



## Schedule of Amendments published on 30 September 2024

The following amendments have been incorporated into Standard Conditions of Engagement Consultancy Services - Technical (COE-1) and Standard Conditions of Engagement for Archaeology Services (COE-2) with a publication date of 30-09-2024. These amendments should be read in conjunction with the forms of Forms of Tender and Schedule published 16-09-2024.

### 1. COE1 v2.j 30-09-2024

| Topic                    | Clause Reference | Description  |
|--------------------------|------------------|--|
|                          | Flysheet         | title, version no., publication date   |
| Corrupt Gifts            | 2.22-24          | New sub-clauses added requiring that the consultant shall not offer and the Client shall not accept gifts of any kind in relation to the award or performance of the contract, or any other public contract.   |
| Key Team Members         | 2.25-27          | New sub-clauses outlining that Key Team Members as named in the Schedule may not be changed without the prior approval from the Client.<br>Previously presented as a footnote in the Form of Tender and Schedule.  |
| Conflicts of Interest    | 2.28-31          | New sub-clauses added providing a procedure for Conflicts of Interest.<br>Previously presented as a footnote in the Form of Tender and Schedule.   |
| Total Performance Period | 4.6              | Previous sub-clause 4.6 removed and subsequent sub-clauses renumbered accordingly.<br><br>Previous sub-clause 4.23 withdrawn.  |
| Prolongation             | Clause 5         | Sub-clauses 5.1- 3 and 5.8 are removed and remaining sub-clauses are renumbered accordingly.<br><br>Sub-clause 5.6 <i>Client Liability</i> is amended as follows:<br>"Except as provided in Clauses 4 and 5, and any adjustment to the Fee for inflation in accordance with Clause 9, the Client has no liability to the Consultant [whether for breach of contract, duty of care or other wise duty] for the Consultant's costs or losses for any delay to the Services". |
| Fixed Price              | 9.9 & 9.11       | The term "fixed price" is removed.   |
| Inflation                | 9.13-20          | New sub-clauses 9.13-16 <i>Inflation Adjustment</i> describe how the Fee is to be adjusted from the First Adjustment Date onwards.<br><br>New sub-clauses 9.17-20 <i>Exclusions from Inflation Adjustment</i> added that describe elements of the Fee that are not subject to the adjustment for inflation (Calculated Time Charges, services which were delayed and Special disbursements).   |
| Intellectual Property    | 13.1-12, 29-38   | Clause 13.1-5 <i>General Rights</i> and 13.6-12 <i>Licence, assignment</i> are amended as follows: <ul style="list-style-type: none"> <li>copyright is amended to intellectual property rights;</li> <li>intellectual property rights extend to "documents, designs or any other deliverables arising from the performance of the Services - (the Consultant's Documents)";</li> <li>13.8 is amended as follows:</li> </ul>  |

“except its internal office notes, memos, emails, which it is acknowledged shall not constitute the Consultant’s Documents.”

- 13.11 is amended as follows:  
“~~or instead of that licence, if so Scheduled, transfer to the Client of the Consultant’s ownership, copyright, in the documents.”~~  
“or for those Consultant’s Documents (if any) set out in Schedule A, an absolute assignment to the Client including by way of present assignment of future rights of the Consultant’s entire right, title and interest, including all intellectual property rights, in and to, such Consultant’s Documents, free from all encumbrances for the full duration thereof throughout the world together with a waiver of all moral or similar rights arising from such Consultant’s Documents, insofar as the Consultant may lawfully do so in favour of the Client.”
- Sub-clause numbering 13.29-28 is corrected

Termination

14.9

New sub-clause added as follows:

“a Scheduled Termination event.”

Scheduled Termination events are defined in the Schedule.

Remaining sub-clauses are renumbered accordingly.

Execution

Execution blocks are amended for sealing.

## 2. COE2 v1.5 30-09-2024

| Topic                    | Clause Reference | Description  |
|--------------------------|------------------|--|
|                          | Flysheet         | title, version no., publication date   |
| Corrupt Gifts            | 2.24-26          | New sub-clauses added requiring that the consultant shall not offer and the Client shall not accept gifts of any kind in relation to the award or performance of the contract, or any other public contract.   |
| Key Team Members         | 2.27-29          | New sub-clauses outlining that Key Team Members as named in the Schedule may not be changed without the prior approval from the Client. Previously presented as a footnote in the Form of Tender and Schedule.   |
| Conflicts of Interest    | 2.30-33          | New sub-clauses added providing a procedure for Conflicts of Interest. Previously presented as a footnote in the Form of Tender and Schedule.  |
| Total Performance Period | 5.6              | Previous sub-clause 5.6 removed and subsequent sub-clauses renumbered accordingly.   |
| Prolongation/ Delay      | Clause 6         | <p>Previous sub-clause 5.23 withdrawn.</p> <p>Sub-clauses 6.1- 3 and 6.8 are removed and subsequent sub-clauses are renumbered accordingly.</p> <p>Sub-clause 6.6 <i>Client Liability</i> amended as follows:<br/> “Except as provided in clauses 5 <del>and 6</del>, and any adjustment to the Fee for inflation in accordance with Clause 11, the Client has no liability to the Consultant [whether for breach of contract, duty of care or other <del>wise duty</del>] for the Consultant’s costs or losses for any delay to the Services”.</p>  |
| Fixed Price              | 10.2             | The term “fixed price” is removed.   |
| Inflation                | 11.13-20         | <p>New sub-clauses 11.13-16 <i>Inflation Adjustment</i> describe how the Fee is to be adjusted from the First Adjustment Date onwards.</p> <p>New sub-clauses 11.17-20 <i>Exclusions from Inflation Adjustment</i> describe elements of the Fee that are not subject to the adjustment for inflation (Calculated Time Charges, services which were delayed and Special disbursements).</p>   |
| Intellectual Property    | 14.1-12          | <p>Clause 14.1-5 <i>General Rights</i> and 14.6-12 <i>Licence, assignment</i> have undergone amendment to be modernised and brought up to current best practice:</p> <ul style="list-style-type: none"> <li>• copyright is amended to intellectual property rights;</li> <li>• intellectual property rights extend to “documents, designs or any other deliverables arising from the performance of the Services- (the Consultant’s Documents)”;</li> <li>• 14.8 is amended as follows:<br/> “except its internal office notes, memos, emails, which it is acknowledged shall not constitute the Consultant’s Documents. ”</li> <li>• 14.10 is amended as follows:<br/> “<del>or instead of that licence, if so Scheduled, transfer to the Client of the Consultant’s ownership. Copyright, in the documents.</del>”<br/> “or for those Consultant’s Documents (if any) set out in Schedule A, an absolute assignment to the Client including by way of present</li> </ul> |

