Standard Conditions of Engagement

for Consultancy Services (Technical)

between

[Kilkenny County Council]

Client

and

[Click or tap here to enter text.]

Consultant

in respect of

[Integrated Multi-Disciplinary Consultancy Services Design Team through Stages II to V inclusive of the Department of Public Expenditure & Reform Capital Works Management Framework for Kilkenny City Centre Vibrant Streets East]

Project

Standard Conditions of Engagement for Consultancy Services (Technical)

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AGREEMENT made on the date of execution
BETWEEN the Client and the Consultant

1. APPOINTMENT

1 The Client appoints the Consultant, and the Consultant accepts the appointment
2 for the Project,
3 on the terms of the Contract.

Contract

4 The Contract is the entire agreement of the parties about the appointment, and consists of –

5 this Agreement;

6 Schedules A and B;

7 any contents of other documents identified in Schedule A.

8 Schedule A describes methods used in the Agreement;
9 defines capitalised terms;
10 includes particulars and choices specially entered for this appointment.

11 The parties intend the Contract to be given purposeful meaning
12 for efficiency and public benefit generally and as particularly identified in it.

2. PERFORMANCE

Services

1 The Consultant shall perform the Services identified in Schedule B, elsewhere in the Contract,
2 at its [his, her] own expense [except where the Contract states otherwise],
3 with the skill, care, diligence, efficiency and professional conduct reasonably to be expected from a consultant with the qualifications and experience suitable for the Services.

4 No contents of the Contract [whether within 1.5, 6, 7] amount to a guarantee by the Consultant of suitability for purpose of the design or other Services.

5 [The Client may evaluate the Consultant's performance for future reference.]

Authority

6 The Consultant has authority to perform the Services [but not to change them].

7 The Client shall not prevent or override any impartial professional judgment required from the Consultant,
8 for any Services as employer's representative under a Project construction contract,
9 as Project Supervisor Design Process.

10 [That restraint is not infringed by the following relevant to 7 –

11 Client's right to the Consultant's Management Services;

12 any Schedule A restriction on the Consultant's authority to issue a Change Order [under any Project construction contract];

13 advance consultation by the Consultant with the Client, Client's cost control advisor, about financial assessments;

14 Client's exclusive right to accept or reject a value engineering proposal.]

Extent of liability

15 The Consultant acknowledges that any breach by it of the Contract may cause financial losses to the Client not only directly but by liability to contractors, suppliers, other consultants, involved in the Project
16 [so that consequently such losses may be included in compensation for which it is liable to the Client].

Limit of Liability

17 The Consultant's liability to the Client as ascertained in any year commencing on 1 January arising out of or under this Contract is limited to the amount of, and subject to the exceptions to, the Liability Cap, as Scheduled.

Joint and several liability

18 If more than one [human, legal] person is identified as the Consultant, they are jointly and severally liable to the Client.

Insurance

19 The Consultant shall insure [at least] as Scheduled

20 [its responsibilities are not limited by a permitted deductible or any insufficiency of the insurance]. The Consultant shall comply with the terms of the insurance policies. The Consultant shall not make any cancellation, material reduction or alteration to the insurance unless approved in advance by the Client. The Consultant shall promptly notify the Client of any cancellation, renewal, non-renewal or material reduction or alteration by the insurer of any insurance policies.

21 If the Consultant does not promptly on the due date of renewal, and in any event on request, prove that this insurance is fully in force the Client may [without affecting its other rights] insure and recover the cost from the Consultant. For professional indemnity insurance, a certificate in a form approved by the Client, signed by the broker or underwriter, may be given.

Corrupt Gifts

22 The Consultant warrants that:

23 it shall not offer or agree, or has not offered or agreed, to give to the Client [including any of the Client's personnel] or any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract; and

24 unless fully disclosed to and agreed by the Client in advance, no former officer nor employee of the Client nor of a consultant to the Client whose duties related to the project will, for 12 months after leaving the employment or office, be engaged by the Consultant.

