

**WCA ENVIRONMENT LIMITED  
STANDARD CONDITIONS OF ENGAGEMENT**

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## CONDITIONS OF ENGAGEMENT

### 1 DEFINITIONS

1.1 The following definitions shall apply throughout this Agreement:

“The Client”	As described in WCA ENVIRONMENT LIMITED’s Proposal or in the Memorandum of Agreement (if a Memorandum of Agreement is signed by WCA ENVIRONMENT LIMITED and the Client)
“WCA ENVIRONMENT LIMITED”	WCA ENVIRONMENT LIMITED, also trading as <i>Watts &amp; Crane Associates</i>
“Adjudicator”	A person appointed under Condition 5.4 of this Agreement to study and give his decision on any dispute notified by either party during the progress of The Services
“Agreement”	The Agreement comprises WCA ENVIRONMENT LIMITED’s Proposal and the Memorandum of Agreement (if a Memorandum of Agreement is signed by WCA ENVIRONMENT LIMITED and the Client) and these Conditions of Engagement
“Description of Services”	A description of the requirements for the relevant Services to be performed by the WCA ENVIRONMENT LIMITED in WCA ENVIRONMENT LIMITED’s Proposal or the Memorandum of Agreement covering the Services
“Client Manager”	The person designated by the Client pursuant to Condition 3.5 to manage the contract as the Client’s representative
“Insolvency”	Either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, compounding with its creditors or having a receiver or administrative receiver

	appointed of the whole or any part of its assets
“Mediator”	An independent person appointed under Condition 5.2 to conduct a non-binding procedure towards resolving a difference
“Notice”	A notice given in accordance with Condition 8
“Other Consultants”	Consultants and specialist advisers, other than WCA ENVIRONMENT LIMITED, appointed or to be appointed by the Client to perform professional services in relation to the Services
“Project Manager”	The person designated by WCA ENVIRONMENT LIMITED under Condition 2.2 of this Agreement and named as such in the Proposal or Memorandum of Agreement, or his replacement appointed in accordance with that Condition
“Proposal”	WCA ENVIRONMENT LIMITED’s proposal to the Client presenting the Description of Services to be provided, the cost of those services and the fee rates
“The Services”	The totality of Services defined in WCA ENVIRONMENT LIMITED’s Proposal, and in the Memorandum of Agreement (if a Memorandum of Agreement is signed by WCA ENVIRONMENT LIMITED and the Client) and such of the Additional Services as may be requested or consented to by the Client
“Additional Services”	Services which are not foreseen as being required by the Client at the commencement of the Agreement but which are identified as being necessary during the performance of the Services.
“Contractor”	A person or firm appointed by the Client to execute work required in furtherance of the Services and to co-ordinate and supervise such execution

1.2 Headings are explanatory and do not form part of the Conditions.

## **2 OBLIGATIONS OF WCA ENVIRONMENT LIMITED**

### **2.1 Skill and Care**

WCA ENVIRONMENT LIMITED shall exercise reasonable skill, care and diligence in the performance of the Services.

### **2.2 Project Manager**

WCA ENVIRONMENT LIMITED shall designate its Project Manager who shall be deemed to have authority to make decisions on behalf of the WCA ENVIRONMENT LIMITED under this Agreement. The Project Manager shall not be replaced without the consent of the Client, which consent shall not unreasonably be delayed or withheld.

### **2.3 Assignment**

WCA ENVIRONMENT LIMITED shall not assign or transfer any benefit or obligation under this Agreement unless agreed by the Client with such agreement not to be unreasonably withheld.

### **2.4 Other Consultants**

WCA ENVIRONMENT LIMITED shall if so requested advise the Client on the need for and the selection and appointment of Other Consultants to perform services in respect of the Services.

WCA ENVIRONMENT LIMITED shall co-operate with any Other Consultants and if so requested by the Client shall co-ordinate and integrate the results of their services with the Services performed under this Agreement. WCA ENVIRONMENT LIMITED will not be responsible for the services performed by any Other Consultant or liable for defects in or omissions from them.

### **2.5 Specialist Sub-Consultants**

WCA ENVIRONMENT LIMITED may recommend to the Client that it sub-lets to a specialist subconsultant the performance of any of the Services.

The Client shall not unreasonably withhold consent to such recommendation and WCA ENVIRONMENT LIMITED shall integrate such sub-consultant's services with his own. WCA ENVIRONMENT

LIMITED shall be responsible for the performance and the payment of any subconsultant.

