

Chartered Institution of Building Services Engineers



STANDARD TERMS AND CONDITIONS FOR CIBSE KNOWLEDGE CONTRACTS

CONTENTS

Condition	Heading	Page
1	DEFINITIONS	1
2	CONTRACTOR'S DUTIES	1
3	TIME OF THE ESSENCE	1
4	ASSIGNMENT, SUB-CONTRACTING AND SUPPLIERS	2
5	CONTRACTOR'S STAFF	2
6	INSPECTIONS AND MEETINGS	2
7	REPORTS	2
8	SURVEYS	3
9	PUBLICITY	3
10	CONFIDENTIALITY AND DATA PROTECTION	3
11	INTELLECTUAL PROPERTY OWNERSHIP	3
12	FINANCIAL LIMIT	4
13	PAYMENT	5
14	TRAVEL AND SUBSISTENCE	5
15	CAPITAL ITEMS	5
16	FINAL CLAIM	5
17	ACCOUNTS	6
18	EXTENSION OF TIME AND BUDGET	6
19	VARIATIONS TO THE CONTRACT	6
20	NOTICE OF BREACH	6
21	TERMINATION BY CIBSE ON NOTICE	6
22	UNSATISFACTORY PERFORMANCE	6
23	TERMINATION WITHOUT NOTICE	7
24	FEES PAYABLE ON TERMINATION	7
25	OTHER RIGHTS ON TERMINATION	7
26	LIABILITY	8
27	INSURANCE	8
28	TAXATION	8
29	DEBTS	8
30	CORRUPT GIFTS AND PAYMENTS OF COMMISSION	8
31	ARBITRATION	9
32	DELIVERY OF NOTICES	9
33	TRANSFER	9
34	CHOICE OF LAW	9
35	RIGHTS OF THIRD PARTIES	9
36	HEALTH AND SAFETY AND ENVIRONMENT	9
37	WAIVER	10
38	PREVAILING CLAUSE	10
Appendix A	Contract Agreement Template	11
Appendix B	CIBSE Contracts Procedure and Guidance Note (12 December 2013)	12

1 DEFINITIONS

1.1 In these Conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:

- a) "CIBSE" means the Chartered Institution of Building Services Engineers (CIBSE)
- b) "Agree" and cognate words mean agree etc. in writing.
- c) "Capital Items" means land, buildings and structures, machinery, plant and other fixed assets having a working life exceeding three years, vehicles and any other item costing more than £1,000 bought or fabricated for the purposes of the Contract, but excluding any item costing more than £1,000 where CIBSE agrees that it shall not be treated as a capital item.
- d) "Completion Date" means the date specified in the Contract.
- e) "Contract" means the Contract Agreement (Appendix A to this document) and Annexes referred to therein as contract documents, including these terms and conditions and the Programme of Work.
- f) "Fee" means the total fee or fees quoted in the Schedule of Fees which is part of the tender.
- g) "Work" means the Programme of Work or services specified in the Contract.
- h) "Contractor's Representative" means a competent person appointed by the contractor and agreed by CIBSE, to be the contractor's representative in relation to the performance of the Contract, who will receive and act on any directions given by the Project Manager.
- i) "Contract Manager" means the official of CIBSE, or other person appointed by CIBSE to act on its behalf for the purpose of managing the Contract.
- j) "Key Personnel" means any person who, in CIBSE's opinion, is fundamental to the performance of the Contract.
- k) "Contract Agreement" means the agreement between CIBSE and the contractor and all its annexes.

1.2 Unless the context requires otherwise, the singular shall include the plural and visa versa, and the masculine shall include the feminine and visa versa.

1.3 The headings are inserted for convenience only and shall not effect the interpretation of the contract.

1.4 Reference to any legalistic requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.

2 CONTRACTOR'S DUTIES

2.1 The contractor shall perform the Work with a standard of skill, care and diligence which a competent and suitably qualified person performing the same Work could reasonably be expected to exercise.

2.2 The Contractor shall carry out the Work in accordance with such timetables as may be specified in the Contract or Programme of Work, so as to complete it on or before the Completion Date.

2.3 The Contractor shall provide all necessary facilities, materials, equipment and personnel of appropriate qualifications and experience for the execution and completion of the Work.

2.4 The Contractor shall perform the Work in accordance with all relevant legislative and statutory requirements in force at the date at which the Work is performed.

