

A1 Annex A1 – Standard Terms & Conditions of Tenos Limited for the Supply of Services

Please read these Conditions carefully as they will form the basis of all agreements between us for the supply of our services to you. Your attention is particularly drawn to Clause 10 which contains provisions limiting our liability to you in respect of matters arising from the Agreement. You acknowledge that, unless otherwise expressly agreed in writing between the parties these Conditions apply to the Agreement to the exclusion of any other terms and conditions.

1 DEFINITIONS

1.1 In these Conditions, the following expressions shall have the meanings set out below unless the context requires otherwise:

"Agreement" means the agreement between the Client and the Consultant for the supply and acquisition of the Services concluded in accordance with the procedure set out below and subject always to the Conditions and the terms set out in the Proposal;

"Client" means the individual or organisation with whom the Agreement is made (and identified as such in the Proposal) as indicated by that party's acceptance of the Proposal;

"Conditions" means the standard terms and conditions for the supply of services set out in this document, as amended from time to time in accordance with clause 22 below, and (unless the context requires otherwise) including any Special Conditions;

"Confidential Information" means any information of a confidential nature which is disclosed by one party to the other under or in connection with the Agreement or which comes to the attention of such other party as a result of the Agreement (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such) and including, but not limited to, the terms of the Agreement;

"Consultant" means Tenos Limited (Company number 03277817) whose registered office is at 1 St. Peters Square, Manchester, England, M2 3DE;

"Deliverables" means all documents and materials (and drafts thereof), opinions, advice and recommendations developed or produced by the Consultant or its agents, subcontractors or employees in relation to the Services in any form (and whether written or oral), including, but not limited to the Proposal(s) and the Report(s);

"Force Majeure" means any circumstance whatsoever beyond the reasonable control of either party including, but not limited to war, acts of foreign enemies, terrorism, revolution, riot, civil commotion, fire, flood or other natural disaster or radioactive contamination or the failure or default of suppliers and / or sub-contractors;

"Intellectual Property" means any patent, invention, copyright, database right, registered or unregistered design, trade mark (whether registered or unregistered), trade name, logo, trade secrets, know-how or other industrial or intellectual property right subsisting anywhere in the world, and applications for any of the foregoing, together with the goodwill therein;

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

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

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

"Services" means the services described in the Proposal and all other work performed by the Consultant pursuant to this Agreement (including, but not limited to, the supply of the Report or any other Deliverables);

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

"Special Conditions" means any additional conditions agreed in writing between the Client and the Consultant, whether found in the Proposal or otherwise, and which form part of the Agreement.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 Any reference in these Conditions to:

- a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, updated, re-enacted or extended from time to time;
- the singular shall include the plural and vice versa and any reference to one gender shall include all genders;
- "writing" or "written" shall (unless stated specifically to the contrary) include both faxes and e-mail methods of transmission;
- a person includes bodies corporate, unincorporated associations and partnerships (including limited liability partnerships).

2 APPLICATION OF TERMS

2.1 The Consultant shall provide, and the Client shall accept, the Services in accordance with the Proposal (if accepted by the Client in accordance with the procedure set out in these Conditions), subject always to these Conditions which shall govern the Agreement to the exclusion of any other terms or conditions subject to which any such proposal is made or purported to be made or which may be supplied by or on behalf of the Client. For the avoidance of doubt, it is the Client's responsibility to ensure that the terms of the Proposal accurately and reflect the Client's requirements in respect of the Consultant's Services prior to the Client confirming its acceptance of the same to the Consultant.

2.2 The Consultant's employees, agents or sub-contractors are not authorised to make any representations or give any advice or recommendations concerning the Services unless confirmed by an authorised representative of the Consultant in writing.

2.3 Information, statements or representations contained in any quotation or estimate, or any sales, promotional or other literature issued by or on behalf of the Consultant is for illustrative purposes only and shall not form part of the Agreement. The Client agrees to rely upon its own judgement as to the nature and quality of the Consultant's services (including the Deliverables), their use and application and their suitability for its purposes.

2.4 Any typographical or other error or omission in any information or documentation issued by or on behalf of the Consultant shall be subject to correction without liability on the part of the Consultant.

3 FORMATION OF AGREEMENT

3.1 Unless otherwise stated in the Proposal, each Proposal submitted by the Consultant to the Client remains open for acceptance by the Client for a period of thirty (30) days from the date of the Proposal in question.

3.2 Acceptance of the Proposal by the Client shall be deemed to be an offer by the Client to acquire the Services subject to these Conditions. No such offer placed with the Consultant by a Client is binding on the Consultant unless and until:

- 3.2.1 it is accepted in writing by an authorised representative of the Consultant; or
- 3.2.2 the Consultant commences the provision of the Services, at which point a binding Agreement shall be deemed to have come into effect on the basis of these Conditions.