Key Team Members

25 The Consultant may not make changes to Key Team Members without the prior approval of the Client.

26 Application to the Client for approval must be made no later than a month before the proposed change is to occur, unless the Client agrees to a shorter notice period. The Consultant must provide the name and curriculum vitae of the proposed substitute personnel together with any other details requested by the Client.

27 The Client may refuse to accept any proposed substitute and in such a case, the Consultant shall submit to the Client further names and curricula vitae of other proposed substitute personnel within a period specified by the Client but no proposed substitute shall be engaged in respect of the Services unless and until approved by the Client.

Conflicts of Interest

28 The Consultant shall ensure that no conflict of interest arises in respect of its performance of the Services.

29 The Consultant shall disclose to the Client any conflict of interest or potential conflict of interest which the Consultant or any sub-consultant may have in performing the Services within forty-eight hours of the Consultant becoming aware of such conflict or potential conflict.

30 The Consultant shall be responsible for ensuring that its sub-consultants provide it with information allowing it to observe this obligation.

31 The Client shall at its absolute discretion decide on the appropriate course of action to be taken in respect of any conflict of interest or potential conflict of interest [which may include termination under 14].

3. TRANSFERS

1 The Consultant may not validly assign any Contract benefit, responsibility, without the consent of the Client,

2 who shall not unreasonably withhold or delay a consent to a request [made according to the Scheduled Management Services].

3 The Consultant may not validly sub-contract performance of any Services,
4 unless agreed or requested by the Client. The Consultant shall procure that a sub-consultant shall provide a collateral warranty in favour of the Client in a form approved by the Client. The Client may [without affecting its other rights] withhold from the Consultant 5% of any payment to be made to the Consultant until the Consultant provides such collateral warranty in the required form duly executed.

5 The Consultant shall be responsible for the acts and omissions of sub-consultants as if they were its own.

6 The Consultant shall be bound by any Scheduled novation agreement with the Project construction contractor
7 from seven days after notice from the Client to the Consultant [and the contractor] that the agreement applies.

4. PROGRESS, PERIODS

1 The Consultant shall start its Services for a Stage when the Client gives permission,
2 perform them regularly,
3 meet each Milestone within the Stage,
4 and complete the Services for the Stage within the Performance Period Scheduled for it.

5 The timing of each permission to start is the Client's choice.

Sub-Stage[s]

6 If Schedule B divides Stage (ii) into Sub-Stages (a), (b) and (c), the Client may give permissions to start them at different times.

7 References to a Stage in this Clause,
8 and elsewhere in the Contract [unless the context shows otherwise],
9 shall apply separately to each Sub-Stage.

Suspension

10 The Client may inform the Consultant that it is considering a suspension
11 and may invite the Consultant's response.

12 The Client may by notice suspend the Consultant's performance of [all or any] Services [even without prior information].

13 The notice takes effect immediately unless a later date is stated in it.

14 The suspension is for any fixed period stated in the notice, or if none until further notice.

15 The Consultant shall suspend Services accordingly, except for
16 emergency Services necessary,
17 Services requested by the Client in connection with the suspension.

Suspension payments

18 The Client shall pay the 'Percentage of Stage Fee for Suspension' [Schedule B] in respect of the first Stage suspended in the notice
19 as payment for all effects of the suspension on the Consultant's costs [e.g. of allocating personnel from and back to the Services, PSDP Services].

20 Half the addition is due with the notice, and the rest when the suspension ends.

21 The Client shall also pay any direct costs at the Scheduled Time Charges for emergency, requested, Services [under 16,17].

5. PROLONGATION

Relief

1 Neither party is liable to the other for delay due to Special circumstances not due to its own breach of this Contract.

2 Special circumstances are –
3 war, hostilities, civil commotion;
4 industrial disputes;

Client liability

5 Except as provided in Clause 4 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 otherwise] for the Consultant's costs or losses for any delay to the Services.

6. COMMUNICATIONS

Purposeful

1 The parties intend all communications between them to be interpreted purposefully, having regard to the Contract purposes [1.11,12].