|             |           |  |
|-------------|-----------|--|
|             |           | assignment of future rights of the Consultant’s entire right, title and interest, including all intellectual property rights, in and to, such Consultant’s Documents, free from all encumbrances for the full duration thereof throughout the world together with a waiver of all moral or similar rights arising from such Consultant’s Documents, insofar as the Consultant may lawfully do so in favour of the Client.” |
| Termination | 15.9      | New sub-clause added as follows:<br>“a Scheduled Termination event.”<br><br>Scheduled Termination events are defined in the Schedule.<br>Remaining sub-clauses are renumbered accordingly.   |
|             | Execution | Execution blocks have been amended for sealing.  |

### 3. Additional Information on amendments

While completing the necessary changes to give force to Indexation in the Conditions of Engagement the Office of Government Procurement has also made changes to other Clauses, which are outlined above. Further detail is given below.

#### Key Team Members:

The purpose of this amendment is to highlight the importance of maintaining the promised level of service quality from tender stage to project delivery. Tenderers cannot alter named key personnel without the consent of the Contracting Authority and must propose a replacement of equal standing. The definition of Key Team Members can be found in the Form of Tender and Schedule (FTS).

#### Total Performance Period:

As a consequence of the introduction of Indexation of Consultancy fees in the Standard Conditions of Engagement, the contractual term *Total Performance Period* has been withdrawn. This is because its purpose in the Conditions was to facilitate the previous prolongation mechanism, which will no longer be in force.

With the removal of the Total Performance Period, Contracting Authorities must continue to carefully consider the realistic time periods necessary to delivery each Stage of the Project. Inter Stage periods and predictable Client led delays (awaiting internal approvals, planning consents and potential appeals, procurement processes for the Construction stage of the project, etc.), should be considered when entering Stage Periods. Estimated Inter-stage durations can be included in the Service Requirements.

The total of the Stage Performance Periods and inter-Stage periods provide Tenderers with an estimate of the total duration during which the Services will be required to be performed.

### **Indexation:**

Fees are fixed for an initial minimum 2 year period from 10 days before submission of the tender. The fixed period will encompass 10 days pre-tender, the tender assessment period and a residual fixed in-contract period until the First Adjustment Date. On percentage fee contracts (applies to COE1 only) the First Adjustment Date (refer to FTS9 v1.10 16-09-2024) may arise later than 2 years. It is considered that the percentage fee is already taking account of inflation, thus the fee is only subject to adjustment for inflation from the point that the percentage fee is converted or applied. Thereafter the adjustment for inflation is calculated using the COE Fee Adjustment Factor Methodology to arrive at the COE Fee Adjustment Factor which is informed by risk share rule application of average annual percentage movement of the chosen Earning Statistic and CPI inputs. The OGP will undertake the calculation and publish the COE Fee Adjustment Factor.

Contracting Authorities should consider the impact of this on their budgets which will need to be forecasted from 2025 for 2026 budgets. Earliest expenditure relating to inflation adjustment may arise from Q4 2026. OGP will provide guidance to support contracting authorities in this regard.

### **Intellectual Property Rights:**

The Intellectual property clause has been amended to reflect current practice. This has little impact on the Conditions as a whole but Contracting Authorities should note that rights are now given through assignment rather than transfer. Also that intellectual property rights extend to documents, drawings and all outputs related to the completion of the Services (the Consultant's Documents).

Contracting Authorities must elect whether there is assignment, and if so, which documents are affected. This is inputted into Schedule A of the FTS.

### **Termination Events:**

Termination events for European Union Regulations and national legislation are defined in the Form of Tender and Schedule, Schedule A. Should the Contracting Authority discover that a Tenderer is in one of the situations described in the Schedule, the Contract must be terminated.

Further information on Termination events will be published by the OGP to coincide with upcoming changes to the Suitability Assessment Questionnaires for Consultancy Services (Declaration re Russian Sanctions in QC Part 2 Applicant Details and Declaration).

**[END].**