2.5 The Contractor shall perform the work in accordance with the Contract.

2.6 The Contractor shall comply with any reasonable direction or instruction which CIBSE may give regarding the carrying out of the Work.

3 TIME OF THE ESSENCE

3.1 The delivery and/or completion of the Work to be performed under the Contract shall be of the essence of the Contract.

4 ASSIGNMENT, SUB-CONTRACTING AND SUPPLIERS

- 4.1 The contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the CIBSE.
- 4.2 The Contractor shall ensure that any contractor complies with the terms and conditions of the Contract and safeguard the rights, including the rights in intellectual property, of both parties.
- 4.3 The contractor shall be responsible for the acts, defaults and omissions of its contractors, whether approval has been given to their appointment or not, as if they were his own. Any consent given under this Clause shall not relieve the contractor of any of his obligations under the Contract.

5 CONTRACTOR'S STAFF

- 5.1 The day to day management of the Work shall be the responsibility of the contractor and/or the contractor's representative.
- 5.2 All personnel deployed on the work relating to the Contract shall have appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to CIBSE. If CIBSE gives the contractor notice that in its reasonable opinion any person should be removed from involvement in the work related to the Contract, the contractor shall take immediate steps to comply with such notice. The decision of CIBSE regarding the contractor's personnel shall be final and binding.
- 5.3 The contractor shall give CIBSE the names of all the Key Personnel whom the contractor proposes will carry out the Work, together with a description of the part each person will play in carrying out the Work, and details of each person's age, qualifications, experience, and previous employment.
- 5.4 No Key Personnel shall carry out any part of the Work without the written agreement of CIBSE.
- 5.5 The Contractor does not act as CIBSE's agent when employing any staff. The Contractor enters into contracts with staff entirely at his own risk.

6 INSPECTIONS AND MEETINGS

- 6.1 During the course of the Contract, on giving reasonable notice and/or at any reasonable time, CIBSE or a CIBSE appointed nominee, shall have the power to inspect and examine Work, including any Work in progress, and all documents (including in particular documents recording methodology and results, filed observations, and analyses of data) produced in connection with the Work. The Contractor shall provide free of charge all such facilities as CIBSE may reasonably require for such inspection and examination.
- 6.2 The Contractor shall attend all meetings arranged by CIBSE for the discussion of matters connected with the performance of the Work, unless otherwise agreed between parties in writing.
- 6.3 The Contractor shall, if invited by CIBSE, assist CIBSE, or any committee appointed for that purpose, to consider the conduct and progress of the Work.
- 6.4 CIBSE shall be adopted as a member and receive all reports of any committees or working groups set up by the Contractor to advise or steer the Contractor on the course of the Work.

7 REPORTS

- 7.1 The Contractor shall provide, at such intervals as CIBSE may require, progress reports showing the progress of the Work in relation to any contractual programme or timetable, the cost of the Work during the period covered by the report, and a review of any factors likely to affect the satisfactory completion of the Work in accordance with the timetable.
- 7.2 The Contractor shall provide reports on each completed stage of the Work as specified in the Contract and shall supply drafts of these reports in sufficient time for CIBSE to comment on those drafts before the date for submission of completed reports.

- 7.3 Any report and summary required under the Contract shall be in such form, and supplied in such numbers, as may be specified in the Programme of Work.

8 SURVEYS

The Contractor shall not carry out any survey for CIBSE (whether or not such survey forms part of the Work) which includes any interviews or the circulation of questionnaires or similar documents without the written agreement of CIBSE to the form and content of such interviews, questionnaires or other documents.

9 PUBLICITY

The Contractor shall not communicate with the press, or any broadcaster or any other third party, about the Work or the results of the Work without the written agreement of CIBSE.