3.3 The Client shall be responsible for giving the Consultant any necessary information relating to the Services within a sufficient time to enable the Consultant to perform the Agreement. The Consultant shall not be liable for any delay in providing the Services or any associated costs incurred by the Client where the Client has failed to comply with the provisions of this clause.

4 CONSULTANT'S DUTIES

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

4.2 Whilst the Consultant will use its reasonable endeavours to perform the Services within the time frame estimated for their completion, time for performance of the Services is not of the essence of the Agreement.

4.3 Where the Services are to be performed in instalments, each performance shall be deemed to constitute a separate Agreement and failure by the Consultant to perform any one or more of the instalments in accordance with these Conditions or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Agreement as a whole as repudiated.

4.4 The Consultant will perform the Services generally in accordance with the Proposal, but reserves the right to vary the Services if it appears to the Consultant reasonably necessary to do so either as a result of Site conditions, legal, environmental or health and safety factors, or the discovery of any other information, which has a material effect on the Services or the Consultant's ability to perform them. In the event of a variation in the Services due to the reasons described above or in the event that the Client requests a variation to the Services, the Consultant shall notify the Client promptly of the costs of such variations and the Client shall pay such additional costs incurred.

4.5 The Consultant may use sub-contractors, sub-consultants and/or agents to perform all or part of the Services without requiring the consent of the Client. In such event, the Consultant shall exercise all reasonable care to ensure that such sub-contractors, sub-consultants and/or agents are appropriately skilled and experienced in relation to the work which they are instructed to carry out.

5 CLIENT'S OBLIGATIONS

5.1 The Client shall co-operate with the Consultant in all matters relating to the provision of the Services.

5.2 The Client acknowledges that in agreeing to provide the Services, the Consultant has relied upon the Client to make full disclosure of all Relevant Information and to ensure the completeness and accuracy of all Relevant Information disclosed by or on behalf of the Client.

The Client shall transmit promptly to the Consultant any new Relevant Information, which becomes available or any other information which may materially affect the Services.

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

5.4 The Client shall, at its own expense, promptly provide to the Consultant (or its employees, agents or sub-contractors) free access to the Site or to such other premises as well as to data and such other material as the Consultant may reasonably require to perform the Services.

5.5 If the Consultant requires access to any premises in order to carry out the Services, the Client shall be solely responsible for maintaining such premises and shall fully inform the Consultant of all health and safety rules and regulations and any other reasonable security requirements that apply to such premises.

5.6 The Client shall be responsible for obtaining and maintaining in force all licences, permissions, consents and authorisations which may be required for the performance of the Services before the date on which they are to start.

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

5.8 If the Consultant's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Client (or its employees, agents or sub-contractors), the Consultant shall (i) be relieved from its obligation to perform the Services under the Agreement to the extent and for the duration of the prevention or delay, and (ii) not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

5.9 The Client shall be liable to pay to the Consultant upon demand, all reasonable costs, charges or losses sustained or incurred by the Consultant arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in performing any of its obligations under the Agreement (subject only to the Consultant confirming such costs, charges or losses to the Client in writing).

6 USE OF RELEVANT INFORMATION

All Relevant Information provided to the Consultant by the Client shall be returned to the Client after use or completion of the Services by the Consultant or termination of this Agreement under Clause 13, provided that the Consultant shall have the right to take copies of any Relevant Information for its own records, subject to the confidentiality obligations set out in Clause 8.

7 INTELLECTUAL PROPERTY AND REPORTS

7.1 All Intellectual Property and any other rights in the Deliverables shall remain vested in and be owned by the Consultant at all times.

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

7.3 The Client may, subject to compliance with the provisions of clause 7.2 above, without charge, make the Report available to any person or persons for whom the Client is acting in a professional capacity in relation to the Report provided that such person or persons accepts all of these Conditions in their entirety.

7.4 The Consultant shall not be liable for any use of the Deliverables for any purpose other than that for which the same were prepared by, or on behalf of the Consultant.

8 CONFIDENTIALITY

8.1 Each party agrees that it will treat as private and confidential the Confidential Information of the other party and neither of them shall publish or disclose any detail thereof to any third party except as permitted in this Agreement, nor use the same except for the purpose of carrying out its obligations under this Agreement. This duty of confidentiality shall not apply to information which a party can show by reasonable documentary proof:

- 8.1.1 to have been in the public domain at the time of receipt by such party; or
- 8.1.2 to have become known to the public through no fault of such party after receipt thereof; or

8.1.3 is required to be disclosed pursuant to applicable laws or a legally binding order of any competent judicial governmental or regulatory body. Before the disclosure of any information pursuant to this clause 8.1.3, the disclosing party will (to the extent permitted by law) inform the other party of the circumstances and the details of the information to be disclosed at the earliest possible opportunity.

