

MPF2

MPF2

MPF2

Major Projects Framework 2

NEC3 Pre-Construction Delivery Agreement



PROCUREMENT



The following Delivery Agreement template is drafted on the basis that the law of Scotland applies.

Pre-construction Services Delivery Agreement

(Professional Services Contract)

THIS AGREEMENT is made

BETWEEN:

(1) [insert Employer name] of [insert Employer registered address] (**the 'Employer'**)

AND

(1) Robertson[Fill in the Division] whose registered office is at [] (**the 'Contractor'**)

for the Services of Pre-construction, Design and other Professional Services to complete RIBA Stage [insert stage here].

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated [] made between **PLACES FOR PEOPLE GROUP LTD** and the Contractor dated 4th April 2022 (the 'Framework Agreement') and incorporates those provisions of the Model Delivery Agreement set out in Schedule A10 to the Framework Agreement.

When using the Professional Services Contract, the Contractor (as stated in the Framework Agreement) is the party named as 'Consultant'.

IT IS AGREED as follows:-

1. **The Contractor's obligations**

The *Contractor* provides the services and complies with its obligations, acting as the *Consultant* in accordance with the conditions of contract set out in the Contract Data herein.

2. **The Employer's obligations**

The *Employer* pays the amount of money and complies with its obligations in accordance with the conditions

3. The documents forming part of this agreement are:

The Model Delivery Agreement

The *conditions of contract* (NEC 3rd edition professional services contract April 2013)

The *Contract Data part one* (and any appendices of schedules referred to therein)

The *Contract Data part two* (and any appendices or schedules referred to therein)

The *Scope*

The [*activity schedule*]

IN WITNESS WHEREOF these presents consisting of this and the preceding page, [Contract Data Parts One and Two, the Scope, Activity Schedule,] are signed as follows:

SUBSCRIBED for and on behalf of [Employer]

at
on
by

Print Full Name
before this witness

Print Full Name
Address

Director

Witness

SUBSCRIBED for and on behalf of Robertson Construction Group Limited or agreed subsidiary]

at
on
by

Print Full Name
before this witness

Print Full Name
Address

Authorised Signatory

Witness

Contract Data: Part One – Data provided by the Employer

1. General

The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, [X5], X7, X8, X9, X10, X11, X18, [Y(UK)1], Y(UK)2, Y(UK)3 of the NEC3 Professional Services Contract April 2013 Option A.

- The *Employer* is

Name
Address
Telephone
E-mail address

- The *Adjudicator* is

Name
Address
Telephone
E-mail address

- The *services* are

- The *Scope* is:

Project Brief [insert project specific brief]

- The *language* of this contract is English
- The *law* of the contract is the law of Scotland
- The *period for reply* is **2** weeks
- The *period for retention* is **12** years following Completion or earlier termination
- The *Adjudicator nominating body* is **the Royal Institution of Chartered Surveyors**
- The *tribunal* is **the Courts of Scotland**
- The following matters will be included in the Risk Register

.....
.....

2. The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things

access to	<i>access date</i>
.....
.....

3. Time

- The starting date is
- The *Consultant* submits revised programmes at intervals no longer than **5** weeks

4. Quality

- The quality policy statement and quality plan are provided within **2** weeks of the Contract Date.
- The *defects date* is **12** weeks after Completion of the whole of the *services*.

5. Payment

- The *assessment interval* is monthly
- The *currency* of the contract is **the pound sterling**
- The *interest rate* is 4% per annum above the base rate in force from time to time of the Bank of England.:

8. Indemnity, insurance and liability

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	Cover	period following Completion of the whole of the <i>services</i> or earlier termination
Professional Indemnity Insurance - failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£5,000,000 in respect of each claim, without limit to the number of claims or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm	12 years
death or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	£10,000,000 in respect of each claim, without limit to the number of claims	12 years
death or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	£10,000,000 in respect of each claim, without limit to the number of claims	12 years

- The *Employer* provides the following insurances
- Insurance for all existing buildings and property existing within the Site or at the sole discretion of the *Employer* he may elect to 'self-insure' such existing buildings and property and in doing so accepts all of the *Employer's* associated risks arising out of or in relation to such 'self-insurance'. In accordance with an *Employer's* decision to 'self-insure' they do not accept any additional insurance premium/cost from the *Contractor*.

.....

- The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters is limited to

[]

Optional statements (The following optional clauses apply)

If the *Employer* has decided the *completion date* for the whole of the *services*

- The *completion date* for the whole of the *services* is

○

If no programme is identified in part two of the Contract Data

- The *Consultant* is to submit a first programme for acceptance within **2** weeks of the *Contract Date*.

If the *Employer* has identified work which is to meet a stated *condition* by a *key date*

- The *key dates* and *conditions* to be met are

<i>Condition</i> to be met	<i>key date</i>
1
2
3

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is **14** days

If the *Employer* states any expenses

- The *expenses* stated by the *Employer* are

Item	amount
.....
.....
.....
.....