10 CONFIDENTIALITY AND DATA PROTECTION

- 10.1 Each party shall treat the Contract and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Contract or its negotiation or relating to business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other or as may be permitted under the later provision of this condition.
- 10.2 The obligations expressed in condition 10.1 above shall not apply to any information which:
- a) is/or subsequently comes into the public domain otherwise than by breach of this Clause.
 - b) is already in the possession of the receiving party without an accompanying obligation of confidentiality.
 - c) is obtained from a third party who is free to divulge the same.
 - d) is independently and lawfully developed by the recipient or its contractor outside the scope of the Contract.
- 10.3 So far as it may be necessary for the performance of the Contract or for the operation and maintenance of the Work related matter of the Contract each party may divulge any information to be kept confidential under condition 10.1 to their employees, agents and contractors on a “need to know” basis but undertake that they will take all steps necessary to ensure compliance by such employees, agents and contractors with the obligations as to confidentiality expressed in this condition and will be responsible to the other party for any failure by any employees, agents and sub-contractors to comply with such obligations whether such employee, agent and contractor was aware of them or not.
- 10.4 Both parties shall ensure that they, their employees, agents and contractors shall observe the requirements of the Data Protection Act 1998 and any amendments or revisions thereto in the provision and use of subject matter of the Contract and shall comply with any request made or direction given to the other which is directly due to the requirements of such Act.
- 10.5 The Contractor shall indemnify CIBSE against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against CIBSE by any person in respect of loss, damage or distress caused to that person by the disclosure, loss or destruction by the Contractor, his employees, his agents or his contractors of any personal data or sensitive personal data.
- 10.6 In this condition “personal data” and “sensitive personal data” have the same meaning as in section 1 and 2 of the data Protection Act 1998.
- 10.7 On the conclusion or termination of the Contract both parties shall continue all obligations relating to confidentiality for a period of 10 years.

11 INTELLECTUAL PROPERTY OWNERSHIP

DEFINITION

In this condition “Results” shall mean any document, item, material or other work produced for the purpose of the Work or in connection with the Work by the Contractor or by any third party engaged by the Contractor or working under the Contractor’s direction or supervision. This shall include any invention, innovation and design.

11.1 OWNERSHIP OF THE RESULTS

- a) Subject to any prior rights of the contractor, and to the rights of third parties or of CIBSE arising otherwise than under this Contract, all rights in the results of the Work carried out under the Contract by CIBSE, the Contractor or on the behalf of either party shall vest in CIBSE. For the purposes of this Contract, the results of the Work shall include any and all reports made, analysis, data, records, drawings, specifications, designs or other information (including questionnaires) collected or compiled, computer programmes (including source codes) master video film tapes, slides or negatives and the like developed, and specimens, prototypes or hardware acquired, prepared or developed specifically for or in connection with the Work.
- b) Neither CIBSE nor the Contractor shall use the Results or decide that the Results shall be published or exploited commercially and, if so, on what conditions without the Agreement of the other party and of BRESEC and Action Energy, which shall not be unreasonably withheld.
- c) CIBSE and the Contractor shall jointly determine whether any patent or similar protection shall be applied for and whether the Results shall be exploited commercially. Either party shall inform the other promptly of any of the Results which may be capable of commercial exploitation.
- d) No member of either Parties staff shall engage in any application for a patent relating to the Results without the written consent of the other Party.

11.2 USE OF OTHER COPYRIGHT MATERIAL

- a) The Contractor shall be responsible for obtaining and providing written evidence to CIBSE of any and all authorities from the copyright holder for any material to be included in the Results of the Contract for which the Contractor or CIBSE are not the beneficial holders of the copyright.
- b) The Contractor hereby warrants that the Results do not violate any existing copyright or other third party right, and that to the best of the Contractor's knowledge all the facts and statements are true. The Contractor hereby agrees to indemnify CIBSE from any loss, injury or damage (including any legal costs, expenses, compensation claims or disbursements made by CIBSE in respect of any claim) occasioned to CIBSE in consequence of any Breach of this warranty.

11.3 PUBLICATION OF RESULTS

- a) CIBSE shall be the proprietors of the copyright in respect of the Contract and any data relating to this copyright.
- b) In this condition, 'publication' includes any method, whether written, oral or visual, by which information relating to the Work or the Results is disclosed to persons other than the Contractor, CIBSE and their employees.
- c) Neither party shall publish any information related to the Work or the Results without the Agreement of the other party, which shall not be unreasonably withheld.
- d) Neither party shall, without the Agreement of the other party use or permit any other person to use the Work or the Results for any thesis or degree.
- e) If information is to be published in writing, the Contractor must submit a draft of the proposed publication to CIBSE together with the name of the journal in which it is to appear, or details of the form in which it is to be published. CIBSE may subject to Sub-Condition (b) make its Agreement to the publication conditional upon specified amendments to the draft being made.
- f) Any publication shall contain an acknowledgement that the Work was carried out under contract co-funded by CIBSE and is published with CIBSE's Agreement.
- g) Any publication by the Contractor shall be at the Contractor's own cost, including the cost of any copyright fees.
- h) The Contractor shall within ten days of the date of publication supply CIBSE free of charge with as many copies of any publication as CIBSE may reasonably request.