#### 2.6 Authority

WCA ENVIRONMENT LIMITED shall not without the approval of the Client perform Services other than those required by the Description of Services and other instructions given by the Client in accordance with this Agreement.

Save in the event of any emergency, WCA ENVIRONMENT LIMITED shall not without the approval of the Client issue instructions to any Contractor the effect of which would be to incur additional costs to the Client beyond whatever limits may have been agreed for such additional costs.

#### 2.7 Additional Services

In the event the Client requires Additional Services or WCA ENVIRONMENT LIMITED recommends that Additional Services are required, then WCA ENVIRONMENT LIMITED shall prepare a memorandum to reflect such Additional Services. WCA ENVIRONMENT LIMITED shall either quote the Client a fixed price for the Additional Services or estimate the costs to carry out the Additional Services on a time and material basis in accordance with its current charging rates. Any Additional Services shall be attached as an addendum to the project documentation and will be incorporated into this Agreement.

#### 2.8 WCA ENVIRONMENT LIMITED's Discretion

If in the performance of the Services WCA ENVIRONMENT LIMITED has a discretion exercisable as between the Client and a Contractor WCA ENVIRONMENT LIMITED shall exercise that discretion fairly.

#### 2.9 Pollution and Contamination

The obligations of WCA ENVIRONMENT LIMITED under this Agreement do not include a duty to advise as to the actual or possible presence of pollution or contamination or as to the risks of such matters having occurred being present or occurring in the future nor shall WCA ENVIRONMENT LIMITED have any duty to consider such matters as influencing any aspect of the Services to be performed by WCA ENVIRONMENT LIMITED under this Agreement, except where the Description of Services specifically includes provision of such advice or consideration.

## 2.10 Professional Opinion

Where the scope of the Services includes a site or environmental assessment, audit, review or investigation which includes the interpretation, interpolation or extrapolation of data from discrete sampling locations and/or discrete times, the Client accepts and agrees that these data may not represent actual conditions between these locations or between these times and that WCA ENVIRONMENT LIMITED's conclusions and recommendations based on such data are statements of professional opinion and not statements of fact. Whilst WCA ENVIRONMENT LIMITED will carry out such Services and provide its conclusions and recommendations with reasonable skill, care and diligence, it accepts no liability if the actual conditions between the locations and times is different to WCA ENVIRONMENT LIMITED's conclusions or recommendations.

## 3 OBLIGATIONS OF THE CLIENT

### 3.1 Information needed by WCA ENVIRONMENT LIMITED

The Client shall supply to WCA ENVIRONMENT LIMITED, without charge and in such time so as not to delay or disrupt the performance by WCA ENVIRONMENT LIMITED of the Services, all necessary and relevant data and information (including details of the services to be performed by any Other Consultants) in the possession of the Client, his agents, servants, Other Consultants or Contractors.

### 3.2 Assistance

The Client shall give, and shall procure that his agents, servants, Other Consultants and Contractors give, such assistance as shall reasonably be required by WCA ENVIRONMENT LIMITED in the performance of the Services.

### 3.3 Decisions

The Client shall ensure that his decisions, instructions, consents or approvals on or to all matters properly referred to him shall be given in such reasonable time so as not to delay or disrupt the performance of the Services by WCA ENVIRONMENT LIMITED.

### 3.4 Assignment

In case the Client wishes to assign or transfer, wholly or partially, any rights and obligations of this Agreement, it shall inform WCA ENVIRONMENT LIMITED and the parties shall agree in writing

thereupon so not to affect the rights and obligations of WCA ENVIRONMENT LIMITED under this Agreement.

**Deleted:** The Client shall not assign or transfer any benefit or obligation under this Agreement.¶

### 3.5 Client Manager

The Client shall designate a Client Manager who shall be deemed to have authority to make decisions on behalf of the Client under this Agreement. The Client shall notify WCA ENVIRONMENT LIMITED immediately if the Client Manager is replaced.

### 3.6 Contractors

The Client shall appoint Contractors to execute and/or to manage such work not being part of the Services as may be required in furtherance of the Services. The Client shall require that the Contractors execute such work in accordance with the terms of the relevant contracts.

Neither the provision of Site Staff nor periodic visits by the Project Manager or his staff to the site of any work being executed by Contractors in furtherance of the Services will in any way affect the responsibilities of the Contractors for executing such work in compliance with the relevant contract documents and any instructions issued by WCA ENVIRONMENT LIMITED.