If Option A is used

- The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than **4** weeks.

If Option C is used

- The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than **4** weeks.
- The *exchange rates* are those published in [**to be agreed on a project specific basis**] on [**to be agreed on a project specific basis**] (date)

If Option C is used

- The *Consultant's share percentages* and the *share ranges* are:

<i>Share range</i>	<i>Consultant's share percentage</i>
Less than 95%	10%
From 95% to 100%.....	40%
From 100% to 102.5%.....	40%
Greater than 102.5%.....	100%

Option X1 is used

- The index is.....

Option X2

- The *law of the project* is the law of Scotland

If Option X5 is used

- The *completion date* for each *section* of the services is

<i>section</i>	<i>description</i>	<i>completion date</i>
1.
2.
3.

If Option X5 and X7 are used together

- Delay damages for each *section* of the services are

<i>section</i>	<i>description</i>	<i>completion date</i>
1.
2.
3.
Remainder of <i>services</i>		

If Option X7 is used (whether or not Option X5 is also used)

- Delay damages for Completion of the whole of the *services* are £nil per day

Option X8

- The *collateral warranty agreements* are agreement reference third party

If Option X10 is used

- The *Employer's Agent* is
Name
Address
- The authority of the *Employer's Agent* is all actions by the Employer stated in this contract except clauses 51, 90, 91 and 92.

If Option X18 is used

- The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to
 - £[]
- The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to the higher of
 - £[]
- The end of liability date is **12 years** after Completion of the whole of the services

If Option Y(UK)1 is used and the Employer is to pay any charges made and is paid any interest paid by the *project bank*

- The *Employer* is to pay any charges made and is paid any interest paid by the *project bank*.

If Options Y(UK)3 is used

- Term person or organisation
.....
.....
.....
.....

If Options Y(UK)1 and Y(UK)3 are both used

- Term person or organisation
- The provisions of Option Y(UK)1 Named Suppliers

Option Z

The additional Conditions of Contract are:

- 1 General**
- 11.2 (2) Add further bullet point:
- provided or procured all Collateral Warranties which the *Consultant* is then obliged under this contract to provide or procure;
- 11.2(14) Insert a new definition:
- ‘Framework Agreement’ is the framework agreement between **PLACES FOR PEOPLE GROUP LIMITED** and the *Consultant* dated 4 th April 2022
- 11.2(15) Fire Safety Strategy means the specifications and drawings setting out the detailed design for the *works* and specifying all systems, methods, products and materials to be used in the construction and delivery of the external walls of the *works* including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in the documents which the Contract Data states it is in.”
- 11.2(16) Public Health Emergency such as the occurrence of a "public health emergency", such as coronavirus disease (COVID-19), or any other disease variant caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) virus
- 11.2(17) Russian Federation’s attack on Ukraine and other wars in violation of international law
- 11.2(18) "Implications of the constraints upon the availability of **KEY** Equipment and/or Plant and Materials to be provided by the *Contractor*
- 2 The Parties’ main responsibilities**
21. Amend as follows:
- 21.2 Delete and replace with:
- ‘The *Consultant’s* obligation is to exercise (and it warrants that it has exercised) all the reasonable skill, care and diligence to be expected of a competent and appropriately qualified consultant of the professional discipline relevant to the Services being performed and who is experienced in undertaking services such as the Services in a similar timescale and also in connection with projects equivalent to the Project in connection with which the *services* are being performed.’

The Consultant’s Obligations

21.3 Insert new clause 21.3

21.3.1 Notwithstanding any contrary provision in the Contract or any documents forming part of the Contract it is hereby expressly agreed and acknowledged that: -

- a) no fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the works to be delivered under this Contract and/or method, system, design, products and materials provided by the Contractor, and
- b) the Contractor in designing the Works shall exercise reasonable skill and care and shall have the like liability to the Client, whether under statute, this contract or otherwise, as would an architect or, as the case may be, any other appropriate professional designer holding himself out as competent to take on such work for such design and material selection who, acting independently under a separate contract with the Client, has supplied such design for or in connection with the works to be carried out by a building contractor who is not the supplier of the design.'

6. Compensation Events

60.1(13) Insert new clause 60.1(13)

Any change to the Fire Safety Strategy after the Contract Date required as a result of any direction, interpretation or requirement of any statutory body or relevant third party, including but not limited to any local authority building control or approved inspector and which affects the excavation of the Works.