12 FINANCIAL LIMIT

- 12.1 The total Fee to be paid by CIBSE for the Work shall not exceed the total Fee stated in the Contract without the prior written agreement of CIBSE.

- 12.2 Any additional work not forming part of the Programme of Work requiring a renegotiation of the Fee shall not be undertaken until such work and the cost thereof, if applicable, has been agreed in writing by CIBSE.

13 PAYMENT

- 13.1 Subject to the provisions of condition 12, progress payments may be claimed by the Contractor at monthly intervals in arrears. Subject to (13.1)(i), (13.1)(ii) and (13.1)(iii) below, claims shall be 100% of expenditure incurred. The maximum sum payable at any time shall be determined as follows:
- i) Until submission to and acceptance by CIBSE of all the Work under the Contract, the maximum sum payable shall not exceed 50% of that proportion of the Fee which relates to staff costs, plus 100% of expenses properly incurred, with the exception that
 - ii) where the Programme of Work defines separate deliverable items and where the associated costs for each deliverable item are separately shown in the Schedule of Fees, the maximum sum payable until submission to and acceptance by CIBSE of that deliverable item shall not exceed 50% of the cost of the staff costs relating to that deliverable item plus 100% of expenses properly incurred. On acceptance by CIBSE of that deliverable item the maximum admissible costs associated with that deliverable item shall be payable; and
 - iii) where the Programme of Work has agreed stages and where stage payments are shown in the Schedule of Fees, the Contractor shall submit properly certified claims to CIBSE at the Agreed stages. Full settlement of the final stage claim shall not be made until a satisfactory final report has been accepted.
- 13.2 Claims in respect of work carried out shall be forwarded to CIBSE. Full supporting documents, including a breakdown of staff costs against each deliverable item, and receipts for travel and subsistence costs, equipment, etc, must accompany each claim. CIBSE's payment terms are thirty days from receipt of a valid invoice.

14 TRAVEL AND SUBSISTENCE

- 14.1 The Contractor must before Work starts, agree with CIBSE, rates and conditions of reimbursement, of travel and subsistence expenditure. Payment in respect of travel and subsistence will be made at those rates agreed with CIBSE.
- 14.2 No claim for expenses incurred in travelling to or attendance at any conference, seminar, course or other such event, or for any travel overseas, will be payable unless CIBSE has given its prior agreement to incurring such expenses.

15 CAPITAL ITEMS

- 15.1 No payment will be made for the acquisition of Capital Items unless the Contractor has obtained CIBSE's agreement to the acquisition of that item.
- 15.2 CIBSE may require that Capital Items be leased rather than purchased.
- 15.3 The Contractor shall, unless CIBSE agrees otherwise, obtain tenders for the acquisition of Capital Items from at least three suppliers not connected with the Contractor or each other. No claim for any amount higher than the lowest of such tenders will be payable unless CIBSE has previously Agreed otherwise.
- 15.4 The Contractor shall maintain an inventory of all Capital Items and must supply an updated copy each quarter to CIBSE. A final inventory must be supplied at the termination of the Contract.
- 15.5 Where Capital Items are the property of CIBSE and where practicable, they shall be clearly marked as such. They shall be maintained and safeguarded by the Contractor and shall not be used for any purpose other than the Work without the agreement of CIBSE.
- 15.6 The Contractor shall maintain an inventory of items loaned to him by CIBSE. The Contractor shall be responsible for the upkeep of all such items. All loaned items are to be returned to CIBSE or disposed of in such manner as CIBSE may direct.
- 15.7 The Contractor shall obtain CIBSE's permission before any sale, transfer or disposal of any Capital Item.

16 FINAL CLAIM

A final claim shall be submitted to CIBSE within six weeks of the satisfactory completion of the Work (or of termination of the Contract if that is earlier). CIBSE will then certify the final amount due under the Contract and these Terms and Conditions.

