direct to such person or persons their fees and expenses for performance of such services.

Discretion
2.9 The Consultant shall, in the performance of the Services, exercise any discretion required in a fair, impartial and professional manner.

3. CLIENT'S OBLIGATIONS

Payment
3.1 The Client shall pay the Consultant the fees and expenses set out in Part 4 of the Schedule for the performance of the Services the fees and expenses set out in Part 4 of the Schedule.

Information and Instructions
3.2 The Client shall supply the Consultant with all information, documents and relevant data in its possession or in the possession of any of its Contractors, subcontractors, consultants and advisors in a timely manner and provide all instructions, decisions, consents or approvals in a timely manner to avoid delay to the performance of the Services.

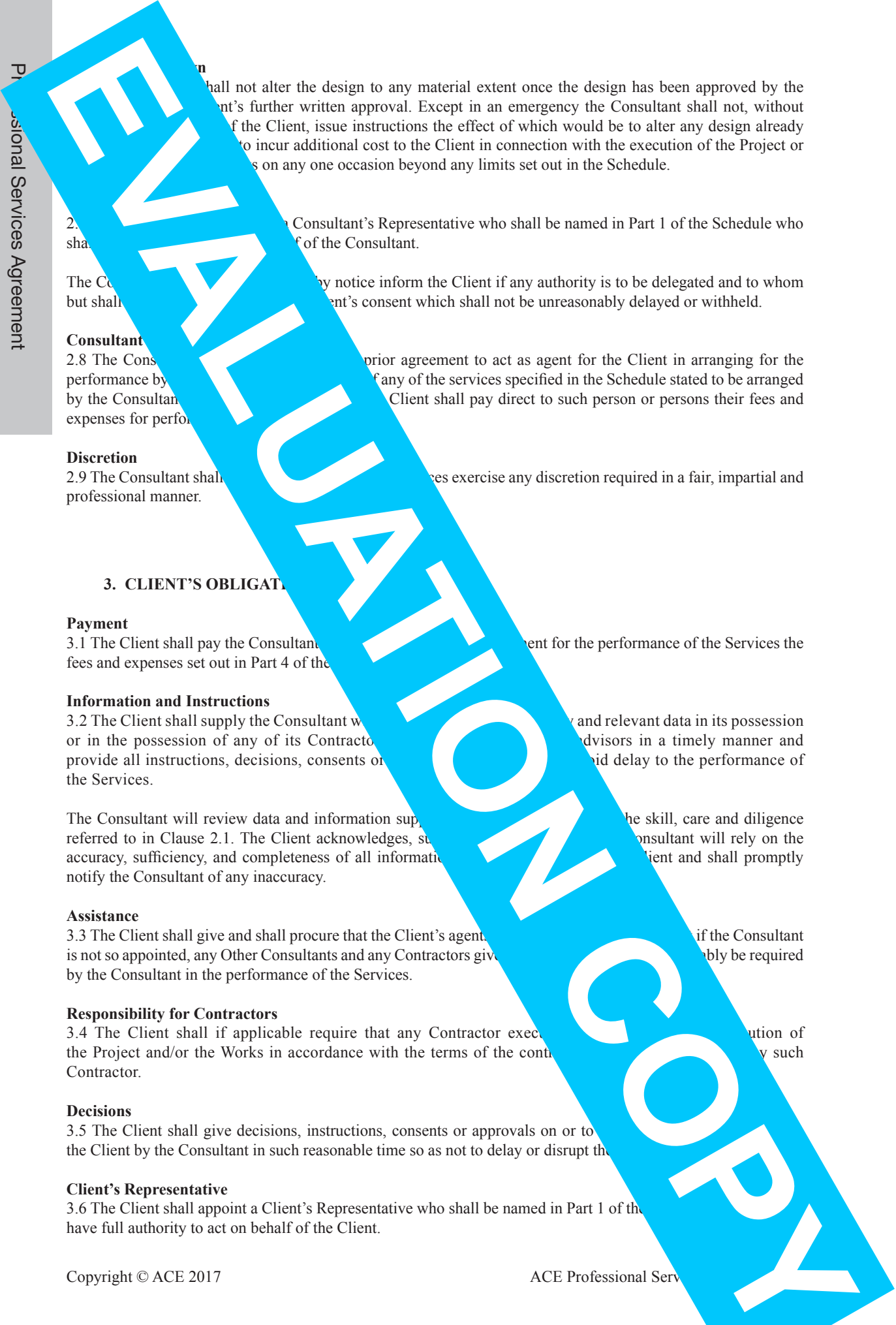
The Consultant will review data and information supplied to it and will rely on the skill, care and diligence referred to in Clause 2.1. The Client acknowledges, understands and warrants that the Consultant will rely on the accuracy, sufficiency, and completeness of all information supplied to it by the Client and shall promptly notify the Consultant of any inaccuracy.

Assistance
3.3 The Client shall give and shall procure that the Client's agents, employees, subcontractors, if the Consultant is not so appointed, any Other Consultants and any Contractors give the Consultant all assistance reasonably required by the Consultant in the performance of the Services.

Responsibility for Contractors
3.4 The Client shall if applicable require that any Contractor execute the Works in accordance with the terms of the contract for the Project and/or the Works in accordance with the terms of the contract for the Project by such Contractor.

Decisions
3.5 The Client shall give decisions, instructions, consents or approvals on or to the Consultant in such reasonable time so as not to delay or disrupt the performance of the Services.

Client's Representative
3.6 The Client shall appoint a Client's Representative who shall be named in Part 1 of the Schedule who shall have full authority to act on behalf of the Client.



JOINT OBLIGATIONS

Each Party shall in the performance of their obligations under this Agreement collaborate in a spirit of trust and in the interests of the timely, economic and successful completion of the Project.

Each Party shall each give Notice to the other as soon as they become aware of any matter which is likely to affect the performance of the Services, including delay and additional costs, irrespective of whether the matter is covered by any relief under this Agreement. Upon the giving of such Notice by either Party the Parties shall engage in discussions or if appropriate arrange a meeting of appropriately authorised representatives to discuss the matter and to take such measures in response to the matters so notified and for avoiding or mitigating any such matters, provided that

Such measures so agreed shall be put in writing and, when signed by the Client and the Consultant, shall be binding on the Parties

Such measures shall include matters of payment and/or adjustment to the Programme, provided that such measures shall be deemed to be in full satisfaction of any claim by either Party arising from the matters included in the agreement

(iii) Where the matter is (i) but does not include matters of payment and/or adjustment to the Programme, the Parties shall in respect of the matters agreed shall continue to be governed by the terms of the Agreement

(iv) Where the matter is (i) the Client shall issue such instructions as are appropriate.

5. RISK

The Consultant and the Client shall identify, assess and manage any risks which may occur during the delivery of the Services and shall bear the risks including any associated costs.

6. SITE STAFF

Provision of Site Staff

6.1 If in the opinion of the Consultant it is necessary for the Consultant to warrant full time or part time Site Staff to be deployed at any stage the Client shall consent to the employment and/or deployment of such reasonably qualified Site Staff as the Consultant shall advise. The Client and the Consultant shall discuss the requirements in advance of such deployment including the number and levels of staff to be deployed, the frequency of such deployments, the frequency of occasional visits, the duties to be performed and whether Site Staff shall be employed by the Consultant or by the Client.

Site Staff employed by the Client

6.2 The Client shall procure that the contracts of employment for Site Staff employed by the Client empower the Consultant to issue instructions to such staff in relation to the performance of the Services and that staff so employed shall in no circumstances take or act upon instructions in conflict with those given by the Consultant.

Responsibility of Site Staff

6.3 The Consultant shall not be responsible for any failure on the part of Site Staff other than by the Consultant to comply with any instructions given by the Consultant.

Facilities and arrangements for Site Staff

6.4 The Client shall be responsible for the cost and provision of such facilities as furniture, telephones and facsimile apparatus and other office equipment, protective clothing as shall reasonably be required for the use of Site Staff and for the reasonable running and maintenance of such facilities, including those of stationery, telephone and data charges and

Expenses

to the Consultant the fees for the performance of the Services in accordance with the and as set out in Part 4 of the Schedule. If not set out in the Schedule the fees and other agreement shall be paid in equal instalments at monthly intervals.

The Client shall pay the Consultant's expenses and disbursements reasonably and the Services in accordance with Part 4 of the Schedule.

Payment

7.2 In all payments to be made under this Agreement, the Client shall pay the Consultant for all Site Staff unless otherwise agreed. Payment for Site Staff shall be on a time basis and at the rates of Part 4 of the Schedule.

Payment Notice

7.3 The Consultant shall issue a "Payment Notice" (which may be the Consultant's invoice) to the Client for each instalment of the Services under this Agreement. Each Payment Notice or invoice shall specify the sum that the Client is to pay on the payment due date under Clause 7.4 and the basis on which that sum is calculated.

Due Date

7.4 Payment shall be due on the date specified in the Payment Notice.

Final Date for Payment

7.5 The final date for payment shall be the date or such other period as may be specified in the Schedule.

Payment

7.6 On or before the final date for payment the Client shall pay to the Consultant the sum stated as due in the Consultant's Payment Notice issued under Clause 7.3 (the "Notified Sum") or the sum that the Client considers to be due as specified in any Pay Less Notice.

Pay Less Notice

7.7 Not later than seven days before the final date for payment the Client shall give the Consultant a Notice that it intends to pay less than the Notified Sum (a "Pay Less Notice"). The Pay Less Notice shall specify the sum that the Client considers to be due on the date the Notified Sum is due and the basis on which that sum is calculated.

Value Added Tax

7.8 All sums due to the Consultant under this Agreement shall be inclusive of Value Added Tax which shall be paid by the Client in addition to those sums.

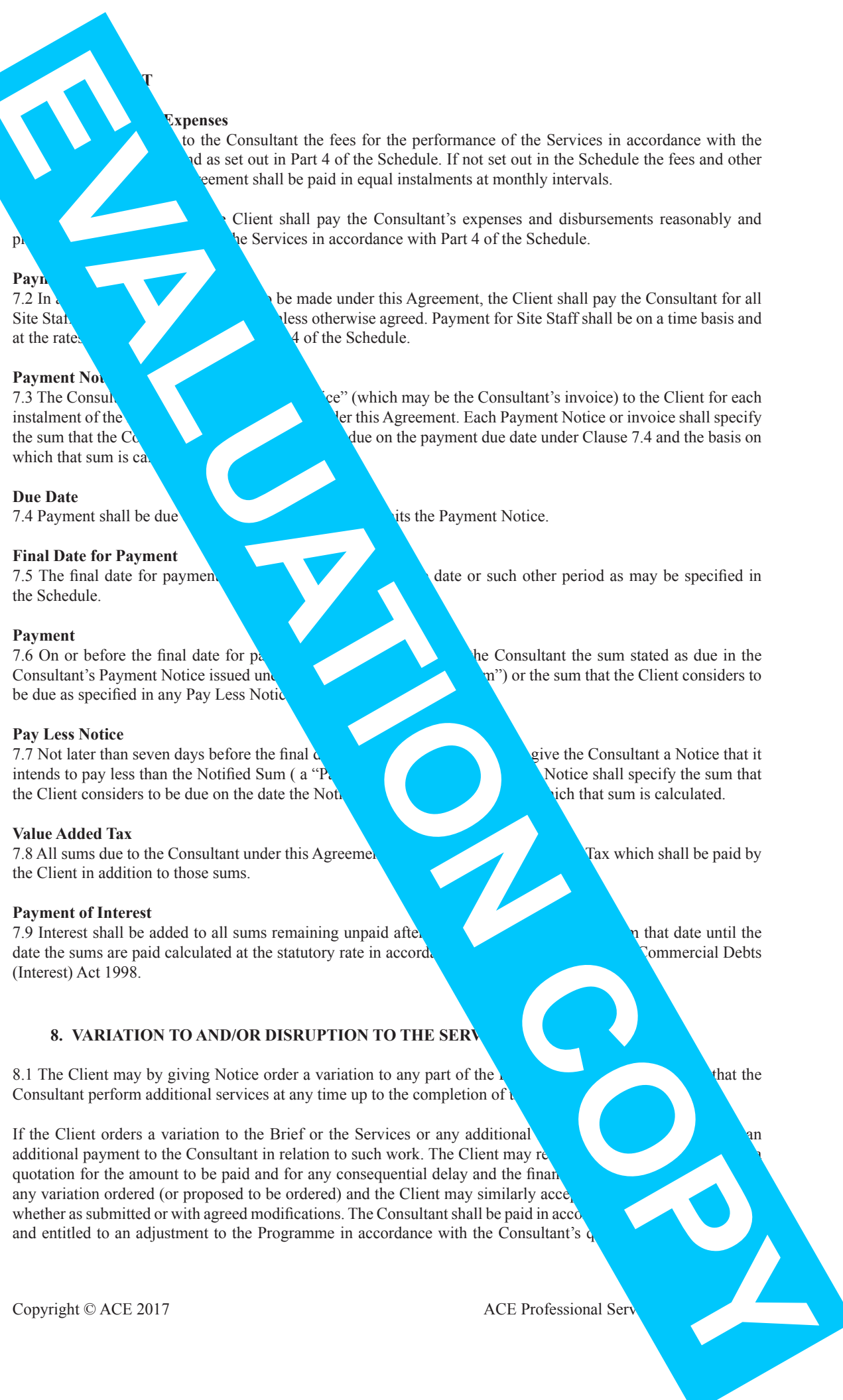
Payment of Interest

7.9 Interest shall be added to all sums remaining unpaid after the final date for payment from that date until the date the sums are paid calculated at the statutory rate in accordance with the Commercial Debts (Interest) Act 1998.

8. VARIATION TO AND/OR DISRUPTION TO THE SERVICES

8.1 The Client may by giving Notice order a variation to any part of the Services or that the Consultant perform additional services at any time up to the completion of the Services.

If the Client orders a variation to the Brief or the Services or any additional services the Client shall make an additional payment to the Consultant in relation to such work. The Client may request a quotation for the amount to be paid and for any consequential delay and the financial impact of any variation ordered (or proposed to be ordered) and the Client may similarly accept or reject any variation whether as submitted or with agreed modifications. The Consultant shall be paid in accordance with the Schedule and entitled to an adjustment to the Programme in accordance with the Consultant's quotation.



and shall have no further entitlement in regard to such variation. If no quotation is requested or agreed payment shall be calculated on a time basis as set out in Part 4 of the Schedule.

Disruption of the Consultant's work

The Consultant shall inform the Client if it appears that the Consultant has to carry out additional work and/or in the performance of the Services because

by the Client in fulfilling any of the Client's obligations or in taking any other step necessary continuation of the Project or the Works or

is delayed by others or by events that were not reasonably foreseeable or

the Works are damaged or destroyed or

beyond the control of the Consultant.

The Consultant shall be entitled to an additional payment to the Consultant in respect of the additional work carried out and and/or the disruption suffered together with any relevant adjustment to the Programme. Additional payment shall be calculated (unless otherwise agreed) on a time basis as set out in Part 4 of the Schedule. If requested by the Client the Consultant shall give an initial estimate for the additional work and take reasonable measures to minimise any additional costs and time taken to carry out the Works.

Consultant's Breach

8.3 The Consultant shall not be entitled to an additional payment or adjustment to the Programme to the extent that any varied or additional work is the result of the Consultant's failure to deliver the Services in accordance with the Programme or the Consultant's breach of any of its terms.

9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

Consultant's Intellectual Property

9.1 The Consultant's Intellectual Property shall be owned and controlled by the Consultant.

9.2 The Client has a licence to use the Consultant's Intellectual Property information issued to the Client by the Consultant for any purpose relating to completion of the Works in relation to the Client, the operation of the Project.

9.3 The licence shall enable the Client to use the Consultant's drawings, documents and information and to grant sub-licences for an extension to the Project. The Client shall not use the designs contained within it for any extension of the Project.

9.4 Except as stated above the Client shall not use the Consultant's drawings, designs or other documents or information nor use any of the Consultant's Intellectual Property for other projects or works without the Consultant's prior written approval.