Effective

2 A communication by a party provided for in the Contract is effective [only] when received as follows.

3 A communication is presumed [unless the contrary is proved] to have been received by the other on the –

4 date of faxing, emailing, to the other's representative according to the current particulars [Schedule A] that is electronically recorded by the transmission;

5 date shown in a signed receipt for due delivery by hand, courier, recorded post.

6 A communication is effective on any proven date of receipt by any other method in the Scheduled Management Services.

7 A document purporting to be an electronic or mechanical copy or duplicate of a communication is presumed to be accurate.

7. COORDINATION

Client's information, access, assistance

1 The Client shall provide when required according to both the Consultant's Management information [Schedule B] and actual progress with the Services –

2 Client's briefs and output specifications;

3 access to the Project site;-

4 any other information, access to other places required from the Client to enable the Services to be performed;

5 any Scheduled facilities;

6 Scheduled resident staff for Project construction.

Client's responses

7 The Client may respond to Consultant's communications with comments, questions, objections,

8 to which the Consultant shall reply.

9 A Client's response or failure to respond to any communication from the Consultant does not constitute or imply any review or verification by the Client,

10 or relieve the Consultant from any responsibility or liability.

Team leader

11 If identified in Schedule A as leader of any Client's consultancy team, the Consultant shall assist the other members of the team to coordinate their services where they are related in contents, timing,

12 and where necessary shall resolve conflicts in the coordination.

13 If not leader, the Consultant shall perform the Services so as to minimise such conflicts,

14 and shall comply with coordination decisions of any leader of the team appointed by the Client.

8. COOPERATION

1 The Client [subject to restraints as a public authority] and the Consultant shall support reciprocal cooperation for the Contract purposes [1.11,12],

2 for example –

3 in dealing with relationships between personnel, changes of personnel;

4 for informed consultations;
5 in negotiating agreements referred to in the Contract;
6 for mutually suitable timing, and taking account of parties' priorities;
7 for orderly suspension and resumption of Services;
8 to minimise problems, delays [irrespective of responsibility].

Protection

9 The parties may agree to consult, communicate, without prejudice.

10 In any case, offering or giving cooperation does not imply any admission whatever of any responsibility,
11 or alter either parties' rights or duties unless otherwise agreed [in accordance with the Scheduled Management Services].

Incentives

12 Failure to cooperate by either party shall be taken into account where it affects legal duties involving reasonableness,
13 in performance, calculating payment, minimising losses.

14 The Client may make concessions as an incentive to continued cooperation by the Consultant [such as adding extra Milestones for payments on account, paying early within the maximum payment period in 9.5].

9. PAYMENTS

1 The Client shall pay to the Consultant –

2 the amount of each Scheduled Stage Fee for duly completing all the Services [including PSDP Services] for a Stage [a Sub-Stage];

3 any additional payments specified in the Contract that are due;
4 any Special disbursements sanctioned in advance by the Client [the Fees are inclusive of all other disbursements].

5 Payment of each amount due [less any due deduction of withholding tax] shall be made within 30 days after the Consultant supplies a valid invoice,
6 provided the Consultant has proved that it has a current tax clearance certificate from the Revenue Commissioners.

Applying Percentage fees

7 A Scheduled Percentage for the Total Fee is applied [in accordance with the Scheduled Management Services] to the estimate approved by the Client of the relevant Project costs made on completion of the working design prior to commencement of tender drawings and specifications.

8 The resulting amount is final, and each percentage tabled in Schedule B for a Stage Fee is applied to it, irrespective of any later estimated, actual, variation in those costs [unless due to a change instructed after that estimate].

Converting Percentage Fee to Lump Sum

9 The Client may inform the Consultant that it is considering converting a Scheduled Percentage Total Fee to a Lump Sum Total Fee,
10 and may invite the Consultant's response.

11 The Client may by notice apply any initially Scheduled Percentage Total Fee to any current estimate to convert it to a Lump Sum Fee for Stages (ii) to (v).