17 ACCOUNTS

The Contractor shall, if CIBSE so requests, produce to CIBSE either at the Contractor's premises or such other place as CIBSE may reasonably specify, all accounts, documents and records relating to expenditure under the Contract. The Contractor shall permit CIBSE to take copies of any such document, and shall provide any explanations CIBSE may request.

18 EXTENSION OF TIME AND BUDGET

- 18.1 If it appears to the Contractor that the Work is not likely to be completed by the Completion Date, or that the amount of any category of expenditure specified in the Contract is, or is likely to be exceeded, the contractor shall immediately notify CIBSE of that fact, together with the reasons for the delay or increase in expenditure, and give his best estimate of the additional time and/or expenditure required to complete the Work.
- 18.2 CIBSE if satisfied that the Work is not likely to be completed by the Completion Date or within the Contract Budget, may in its absolute discretion:
- a) vary the Work or any part of it so that the Work may be completed without exceeding the Contract Budget;
 - b) extend the Completion Date;
 - c) withhold 10% of the agreed total fee for the work to compensate for late delivery;
 - c) increase any category of expenditure specified in the Contract; or
 - d) terminate the Contract.

19 VARIATIONS TO THE CONTRACT

This Contract may only be varied by the written agreement of the parties.

20 NOTICE OF BREACH

- 20.1 Where in the reasonable opinion of CIBSE the Contractor has in some material respect failed to perform the Work in accordance with the Contract, CIBSE shall give the Contractor particulars of that failure.
- 20.2 Where the Contractor has been informed of a failure in accordance with condition 20.1, he shall promptly and at his own expense take the steps which are necessary to rectify that failure, including, where necessary, the correction or re-execution of any Work already carried out.
- 20.3 Nothing in this paragraph shall prejudice the right of CIBSE to give to the Contractor a notice under condition 22 or a notice of termination under condition 23.
- 20.4 In the event that the Contractor has not completed the Work by the Completion Date, and CIBSE does not wish to terminate or vary the Contract under condition 18, CIBSE shall have the right to claim from the Contractor liquidated damages for each day of delay a sum equal to ½% (one half of one percent) of the total value of the contract. The maximum claim would be 20% of the total contract value. Such payment shall be in full and final settlement of the Contractor's liability for any loss or damage incurred by CIBSE up to the end of the period in which the liquidated damages are payable.

21 TERMINATION BY CIBSE ON NOTICE

- 21.1 CIBSE may terminate the Contract at any time by giving the Contractor 28 days notice in writing.
- 21.2 Where the Contract is terminated under this condition CIBSE shall reimburse the Contractor for all reasonable costs properly incurred by him incidental to the orderly cessation of the Work.

22 UNSATISFACTORY PERFORMANCE

- 22.1 Where in the opinion of CIBSE the Contractor has persistently failed to:
- a) perform the whole, or any part of the Work, with the standard of skill, care and diligence which a competent and suitably qualified person performing the same services could reasonably be expected to exercise, or
 - b) perform the Work in accordance with the Contract, the Programme of Work or these terms and conditions,

CIBSE may give the Contractor a notice specifying the way in which his performance falls short of the expected standard, or is otherwise unsatisfactory.

- 22.2 Where the Contractor has been notified of a failure in accordance with condition 22.1 CIBSE may:
- a) specify a reasonable period within which the Contractor is to improve his performance, including where necessary, the correction or re-execution of any Work already carried out, and / or
 - b) withhold or reduce payments to the Contractor, in such an amount as CIBSE deems appropriate in each case.

23 TERMINATION WITHOUT NOTICE

- 23.1 CIBSE may terminate the Contract forthwith by notice to the Contractor for any of the following reasons, namely -

- a) the breach by the Contractor of condition 10, 11 or 30 of the Contract;
- b) the failure by the Contractor to comply with a notice given under condition 22;
- c) where the Contractor is a registered company, the making of an administration order or any voluntary arrangement with his creditors; the appointment of a receiver or manager; the passing of any resolution, or making of any application to the court for, the winding up of the Contractor other than for the purposes of amalgamation or reconstruction under circumstances where the amalgamated or reconstructed company is to assume all the obligations of the Contractor under the Contract;
- d) where the Contractor is an individual, the insolvency of the individual, or, where the Contractor is a partnership, the insolvency of any partner; provided that for the purposes of this sub-paragraph insolvency shall include the making of any voluntary arrangement with creditors, the presentation of a bankruptcy petition, and the making of any conveyance or assignment for the benefit of any creditor;
- e) the Contractor ceases or threatens to cease to carry out his business.