### 3.7 Pollution and Contamination

It is the responsibility of the Client to decide on the extent of investigation that may be necessary and to investigate whether pollution or contamination may affect the Services or any site relevant thereto by making such investigations and/or taking advice (other than under the terms of this Agreement) as to such matters, except where such investigations are specifically included in the Description of Services.

### 3.8 Buried Services and Structures

Without affecting the generality of Condition 3.1, where excavating, boring, probing or the like below existing ground level is required as part of the Services, the Client shall provide in a timely fashion drawings or plans showing accurate and complete locations of all underground services, structures or artificial obstructions to WCA ENVIRONMENT LIMITED who, in performing such Services as set out in this Condition, shall take reasonable precautions to avoid damage or injury to such underground services, structures or artificial obstructions as shown in such drawings or plans.

Without prejudice to Condition 6.10, WCA ENVIRONMENT LIMITED will not be responsible for any damage to underground services, structures or obstructions or for any damage, claims, expenses or loss arising as a result of such excavating, boring, proving or the like below existing ground level, unless their locations on site are accurately shown on drawings or plans furnished to WCA ENVIRONMENT LIMITED in good time prior to commencement of such Services.

#### **4 TERMINATION OF APPOINTMENT**

##### **4.1 Duration of Appointment**

Notwithstanding the date stated in WCA ENVIRONMENT LIMITED's Proposal or Memorandum of Agreement, the effective date of the appointment of WCA ENVIRONMENT LIMITED shall be the date of the Client's written instruction to proceed with the Services, the date upon which any Memorandum of Agreement was executed by the parties or the date when WCA ENVIRONMENT LIMITED shall have first commenced performance of the Services, whichever is the earlier.

Unless suspended or terminated in accordance with this Agreement, the appointment of WCA ENVIRONMENT LIMITED shall be completed when WCA ENVIRONMENT LIMITED has performed the Services required under this Agreement.

##### **4.2 Termination by the Client**

The Client may terminate the appointment of WCA ENVIRONMENT LIMITED at any time by not less than four weeks Notice in respect of all or any part of the Services.

##### **4.3 Postponement by the Client**

The Client may at any time by not less than four weeks Notice require WCA ENVIRONMENT LIMITED to postpone the performance of all or any part of the Services.

On notice of postponement of all or any part of the Services WCA ENVIRONMENT LIMITED shall cease such postponed Services in an orderly and economical manner compatible with a possible order to restart.

If the postponement of the performance of all or any part of the Services exceeds three months in aggregate WCA ENVIRONMENT LIMITED may by Notice treat the Services or that part of the Services as having been abandoned and the appointment of WCA ENVIRONMENT

LIMITED in respect of all or any part of the Services affected shall be automatically terminated and treated as if the Client had terminated the Agreement in accordance with Condition 4.2.

4.4 Termination by the Client following Breach of this Agreement by WCA ENVIRONMENT LIMITED

In the event of a material breach of this Agreement by WCA ENVIRONMENT LIMITED the Client may give four weeks' Notice of his intention to determine the appointment of WCA ENVIRONMENT LIMITED setting out the acts or omissions of WCA ENVIRONMENT LIMITED relied upon as evidence of such breach. If the breach is remediable and WCA ENVIRONMENT LIMITED does not take expeditious steps to repair the breach during the notice period the Client may forthwith on the expiry of the notice period terminate the appointment of WCA ENVIRONMENT LIMITED by a further Notice.

4.5 Suspension or Termination by WCA ENVIRONMENT LIMITED

Upon the occurrence of any circumstance beyond the reasonable control of WCA ENVIRONMENT LIMITED which is such as to prevent or significantly impede the performance by WCA ENVIRONMENT LIMITED of the Services under this Agreement, WCA ENVIRONMENT LIMITED may suspend for a period of up to twenty-six weeks the performance of the Services under this Agreement or if it is still prevented from performing such Services for reasons beyond its reasonable control terminate its appointment forthwith by a further Notice in respect of all or any part of the Services affected.

4.6 Termination by WCA ENVIRONMENT LIMITED following Breach of this Agreement by the Client

In the event of a material breach of this Agreement by the Client (including but not limited by any failure by the Client to pay any invoices when due in accordance with Condition 9) WCA ENVIRONMENT LIMITED may give four weeks' Notice of its intention to terminate this Agreement setting out the acts or omissions of the Client relied upon as evidence of such breach. If the breach is remediable and the Client does not, to the reasonable satisfaction of WCA ENVIRONMENT LIMITED, take expeditious steps to repair the breach during the notice period WCA ENVIRONMENT LIMITED may forthwith on the expiry of the notice period immediately terminate this Agreement by a further Notice.