12 The Lump Sum Fee will then be treated as divided between Stages, Sub-Stages, in the percentages initially Scheduled.

Inflation Adjustment

13 Subject to 14 and 17, on the First Adjustment Date and, thereafter, on each anniversary of the previous Adjustment Date, the COE Fee Adjustment Factor shall be applied to the amount of the element of the Fee [with any necessary apportionments] for Services performed during an Indexation Year.
14 Where the performance of any element(s) of the Services are delayed due to the Consultant's breach of contract, the Consultant's entitlement to an adjustment to the Fee for

inflation for those elements of the Services so delayed shall be calculated by reference solely to the lower of the COE Fee Adjustment Factor:

15 which applied in the Indexation Year in which the delayed Services were due to be performed; and

16 for the Indexation Year in which the delayed Services were performed.

Exclusions from Inflation Adjustment

17 The following amounts shall not be subject to adjustment under 13 -

18 any element of the Fee based on Calculated Time Charges;

19 any payment due under Clause 13.15;

20 any Special disbursements under 4.

10.DEBTS TO CLIENT

1 The Client may recover any money due from the Consultant under or for breach of this Contract as a debt due.

2 The Client may deduct the money due from any other money due or to become due to the Consultant under the Contract, any other contract between the parties,

3 after at least 14 days' notice to the Consultant.

4 The Client is liable for [simple] interest at the Scheduled rate on any money wrongfully deducted, while withheld.

11.CLIENT'S CHANGES

1 The Client may instruct a change to the Services for any reason, and the Consultant shall comply with the instruction.

Increased, reduced, lump sum fee

2 Where a change increases the Services for a Stage with a Lump Sum Fee [by Schedule B or by conversion under 9.11,12] the Fee is increased at the Client's choice either –

3 in proportion to the increase in those Services;

4 or by the Scheduled Time Charges for changes, applied as follows.

5 The Time Charges are applied to the estimated extra time required for increased Services in Stage (ii);

6 the actual extra time spent on the increased Services in any other Stage.

7 A Lump Sum Stage Fee is reduced in proportion to the reduction in Services by a change.

Adjustment of percentage Fee

8 A Percentage Total Fee, and consequently each percentage Stage Fee, is adjusted for any increase, decrease, in the estimated Project costs by a change instructed after the estimate has been applied to calculate the Fee [9.7,8].

9 But a decrease is not made in the estimated Project costs for design excluded from the Project by the change where the Consultant had duly made the design before the change was instructed.

Consultant's breach

10 The Client is not liable for any additional fee or other payment for a change that is consequential on the Consultant's breach of the Contract [without prejudice to the Client's other rights and remedies].

12.BUDGETARY CONTROL

1 In performing its Services the Consultant shall have regard to the importance and value in the public interest of accurate estimating.

2 'Excess Percentage' means the percentage [if any] in excess of the percentage in Schedule A

3 of the tendered amount accepted by the Client for the Project construction

4 by which that amount is above or below the last estimate approved by the Client before giving permission to start Stage (iii).

5 'Consultant's contribution' means any information, checking, computation, that having regard to its Services the Consultant should provide for that last estimate.

6 The fee payable for performing the Design Stage (ii) shall be the amount of the Fee otherwise payable less the percentage of it equal to any Excess Percentage,
7 unless the Consultant establishes that none of the Excess Percentage is [directly or indirectly] in respect of the Consultant's contribution.

8 If the Consultant establishes that only part of the Excess Percentage is in respect of the Consultant's contribution only so much of the Excess Percentage as is proportionate to its contribution shall apply in calculating the Fee.

9 The Client may [in its absolute discretion] determine that the Fee is to be calculated without taking account of all or part of any Excess Percentage where in its opinion the Consultant has established a reasonable and justifiable cause for the excess.

13.INTELLECTUAL PROPERTY ETC.

General rights

1 The parties' rights in law between themselves to –
2 documents;
3 intellectual property rights in documents, designs or any other deliverables arising from the performance of the Services;
4 are not altered by the Contract;
5 except as follows.

Licence, assignment

6 The Consultant hereby grants the following rights to the Client
7 in each of the [hard copy, electronic] documents, designs or any other deliverables arising from the performance of the Services made or obtained by the Consultant in the course of the performance of the Services (the "Consultant's Documents"),
8 except its internal office notes, memos, emails, which it is acknowledged shall not constitute the Consultant's Documents.