- 23.2 Where the Contract is terminated under this condition, the following provisions shall apply -

- a) all instalments of the Fee that may then be due or accruing due from CIBSE to the Contractor shall be withheld by CIBSE;
- b) CIBSE may make all arrangements which they consider necessary to procure the orderly completion of the Work;
- c) where the total costs reasonably and properly incurred by CIBSE by reason of such arrangements exceed the amount that would have been payable to the Contractor for the completion of the Work, the excess shall be recoverable from the Contractor by set-off against any amount withheld by CIBSE under sub-paragraph (a) or otherwise.

24 FEES PAYABLE ON TERMINATION

- 24.1 Subject to condition 24.2 on the termination of the Contract under condition 21 or 23 CIBSE shall pay the Contractor a final instalment of the Fee pursuant to condition 13, except that the period to which the instalment relates shall be the period expiring on the date of termination. CIBSE's liability for payment of the Fee shall thereupon be fully and finally discharged.

- 24.2 Where any instalment of the Fee (including any amount due under condition 24.1 above) is withheld by CIBSE under condition 23.2, the amount due to the Contractor, or the balance, if any, of the amount

due to him after the exercise of CIBSE's rights under condition 23.2(c), shall be paid on the satisfactory completion or abandonment of the Work.

25 OTHER RIGHTS ON TERMINATION

- 25.1 The termination of the Contract under condition 21 or 23 shall be without prejudice to any right or remedy of either party with respect to any Breach of the Contract by the other party, including any Breach for which the Contract is terminated under conditions 23.1 or 23.2.

26 LIABILITY

- 26.1 For the avoidance of doubt it is declared that the Contractor in carrying out the Work acts as an independent Contractor and is not CIBSE's servant or agent. CIBSE accepts no liability for loss, damage or injury caused by the negligence or default of the Contractor and the Contractor shall save and indemnify CIBSE against any claims and costs arising from such matters.
- 26.2 CIBSE shall not be liable for any loss, damage, injury or death of any person arising from or in consequence of the execution or purported execution of the Work, except for loss, injury or damage caused by the negligence of CIBSE or its employees.

27 INSURANCE

- 27.1 The Contractor shall without prejudice to its obligations to indemnify CIBSE under these conditions take out and maintain a policy or policies in respect of public liability, employers liability and professional indemnity, until the expiry of the period of six years from the discharge or determination of the Contract, which insurance may be limited in respect of any one claim (but shall not be limited in any other respect) to at least £1,000,000.
- 27.2 The Contractor shall ensure that its contractors, agents and suppliers each take out and maintain at their own expense a policy or policies of insurance that comply with condition 27.1.
- 27.3 The Contractor shall at the request of CIBSE produce a certificate of his professional indemnity insurance and such particulars thereof as CIBSE may require.
- 27.4 If the Contractor fails to maintain indemnity insurance CIBSE may take out and maintain a policy of indemnity insurance in CIBSE's or the Contractor's name and shall be entitled to recover from the Contractor all costs incurred.
- 27.5 The terms of any insurance or the amount of cover shall not relieve the Contractor or his contractors, agents and suppliers of any liabilities under the Contract, their sub-contract or any terms of commission.

28 TAXATION

CIBSE will not be responsible for any taxes, National Insurance Contributions, VAT or excise duties incurred by the Contractor.

29 DEBTS

- 29.1 CIBSE will not be held responsible for any loans or debts incurred or negotiated by the Contractor.
- 29.2 The Contractor will not negotiate charges secured on the Capital Items which are the property of CIBSE.

30 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 30.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to offer to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour to any person in relation to this or any other contract with CIBSE.
- 30.2 The Contractor shall not conspire with any person to do any of the acts mentioned in condition 30.1.
- 30.3 Any Breach by the Contractor of this condition shall entitle CIBSE to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

- 30.4 If any dispute, difference or question arising in respect of:
- a) the interpretation of this condition (except so far as the same may relate to the amount recoverable from the Contractor under condition 30.3 of this condition in respect of any loss resulting from such determination of the Contract);
 - b) the right of CIBSE to determine the Contract; or
 - c) the amount or value of any such gift, consideration or commission;
- the decision of CIBSE shall be final and binding.