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4.7 Insolvency

Either party may by Notice immediately terminate this Agreement in the event of Insolvency of the other party.

4.8 Accrued Rights

Termination of WCA ENVIRONMENT LIMITED's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party to this Agreement.

4.9 No effect

Termination of this Agreement shall not affect those provisions which expressly or impliedly survive termination

## 5 DISPUTE RESOLUTION

Conditions 5.1 to 5.2 shall not apply to the contesting of any invoice nor to the termination of this Agreement under Conditions 4.4 or 4.5 nor to any difference or dispute arising out of or in connection with such contested invoice or such termination.

5.1 Mediation

The relationship between the parties to this Agreement is that of client and professional adviser in which both parties recognise that the Services are most likely to be successfully achieved if the Client and WCA ENVIRONMENT LIMITED co-operate fully. Every effort shall be made by both parties to resolve any difference arising between them during the duration of this Agreement but if such differences are not resolved the parties shall seek the assistance of a Mediator to attempt to resolve such differences as quickly and amicably as possible. The parties shall not resort to adjudication or arbitration in accordance with this Condition unless informal attempts to reach a settlement by way of mediation under this Condition have been unsuccessful.

If no settlement has been reached within six weeks of the first appointment of or attempt to appoint a Mediator the mediation shall be deemed to have been unsuccessful and condition 5.2 shall apply.

5.2 Adjudication

In the event Condition 5.1 applies, the parties shall refer the dispute to an Adjudicator who shall be an independent person to be agreed between the parties, or failing agreement, appointed at the request of either party by the President or Vice President of the Chartered Institute of Arbitrators. The Adjudicator shall act as an expert and be entitled to request either party to provide oral or written statements, documents and information for the adjudication. He shall give written notice of his decision to both parties

within such period as may be agreed or, failing agreement, as determined by the Adjudicator.

### 5.3 Arbitration

If a dispute should arise between WCA ENVIRONMENT LIMITED and the Client following completion or alleged completion or abandonment of the Services or the termination of the appointment of WCA ENVIRONMENT LIMITED or out of any contested invoice or any determination of the appointment of WCA ENVIRONMENT LIMITED under Condition 4.4 or 4.5, the dispute shall be referred to the arbitration of a person to be agreed between the parties to act as arbitrator, or failing agreement within one month of a Notice by either party to the other requesting agreement to an arbitrator, to an arbitrator appointed by the President or Vice President of the Chartered Institute of Arbitrators.

### 5.4 Subsequent Proceedings

Records of evidence given and opinions expressed in mediation and adjudication proceedings in respect of any difference or dispute in connection with the Services or this Agreement shall not be admissible as evidence in any subsequent proceedings solely on the grounds that they were included in such records.

Nevertheless, facts once established and agreed upon by the parties may be recorded and then accepted in later proceedings.

No person appointed as Mediator or Adjudicator in respect of any difference or dispute in connection with the Services or this Agreement may be called to give witness thereon in any subsequent proceedings.

## **6 LIABILITY**

6.1 This Clause 6 sets out the entire liability of WCA ENVIRONMENT LIMITED (including any liability for the acts or omissions of its sub-contractors and any member of its Group) in respect of:

- (a) any breach of this Agreement; and
- (b) any representation, statement or tortuous act or omission including negligence arising under or in connection with the Agreement.

6.2 Nothing in this Agreement shall in any way exclude or limit WCA ENVIRONMENT LIMITED's liability for death or personal injury caused by WCA ENVIRONMENT LIMITED's negligence or for fraudulent misrepresentation

6.3 WCA ENVIRONMENT LIMITED shall not be liable for any of the following losses or damage (whether or not such losses or damage were foreseen, direct, foreseeable, known or otherwise):

- (a) loss of revenue;
- (b) loss of actual or anticipated profits (including without limitation loss of profits on contracts);
- (c) loss of use of money;
- (d) loss of anticipated savings;
- (e) loss of business;
- (f) loss of opportunity;
- (g) loss of goodwill;
- (h) loss of reputation;
- (i) loss of, damage to or corruption of data;
- (j) any indirect, special or consequential loss or damage howsoever caused whether or not such loss is covered in clauses 6.3(a)-(j) above;
- (k) any losses arising as a result of any third party bringing a claim in respect of any of the above types of loss.