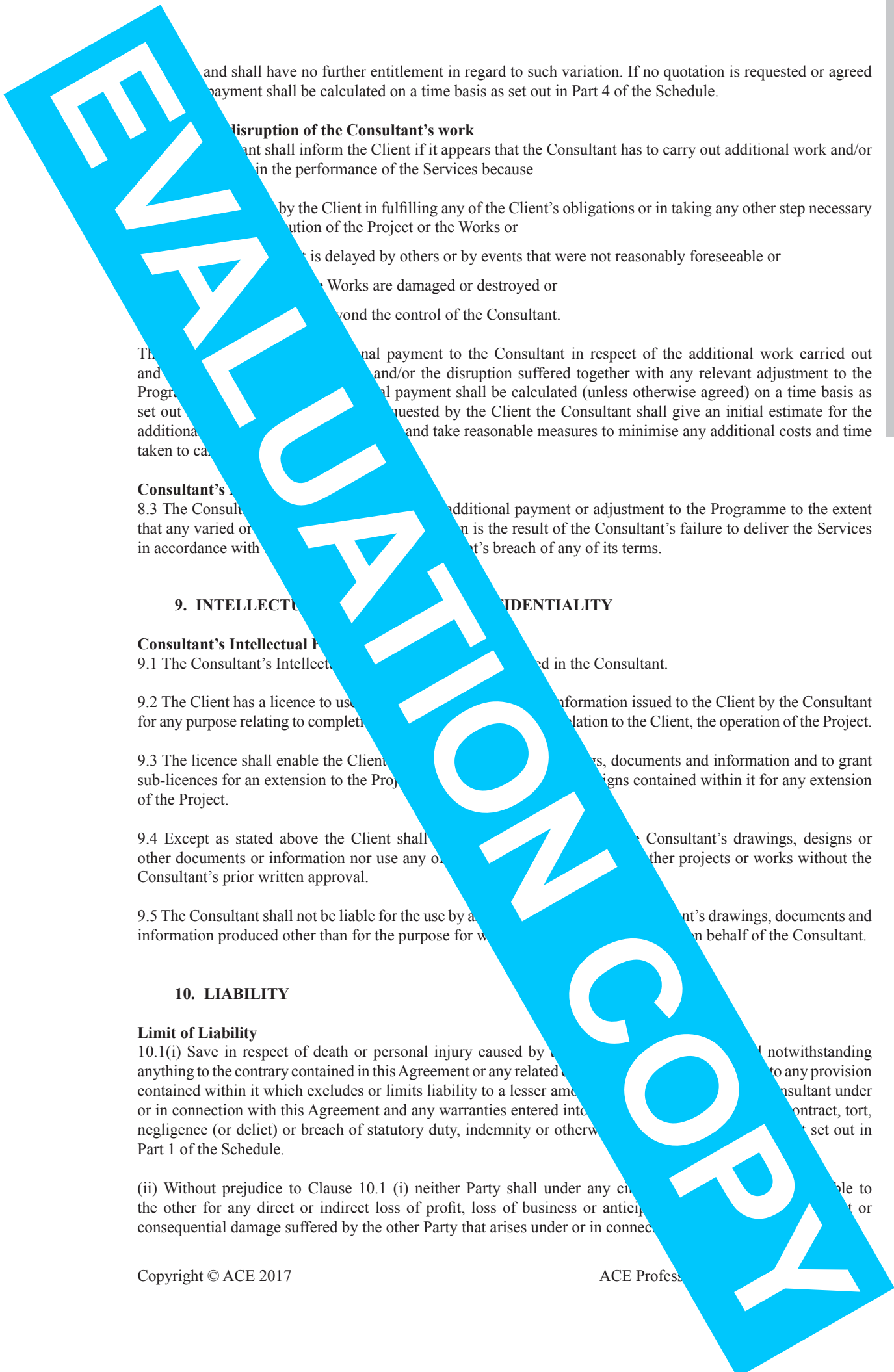
9.5 The Consultant shall not be liable for the use by a third party of the Consultant's drawings, documents and information produced other than for the purpose for which they were produced on behalf of the Consultant.

10. LIABILITY

Limit of Liability

10.1(i) Save in respect of death or personal injury caused by negligence, neither Party shall be liable notwithstanding anything to the contrary contained in this Agreement or any related agreement for or in connection with this Agreement and any warranties entered into under or in connection with this Agreement and any warranties entered into under or in connection with this Agreement, contract, tort, negligence (or delict) or breach of statutory duty, indemnity or otherwise for any direct or indirect loss of profit, loss of business or anticipated consequential damage suffered by the other Party that arises under or in connection with this Agreement. The limit of liability shall be set out in Part 1 of the Schedule.

(ii) Without prejudice to Clause 10.1 (i) neither Party shall under any circumstances be liable to the other for any direct or indirect loss of profit, loss of business or anticipated consequential damage suffered by the other Party that arises under or in connection with this Agreement.



of personal injury or death the Consultant's liability in respect of the following matters (the "Excepted Matters") whether in contract, tort, negligence (or delict), breach of statutory duty or otherwise is set out in the Schedule namely

termination.

If the Consultant's liability in respect of any of the Excepted Matters is excluded, the relevant Excepted Matters are omitted from the Schedule and the Consultant shall have no responsibility for advising or providing any Services in respect of the relevant Excepted Matters.

Liability

10.2 If the Consultant is jointly with third parties to the Client the proportion of compensation payable by the Consultant shall be a just and equitable proportion of liability which is attributable to the Consultant on the basis that the relevant third parties have paid a just and equitable proportion having regard to their respective responsibility. The Consultant's liability shall be limited to and form a part of the total agreed liability set out in Part 1 of the Schedule.

Liability of Employees

10.3 Save in respect of death or personal injury the Client shall only look to the Consultant (and not to any of the Consultant's Personnel) in respect of claims that there has been a breach of this Agreement. The Client agrees not to pursue any claim in tort or statute (including negligence or delict) against any of the Consultant's Personnel as a result of the Consultant's obligations under or in connection with this Agreement at any time and where the Consultant's Personnel is named expressly in this Agreement.

Limitation of time within which

10.4 Save in respect of death or personal injury proceedings under or in respect of this Agreement whether in contract, in tort, in negligence or breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of the period set out in Part 1 of the Schedule or such earlier date as may be prescribed by law.

11. INSURANCES

Public liability and professional indemnity insurance

11.1 The Consultant shall maintain public liability and professional indemnity insurances in the amounts and for the length of time sufficient to cover the Consultant's liability under this Agreement or in such amounts as the Parties may agree in writing in Part 1 of the Schedule. The Consultant shall ensure that such insurances are available at commercially reasonable rates and subject to any exclusions and limitations to the scope of cover that are commonly included in such insurances at the time they are taken out or renewed as the case may be.

The Consultant shall immediately inform the Client if such professional indemnity insurances are to be available on the terms required by this Clause at commercially reasonable rates. The Consultant shall discuss means of best protecting their respective positions in the absence of such indemnity insurance.

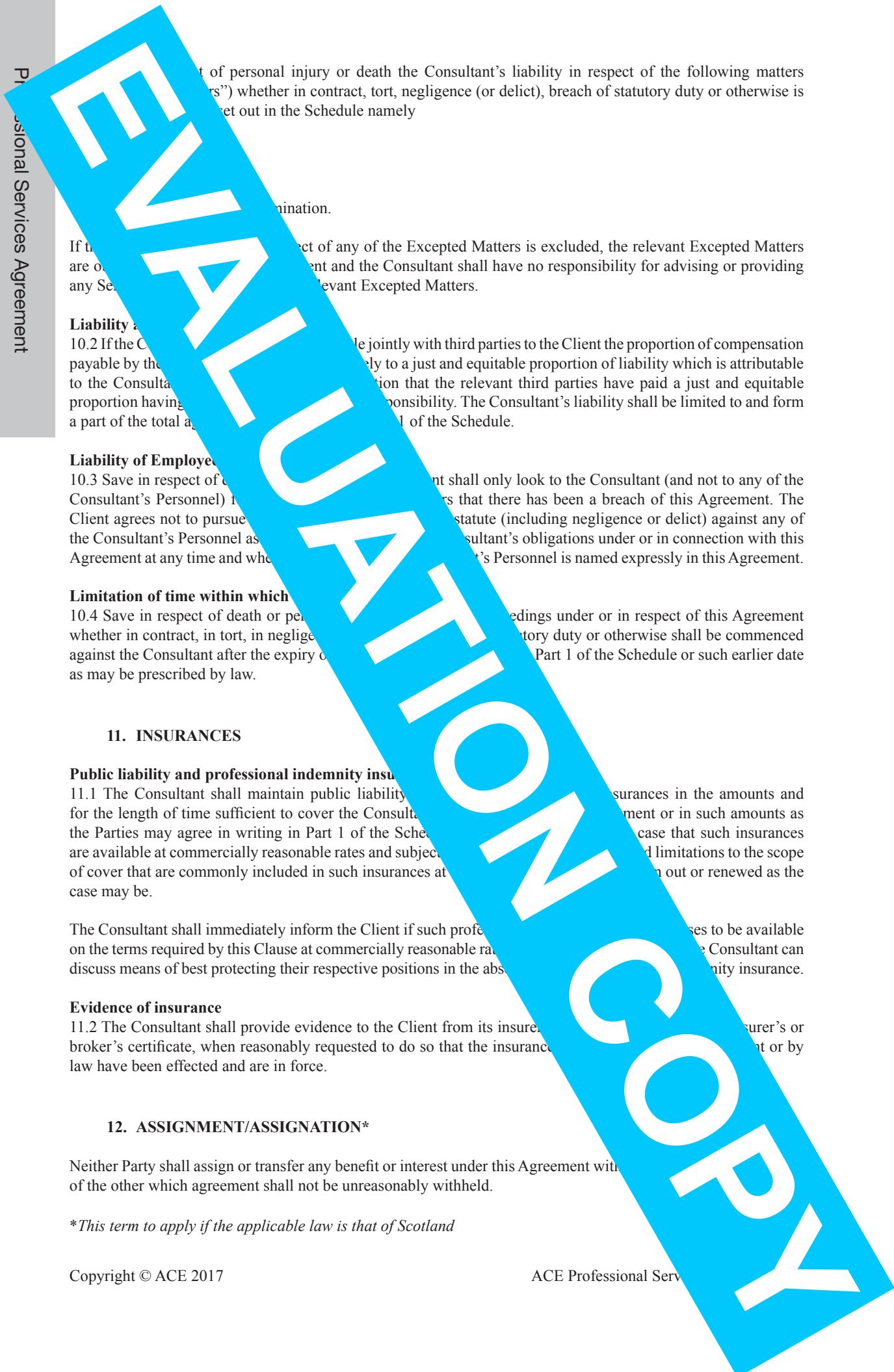
Evidence of insurance

11.2 The Consultant shall provide evidence to the Client from its insurer, broker or reinsurer's or broker's certificate, when reasonably requested to do so that the insurance cover required by this Clause or by law have been effected and are in force.

12. ASSIGNMENT/ASSIGNATION*

Neither Party shall assign or transfer any benefit or interest under this Agreement with the consent of the other which agreement shall not be unreasonably withheld.

**This term to apply if the applicable law is that of Scotland*



COMMENCEMENT, SUSPENSION AND TERMINATION

Appointment

13.1 This Agreement shall apply from the date upon which the Agreement was executed by the Parties or the Consultant first commences performance of the Services, whichever is the earlier. Completion shall mean when all Services required under the Agreement have been delivered in accordance with its terms.

Client

13.2 At any time, by Notice require the Consultant to suspend the performance of all or any part of the Services. Upon the issue of such Notice the Consultant shall cease such Services in a manner consistent with a suspension of performance provided that

(a) if the duration of the performance of part or all of the Services exceeds 39 weeks in aggregate the Consultant, upon giving four weeks' Notice, treat that part of the Works or Project to which such Services relate as completed and the Consultant's appointment in respect of them automatically terminated

(b) in the event of suspension the Client shall pay the Consultant

(c) the fees due but unpaid

(d) a proportion of the next following instalment commensurate with the Services performed up to the date of such suspension

(e) the costs of the Consultant and disbursements together with

(f) interest on the sum specified in (d) and (e) at the rate of 10% per annum calculated on the basis of the loss to the Consultant and the Client in respect of planned future work on the Services as a result of such suspension.

If the Client requests the Consultant to commence the suspended Services prior to any Consultant's Notice served under (j) above, the Consultant shall comply with such Notice as soon as reasonably practicable. The Client shall pay the Consultant the amount of any fees due for the Consultant doing.

Suspension by the Consultant

13.3 The Consultant may upon the occurrence of any circumstance beyond the control of the Consultant which prevents or significantly impedes the performance of the Services, without prejudice to any other remedy and upon the giving of not less than four weeks' Notice in writing and a period of up to twenty-six weeks the performance of the Services in respect of all or such part of the Services as is so affected.

The Consultant may when the period for which it is suspended from performing such Services for reasons beyond the Consultant's control terminates the suspension of the Consultant forthwith by giving a further Notice in respect of all or part of the Services affected.

In the event of such suspension and/or termination the Consultant shall be entitled to the amount of any fees due to the Consultant as stated in Clause 13.2 (ii) (a) – (d) above.

Suspension for Non-Payment

13.4 If the Client does not pay to the Consultant the amount of any fees due as due in a Pay Less Notice in full by the final date for payment, the Consultant may (without prejudice to any other right or remedy) suspend the performance of any or all its obligations under this Agreement upon the giving of not less than seven days' Notice to the Client of its intention to do so and stating the ground on which it is suspending performance.

Where the Consultant exercises its right of suspension under

- (i) the Client shall pay to the Consultant an amount in respect of the fees and disbursements reasonably incurred by the Consultant as a result of the exercise of that right
- (ii) any period during which performance is suspended in pursuance of the exercise of the right of suspension of that right shall be disregarded in computing (for the purposes of Clause 13.2 (ii) (d) and (e)) the time taken by the Consultant or by a third party to complete any part of the Services affected by the exercise of that right (and where a contractual time limit is specified in the Agreement for the completion of a period, the date shall be adjusted accordingly), and
- (iii) The right of suspension in this Clause 13.4 shall cease when the Client has paid to the Consultant the sum specified as due in a Pay Less Notice.

Termination by Client at any time

The Client may terminate the Consultant's appointment in respect of all or any part of the Services at any time by giving two weeks' Notice.

Termination for breach by either Party

Either Party may terminate this Agreement if the other Party is in breach of this Agreement they may give to the other two weeks' Notice of their intention to terminate. The Notice shall set-out the acts and/or omissions relied on as evidence of the breach.

If the Party receiving notice takes expeditious steps to the reasonable satisfaction of the other Party during the notice period, the Party serving notice may forthwith on its expiry and by a further Notice terminate the appointment.

Termination for certain circumstances

13.7 If circumstances arise which the Consultant is not responsible for and which the Consultant considers make it irresponsible to continue to provide all or any part of the Services the Consultant shall be entitled to terminate the appointment by two weeks' Notice in respect of all or such part of the Services.

In the event of such termination the Client shall pay the Consultant on the same basis as in Clause 13.2 (ii) (a) – (d) above.

Termination following insolvency

13.8 In the event of the insolvency of either Party the appointment of the Consultant may be terminated forthwith. Notice of termination shall be given by the Party insolvent by the other Party.

Payment on termination following insolvency

13.9 In the event of any termination of the appointment of the Consultant as a result of a breach by the Consultant or in the event of the Insolvency of either Party the Client shall pay the Consultant a fair and reasonable amount on account of the fees due commensurate with the Services provided up to the date of termination and any outstanding expenses.

Accrued rights on Termination

13.10 Termination of the appointment of the Consultant under this Agreement shall not prejudice or affect the accrued rights or claims of either Party to the date of termination.

14. COLLATERAL WARRANTIES

If stated in this Agreement and when requested by the Client the Consultant shall provide or obtain collateral warranties for the benefit of third parties as specified in Part 1 of the Schedule. Such collateral warranties shall not confer any greater benefit on those third parties than is given to the Client under the terms of this Agreement. The provision of such collateral warranties that all fees due to the Consultant at the date of termination have been paid.

15. NOTICES

Service of Notices

Any Notice to be given under this Agreement shall be in writing and given to the Representative on behalf of the Client or the Consultant's Representative on behalf of the Consultant in any form, including electronic form, provided that a permanent record exists. Notices shall be deemed to have been received.