31 ARBITRATION

All disputes, differences or questions between the parties with regard to any matter or thing arising out of or connected with the Contract shall after notice by either party to the purpose be referred to a single arbitrator agreed for that purpose, or in default of agreement to be appointed by such one of the following persons as CIBSE may decide, namely the President of a mutually acceptable institution in accordance with and subject to the provisions of the Arbitration Act 1996, or any statutory amendment or re-enactment for the time being in force.

32 DELIVERY OF NOTICES

Notices may be served by giving them to the Contractor's Liaison Officer or by sending or delivering them to the Contractor's address specified in the Contract. If a notice is sent by post it shall be deemed to have been delivered on the day when, in the ordinary course of the post, they would have been delivered.

33 TRANSFER

- 33.1 Notwithstanding any other provision in this Contract, CIBSE may assign, novate or otherwise transfer the benefit and burden of this Contract to any other body (including, without limitation, any private sector body) (hereinafter referred to as the "Transferee") which substantially performs any of the functions that previously had been performed by CIBSE without the consent of the Contractor. The Contractor shall execute all such further deeds and documents as CIBSE may reasonably require to give effect to such assignment, novation or transfer.
- 33.2 Except as provided in condition 33.1, CIBSE shall not be entitled to assign, novate or otherwise transfer the benefit and burden of this Contract without the prior written consent of the Contractor, such consent not to be unreasonably withheld.
- 33.3 CIBSE shall be entitled to disclose to any Transferee any confidential information of the Contractor which relates to the performance of the Work or Services by the Contractor. In such circumstances, CIBSE shall authorise the Transferee to use such confidential information for purposes relating to the performance of the Work or Services and for no other purposes.

34 CHOICE OF LAW

The construction, validity and performance of this Contract shall be governed by English law.

35 RIGHTS OF THIRD PARTIES

- 35.1 The provision of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.
- 35.2 Save as may be contained herein no third party shall have the right to enforce all or any part of this Contract.
- 35.2 The conferring of any benefit under this Contract to any person other than the parties to this Contract shall not give any person the right to enforce all or any part of the agreement.

36 HEALTH AND SAFETY AND ENVIRONMENT

- 36.1 The Contractor undertakes that he and his employees, contractors and agents will at all times comply with all health and safety requirements relating to the carrying out of the Work under the Contract. Such requirements include in addition to statutory laws and regulations any Approved Codes of Practice and British Standards which may be applicable to the performance of the Contract.

- 36.2 When the Contractor, his employees, contractors or agents are required to attend CIBSE premises then the Contractor undertakes that they shall additionally comply with all CIBSE rules and practices relating to safety and the conduct of persons working on CIBSE premises.
- 36.3 In the performance of the Contract the Contractor, his employees, contractors or agents shall conform to all relevant environmental standards, guidelines and Codes of Practice as defined by CIBSE. The Contractor shall ensure that sustainable practices are maintained regarding waste reduction and energy, water and resource conservation. Examples include ensuring that all written work in connection with the Contract is printed on recycled paper on both sides where appropriate, and reducing emissions associated with business travel

37 WAIVER

Any failure by CIBSE to insist at any time upon the performance of any of the terms, conditions, provisions or undertakings of the Contractor contained in the Contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of CIBSE's rights to require the future performance of any such term, condition, provision or undertaking but the obligation of the Contractor with regard to the same shall continue in full force and effect.

38 PREVAILING CLAUSE

CIBSE is not willing to contract other than on these conditions and any printed, standard or other conditions which appear or are referred to in any documents emanating from the Contractor insofar as they conflict with the terms hereof to have no legal effect whatsoever.