9 PRICE AND PAYMENT

9.1 The price for the provision of the Services shall be the price quoted in the Proposal by the Consultant, or where no price has been quoted, the standard hourly rates of the Consultant in force at the time of performing the work shall apply to work done in the provision of the Services. Unless it is stated in the Proposal that they are included within the price for the Services, out of pocket expenses properly incurred by the Consultant in the performance of the Services shall be re-imbursed by the Client on production of receipts for the same.

9.2 The Client shall also pay, in addition to the price for the Services, any extra costs that may be incurred by the Consultant by reason of any acts or omissions by the Client or its agents (including, but not limited to, the failure to provide any Relevant Information or adequate instructions, specifications or other information relating to the Services, or any alteration in specification or details of the Services required by the Client) and all the provisions of the Agreement applicable to payment of the price for the Services shall apply equally to the payment by the Client of any additional costs set out in this Agreement.

9.3 The Consultant shall be entitled to invoice the Client for the Services in accordance with the timescales set out in the Proposal, or where no such timescales have been agreed, on a monthly basis in arrears.

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

9.5 The Client shall settle the Consultant's invoices in full and in cleared funds to a bank account nominated in writing by the Consultant no later than twenty eight (28) days after the invoice date. Time for payment is of the essence of the Agreement.

9.6 If the Services are to be performed in instalments the Consultant shall issue a separate invoice in respect of each instalment and the Client shall pay for each instalment of Services in accordance with clause 9.5 above.

9.7 If the Client fails to make full payment on the due date then without prejudice to any other right or remedy available to the Consultant, the Consultant may (without incurring any liability to the Client):

9.7.1 cancel the Agreement or suspend any further performance of the Services to the Client;

9.7.2 appropriate any payment made by the Client to such of the Services (or the Services already performed under any other agreement between the Consultant and the Client) as the Consultant may think fit (notwithstanding any purported appropriation by the Client); and / or

9.7.3 charge the Client interest (both before and after any judgment) on the amount unpaid at the rate of four per cent (4%) above Lloyds TSB base rate from time to time until payment in full is made.

9.8 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of VAT chargeable for the time being. Where any taxable supply for VAT purposes is made under the Agreement by the Consultant to the Client, the Client shall (on receipt of a valid VAT invoice) pay to the Consultant such additional amounts in respect of VAT as are chargeable on the supply in question.

9.9 The Consultant may, without prejudice to any other rights it may have, set off any liabilities to the Client against any liability of the Client to the Consultant.

10 **LIABILITY OF THE CONSULTANT**

10.1 Nothing in this Agreement shall exclude or limit either party's liability to the other in respect of any fraudulent misrepresentation made by it, in respect of death or personal injury caused by its negligence or in respect of any other matter for which its liability cannot be excluded or limited by law.

10.2 Subject to clause 10.1 above, liability for any claim or loss in relation to cladding or cladding systems is subject to the exclusions of our professional indemnity insurance.

10.3 Subject to clauses 10.1 and 10.2 above, neither party shall be liable for any loss of profit, loss of revenue, business interruption, or any other special, indirect or consequential losses, whether caused by negligence, breach of duty (statutory or otherwise), breach of contract or otherwise and whether or not such losses were foreseeable at the time of entering this Agreement.

10.4 Subject to clauses 10.1, 10.2 and 10.3 above, each party's liability under this Agreement shall be limited to the extent of any loss, damages, injury, expenses, costs (including legal costs) that are directly caused by their failure to perform their obligations under this Agreement and in any event, the total aggregate limit of each party's liability under this Agreement whether under contract, tort or any other legal basis shall be the lower of (i) one hundred (100) times the total value of the Consultant's fees paid or payable under this Agreement or (ii) five million pounds (£5,000,000).

10.5 The Consultant's liability to the Client under or in connection with this Agreement shall be limited to the proportion of the Consultant's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same.

10.6 If the Client becomes aware of circumstances which might give rise to a claim against the Consultant, it is a condition precedent to the liability of the Consultant that the Client shall give notice of such circumstances to the Consultant with sixty (60) days of the Client becoming aware of them.

10.7 This clause 10 shall survive any expiry or termination of the Agreement for any reason.

11 **INSURANCE**
The Consultant shall, throughout the term of this Agreement, maintain professional indemnity insurance provided such insurance is available in the market at commercially reasonable rates and terms, in respect of the Services and shall upon request provide evidence that such insurance coverage is provided up to the limit of the Consultant's liability under this Agreement.