6.4 Subject to Clauses 6.1, 6.2 and 6.3, the total liability of WCA ENVIRONMENT LIMITED in connection with pollution or contamination shall be limited to either:

- (a) where an amount is stated in WCA ENVIRONMENT LIMITED's Proposal, as the limit of WCA ENVIRONMENT LIMITED's liability for pollution and contamination, the lesser of;
  - (i) that amount; or
  - (ii) the direct costs incurred by the Client in cleaning up the site of any works related to the Services or any part or parts thereof; or
- (b) where no amount is stated in WCA ENVIRONMENT LIMITED's Proposal as the limit for WCA

ENVIRONMENT LIMITED's liability for pollution and contamination, the lesser of;

- (i) the total amount of WCA ENVIRONMENT LIMITED's invoices submitted under the Agreement at the date at which any claim is notified to WCA ENVIRONMENT LIMITED by the Client; or
- (ii) the amount if any recoverable by WCA ENVIRONMENT LIMITED in respect of such claims under any professional indemnity insurance policy taken out by WCA ENVIRONMENT LIMITED.

6.5. Subject to clauses 6.1, 6.2 and 6.3 above notwithstanding anything to the contrary contained elsewhere in this Agreement, the total aggregate liability of WCA ENVIRONMENT LIMITED shall be limited to either:

- (a) where an amount is stated as WCA ENVIRONMENT LIMITED's total liability in the Proposal or in any Memorandum of Agreement then WCA ENVIRONMENT LIMITED's liability shall be limited to the lesser of:
  - (i) the amount stated in that Proposal or any Memorandum of Agreement as the limit of WCA ENVIRONMENT LIMITED's total liability; and
  - (ii) such sum as WCA ENVIRONMENT LIMITED ought reasonably to pay having regard to its responsibility for the total loss or damage suffered, on the basis that all Other Consultants and all other parties providing design management or financial services (or labour or materials or plant or equipment for incorporation in works) related to the task or executing such works or any part thereof shall be deemed to have provided contractual undertakings on terms no less onerous than that set out in Condition 2.1 hereof to the Client (whether or not they shall have been so provided to the Client) in respect of the provision of their services or labour or materials or plant or equipment in respect of executing such works or any part thereof and shall be deemed to have paid to the Client such contribution which it would be just and equitable for them to pay having regard to the extent of their responsibility for any loss or damage.

- (b) where an amount of total liability is not stated in WCA ENVIRONMENT LIMITED's Proposal or in any Memorandum of Agreement, then WCA ENVIRONMENT LIMITED's liability shall be limited to the lesser amount of:
- (i) 150% of the total amount of WCA ENVIRONMENT LIMITED's invoices submitted under this Agreement at the date at which any claim is notified to WCA ENVIRONMENT LIMITED by the Client; and
  - (ii) such sum as WCA ENVIRONMENT LIMITED ought reasonably to pay having regard to its responsibility for the total loss or damage suffered, on the basis that all Other Consultants and all other parties providing design management or financial services (or labour or materials or plant or equipment for incorporation in works) related to the task or executing such works or any part thereof shall be deemed to have provided contractual undertakings on terms no less onerous than that set out in Condition 2.1 hereof to the Client (whether or not they shall have been so provided to the Client) in respect of the provision of their services or labour or materials or plant or equipment in respect of executing such works or any part thereof and shall be deemed to have paid to the Client such contribution which it would be just and equitable for them to pay having regard to the extent of their responsibility for any loss or damage.
- 6.6 For the avoidance of doubt the provisions of clauses 6.1, 6.2, 6.3(a), 6.3(b), 6.3(c), 6.3(d), 6.3(e), 6.3(f), 6.3(g), 6.3(h), 6.3(i), 6.3(j), 6.3(k), 6.4 and 6.5 shall each be construed as a separate limitation of liability.
- 6.7 The Client acknowledges that WCA ENVIRONMENT LIMITED has calculated the charges in this Agreement on the basis that WCA ENVIRONMENT LIMITED will exclude or limit its liability as set out in this Agreement and the Client agrees that:
- (a) the Client shall insure against or bear itself any loss for which WCA ENVIRONMENT LIMITED has excluded or limited its liability in this Agreement; and
  - (b) WCA ENVIRONMENT LIMITED shall have no further liability to the Client save as set out in these conditions; and
  - (c) the client shall indemnify and keep indemnified WCA ENVIRONMENT LIMITED from and against all claims demands proceedings damages costs charges and expenses arising out of or

in connection with this Agreement and/or Services in excess of the liability of WCA ENVIRONMENT LIMITED agreed in Condition 6 or which may be in respect of events or claims occurring in the twelve years after the period of liability stated in the Proposal or Memorandum of Agreement or from a period of 6 years from completion of the Services whichever is the greater.