Project Title: Insert

Contract Reference No: Insert

-AGREEMENT-

1. This contract is between the Chartered Institution of Building Services Engineers (CIBSE) 222 Balham High Road, London, SW12 9BS (“CIBSE”) and xxxxxxxxxxxxxxxx (“the contractor”).
2. The annexes listed below form the contract for this project as and where applicable to the sub-contractor and his work.
Annex A. Project Proposal submitted to CIBSE, [Date]
Annex B. CIBSE Standard Terms and Conditions
Annex C. CIBSE Contracts Procedure and Guidance Note (12 December 2013)
Annex D. Preparation of Drafts for Publication: Guidance Notes for Authors and Editors
3. Any variations to the programme of work, including the timetable, delivery of outputs and personnel employed, deemed necessary by the contractor shall be agreed in advance in writing with the CIBSE Project Manager. Such variations may only be sought in exceptional and unforeseen circumstances.
4. The total sum payable by CIBSE to the contractor for carrying out, to satisfactory completion as determined by the Steering Group and Knowledge Management Committee (KMC), the project detailed in Annex A to this agreement, is £xxx, excluding VAT, and shall be paid according to the fee payment schedule in the final agreed version of Annex A.
5. Claims for payment in respect of work carried out against the fee schedule must be submitted to CIBSE within three weeks of completion.
6. Invoices and all correspondence must state clearly the contract reference number and indicate the sequence number in the fee schedule to which they relate.
7. The CIBSE project officer for this project is: [xxxxxxxxxxxxxxxxxxxx]; email xxxxxxxxx, to whom all correspondence should be addressed.

Signed on behalf of:

Chartered Institution of Building Services Engineers

Name: **Signature:**

In the presence of:

Name: **Signature:**

Date:

For Insert

Name: **Signature:**

In the presence of:

Name: **Signature:**

Date:

CIBSE Contracts Procedure and Guidance Note 1

This note gives the general procedures which should be adopted by CIBSE contractors for knowledge projects which CIBSE manages. It highlights issues which are priorities to the Institution.

1. Contact with CIBSE

- 1.1 All contact regarding the management of this projects should initially be with the CIBSE Project Manager as identified in the contract agreement.

2. Contract Variations

- 2.1 Variations to contract will only be agreed in line with changing CIBSE policy needs or strategic requirements. Delays due to difficulties in staffing or sponsorship will not be sufficient reason to vary contracts. The timetable set out in the contract is therefore to all intents and purposes final. The Institution's senior staff and Knowledge Delivery sub-committee members view the prompt completion of contracts as a priority and monitor contractor performance carefully.
- 2.2 Any variation which does occur will require revision of the contract agreement and fee schedule.

3. Extensions to Completion Dates

- 3.1 If delivery of an output or milestone is delayed, then the sub-contractor should inform the CIBSE Contract Manager as soon as possible, and a new delivery date must be agreed. CIBSE reserves the right to make alternative arrangements to complete the project and to seek appropriate recompense in the case of late delivery. Any anticipation of late delivery of the final milestone shall be notified in writing giving full reasons for the delay.

4. Reports/Milestones

- 4.1 All milestone reports should be submitted to the CIBSE Contract Manager. Outputs which will form part of any CIBSE guidance shall be submitted in the format specified in the CIBSE Guidance Notes for authors, which are supplied to the contractor as Annex D to the Contract Agreement. Particular attention should be paid to the requirements for typescripts. Corporate report formats of the Contractor shall not be used: CIBSE reserves the right to deduct the costs of editing such reports into the specified format from the associated milestone fees.
- 4.2 All reports must give correct contract details and include the fee schedule number.
- 4.3 All outputs should be approved internally by Contractors, in line with their own quality assurance procedures, and signed off accordingly. Submission of the report will be taken by CIBSE as confirmation that all internal Contractor approvals have been completed unless notified otherwise.
- 4.4 In the event of late delivery of the final draft for peer review, or of the final draft following peer review, CIBSE reserves the right to withhold 10% of the total contract value.

5. Invoices

- 5.1 **ALL invoices should be sent to CIBSE marked for the attention of the Accounts Department.** Copies to the Contract Manager may be sent clearly marked as copies for information only.
- 5.2 Invoices should clearly relate to the fee schedule for the contract and should clearly state to what deliverable the invoice relates.
- 5.3 CIBSE aims to process invoice requests promptly. This can be greatly assisted by the contractor agreeing orally with the CIBSE Contract Manager that submission of an invoice for a specified deliverable is considered appropriate. Where this is done the internal approval procedures at CIBSE will be quick and straightforward.

6. Publicity/publication

- 6.1 The contractor should not have any contact with the press regarding the contracted project or its results without prior approval from the CIBSE Contract Manager. Such contact and clearance of material will normally be managed by the CIBSE Communications Team. In the case of jointly funded projects agreement with all funders must be obtained before any contact is made with the media.