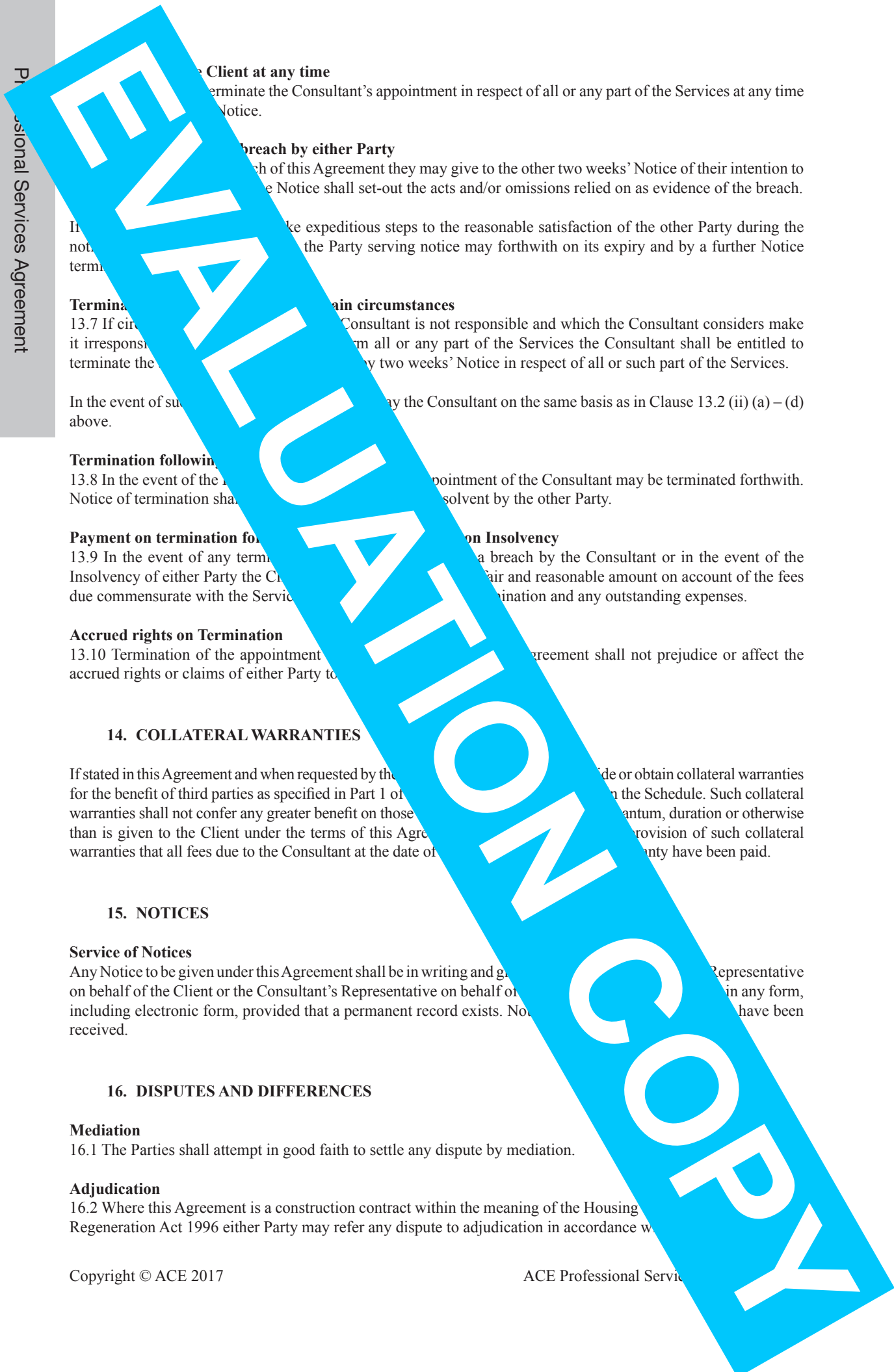
16. DISPUTES AND DIFFERENCES

Mediation

16.1 The Parties shall attempt in good faith to settle any dispute by mediation.

Adjudication

16.2 Where this Agreement is a construction contract within the meaning of the Housing Act 1996 and the Housing Regeneration Act 1996 either Party may refer any dispute to adjudication in accordance with the provisions of the Act.



of the Schedule or if none is so stated the Construction Industry Council Model Adjudication Procedure shall apply at the time of the referral of the dispute. If either Party so requests the adjudicator shall be appointed by the Institution for Consultancy and Engineering.

BIM INFORMATION MODELLING

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 other rights contained within it.

ANTI-BRIBERY REQUIREMENTS

The Consultant shall comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the Bribery Act 2010 and any other applicable law.

Through its policies and procedures the Consultant shall maintain and enforce its own policies and procedures, including those required by the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation. Such policies and procedures shall be determined in accordance with the Bribery Act 2010 (and any guidance issued by the relevant authorities).

The Consultant shall ensure that all persons associated with the Consultant (as defined by Section 2) shall ensure that all persons associated with the Consultant (as defined by Section 2) including any sub-consultants comply with this Clause.

19. GENERAL

19.1 This Agreement is subject to the law of England/Wales/Northern Ireland* and the courts of that country shall have jurisdiction.

This Agreement shall be governed by the law of Scotland and each Party submits to the non-exclusive jurisdiction of the Scottish courts.**

19.2 Where the applicable law is that of Ireland: Save in respect of the benefits or rights conferred on any third party pursuant to Clause 10.3 of the Terms of the Contract nothing in this Agreement shall confer on any third party any benefit or right to enforce any term of this Agreement pursuant to the Statute of Limitations (Amendment) Act 1999 (Third Parties) Act 1999.***

Where the applicable law is that of Scotland: Save in respect of the benefits or rights conferred on any third party pursuant to Clause 10.3 of the Terms of the Contract nothing in this Agreement shall confer on any third party any benefit or right to enforce any term of this Agreement.***

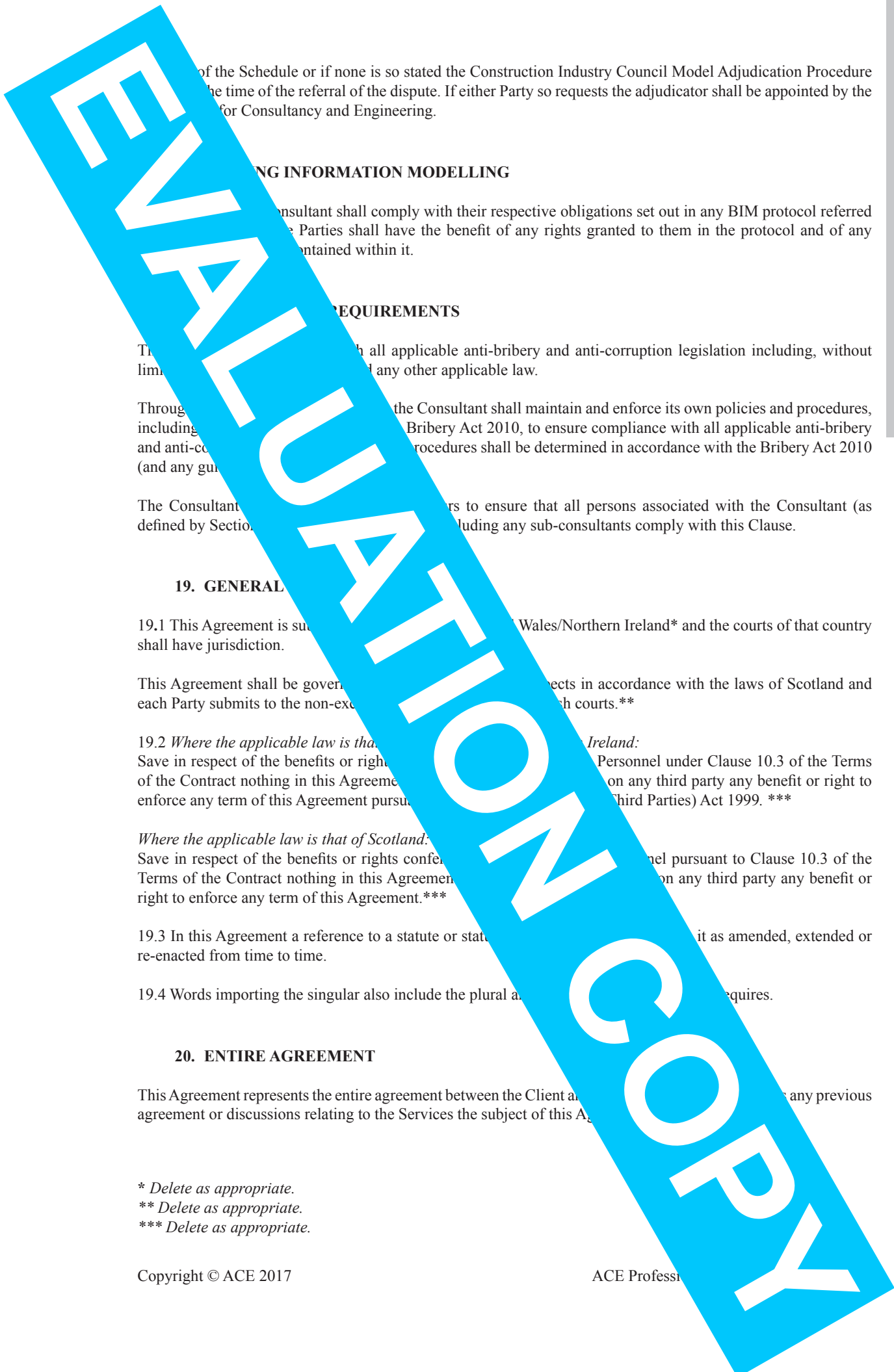
19.3 In this Agreement a reference to a statute or statutory instrument shall include any amendment, extension or re-enacted from time to time.

19.4 Words importing the singular also include the plural and vice versa unless the context requires.

20. ENTIRE AGREEMENT

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

* Delete as appropriate.
** Delete as appropriate.
*** Delete as appropriate.



OF AGREEMENT

...ts and their annexes (if any) shall together be read and construed to constitute the Agreement
... Consultant:

...reement

...s Agreement (Parts 1 – 5)

...tract

...ses (if any)

e) ... Services

f) ... low

.....

.....

22. SUPPLEMENT

Insert any additional or

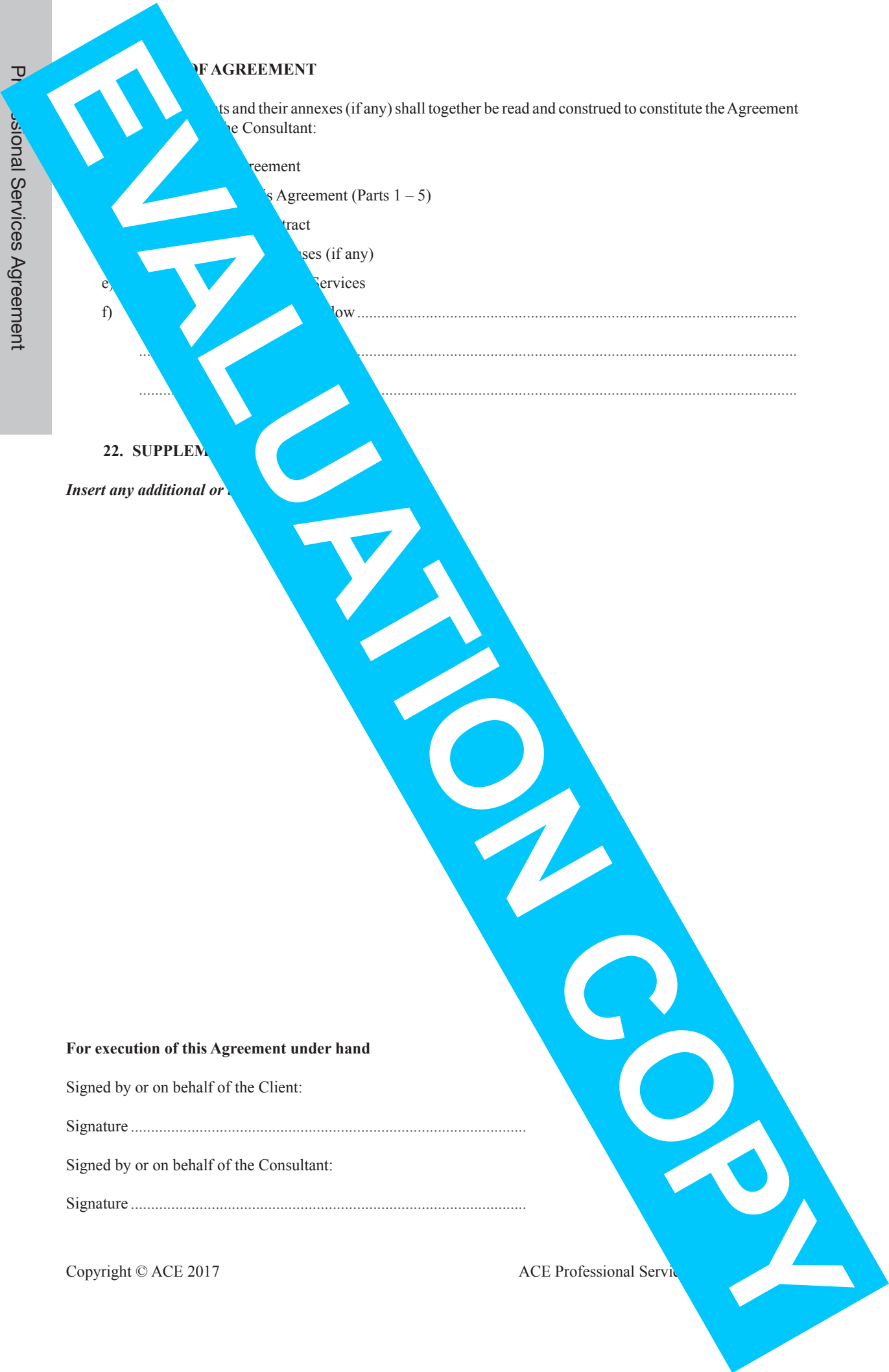
For execution of this Agreement under hand

Signed by or on behalf of the Client:

Signature

Signed by or on behalf of the Consultant:

Signature



Execution of this Agreement as a Deed

whereof the Parties have executed this Agreement as a Deed on the day and year first before written.

Executed as a Deed by the **Client**

Executed as a Deed by the **Consultant**

Director/Member

and

Director/Member/Company Secretary

Director/Member/Company Secretary

Alternatively

Executed as a Deed by the **Client**

in the presence of:

Signature of witness:

Name of witness:

Address of witness:

Alternatively

Executed as a Deed by the **Client**

in the presence of:

Signature of witness:

Name of witness:

Address of witness:

Executed as a Deed by the **Consultant**

in the presence of:

Signature of witness:

Name of witness:

Address of witness:

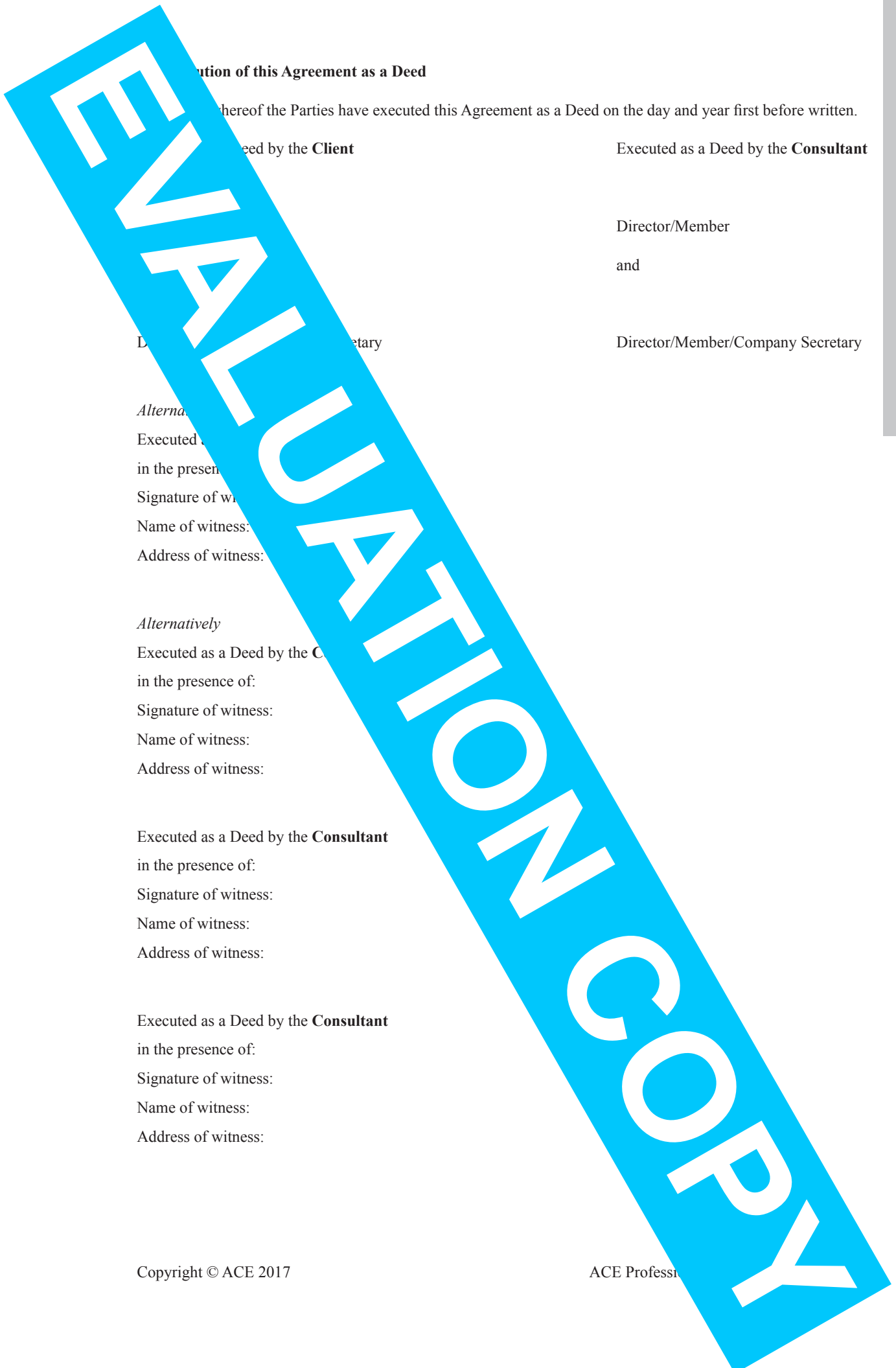
Executed as a Deed by the **Consultant**

in the presence of:

Signature of witness:

Name of witness:

Address of witness:



FOR EXECUTION IN SCOTLAND

OF these presents consisting of this and the preceding [] pages, the Schedule in

.....
.....[list any other annexures]

refer

under date and any deletions are made prior to execution, are executed as follows:

They are executed by the **Client** at on 20

by (print full name)

who is a Director/Company Secretary/Person Authorised to sign on behalf of the **Client** / Partner in Firm name/Partner/ Individual authorised to sign on behalf of the **Client**

(signature)

Before this witness:

Signature of witness:

Full name of witness:

Address of witness:

Occupation:

They are executed for and on behalf of the **Consultant** on 20

by (print full name)

who is a Director/Company Secretary/Person Authorised to sign on behalf of the **Consultant** / Partner in Firm/Partner/ Individual authorised to sign these presents for and on behalf of the **Consultant**

(signature)

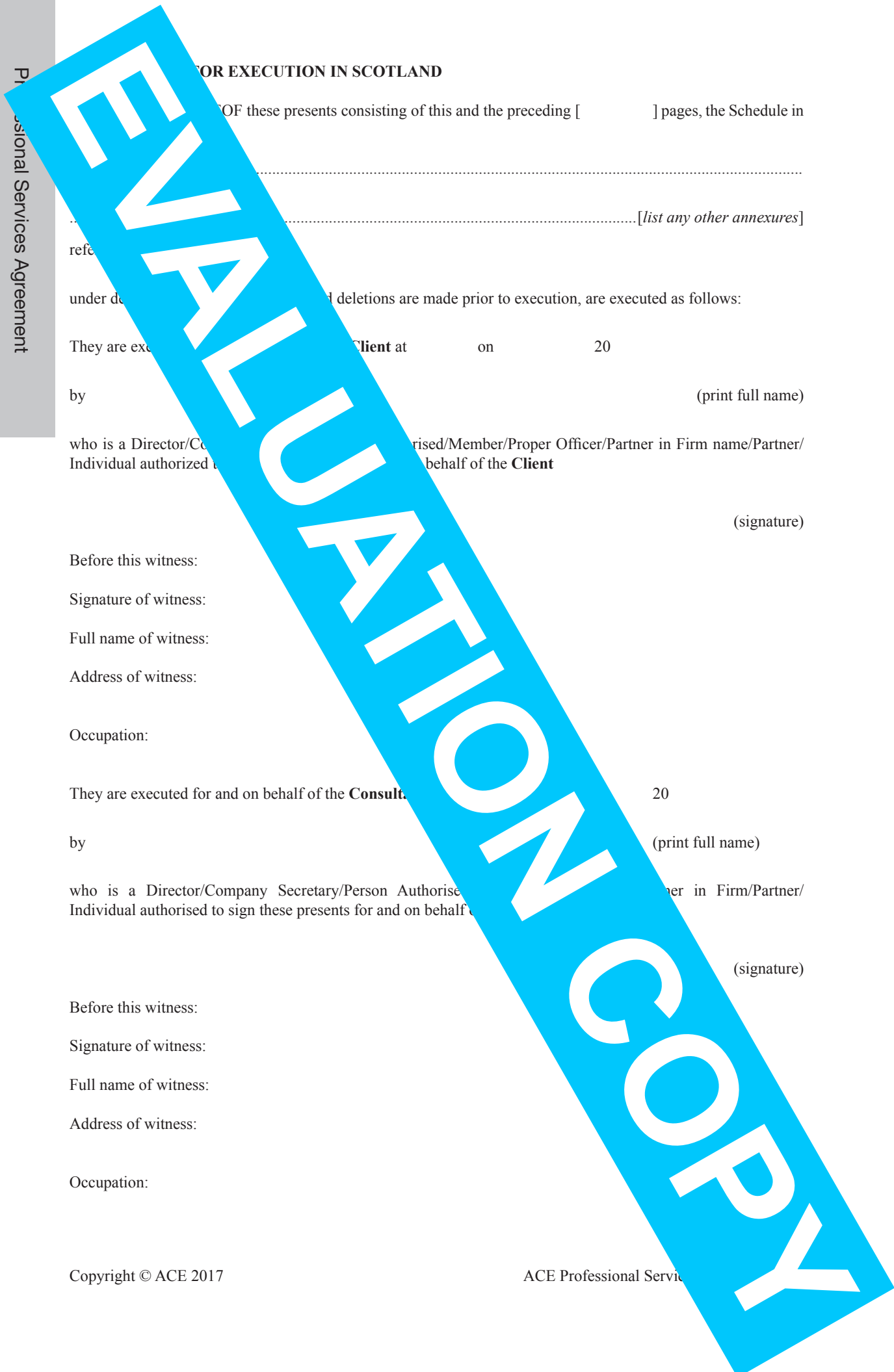
Before this witness:

Signature of witness:

Full name of witness:

Address of witness:

Occupation:



SCHEDULE

Schedule in 5 Parts referred to in the foregoing Form of Agreement between "The Client" and "The Consultant"*

Complete if Agreement executed in Scotland

PROJECT DETAILS (for use where the Client is not a contractor)

.....
.....
.....
.....
..... "the Site".

1. The Services and the Agreement are attached hereto as Part 5 of this Schedule.

2.1 The particular Project with which it is the Client's intention to appoint a Contractor and in connection with which the Consultant is to provide services for which the Client has appointed the Consultant:

.....
.....
..... "the Works".

For the avoidance of doubt the Consultant is not intended in relation to the following parts of the Project:

.....
.....

Or

2.2 For the purposes of this Agreement "the Project" shall mean as "the Project".

3.1 The Client appoints the Consultant as Lead Consultant.

Or

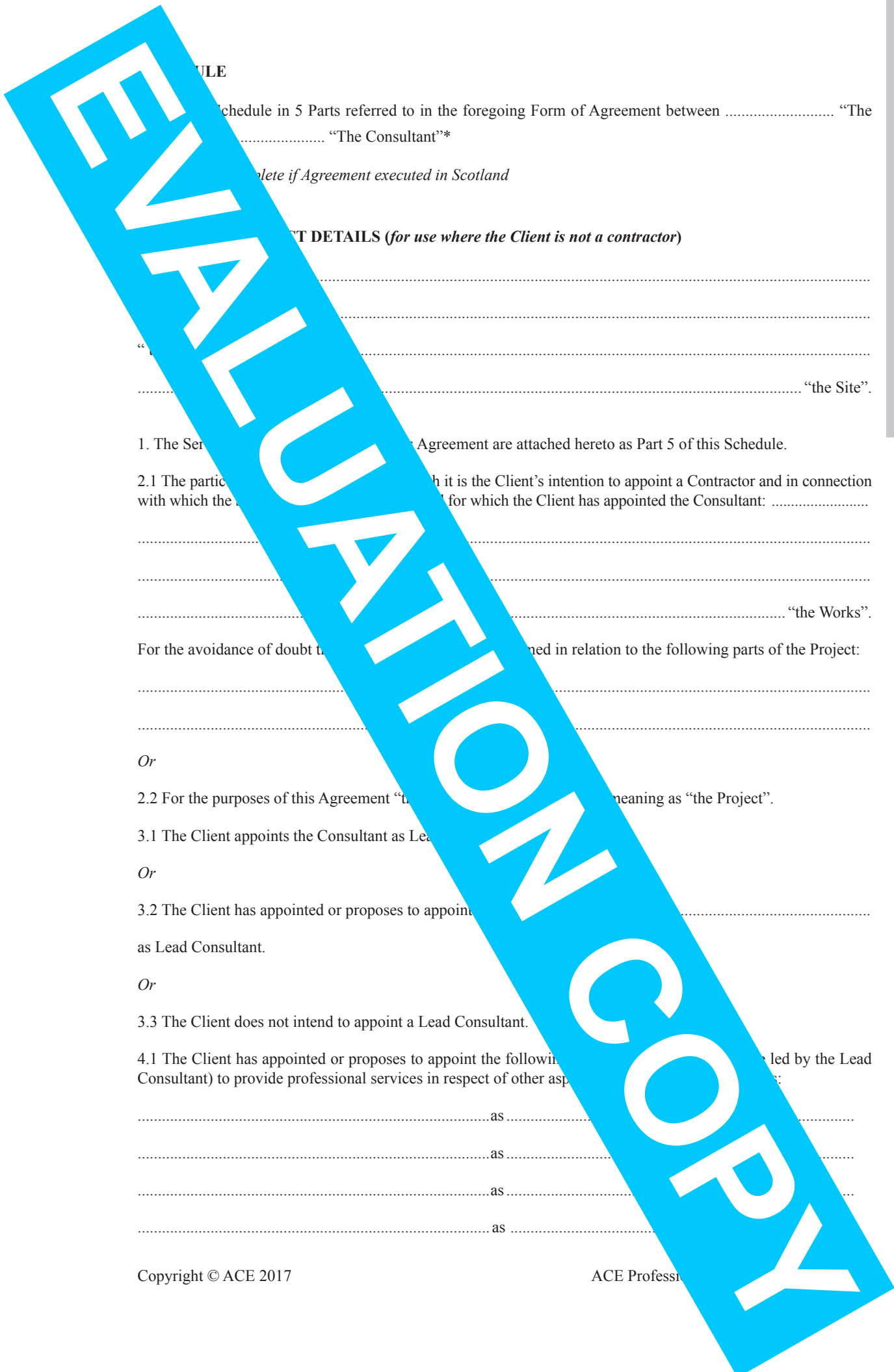
3.2 The Client has appointed or proposes to appoint
as Lead Consultant.

Or

3.3 The Client does not intend to appoint a Lead Consultant.

4.1 The Client has appointed or proposes to appoint the following (to be led by the Lead Consultant) to provide professional services in respect of other aspects of the Project:

- as
- as
- as
- as



..... as Principal Designer in accordance with the Construction (Design and
..... Regulations 2015.

..... to appoint any Other Consultants.

..... shall be (Clause 2.7).....

6 The Consultant shall not incur on behalf of the Client on any one occasion in
connection with the Project or the construction of the Works without the Client's approval in
writing.....

7 The Client shall be responsible for (Clause 3.6).....

8 The total aggregate amount shall not exceed (Clause 10.1) £.....

If no amount is inserted the total of the fees payable to the Consultant by the Client shall apply.

9 Excepted Matters (.....)

The Consultant's liability shall be limited to:

Asbestos..... shall not be covered/..... is excluded.

Terrorism..... shall not be covered/..... is excluded.

Pollution and Contamination..... (£) in the aggregate/is excluded.

10 The period of the Consultant's liability shall be..... years after the completion of the Services
or their termination if earlier.

11 Public liability insurance (Clause 11.1).....

If no amount is inserted the provisions of Clause 11.1 shall apply.

12 Professional indemnity insurance (Clause 11.1).....

If no amount is inserted the provisions of Clause 11.1 shall apply.

13 Collateral warranties (Clause 14) for the benefit of third parties (are to be provided in the
following form..... (if no form is provided the standard warranty shall apply).

Collateral warranties are/are not required from sub-consultants (insert class)
.....

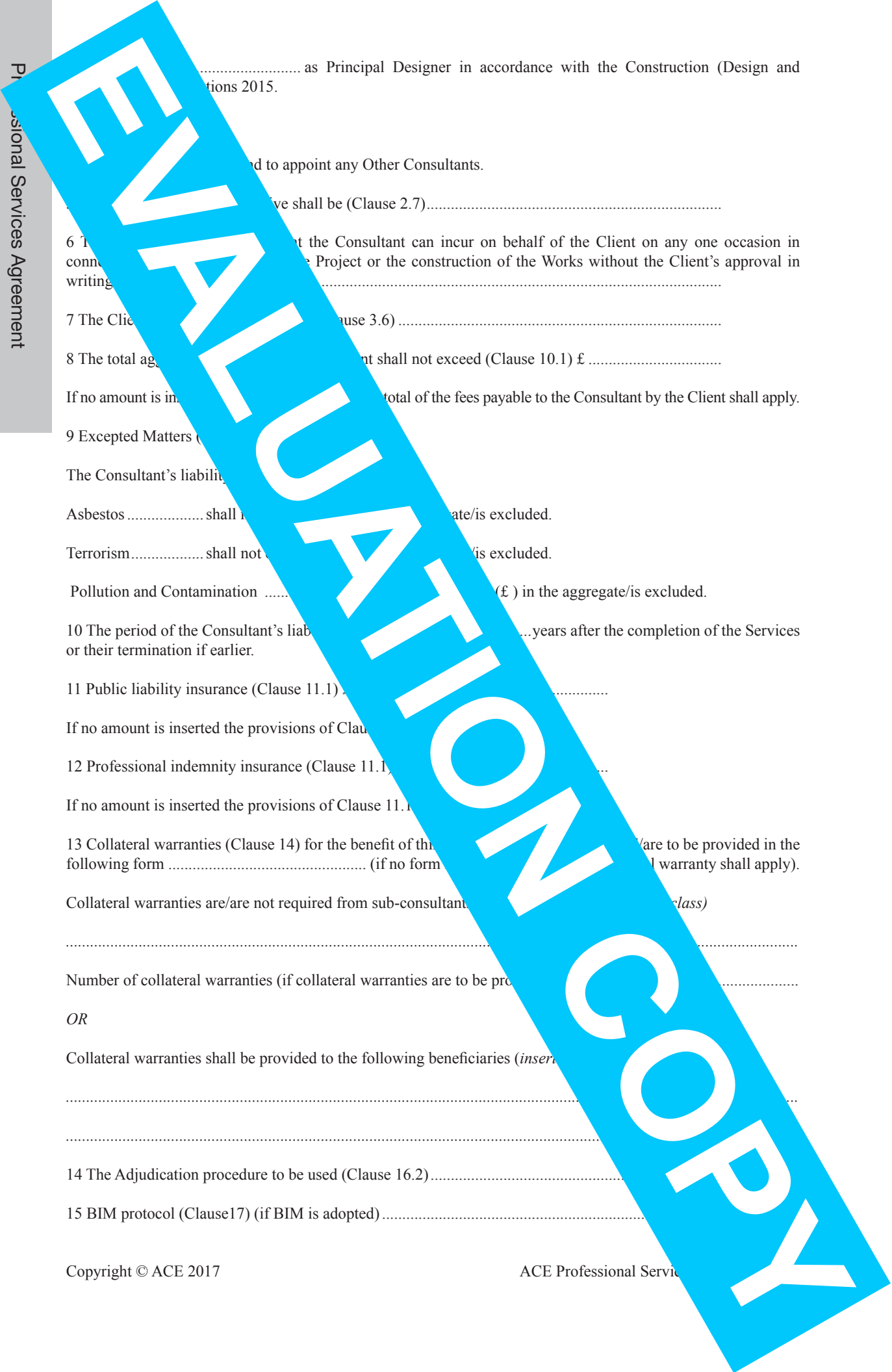
Number of collateral warranties (if collateral warranties are to be provided).....

OR

Collateral warranties shall be provided to the following beneficiaries (insert names)
.....
.....