- 6.8 Subject to clause 6.1, no action or proceedings under or in respect of this Agreement whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against WCA ENVIRONMENT LIMITED after the expiry of the period of liability stated in the Proposal or Memorandum of Agreement or where no period of liability is stated in the Proposal or Memorandum of Agreement a period of 1 year from the completion of the Services performed under this Agreement or such earlier date as may be prescribed by law.

6.9 Personal Liability

The Client agrees that it will not bring any claim personally against any director, employee or consultant of WCA ENVIRONMENT LIMITED in respect of any loss or damage suffered by the Client arising out of this Agreement. No personal liability whatsoever whether in contract or tort or otherwise is accepted by individual directors or employees of WCA ENVIRONMENT LIMITED in relation to acts, omissions or defaults arising out of this Agreement.

6.10 Contracts (Rights of Third Parties Act) 1999

Notwithstanding any other provisions of this Agreement nothing in this Agreement confers or purports to confer any right to enforce any of the terms on any person who is not party to the Agreement.

6.11 Opinions of Cost

If so designated as part of the Services, WCA ENVIRONMENT LIMITED shall use reasonable endeavours to provide a realistic estimate of the construction costs and/or the costs of remedying environmental damage. Such estimate being intended primarily to provide information on the order of magnitude or scale of such costs. The Client agrees and acknowledges that such estimate is not a binding quotation, that no reliance can be placed on such estimate and that the actual cost of such work will depend upon a number of factors including but not limited to regional economics, local construction practices, labour costs, the availability of raw materials, site and weather conditions, unforeseeable ground conditions, the terms on which contractors and consultants are employed and many other factors beyond the control of WCA

ENVIRONMENT LIMITED. In no event will WCA ENVIRONMENT LIMITED be liable for any loss suffered by or claim made by the Client if the actual costs of construction or remedying environmental damage exceeds WCA ENVIRONMENT LIMITED's estimate. If for any reason, WCA ENVIRONMENT LIMITED is liable under this clause, its liability shall be limited to the lesser of:

- (a) the total amount of WCA ENVIRONMENT LIMITED's invoices submitted under this Agreement at the date at which any claim is notified to WCA ENVIRONMENT LIMITED by the Client; and
- (b) such sum as WCA ENVIRONMENT LIMITED ought reasonably to pay having regard to its responsibility for the total loss or damage suffered, on the basis that all Other Consultants and all other parties providing design management or financial services (or labour or materials or plant or equipment for incorporation in works) related to the task or executing such works or any part thereof shall be deemed to have provided contractual undertakings on terms no less onerous than that set out in Condition 2.1 hereof to the Client (whether or not they shall have been so provided to the Client) in respect of the provision of their services or labour or materials or plant or equipment in respect of executing such works or any part thereof and shall be deemed to have paid to the Client such contribution which it would be just and equitable for them to pay having regard to the extent of their responsibility for any loss or damage.

#### 6.12 Claims

In the event that the Client makes a claim against WCA ENVIRONMENT LIMITED at law or otherwise for any alleged error, omission or other act arising out of the Services and to the extent that the Client fails to prove such claim the Client shall indemnify WCA ENVIRONMENT LIMITED and keep it indemnified against all losses, costs and expenses incurred by WCA ENVIRONMENT LIMITED including without limitation all WCA ENVIRONMENT LIMITED's staff costs and all solicitor's and any other professional fees incurred by WCA ENVIRONMENT LIMITED in defending itself against the claim.

#### 6.13 Warranties

Except as expressly set out in the Agreement, WCA ENVIRONMENT LIMITED expressly disclaims and excludes any and all other liabilities (whether in contract, tort or otherwise), representations and warranties, express or implied and in any event shall not be liable for any claims or liability in contract, tort or otherwise for loss of profits, goodwill, data or

any type of special, indirect or consequential loss (including loss or damage suffered by the Client as a result of an action brought by a third party) even if such loss was reasonably foreseeable or WCA ENVIRONMENT LIMITED had been advised of the possibility of the Client incurring the same.