60.1.(14) Insert new clause 60.1(14)

Public Health Emergency such as the occurrence of a "public health emergency", such as coronavirus disease (COVID-19), or any other disease variant caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) virus and/or any the implementation of public health measures in connection with the outbreak, directly affecting the execution of the Works, including but not limited to:

- shortages of labour or supervision as a result of preventative measures to alleviate the outbreak spreading and/or due to infection, or potential infection, and the resulting quarantine, or self-isolation or similar, required; or
- shortages of plant or materials due to delays in their manufacture, importation or transportation; or
- site closure, or restricted access or amended working methods as a result of measures to contain the outbreak; or
- the exercise by the Scottish or United Kingdom Government of any statutory power.

shall be a Compensation Event and the total of the Prices and *completion date* shall be subject to adjustment.

60.1 (15) Insert a new Clause:

"Implications of the constraints upon the availability of **KEY** Equipment and/or Plant and Materials to be provided by the *Contractor* which the *Contractor* has taken all reasonable steps to avoid or mitigate and which prevents the Contractor taking delivery of the of the aforementioned

60.1(16) Insert a new Clause:

“Implications of the Russian Federation’s attack on Ukraine and other wars in violation of international law including but not limited to the availability of Equipment and/or Plant and Equipment.

60.1(17) Inflation caused by current market conditions and availability of Equipment and/or Plant and Materials.

8 Indemnity insurance and liability

81.1 Amend the insurance table:

In respect of the first entry in the left hand column that starts ‘Liability of the Consultant...’ amend so that it reads:

‘Liability of the *Consultant* for claims made against him arising out of his failure to use the skill and care required by this contract.’

Insert new OPTION X21: CIC BIM PROTOCOL (*only applies when BIM is required*)

X21.1 In this Option, the Protocol is the CIC Building Information Modelling Protocol, first edition 2013. Terms used in this clause are those defined in the Protocol.

X21.2 Clauses 1, 2, 5, 6, 7 of the Protocol are *additional conditions of contract*. Clauses 3 and 4 and Appendices 1 and 2 of the Protocol are Scope.

X21.3 The following are compensation events.

- The *Consultant* encounters an event which is outside his reasonable control and which prevents him from carrying out the work specified in clause 4.1.2 of the Protocol.
- The *Employer* revokes a licence granted under clause 6.6 of the Protocol.

OPTION Y(UK) 3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Delete the existing wording for this Option, rename as The Contract (*Third Party Rights*) (*Scotland*) Act 2017 and insert:

Y3.1 A person who is not a party to this contract shall have no rights under the Contract (*Third Party Rights*) (*Scotland*) Act 2017 to enforce any term of this contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified.

Y3.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

Contract Data: Part Two – Data provided by the *Consultant***Statements given in all contracts**

- The *Consultant* is Robertson [Fill in Company Name]

The Services are to be delivered by Local Construction Office:-

Name **(Insert LCO details to be agreed on a project specific basis)**
Address
Telephone
E-mail address

- The key persons are

(1) Name

Job

Responsibilities

Qualifications

Experience

(2) Name

Job

Responsibilities

Qualifications

Experience

- The staff rates are

name /designation **rate**

[as set out in the Commercial Model]

- The following matters will be included in the Risk Register

[insert project specific risks]

Optional Statements

If the *Consultant* is to decide the *completion date* for the whole of the *services*

- The *completion date* for the whole of the *services* is

If a programme is identified in the Contract Data

- The programme identified in the Contract Data is.....

If the Consultant states any expenses

- The *expenses* stated by the Consultant are

Item	amount
.....

Option A

- The *activity schedule* is

The tendered total of the Prices is **[insert project specific price]**

If Option Y(UK)1 is used

- The *project bank* is
- *named suppliers* are

This is Appendix 1 referred to in the foregoing Pre-construction Services Delivery Agreement between (Employers name) and Robertson (Fill in Division) for (insert project)

Appendix 1 – Scope of Services

This is Appendix 2 referred to in the foregoing Pre-construction Services Delivery Agreement between (Employers name) and Robertson (Fill in Division) for (insert project)

Appendix 2 – Risk Register

This is Appendix 3 referred to in the foregoing Pre-construction Services Delivery Agreement between (Employers name) and Robertson (Fill in Division) for (insert project)

Appendix 3 – Programme

This is Appendix 4 referred to in the foregoing Pre-construction Services Delivery Agreement between (Employers name) and Robertson (Fill in Division) for (insert project)

Appendix 4 – Activity Schedule

This is Appendix 5 referred to in the foregoing Pre-construction Services Delivery Agreement between (Employers name) and Robertson (Fill in Division) for (insert project)

Appendix 5 – Drawings and Specifications

Other Appendices that maybe added on a project specific basis would be Site Information, Warranties, Robertson Operating Procedures and the like.



Kevin Stewart
Framework Manager

M 07447 849 470

E k.stewart@robertson.co.uk

Robertson House
Castle Business Park, Stirling, FK9 4TZ

Contact us on 0845 266 7629
www.procurementhub.co.uk

Find us on social media



Procurement Hub
Part of Places for People
Group Support Centre, 4 The Pavilions,
Preston, PR2 2YB