14 The Adjudication procedure to be used (Clause 16.2).....

15 BIM protocol (Clause 17) (if BIM is adopted).....



ALTERNATIVE PART 1

CONTRACT DETAILS (for use where the Client is a contractor)

.....
..... “the Employer”

..... or has appointed the Client as a contractor to execute work under a design/build contract

..... “the Project”

..... “the Site”.

or

.....
..... “the Main Contractor”

..... is proposing to appoint the Client as a specialist sub-contractor to execute work under a design/
build sub-contract in respect of the Project and/or the Site

..... “the Project”

at

..... “the Site”

Either

1.1 The Consultant is initially required to provide the services described in Part 5 of the Schedule relevant to the Pre-Tender Stage to assist the Client to prepare and submit a tender to the Employer or the Main Contractor as the case may be in respect of the Project and/or the Site

Thereafter:

(i) If the Client’s tender is successful, the Client agrees to engage the Consultant to provide the services described in Part 5 of the Schedule relevant to the Post-Tender and Construction Stages

(ii) If the Client’s tender is unsuccessful, the appointment of the Consultant shall terminate

Or

1.2 The Services to be performed under this Agreement are those set out in Part 5 of the Schedule and if so agreed at the date hereof the Consultant will arrange for the services to be performed under this Agreement to be carried out by others.

Or

1.3 The Services to be performed under this Agreement are attached hereto as Schedule 1



of the Project in connection with which the Services are to be performed and for which the Consultant are:

..... "the Works".

For the purposes the Services are not to be performed in relation to the following parts of the Project:

.....

Or

2.2 For the purposes "the Works" shall have the same meaning as "the Project".

Either

3.1 The Client has appointed the following as "Other Consultants" and/or Sub-Contractors to provide professional services in connection with the Project and/or the Works:

.....

Or

3.2 The Client does not intend to appoint any Other Consultants or Sub-Contractors.

4 The Consultant's Representative shall be (Clause 3.6)

5 The Client's Representative shall be (Clause 3.6)

6 The limit for additional cost that the Consultant may incur on any one occasion in connection with the execution of the Project or the Works at the Client's approval in writing shall be (Clause 2.6) £

7 The total aggregate liability of the Consultant shall not exceed

If no amount is inserted a multiple of ten times the total of the fees payable by the Client shall apply.

8 Excepted Matters (Clause 10.1)

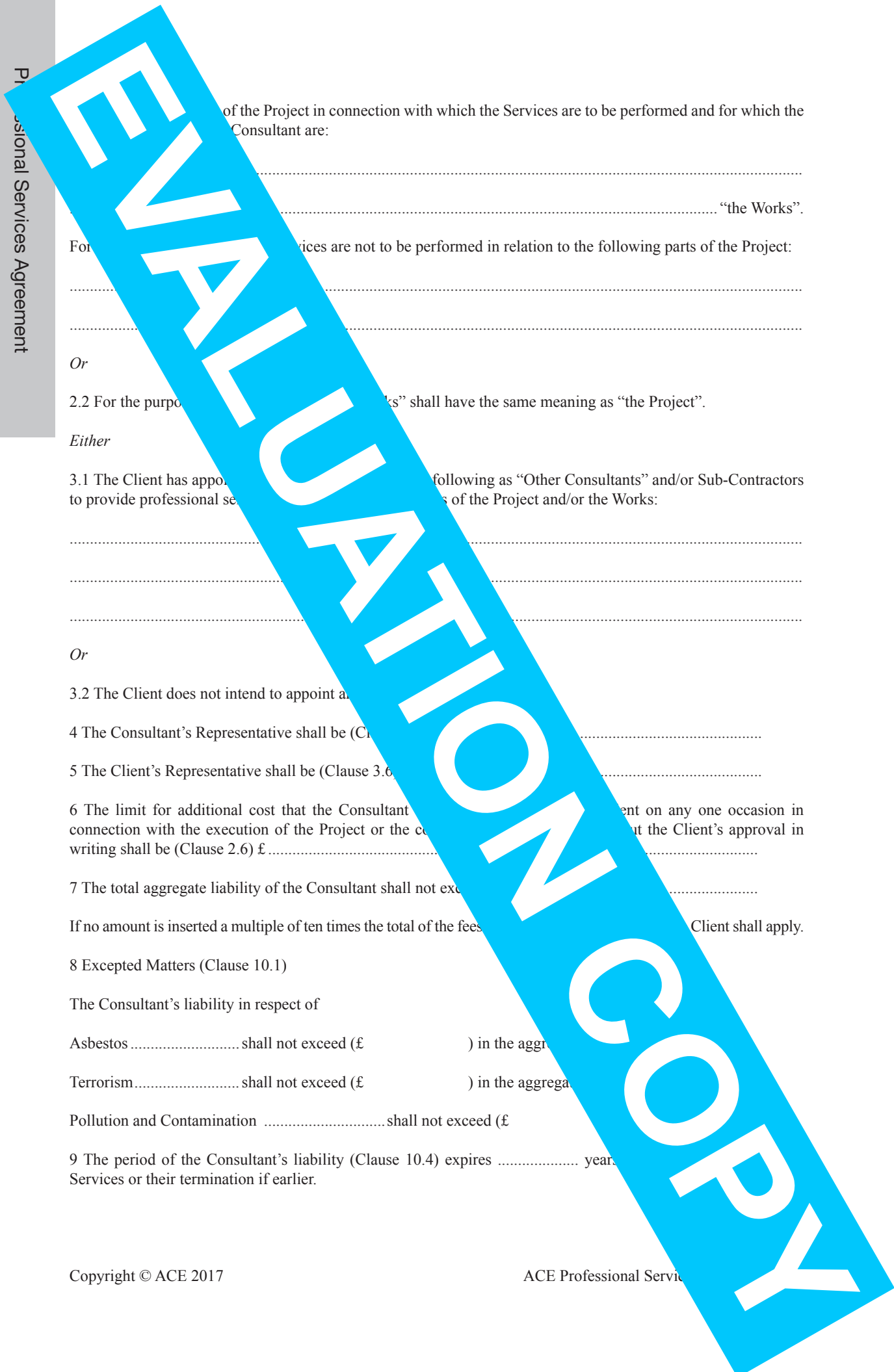
The Consultant's liability in respect of

Asbestos shall not exceed (£) in the aggregate

Terrorism shall not exceed (£) in the aggregate

Pollution and Contamination shall not exceed (£

9 The period of the Consultant's liability (Clause 10.4) expires year(s) from the date of the Services or their termination if earlier.



Amount of public liability insurance (Clause 11.1) £
If this amount is inserted the provisions of Clause 11.1 shall apply.

Amount of professional indemnity insurance (Clause 11.1) £
If this amount is inserted the provisions of Clause 11.1 shall apply.

Collateral warranties (Clause 14) for the benefit of third parties are not to be provided/are to be provided in the following form(s) (if no form is stated, then the ACE Collateral Warranty will apply).

Number of collateral warranties (if Collateral Warranties are to be provided) insert number

Collateral warranties not required from sub-consultants (if required insert name(s) or class)

Or

Collateral warranties to be provided to the following beneficiaries (insert name(s) or class)

13 The Adjudicator (Clause 16.2)

14 BIM protocol (Clause 16.2)

PART 2: THE BRIEF

2.1 The Brief is attached to this Agreement as follows:

Or

2.2 The Brief is described in a separate document titled and dated

Or

2.3 The Brief is as follows:



PROGRAMME FOR THE SERVICES

...ed to in Clause 2.2 of The Terms of the Contract is attached to this Agreement.

3. The Programme for the Services in Clause 2.2 of The Terms of the Contract is described in a separate document
refer to the Programme for the Services attached to this Agreement.

and dated
.....

Or

3.3 The Programme for the Services in Clause 2.2 of The Terms of the Contract is as follows:

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

PART 4: THE FEES

Note: delete the Sections that do not apply to the Services. Section 5 which must be completed in all cases in order to calculate any additional payments in the circumstances set out in Clause 8: The Terms of Contract.

Section 1 – Payment of fees on a time basis

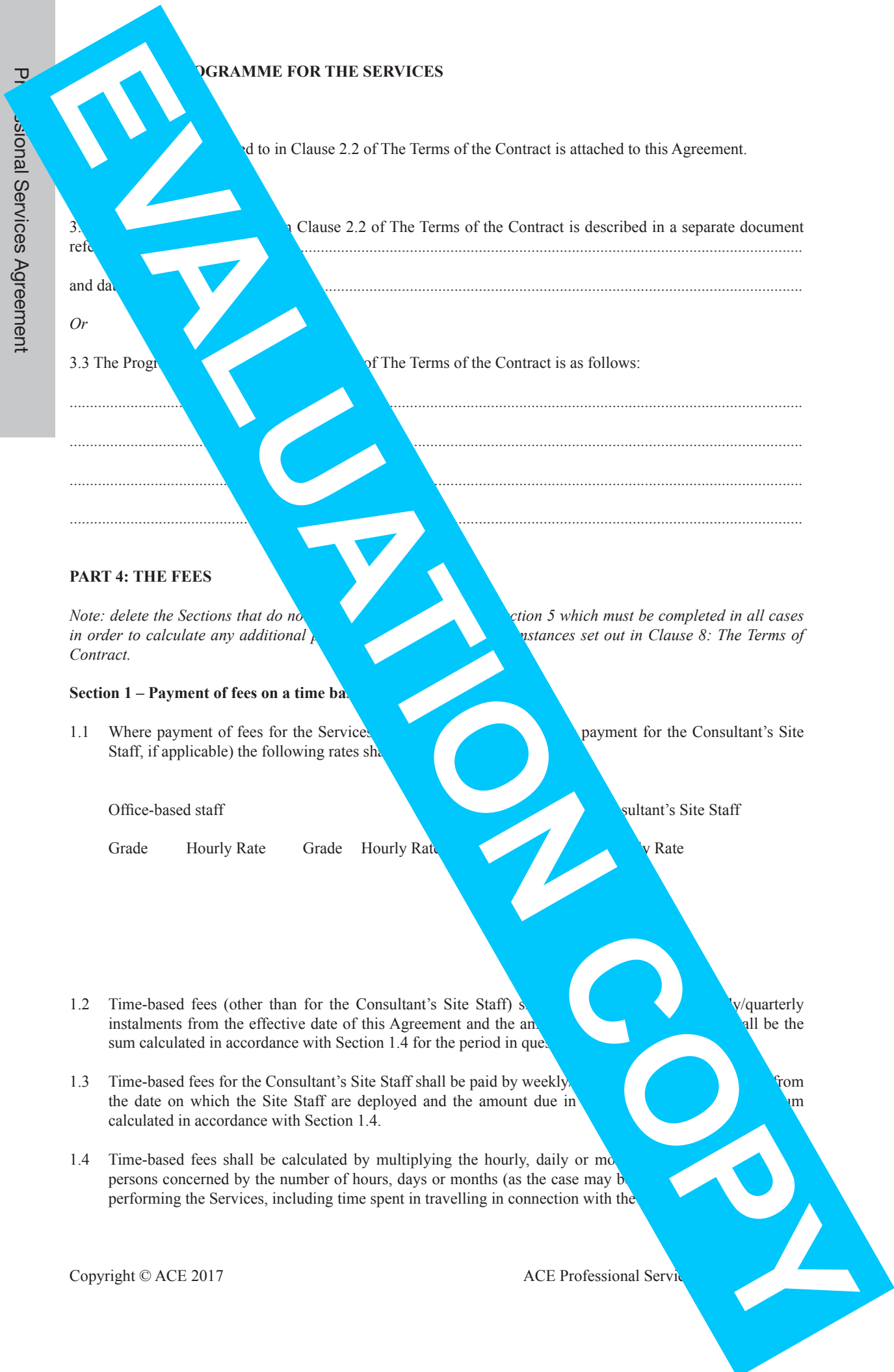
1.1 Where payment of fees for the Services is on a time basis, payment for the Consultant's Site Staff, if applicable) the following rates shall apply:

Office-based staff		Consultant's Site Staff	
Grade	Hourly Rate	Grade	Hourly Rate

1.2 Time-based fees (other than for the Consultant's Site Staff) shall be paid by weekly/quarterly instalments from the effective date of this Agreement and the amount of each instalment shall be the sum calculated in accordance with Section 1.4 for the period in question.

1.3 Time-based fees for the Consultant's Site Staff shall be paid by weekly instalments from the date on which the Site Staff are deployed and the amount due in each instalment shall be the sum calculated in accordance with Section 1.4.

1.4 Time-based fees shall be calculated by multiplying the hourly, daily or monthly rate of the persons concerned by the number of hours, days or months (as the case may be) spent by them performing the Services, including time spent in travelling in connection with the Services.



Section 2 – Payment of fees on a lump sum basis

Payment of fees for the Services is to be on a lump sum basis, the fee shall be a lump sum of

)

Date or end of stage payable

£
£
£
£
£
£
£
£

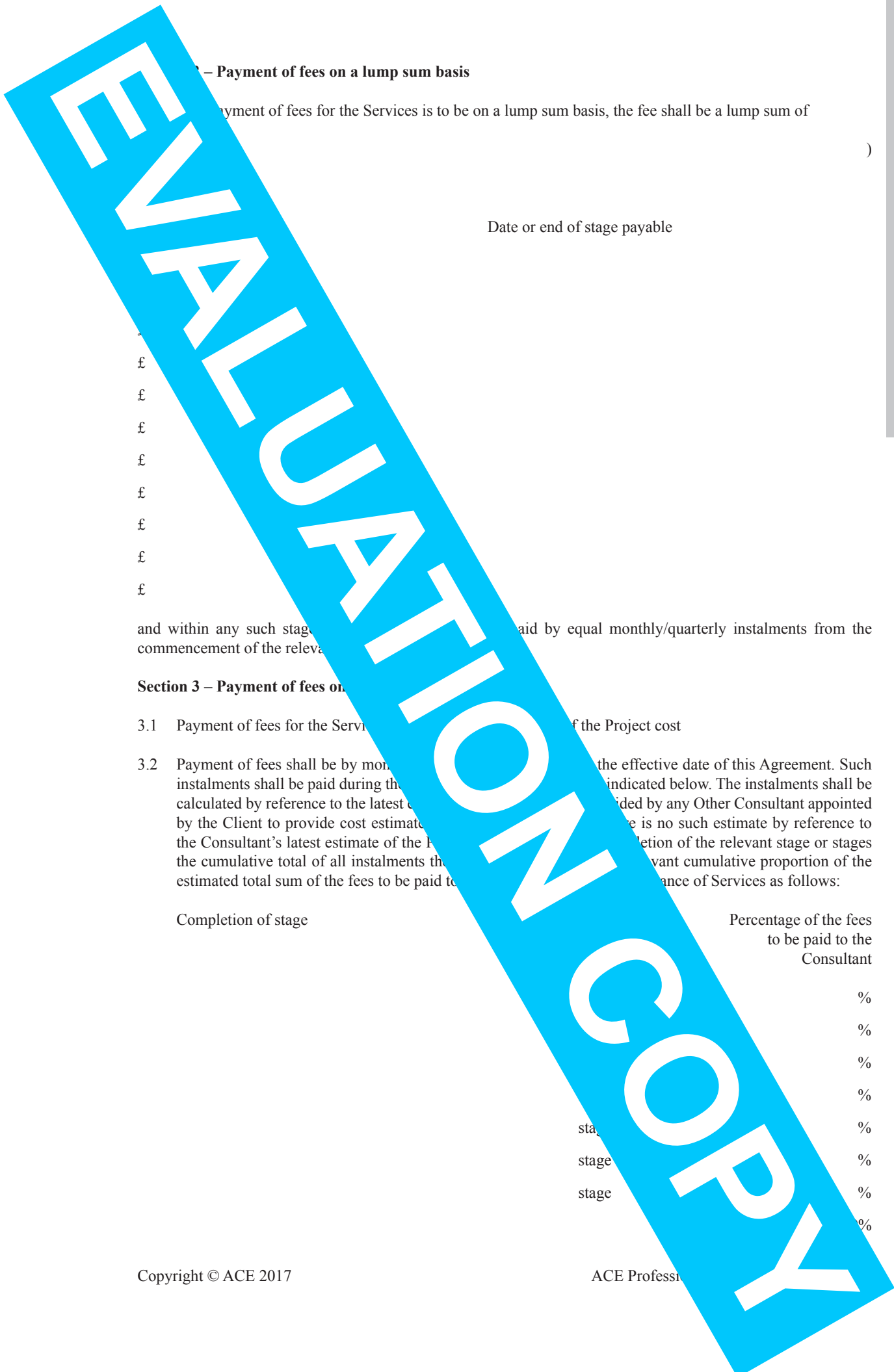
and within any such stage shall be paid by equal monthly/quarterly instalments from the commencement of the relevant stage.