#### 6.14 No liability for Force Majeure

WCA ENVIRONMENT LIMITED shall not be liable for any delays in performing or failure to perform the Services to the extent that such delays or failures result from causes beyond WCA ENVIRONMENT LIMITED's reasonable control including but not limited to any act of God or public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other similar event, disruption or outage of communications, power or other utility, national labour problems or strikes, which the affected party could not have reasonably prevented, and any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented through the use of reasonable care or which was not reasonably foreseeable by the affected party.

## 7 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

### 7.1 Copyright

The copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents and information (hereinafter termed 'intellectual property') prepared by or on behalf of WCA ENVIRONMENT LIMITED in connection with the Services for delivery to the Client shall remain vested in WCA ENVIRONMENT LIMITED. When so agreed by WCA ENVIRONMENT LIMITED and recorded in writing prior to the delivery of such intellectual property and subject to WCA ENVIRONMENT LIMITED having received payment of all fees and disbursements properly due under this Agreement, the Client shall have a licence to copy and use such intellectual property for purposes directly related to the Services. Such licence shall enable the Client to copy and use the intellectual property but solely for his own purposes and such use shall not include any licence to reproduce any conceptual designs or professional opinions contained therein. Save as above, the Client shall not make copies of such intellectual property nor shall he use the same in connection with any other works or for any other purpose nor pass them any third party without the prior written approval of WCA ENVIRONMENT LIMITED and upon such terms as may be agreed by WCA ENVIRONMENT LIMITED.

**Comment:** Please replace/complete by adding that "any interim, draft or final report for each Phase of each project performed by WCA ENVIRONMENT LIMITED for the Client, the CSR when applicable, and the final Registration Dossiers to be submitted to the European Chemicals Agency shall be the property of the Consortium.

WCA ENVIRONMENT LIMITED shall not be liable for the use by any person of any drawings reports specifications or other documents or information for any purpose other than that for which the same were prepared by or on behalf of WCA ENVIRONMENT LIMITED.

#### 7.2 Publication by WCA ENVIRONMENT LIMITED

WCA ENVIRONMENT LIMITED shall not, without the written consent of the Client, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Services.

WCA ENVIRONMENT LIMITED shall not disclose to any person any information provided by the Client as private and confidential unless so authorised by the Client.

### **8 NOTICES**

Any Notice to be given by the Client under this Agreement shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to WCA ENVIRONMENT LIMITED, the address of WCA ENVIRONMENT LIMITED as shown on WCA ENVIRONMENT LIMITED's Proposal or Memorandum of Agreement. Any notice to be given by WCA ENVIRONMENT LIMITED shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the Client at the address of the Client as shown on the Memorandum of Agreement. These Notices shall if sent by registered post be deemed to have been received forty-eight hours after being posted.

### **9 PAYMENTS**

#### 9.1 Payment for Services and Disbursements

The Client shall pay fees to WCA ENVIRONMENT LIMITED for the performance of the Services monthly in arrears against submission of a WCA ENVIRONMENT LIMITED invoice unless otherwise stated in the Proposal or Memorandum of Agreement.

#### 9.2 Variation or Disruption of WCA ENVIRONMENT LIMITED's Work

If WCA ENVIRONMENT LIMITED has to carry out additional work and/or suffers disruption in the performance of the Services because the Description of Services is or are varied by the Client, or because of any delay by the Client in fulfilling his obligations under Condition 3.1, 3.2 or 3.3 or in taking any other step necessary for the execution of the Services, or because WCA ENVIRONMENT LIMITED is delayed by others (or by events which were not reasonably foreseeable), or for other reasons beyond the reasonable control of WCA ENVIRONMENT LIMITED, the

Client shall make an additional payment to WCA ENVIRONMENT LIMITED in respect of the additional work carried out and additional resources employed (unless and to the extent that the additional work has been occasioned by the failure of WCA ENVIRONMENT LIMITED to exercise reasonable skill, care and diligence) and/or the disruption suffered, calculated (unless otherwise agreed) on the basis of time based fees as set out in WCA ENVIRONMENT LIMITED's Proposal or the Memorandum of Agreement.

WCA ENVIRONMENT LIMITED shall advise the Client when it becomes aware that any such additional work beyond the Services will be required and shall if so requested by the Client give an initial estimate of the additional payment likely to be incurred. Where the Client requires that payment for such additional work is to be in the form of lump sums, these lump sums should be agreed by the parties prior to the additional work being commenced.