9 The granted rights are a royalty-free, perpetual, non-exclusive, irrevocable, assignable, licence to reproduce and use, the Consultant's Documents, in connection with the Project [before or after its completion],
10 any other projects within 13,14;
11 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, the 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.

12 The applicable rights apply from the start of the Services or if later, the date upon which the Consultant acquires its rights in or to the relevant Consultant's Documents.

Design features

13 The Client may reproduce [all or any] design features of the Project
14 for any individual project, type of project, identified in Schedule A.

Payment

15 Only payments entered in Schedule A [if any] are due by the Client to the Consultant for rights under this clause.

Confidentiality

16 Each party agrees to treat the other's documents as confidential [and so far as practicable cause their employees, agents, to do so]
17 except for disclosure required for the Services, or the Client's permitted use elsewhere [or by law].

18 A party shall not cause or facilitate any publicity in the press or other media about the Services, Project, without the other's consent if so Scheduled.

19 In any case each party shall take all practicable action to ensure accuracy and balance in the publicity.

Security, access

20 The Client shall give the Consultant access to the documents identified in 7 above that it needs for performing the Services.

21 While they are in the Consultant's control it shall secure the documents against loss, damage, unauthorized access;

22 on request, give the Client, its nominees, access to them,

23 copies at cost.

24 At the end of the Services the Consultant shall give the documents to the Client, store, destroy, them, as instructed by the Client [subject to any legal duties of preservation].

25 The Consultant has no lien on documents for payment due to it from the Client.

26 The Consultant shall indemnify the Client in respect of any loss, damage or liability whatsoever arising from any infringement of any third party's intellectual property rights due to use by the Client in good faith of information, documents, obtained from the Consultant.

Data Protection

27 Personal Data shall have the meaning set out in the General Data Protection Regulation in respect of any such personal data processed on behalf of the Client.

28 Data Protection Law is all applicable data protection Law, including the General Data Protection Regulation (Regulation (EU) 2016/679).

29 The Consultant agrees that:

30 the Consultant shall process Personal Data only in accordance with the Contract and Data Protection Law;

31 the Consultant shall ensure persons authorised by the Consultant to process Personal Data are subject to confidentiality obligations as provided under Data Protection Law;

32 the Consultant must take appropriate technical and organisational security measures as are required to comply with Data Protection Law;

33 the Consultant may engage sub-processors to perform processing on its behalf, provided it gives prior written notice and informs the Client of any changes concerning the status of such sub-processors and allows the Client reasonable opportunity to object to such changes;

34 the Consultant shall delete or return all Personal Data as directed by the Client's Representative and not later than when the Consultant completes its contractual duties relating to such data processing;

35 the Consultant shall: (i) make available to the Client all information necessary to demonstrate compliance with this Clause; and (ii) allow for and assist with audits, including inspections, conducted by or on behalf of the Client, in order to ensure such compliance, provided however that the Client shall be entitled, at its discretion, to accept adherence by the Consultant to an approved code of conduct or an approved certification mechanism to aid demonstration by the Consultant that it is compliant;

36 the Consultant shall inform the Client's Representative immediately if, in its opinion, it receives an instruction which infringes Data Protection Law;

37 the Consultant shall notify the Client's Representative within 24 hours of becoming aware of any act or omission [including breach of security] leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Personal Data transmitted, stored or otherwise processed and shall provide co-operation and assistance to the Client as is required to mitigate the effects of, and comply with applicable reporting obligations in respect of, such act or omission; and

38 no Personal Data shall be transferred outside the European Economic Area by the Consultant or any of its agents or sub-processors without the prior written consent of the Client, and the Consultant shall comply with Data Protection Law in respect of Personal Data transfers outside the European Economic Area which the Client has consented to.

14.TERMINATION

Party for cause

1 A party may terminate the Contract for a substantial breach by the other party of any of its obligations under the Contract.