12 **FORCE MAJEURE**
12.1 Neither party shall be liable for any delays or failure to perform any of its obligations under this Agreement because of Force Majeure. In the event of Force Majeure, both parties shall use all reasonable endeavours to overcome any difficulties thereby arising and shall resume their respective obligations under this Agreement as soon as is reasonably possible.

12.2 If Force Majeure continues for more than ninety (90) days, either party may terminate this Agreement by written notice to the other. The Consultant shall be entitled to charge the Client for all Services performed prior to the Force Majeure in accordance with the price agreed for the Services together with all expenses reasonably incurred by or accruing to the Consultant during the Force Majeure period.

13 **TERMINATION**

13.1 Either party may by written notice terminate this Agreement if the other substantially fails to perform its obligations under the Agreement, provided that the party intending to terminate the Agreement has first given the other party not less than twenty (20) days written notice specifying the default and referring to this clause, and the default has not been remedied prior to termination taking place.

13.2 Either party may by written notice terminate this Agreement immediately if:

13.2.1 the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;

13.2.2 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the other party;

13.2.3 the other party ceases or threatens to cease to carry on business;

13.2.4 the other party becomes subject to or bound by any event or circumstances similar to any of the events or circumstances mentioned above in any jurisdiction; or

13.2.5 it reasonably believes that any of the events mentioned above is about to occur in respect of the other party.

13.3 In the event of termination of this Agreement for any cause whatsoever, (i) the Client shall immediately pay any of the Consultant's outstanding unpaid invoices and in respect of Services supplied but for which no invoice has been submitted, the Consultant may immediately submit an invoice which shall be payable immediately upon receipt by the Client, (ii) save as specifically provided for in the Agreement, each party shall immediately return to the other any of the other party's property then in its possession or under its control, (iii) the accrued rights, remedies, obligations and liabilities of the parties as at expiry / termination shall be unaffected, and (iv) clauses which expressly or by implication survive termination shall continue in full force and effect.

13.4 Without limiting its other rights or remedies, the Consultant may suspend provision of the Services under the Agreement (or any other agreement between the Consultant and the Client) if the Client becomes subject to any of the events listed in clause 13.2 above or the Consultant reasonably believes that the Client is about to become subject to any of them.

14 **NOTICES**

14.1 Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered by hand or by registered post to the company secretary of the party to be served at its principal place of business or its registered office.

14.2 Any other notice to be given by one party to the other shall be served by sending such notice by post or by hand to the addresses specified in the Proposal (or if no address is specified in the Proposal, to the registered office of the other party) or alternatively by fax or by e-mail. Notices shall be deemed to have been received by the recipient party as follows:

14.2.1 by hand, at the time of delivery; or

14.2.2 by post, four (4) days after posting within the United Kingdom; or

14.2.3 by post, within ten (10) days for posting outside the United Kingdom; or

14.2.4 by fax, on the date of transmission, provided that a confirming copy is sent by first class pre-paid post to the other party at the address referred to above within twenty four (24) hours after transmission; or

14.2.5 by e-mail, upon arrival at its mailbox at the internet address apparent from the last electronic communication successfully transmitted.

15 **NON-SOLICITATION**
The Client agrees that it will not, without the prior written consent of the Consultant, at any time during the Agreement or for a period of twelve (12) months following its expiry or termination for any reason, solicit or entice away from the Consultant or employ or attempt to employ any person who is or has been engaged in the provision of the Services.

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

17 **WAIVER**
No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise.

18 **THIRD PARTY RIGHTS**
This Agreement shall not confer and shall not purport to confer on any third party any benefit or any right to enforce any term of this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999.

19 **GOVERNING LAW AND DISPUTE RESOLUTION**

19.1 If at any time any dispute which cannot be settled amicably arises between the Client and the Consultant in relation to this Agreement or in any way connection with the Services, the dispute shall be submitted to arbitration by a sole arbitrator. If the Parties cannot within fourteen (14) days of a proposal to do so, agree on an arbitrator, then the sole arbitrator shall be appointed by the President for the time being of the Institution of Civil Engineers. The arbitration shall take place in London and shall be conducted in English and according to the laws of England and Wales.

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

20 **ASSIGNMENT**
Neither party shall be entitled to assign its rights nor to sub-contract its obligations under this Agreement without obtaining the prior written consent of the other (such consent not to be unreasonably withheld).

21 **ENTIRE AGREEMENT**
This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous agreements and understandings between the parties with respect to this Agreement. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Consultant which is not set out in the Agreement.

VARIATION
Save as expressly set out within these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Consultant. The Consultant shall be entitled to update these Conditions (and thereby the terms of the Agreement) from time to time by giving notice in writing to the Client.