Section 3 – Payment of fees on a time and materials basis

3.1 Payment of fees for the Services shall be based on the actual time and materials of the Project cost

3.2 Payment of fees shall be by monthly instalments from the effective date of this Agreement. Such instalments shall be paid during the month indicated below. The instalments shall be calculated by reference to the latest estimate of the Project cost provided by any Other Consultant appointed by the Client to provide cost estimates. If there is no such estimate by reference to the Consultant's latest estimate of the Project cost at the completion of the relevant stage or stages the cumulative total of all instalments shall be the relevant cumulative proportion of the estimated total sum of the fees to be paid to the Consultant for the performance of Services as follows:

Completion of stage	Percentage of the fees to be paid to the Consultant
	%
	%
	%
	%
stage	%
stage	%
stage	%
	%



...shall be no more than payments on account and a statement of the total sum due to the Consultant
...the Project cost is fully known. Such statement, after giving credit to the Client for all instalments
...the balance (if any) due from the Client to the Consultant or from the Consultant to the Client,
...balances shall be paid to or by the Consultant as the case may require.

...include: administration expenses incurred by the Client; costs incurred by the Client
...agreement with the Lead Consultant if the Consultant is not so appointed or the
...consultants; interest on capital during construction and the cost of raising monies
...re... construction of the Works; the cost of land and wayleaves.

Section 4 – Payment on the following basis:

(For use... than Section 1 – 3 above)

Section 5 – Payment for work or disruption

5.1 Where payment... is to be made on a time basis under Clause 8:
The Terms of Contract...

	Office-based staff	Consultant's Site Staff
Grade	Hourly Rate	Daily Rate Monthly Rate

5.2 Such time-based fees shall be... instalments from the date the Consultant
undertakes such additional work and/...

5.3 Such time-based fees shall be calculate... or monthly rates applicable to the persons
concerned by the number of hours, days o... spent by such persons undertaking such
additional work and/or suffering such disrupt... in connection with such work.

**Section 6 – Payment of fees if the Consultant... by others of Services set out in
Part 5 of the Schedule**

6.1 The Consultant's fee shall be on the following ba...

Section 7 – Reimbursement of Local Authority charges

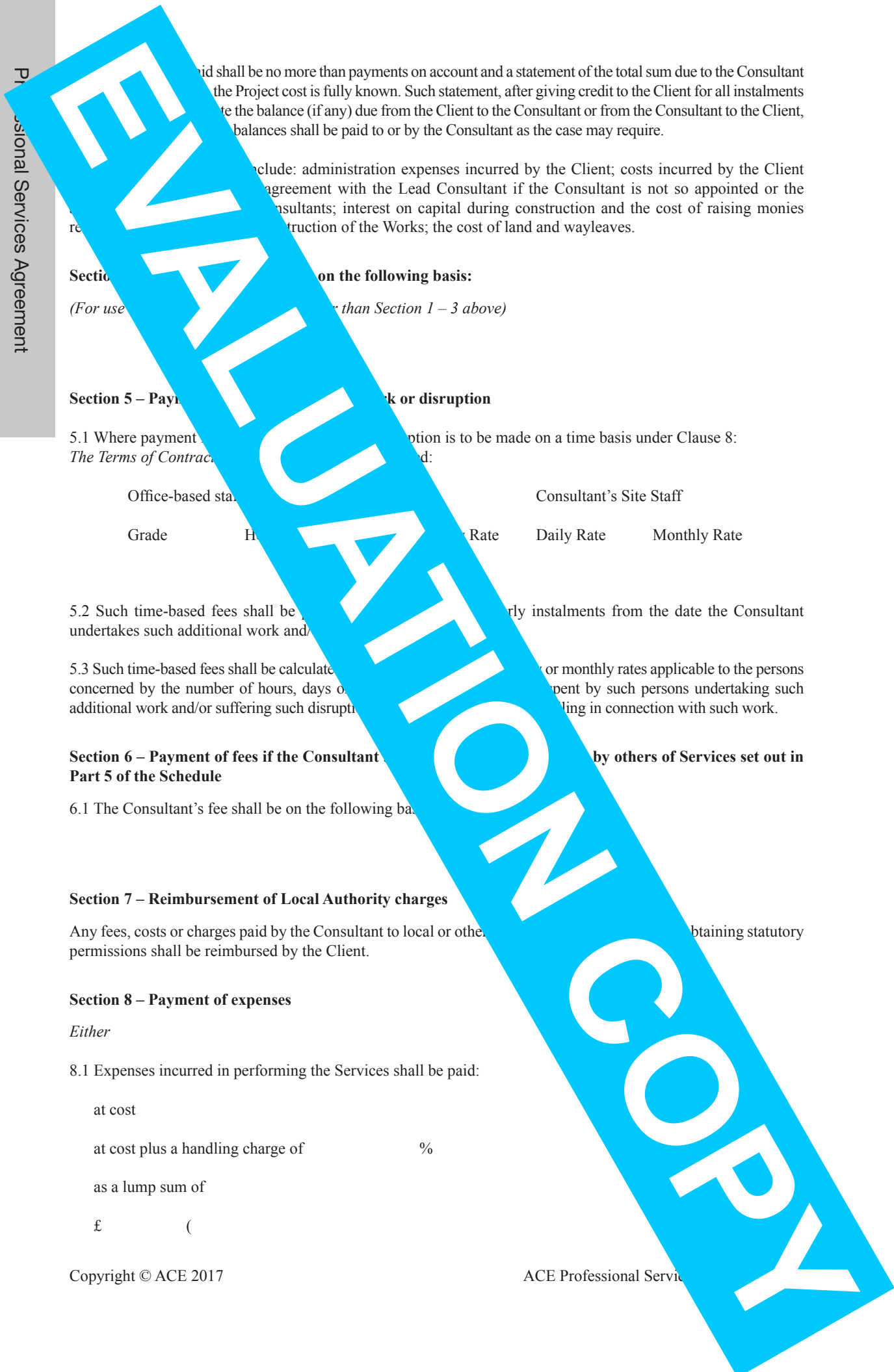
Any fees, costs or charges paid by the Consultant to local or other... obtaining statutory
permissions shall be reimbursed by the Client.

Section 8 – Payment of expenses

Either

8.1 Expenses incurred in performing the Services shall be paid:

- at cost
- at cost plus a handling charge of %
- as a lump sum of
- £ (



...ces for the recovery of expenses shall be submitted weekly/monthly/quarterly and the amount invoiced
...total of all expenses incurred during the interval in question.

...rred in performing the Services are included in the fees.

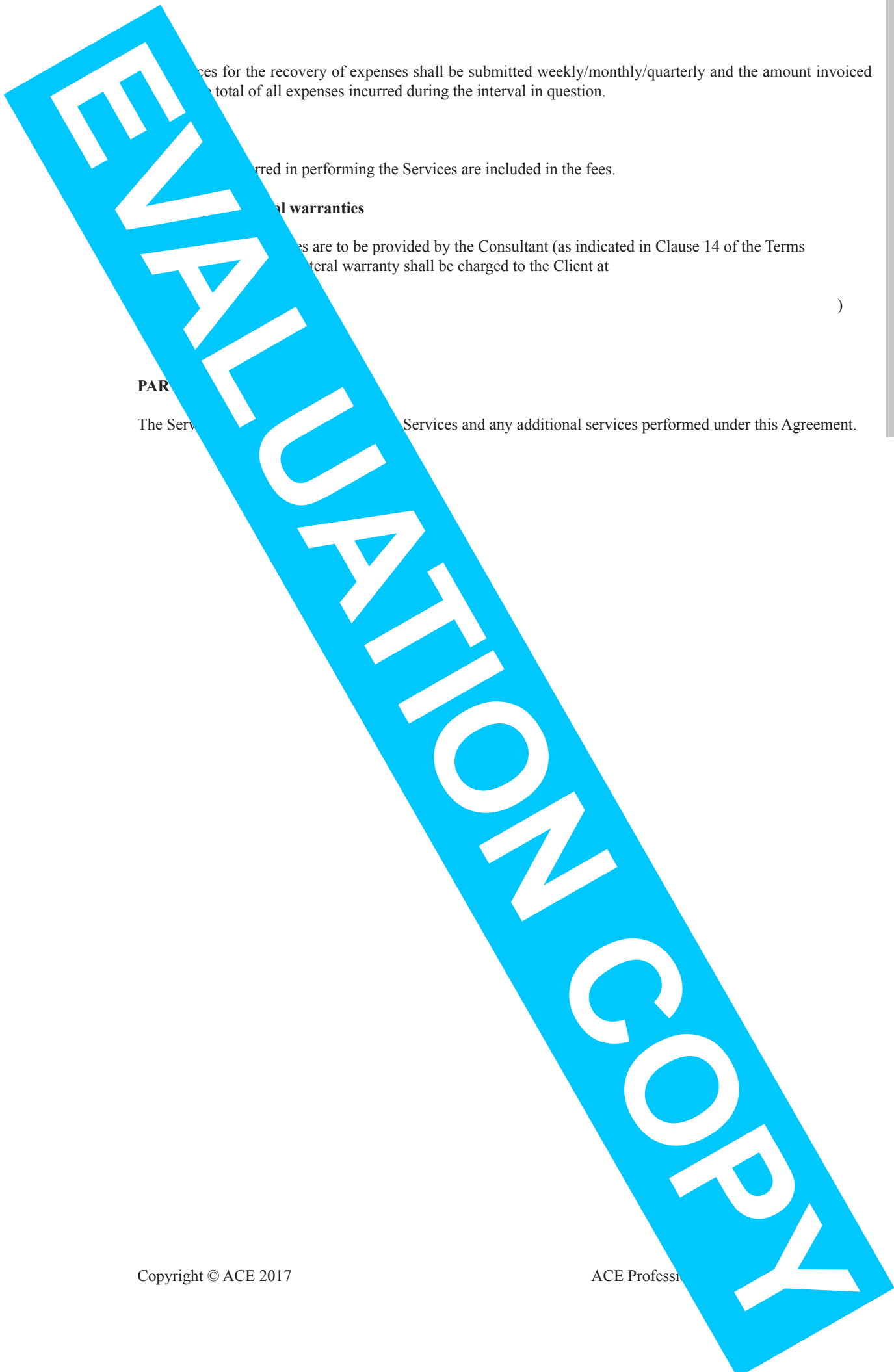
...l warranties

...es are to be provided by the Consultant (as indicated in Clause 14 of the Terms
...teral warranty shall be charged to the Client at

)

PAR

The Serv... Services and any additional services performed under this Agreement.



NOTES

have been prepared to enable users to gain a broad understanding of the Agreement. They should not be regarded and are not intended to be an exhaustive or definitive interpretation and do not form a part of the Agreement.

Material changes to the Clauses within the Agreement might alter the balance of risk

Contract Information on the Project

The Parties (where appropriate) the company registration numbers of the Client and the Consultant, the date of the Agreement together with the title of the Project. Once executed, the date should be inserted in any Agreement to which the applicable law is England and Wales or Northern Ireland.

The Form of Agreement and the documents that constitute the Agreement between the Client and the Consultant, those identified in paragraphs (a)-(e) which are to be part of the Agreement should be identified in Clause 19.1 by deleting that part which is not applicable. The governing law should be identified in Clause 19.1 by deleting that part which is not applicable. If the applicable law, a similar choice should be made in relation to third party rights in the Agreement.

If the applicable law is Northern Ireland, the appropriate attestation clauses should be chosen depending on whether the Consultant is to be executed under hand or as a deed and, in the case of a deed, whether the Consultant and the Client are an individual, a partnership, limited liability partnership or company. If the applicable law is Northern Ireland, the attestation clause should be completed appropriately and it is sufficient if one appropriate signatory signs with their signature being witnessed. In either case the remaining unused clause should be deleted.

The Terms of the Contract

The Terms of the Contract set out the obligations of the Parties under the Agreement. The Parties' rights and obligations toward each other are also set out in the Agreement.

CLAUSE 2 – THE CONSULTANT'S OBLIGATIONS

Clauses 2.1-2.9 deal with the Consultant's obligations. Clause 2.1 states that the Consultant should deliver the Services using the reasonable skill, care and attention of a consultant qualified in the relevant discipline engaged in the performance of such services of a nature, size and complexity to the Project. In this context the Consultant must also ensure that the Services are generally known by consultants of the Consultant's discipline to be delivered with the durability of buildings or structures are not specified for use.

The Consultant is also required to perform the Services in accordance with the agreed or accepted by the Client and act in accordance with the Client's reasonable instructions. It makes it clear that the Consultant should inform the Client if any instruction is outside the scope of the Services or cause a change to the Programme or level of fees. Clause 2.6 states the Consultant should not vary the Services to a material extent without the Client's written approval.

CLAUSE 3 – THE CLIENT'S OBLIGATIONS

Clause 3 lists the Client's obligations including to make payment in accordance with the Programme, to supply information and instructions as set out in Clause 3.2. Client's decisions and instructions should be made in a reasonable time to avoid delay in the performance of the Services.

CLAUSE 4 – JOINT OBLIGATIONS

Clause 4 highlights the Parties' joint obligations to collaborate in the interests of the successful completion of the Project and provides for the giving of "early warning" of any matter likely to effect the performance of the Services.

7.5 – RISK

requires the Consultant and the Client to work together to analyse and manage any risks, the potential any associated costs. Attention is also drawn to the provisions of Clause 10.2 which deals with the apportionment/allocation of liability. In a successful project risk should be allocated to the party best able to manage it and this Clause provides for the just and equitable apportionment of liability should damage or risk materialising.

7.6 – VARIATION

is required to comply with the provisions of the Housing Grants, Construction and Regeneration Act 1996 (referred to as the Construction Act). However, the provisions of Clause 7 relating to variation for or not the Agreement is used in circumstances which fall within the definition of "variation" for the purposes of the legislation.

CLAUSE 8 – VARIATION / DISRUPTION TO THE SERVICES AND VALUATION

Clause 8 sets out how such variation should be managed and, where appropriate, valued. The provisions of Clause 7 relating to variation for or not the Agreement is used in circumstances which fall within the definition of "variation" for the purposes of the legislation.

CLAUSE 10 – LIMITATION OF LIABILITY

It is essential that the Consultant considers the issue of liability and the total aggregate liability undertaken for the project. Clause 10(1) of the Agreement provides for a default position if an aggregate amount is not set out in Part 1 of the Schedule it is not best practice to rely on this approach without due consideration. The Consultant are encouraged to ensure that the figure inserted is realistic in the circumstances. The Consultant should consider the implications of inserting a figure before inserting a figure may well be appropriate and insurers may be involved.

Standard professional indemnity insurance is required. If the Consultant is required to be liable for Asbestos, Pollution and Contamination in certain circumstances it will be necessary to consider separate insurance for this and professional indemnity insurance. Legal, should be sought in relation to both cover and limiting liability.