Client for insolvency etc

2 The Client may by notice terminate the Contract for –

3 the Consultant's arrangement, composition, for the benefit of creditors;

4 act of bankruptcy, actual bankruptcy;

5 resolution passed for voluntary winding-up of the Consultant, except to amalgamate or reconstruct;

6 order for winding up the Consultant;

7 appointment of a liquidator, examiner, receiver, administrative receiver, manager, trustee in respect of any substantial part of the Consultant's business, undertaking or assets;

8 any such appointment, possession taken, under a floating charge;

9 a Scheduled termination event.

Client at will

10 The Client may terminate the Contract at any time [during any Stage, or between Stages, even if the Project is continuing, if it chooses].

Notice

11 To terminate for cause [under 1] a party must first notify the other that it is contemplating termination, for what breach, and what if any remedial result by the other will prevent termination;

12 followed [in the absence of proof of that result from the other] by termination notified at least 14 and at most 28 days after the notice.

13 The other terminations take effect on a date notified by the terminating party

14 that for Client's termination at will is at least 14 and at most 28 days after the notice

15 that for Client's termination under 2-9 is at least 1 and at most 48 days after the notice.

Effects of termination

16 On any termination, the Consultant shall stop performing the Services except for

17 any Services required in the notification;

18 any emergency Services necessary.

19 The Consultant shall hand over its documents to the Client as soon as practicable.

20 The Consultant agrees now that on any termination,

21 except Client's termination at will,

22 the benefit of any sub-consultancy, engagement of site staff, relating to the Services shall stand assigned to the Client or its nominee,

23 with effect from the date of any claim to the assignment from the Client to the Consultant.

24 Both parties remain liable for breaches before termination [subject to Clause 5 on Client's prolongation].

Compensation

25 On termination for cause, Consultant's insolvency,

26 the terminating party is entitled to damages as if the termination was for the other's repudiation of the Contract.

27 On any termination by either party the Consultant is entitled to fees and expenses for Services performed before the termination,

28 with a reasonable apportionment for any incomplete, unsatisfactory, performance.

29 Neither party is entitled to any further payment, damages, for any termination

30 except any Scheduled payment to the Consultant where the Client terminates at will although the Project is continuing.

Termination of PSDP Services

31 In addition, the Client may terminate the Consultant's role as PSDP [if included in the Services]
32 without terminating the Contract for its other Services,
33 for a substantial breach by the Consultant of any of its obligations as PSDP,
34 or at the Client's choice.

35 Elements 10 to 29 [inclusive] apply to this termination of PSDP Services with all necessary adjustments [30 does not apply].

36 On termination of only the PSDP role for breach [31 -33] the Client may make a reasonable assessment of the reduction in the fees because of the reduction in the Consultant's Services.

15.LAW

1 The parties shall comply with Irish law, which governs this Contract.

16.DISPUTES

1 Subject to any conciliation, adjudication under the Construction Contracts Act, 2013 or other initial method agreed by the parties in the Schedule or after Contract for resolving a dispute or issue in a dispute,
2 all disputes, whatever, whenever, between the parties in connection with the Contract, Services, shall be finally decided by arbitration.

3 The arbitrator, conciliator, adjudicator, other under 1, shall be agreed by the parties,
4 or in default of agreement nominated at the request of either by the Scheduled Nominator.

5 Any Scheduled Rules shall apply.

6 If a dispute between the Parties is referred to adjudication any dispute resolution method, other than arbitration, relating to that dispute immediately adjourns. In the event that no decision is reached by the adjudicator, the parties may continue to resolve the dispute under the adjourned dispute resolution method, from the date the dispute was referred to adjudication.

7 In the event that a decision is reached by the adjudicator any dispute resolution method, other than arbitration, relating to that dispute shall be terminated.

EXECUTED by the parties on

[*Date of execution*]

SIGNED on behalf of the Client by

in the presence of

SIGNED by the Consultant

in the presence of

OR

SIGNED and DELIVERED as a DEED by the Consultant

in the presence of	

OR

PRESENT when the **COMMON SEAL** of the Consultant was affixed hereto	