For the avoidance of doubt it is hereby agreed that if WCA ENVIRONMENT LIMITED carries out any work which subsequently becomes nugatory the Client is still obliged (unless WCA ENVIRONMENT LIMITED agrees otherwise) to pay WCA ENVIRONMENT LIMITED on the basis of time based fees as set out in WCA ENVIRONMENT LIMITED's Proposal or the Memorandum of Agreement.

### 9.3 Effect of Determination or Postponement

In the event of any termination by the Client in accordance with Condition 4.2 or any postponement by the Client in accordance with Condition 4.3 or any suspension by WCA ENVIRONMENT LIMITED in accordance with Condition 4.5 or any termination by WCA ENVIRONMENT LIMITED in accordance with Condition 4.3 or 4.5 or 4.6, the Client shall pay WCA ENVIRONMENT LIMITED all fees incurred to date of termination, suspension or postponement and any outstanding disbursements, all charges and expenses incurred or committed on behalf of the Client together with a sum for loss and costs of disruption (calculated on the basis of the loss to WCA ENVIRONMENT LIMITED and costs to which WCA ENVIRONMENT LIMITED is committed in respect of planned future work on the Services).

In the event of any termination by the Client in accordance with Condition 4.4 and 4.6 the Client shall pay WCA ENVIRONMENT LIMITED a fair and reasonable amount on account of the fees due under Condition 9.1 commensurate with the Services performed to the date of determination and any outstanding disbursements.

#### 9.4 VAT

All sums due under this Agreement are exclusive of Value Added Tax, the amount of which shall be paid by the Client to WCA ENVIRONMENT LIMITED at the rate and in the manner prescribed by law.

#### 9.5 Contested Invoices

If any part of any invoice submitted by WCA ENVIRONMENT LIMITED is contested, payment shall be made in full of all that is not contested.

#### 9.6 Time for Payment

All amounts due to WCA ENVIRONMENT LIMITED in accordance with this Agreement shall be paid within 28 days of the date of WCA ENVIRONMENT LIMITED's invoice. Interest shall be added to all amounts remaining unpaid thereafter (including any amounts of any contested invoices remaining unpaid under Condition 9.5 to the extent that they or it shall subsequently be agreed or determined to have been due to WCA ENVIRONMENT LIMITED) at the rate identified in WCA ENVIRONMENT LIMITED's Proposal or in the Memorandum of Agreement.

#### 9.7 Credit Checks

Where a credit check by WCA ENVIRONMENT LIMITED using a reputable credit checking agency, such as Equifax or similar, indicates that the Client has a recommended credit limit of less than the contract value, WCA ENVIRONMENT LIMITED will be entitled to delay commencement of work or continuation of work under the Contract and require payment in advance, parent company guarantees, or other sureties acceptable to WCA ENVIRONMENT LIMITED.

### 10 GENERAL

10.1 In the event of any inconsistency between any of the documentation which makes up this Agreement, the Agreement shall be interpreted in the following descending order of priority:

(a) Memorandum of Agreement; (b) Proposal; (c) Conditions of Engagement

10.2 In case the Client wishes to assign or transfer, wholly or partially, any rights and obligations of this Agreement, it shall inform WCA ENVIRONMENT LIMITED and the parties shall agree in writing

thereupon so not to affect the rights and obligations of WCA ENVIRONMENT LIMITED under this Agreement.

- 10.3 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.4 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 10.5 No amendments to this Agreement will be valid or effective unless in writing and signed by both parties.
- 10.6 If any term or condition of this Agreement or the application thereof shall be illegal, invalid or unenforceable, all other provisions shall continue in full force and effect as if the illegal, invalid or unenforceable provision were not a part of this Agreement.
- 10.7 Save in the case of a fraudulent misrepresentation, this Agreement and any documents referred to herein constitute the entire agreement between the parties in relation to the Services and supersede and replace any previous agreement or understanding between the parties in relation to such Services.
- 10.8 This Agreement shall be governed by the laws of England. Each party agrees that any and all legal proceedings concerning this Agreement must be brought or filed in England and each party irrevocably submits to the nonexclusive jurisdiction of the English Courts and waives any objection to proceedings on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

**Deleted:** This Agreement shall be personal to the Client and incapable of assignment in whole or in part and WCA ENVIRONMENT LIMITED may immediately terminate this Agreement upon any purported assignment by the other.