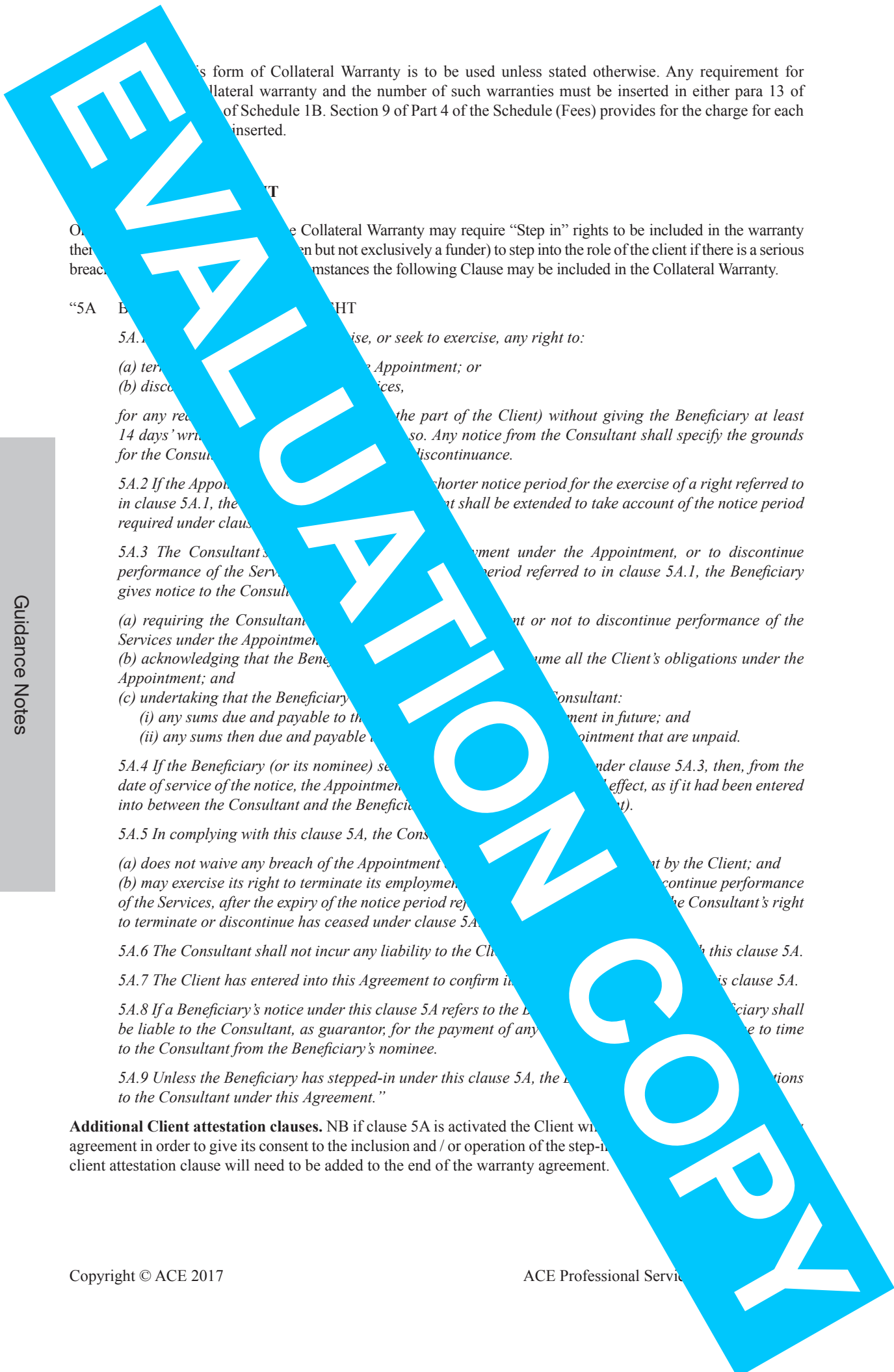
CLAUSE 11 – INSURANCE

Clause 11 requires the Consultant to maintain and pay for professional liability and professional indemnity insurance for the amounts set out in Part 1 of the Schedule. The Consultant is required to cover the Consultant's liabilities under the contract provided the insurance is available at commercially reasonable rates. If the Client so requests the Clause requires the Consultant to provide a certificate from his broker or insurer and must immediately inform the Client if professional indemnity insurance is not available in accordance with its provisions.

CLAUSE 14 – COLLATERAL WARRANTIES /THIRD PARTY RIGHTS

The Agreement expressly excludes the provisions of the Contracts (Rights of Third Parties) Act 1999 and the law of Scotland's common law principle of third party rights (*jus quaesitum tertio*). Unless a collateral warranty provides otherwise third parties having no contractual relationship with the Consultant are precluded from claiming damages under the terms of the Agreement.

Should the Client request that identified third parties receive benefits under a Collateral Warranty has been included which is drafted to mirror the Consultant's duty of care to the third party.



This form of Collateral Warranty is to be used unless stated otherwise. Any requirement for collateral warranty and the number of such warranties must be inserted in either para 13 of Schedule 1B. Section 9 of Part 4 of the Schedule (Fees) provides for the charge for each inserted.

Other than the Collateral Warranty may require "Step in" rights to be included in the warranty then (when but not exclusively a funder) to step into the role of the client if there is a serious breach. In circumstances the following Clause may be included in the Collateral Warranty.

“5A BENEFICIARY’S RIGHT

5A.1 If the Beneficiary wishes, or seek to exercise, any right to:

- (a) terminate the Appointment; or
- (b) discontinue the Services,

for any reason (whether or not the part of the Client) without giving the Beneficiary at least 14 days’ written notice. Any notice from the Consultant shall specify the grounds for the Consultant’s discontinuance.

5A.2 If the Appointment requires a shorter notice period for the exercise of a right referred to in clause 5A.1, the notice period shall be extended to take account of the notice period required under clause 5A.1.

5A.3 The Consultant shall, upon notice from the Beneficiary under the Appointment, or to discontinue performance of the Services under the Appointment, within the notice period referred to in clause 5A.1, the Beneficiary gives notice to the Consultant:

- (a) requiring the Consultant to confirm or not to discontinue performance of the Services under the Appointment;
- (b) acknowledging that the Beneficiary shall assume all the Client’s obligations under the Appointment; and
- (c) undertaking that the Beneficiary shall pay to the Consultant:
 - (i) any sums due and payable to the Client under the Appointment in future; and
 - (ii) any sums then due and payable to the Client under the Appointment that are unpaid.

5A.4 If the Beneficiary (or its nominee) seeks to exercise its right under clause 5A.3, then, from the date of service of the notice, the Appointment shall have effect, as if it had been entered into between the Consultant and the Beneficiary (or its nominee).

5A.5 In complying with this clause 5A, the Consultant shall:
(a) does not waive any breach of the Appointment by the Client; and
(b) may exercise its right to terminate its employment or to discontinue performance of the Services, after the expiry of the notice period referred to in clause 5A.1, if the Consultant’s right to terminate or discontinue has ceased under clause 5A.3.

5A.6 The Consultant shall not incur any liability to the Client under this clause 5A.

5A.7 The Client has entered into this Agreement to confirm its obligations under this clause 5A.

5A.8 If a Beneficiary’s notice under this clause 5A refers to the Beneficiary, the Beneficiary shall be liable to the Consultant, as guarantor, for the payment of any sums due and payable to the Consultant from the Beneficiary’s nominee.

5A.9 Unless the Beneficiary has stepped-in under this clause 5A, the Client shall remain liable to the Consultant under this Agreement.”

Additional Client attestation clauses. NB if clause 5A is activated the Client will need to enter into an agreement in order to give its consent to the inclusion and / or operation of the step-in clause. A client attestation clause will need to be added to the end of the warranty agreement.

17 – BUILDING INFORMATION MODELLING

The Agreement requires the Parties to the Agreement to comply with any BIM protocol that might be in the Schedule to the Agreement. The Agreement also provides in Clause 9.5 that the Consultant's information provided by the Consultant shall only be for the purposes for which it has been

BRIBERY REQUIREMENTS

The Consultant ensures he has knowledge of applicable anti-bribery and anti-corruption laws. The Consultant must also use reasonable endeavours to ensure that any persons associated with the Consultant, including sub-consultants, are aware and have knowledge of and comply with the Consultant's anti-bribery and anti-corruption policies and procedures where applicable.

CLAUSE 20 – ENTIRE AGREEMENT

The effect of the Agreement is that the terms of the contract between the Parties as set out in the Agreement entirely replace any other discussions or previous agreement relating to the Services. Any documents or conditions to form a part of the contract should be listed and incorporated within the Form of Appointment in Clause 21.

CLAUSE 22 – SUPPLEMENT

Any additional requirements should be carefully considered and inserted in the appropriate place within the Agreement. The Parties should ensure that the Parties to the Agreement are fully aware of their inclusion and should seek legal or insurance advice regarding the implications of any changes, particularly to the terms of the Agreement, if there are any concerns.

THE SCHEDULE

Part 1: Contract Details

There are two versions of Part 1, Part 1A where the Client is or is not a Contractor.

Part 1A

Part 1A should be completed where the Client is not a Contractor. The Project and the Site should be identified at the beginning of Part 1. Para 2.1 should identify the Client where the Client intends to appoint a Contractor to perform Works in connection with the Project. Identifying these "Works" is important, especially if there are parts of the Project not included in the Works. Those parts of the Project for which the Services are not to be provided should be described.

Para 3. If the Client has not appointed the Consultant to direct the Project, para 3.2 should name the Lead Consultant or if there is to be no Lead Consultant, para 3.2 should be deleted.

Para 4.1. The names of "Other Consultants", if any, should be listed. If there is any Project Manager.

In many cases the Client will be required to appoint a Principal Designer (Design and Management) Regulations 2015. If the Consultant has agreed to act in this role, appointment in this respect might be appropriate. The HSE and the CITB each produce guidance on the Principal Designer role.

Para 5. The name of the Consultant's Representative who has authority to act on behalf of the Consultant should be inserted here.

Para 7. The name of the Client's Representative should be inserted here. This may be a person from a firm other than that of the Client.

provides for a percentage fee. The Consultant should ensure that the Client delivers regular cost information on the current Project cost. Transparency of cost information is essential if the Consultant is to estimate the amount of the fee payable at the completion of each relevant stage. As the stage payments are made, payments on account information of the total Project cost or out-turn cost should be provided by the Client as this becomes available in order that the account can be finalised.

Not completed if the fee to be paid or part of it does not fall within the methods covered by Sections 2.1 to 2.3. Fees might not be time related, lump sum or a percentage but some other method of payment should be agreed to cover "early stage" work relating to a tender if successful (a "success fee").

Payment of fees where there is additional work or disruption (see Clause 8 of the Agreement) should be agreed. Information needs to be given to the Client that a situation has arisen which is likely to cause an increase in fees.

Should the Client incur the cost to the Client of any collateral warranty provided by the Consultant for the Services, there is no underlying obligation within the Agreement for the Consultant to provide any warranty. The Consultant should agree before the commencement of the appointment whether collateral warranties are to be provided as well as their cost. Their number should be as relevant to the Agreement provides a form of collateral warranty suitable for use if required. There is a reference to this provision, if required, earlier in these guidance notes.

Part 5: The Services

The Services to be provided under the Agreement should be included within this Part or a Schedule of Services. It should be clear that all these Services are included within this Part and clearly described in order to provide information as to what is included within the Fee as the Services are delivered.

These Guidance Notes are not to be relied on as a legal interpretation of the Agreement where, should this be required, appropriate legal advice should be sought.

Guidance Notes

AL WARRANTY

[BENE

WARRANTY AGR

FROM CONSULTANT

relating to consultancy desig

for.....

DUPLICATE ORIGINAL COPY

Collateral Warranty

THE _____ DAY OF _____ 20__*

AGREEMENT IS MADE BETWEEN:

the Consultant”) and

the Beneficiary”)

the Consultant”) has entered or may enter into a construction contract (“the Construction Contract”) with the Contractor [“Contractor”] for the construction of [.....] (“the Works”) at

B. The Consultant (“the Consultant”) (which definition includes any variation to the contract which arises from any variation between the Client and the Consultant) dated [.....] has appointed the Beneficiary (“the Beneficiary”) as defined in the Appointment in relation to the design of the Works (“Services”).

C. The Consultant has entered into this warranty agreement with the Beneficiary and/or is obliged to issue a warranty to the Beneficiary.

THE PARTIES AGREE that the Beneficiary shall make the payment of £1.00 by the Beneficiary to the Consultant, receipt of which is hereby acknowledged by the Consultant**

1 WARRANTIES

1.1 The Consultant warrants that the Consultant will exercise and shall continue to exercise in carrying out the Services (as defined in the Appointment) the reasonable skill, care and diligence to be expected from a consultant qualified in professional practice in the carrying out of a similar size, scope and complexity as the Works.

2 INTELLECTUAL PROPERTY

2.1 The Consultant’s Intellectual Property Rights shall remain vested in the Consultant.

2.2 The Beneficiary has a licence to use the Consultant’s Intellectual Property Rights and information issued pursuant to the Appointment by the Consultant for any purpose relating to the Works and the operation of the Project.

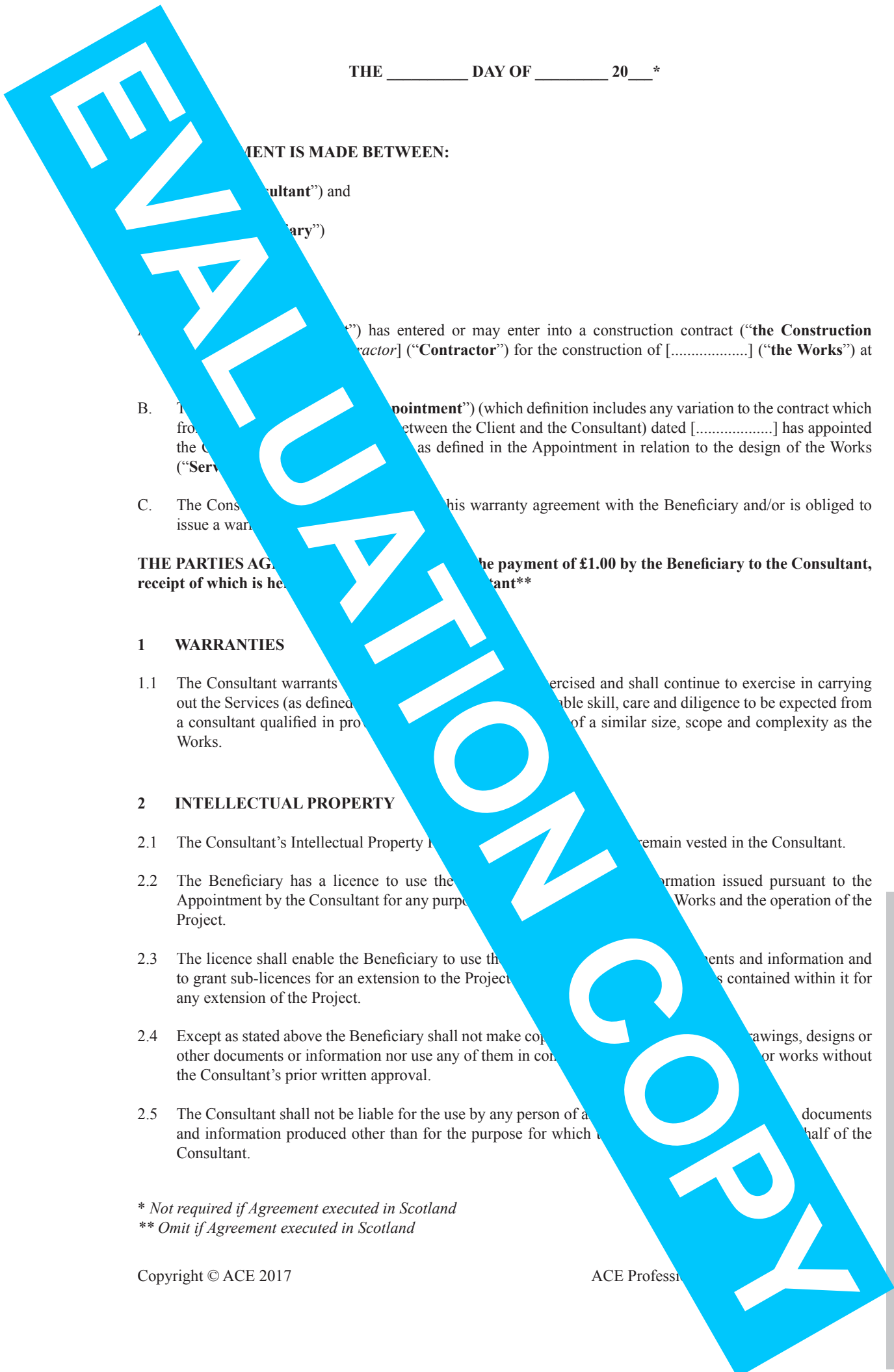
2.3 The licence shall enable the Beneficiary to use the Consultant’s Intellectual Property Rights and information and to grant sub-licences for an extension to the Project of the Consultant’s Intellectual Property Rights contained within it for any extension of the Project.

2.4 Except as stated above the Beneficiary shall not make copies of the Consultant’s Intellectual Property Rights, drawings, designs or other documents or information nor use any of them in connection with the Works or works without the Consultant’s prior written approval.

2.5 The Consultant shall not be liable for the use by any person of any of the Consultant’s Intellectual Property Rights, drawings, designs or other documents and information produced other than for the purpose for which they were produced on behalf of the Consultant.

* Not required if Agreement executed in Scotland

** Omit if Agreement executed in Scotland



Consultant's Intellectual Property Rights shall mean: Any and all intellectual and industrial including (without limitation) patents, trademarks, service marks, registered designs, design rights, moral rights or know-how, howsoever arising, whether or not other similar protected rights in any country and any applications for the registration of such rights and all extensions thereof throughout the world, created, developed, embodied in any drawing or other document and information prepared by or on behalf of the Consultant in connection with the performance of the Services for delivery to the Client.

3

3.1 The Consultant shall maintain professional indemnity insurance in the amount and for the period of time required in relation to its liabilities arising under this Agreement provided always that such insurance is available to the Consultant at reasonable rates and terms. Such insurance shall be with a reputable insurance company carrying on insurance business in the UK market.

3.2 The Consultant shall, whenever requested and without delay such documentary evidence as the Beneficiary may require that the insurance required is in force, and in any event notify the Beneficiary of any inability to obtain cover, or the cancellation of the insurance, or its inability to renew.

4 ASSIGNMENT/ASSIGNATION

4.1 Where the Beneficiary is not a tenant or purchaser of the Works, the Consultant may assign by way of absolute legal assignment/assignment** only the benefit of the Agreement to a third party who is also providing finance in connection with the Works. Any such assignment/assignment** shall only be effective if written notice is given to the Consultant. No further assignment/assignment** shall be permitted.

4.2 Where the Beneficiary is a tenant or purchaser of the Works, the Consultant may assign by way of absolute legal assignment/assignment** only the benefit of the Agreement to a third party who also takes an assignment/assignment** of the tenant's/purchaser's interest in the Works. Any such assignment/assignment** shall only be effective if written notice is given to the Consultant. No further assignment/assignment** shall be permitted.

5 GENERAL

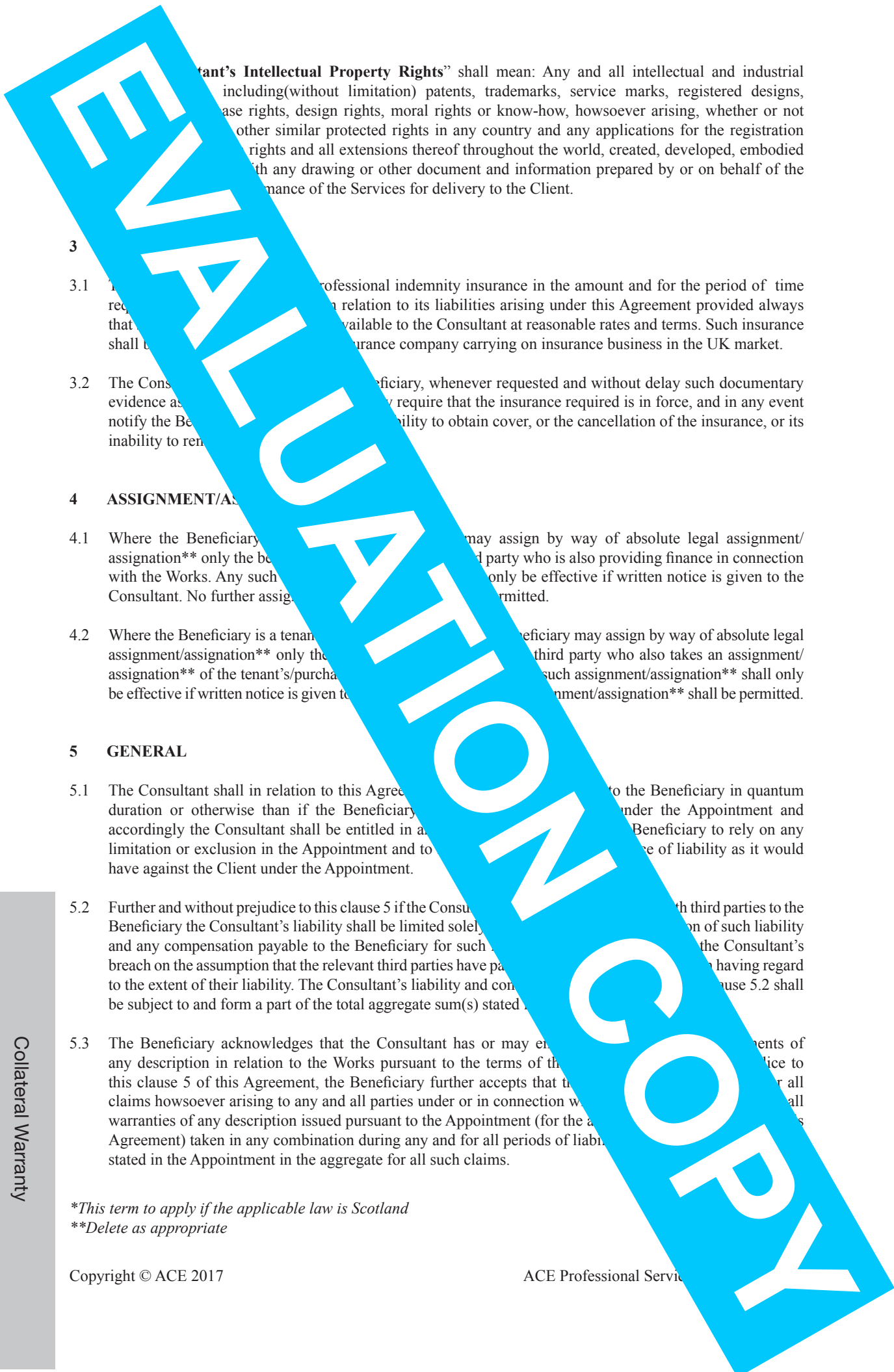
5.1 The Consultant shall in relation to this Agreement be liable to the Beneficiary in quantum meruit or otherwise than if the Beneficiary is a tenant or purchaser of the Works under the Appointment and accordingly the Consultant shall be entitled in and to the extent of its liability to rely on any limitation or exclusion in the Appointment and to the extent of its liability as it would have against the Client under the Appointment.

5.2 Further and without prejudice to this clause 5 if the Consultant is liable to the Beneficiary in quantum meruit or otherwise than if the Beneficiary is a tenant or purchaser of the Works with third parties to the Appointment the Consultant's liability shall be limited solely to the extent of such liability and any compensation payable to the Beneficiary for such liability shall be limited to the Consultant's liability to the Beneficiary on the assumption that the relevant third parties have paid their liability to the Beneficiary having regard to the extent of their liability. The Consultant's liability and compensation payable to the Beneficiary under clause 5.2 shall be subject to and form a part of the total aggregate sum(s) stated in the Appointment.

5.3 The Beneficiary acknowledges that the Consultant has or may enter into or be bound by any description in relation to the Works pursuant to the terms of the Appointment and in reliance on this clause 5 of this Agreement, the Beneficiary further accepts that the Consultant shall be liable for all claims howsoever arising to any and all parties under or in connection with the Appointment for all warranties of any description issued pursuant to the Appointment (for the avoidance of doubt, this includes the Appointment taken in any combination during any and for all periods of liability stated in the Appointment in the aggregate for all such claims.

**This term to apply if the applicable law is Scotland*

***Delete as appropriate*



...ther without prejudice to this clause 5, no action or proceedings for any breach of this Agreement shall be commenced against the Consultant after the expiry of the period of liability specified in the Appointment.

...without prejudice to Clause 5.1 neither party shall under any circumstances whatsoever be liable to ... for any direct or indirect loss of profit, loss or business or anticipated saving or special, indirect or ... damage suffered by the other party that arises under or in connection with this Agreement.

...LIGATIONS

...ection of the documents prepared by the Consultant in relation to design of the Works ... tion or testing of any of the Works or any attendance at site meetings by or on behalf ... other party shall wholly or partly relieve the Consultant from its obligations under

7

Any notice ... in writing and shall be sent by pre-paid first class post, registered post, recorded delivery ... addressed to the Beneficiary or the Consultant (as the case may be) at the address or place of business ... in or such other address or place of business last notified in writing by the Beneficiary ... (as the case may be) to the other.

8 THIRD PARTIES

Where the applicable law is that of Northern Ireland:

The Beneficiary and the Consultant ... confer and nothing in this Agreement shall be construed as conferring, on a third party ... of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.*

Where the applicable law is that of ...

Nothing in this Agreement confers ... third party any benefit or right to enforce any term of this Agreement.*

9 GOVERNING LAW AND JURISDICTION

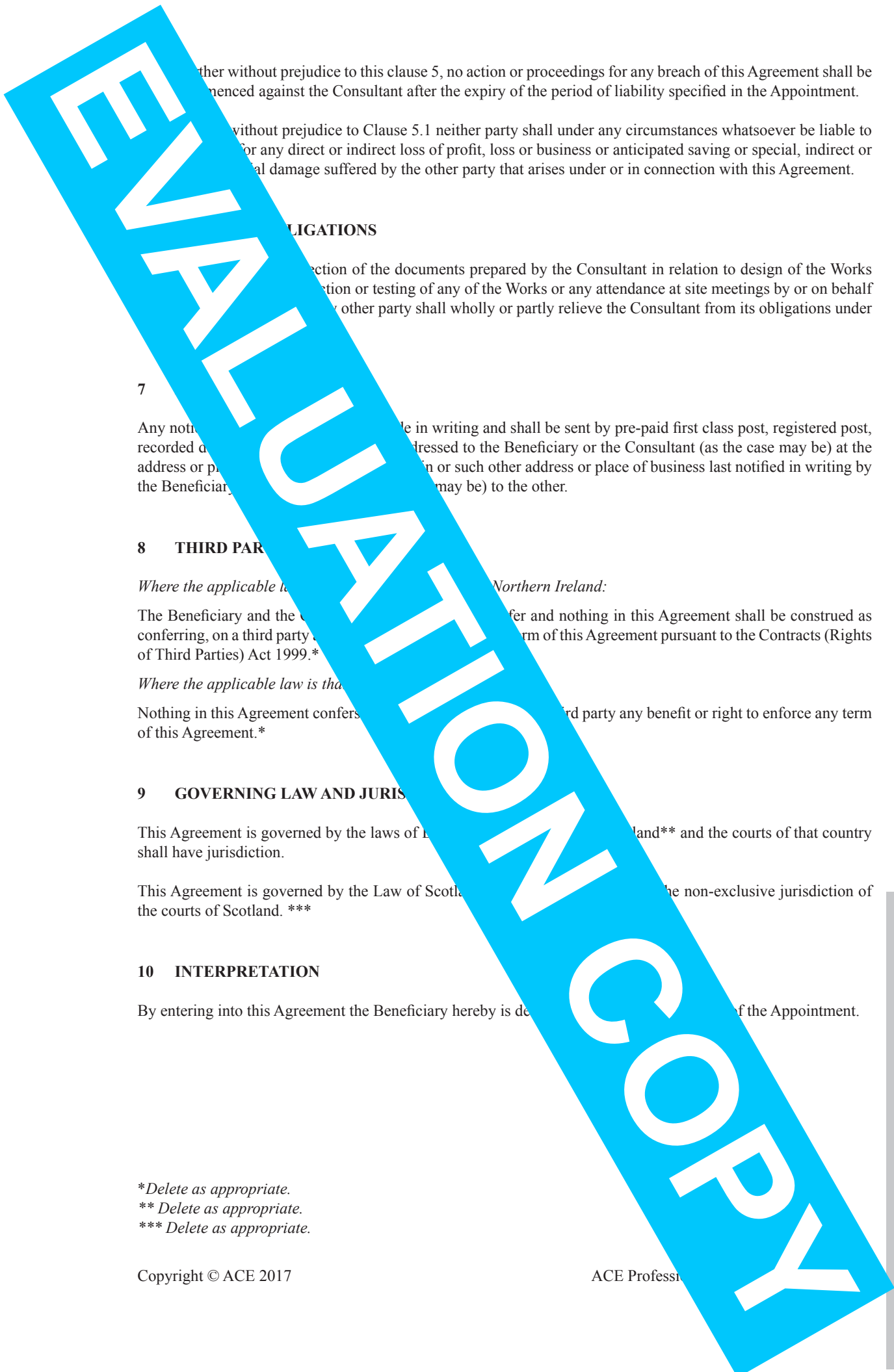
This Agreement is governed by the laws of ... and** and the courts of that country shall have jurisdiction.

This Agreement is governed by the Law of Scotland ... the non-exclusive jurisdiction of the courts of Scotland. ***

10 INTERPRETATION

By entering into this Agreement the Beneficiary hereby is deemed to have accepted the terms of the Appointment.

*Delete as appropriate.
** Delete as appropriate.
*** Delete as appropriate.



of the parties have executed this Agreement on the date shown on the first page.

BENEFICIARY

.....

In

.....

SIGNED by the

.....

Director

In the presence of

.....

ALTERNATIVE FOR EXECUTION

IN WITNESS WHEREOF these presents have been signed by me, preceding [] pages, and comprising referred to and annexed hereto

Under declaration that any insertions and deletions, are executed as follows:

They are executed for and on behalf of the Beneficiary on.....20

by..... (print full name)

who is a Director/Company Secretary/Person Authorised to sign in Firm name/Partner/Individual authorised to sign these presents for and on behalf of.....

(signature)

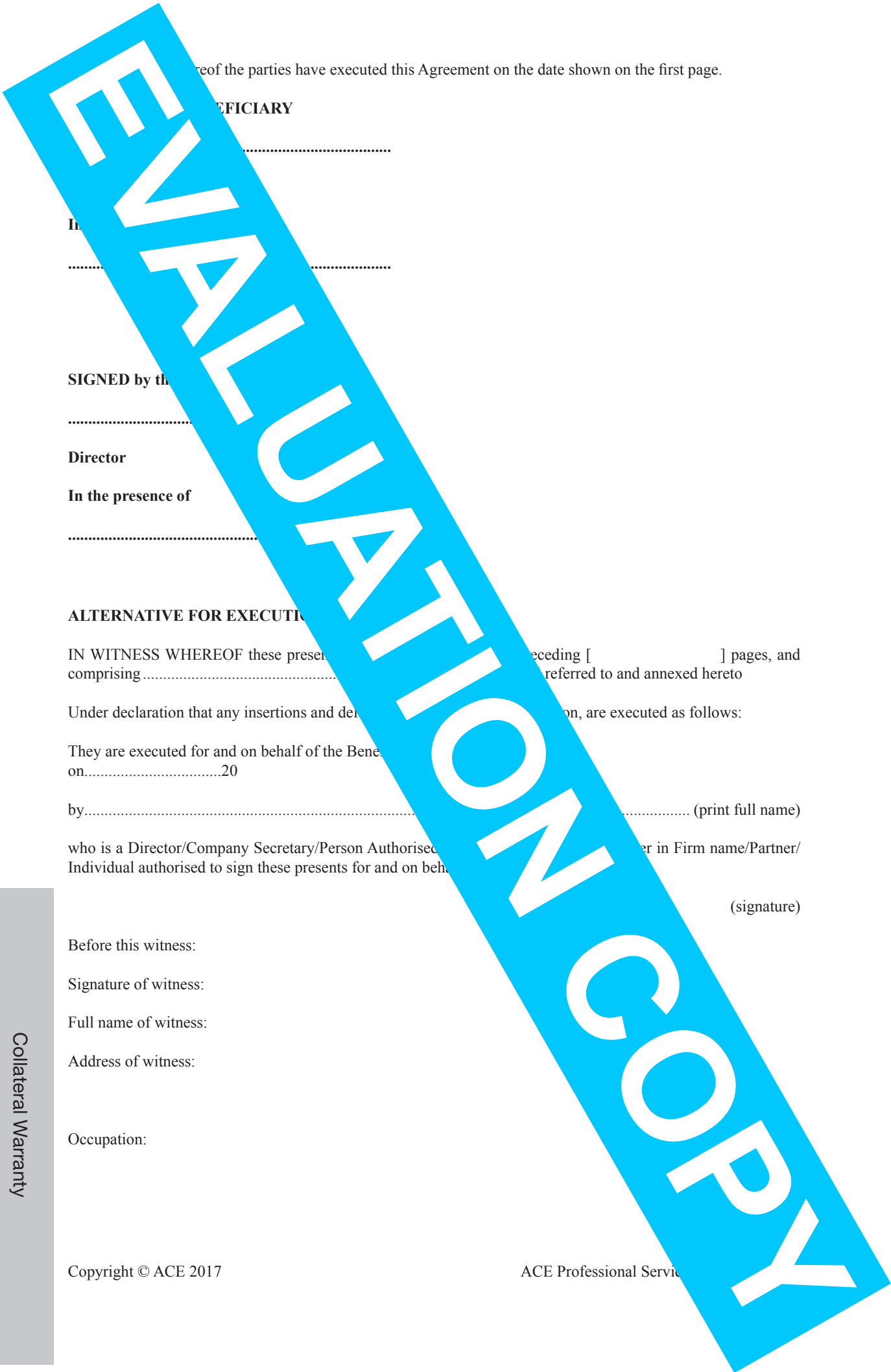
Before this witness:

Signature of witness:

Full name of witness:

Address of witness:

Occupation:



executed for and on behalf of the Consultant at on 20

..... (print full name)

..... or/Company Secretary/Person Authorised/Member/Proper Officer/Partner in Firm name/Partner/
..... used to sign these presents for and on behalf of the Consultant

..... (signature)

Ad

Occupatio



**UNLAWFUL
REPRODUCTION
OR
COPY**