

Standard terms and conditions

Charging for planning and marine licence advice April 2018

These are the standard terms and conditions that apply to any charged planning or marine licence advice we give.

Interpretation

The following terms have the following meanings:

“**advice**” means the provision by us of chargeable advice to you related to your application before you formally submit it to the relevant authority and/or after such submission and/or after the grant of your application, such advice being as specified in the programme but which may include but not be limited to: flood and coastal risk management; surface water management; pollution prevention; impacts on water bodies in a River Basin Management Plan; impacts on wetland biodiversity and fisheries; waste management; and climate change adaptation

“**agreement**” means the parties’ agreement for the provision of the advice as set out in (in order of preference in the case of conflict): the programme, these terms, our published charges and the instruction

“**application**” means an application for planning permission, a development consent order or a marine licence

“**contract duration**” means the period specified in the programme

“**instruction**” means your written acceptance of these terms and the programme and confirmation that we are to provide the advice

“**party**”, “**parties**” means you and us

“**programme**” means our letter setting out the schedule of work to provide the advice and the estimated cost of that work

“**we**”, “**us**”, “**our**” means the Environment Agency, including its officers, employees, contractors and agents

“**you**”, “**your**” means the natural or legal person named or proposed to be named in the application or grant of the application, as applicable, including their officers, employees, contractors and agents

1. Work we will do

1.1 Subject to Conditions 3 and 8.4, we will provide you with our advice as set out in the programme and as permitted under these terms.

1.2 We may consult other regulators and government bodies or other relevant authorities where we consider their input is relevant.

2. Programme

2.1 By providing the instruction, you acknowledge and agree that the work you require from us is as set out in the programme. We will use reasonable endeavours to provide our advice within any period(s) set out in the programme (or in the absence of a specified period, within a reasonable time) but we don’t guarantee to meet these timescales.

2.2 The parties may at any time agree changes to the programme in accordance with Condition 10.1.

3. Work you will do

3.1 Upon receipt of the programme, you must promptly provide the instruction or confirm in writing that you do not wish to proceed with the agreement. If you do not do this within 28 days of our sending you the programme, we shall be entitled to assume that you do not wish to proceed.

3.2 You must make available to us such information (including maps, reports, plans and drawings as relevant) and provide such support as we may reasonably require in relation to the provision of our advice.

3.3 You must discuss with us when you have any change in your requirement for our advice. We shall not be under any obligation in relation to such changes unless and until they have been agreed in accordance with Condition 10.1.

4. Commencement and term

4.1 Subject to Conditions 3 and 8.4, we will start work on providing our advice from the date we receive the instruction and, unless terminated earlier under Condition 8, the agreement shall continue in force until you have paid in full our final invoice for the provision of our advice.

5. Costs of our advice

5.1 You must pay all reasonable costs and expenses we incur in providing our advice.

5.2 We will charge you for each hour or part hour (subject to a minimum of half an hour) of staff time incurred in giving our advice. Our hourly rate(s) shall be those rate(s) we approve from time to time and publish for this purpose. In addition we will charge you for any other reasonable costs we incur (including the costs of advice from external consultants if we consider such advice necessary) and provide you with evidence of them.

5.3 Our hourly rate(s) shall be exclusive of VAT or any similar taxes, which shall be payable by you in respect of our charges.

5.4 We will tell you if our costs estimate changes when we receive more information from you or others, and when we agree with you in writing any changes to the programme under Condition 2.2.

5.5 You must tell us if you disagree with any costs estimate given under Condition 5.3 and why as soon as possible, and in any event not later than 14 days after you receive it.

5.6 You may terminate this agreement on the basis that the costs estimate is not acceptable at any time before we start work.

5.7 We will send you invoices quarterly. You must pay all invoices within 30 days of the date of issue.

6. Acknowledgement

6.1 You acknowledge and agree that in providing our advice we are under no obligation:

(a) to make any favourable recommendation to the Marine Management Organisation, a local planning authority or the Planning Inspectorate in relation to your application; or

(b) to grant any related consents or permits which we are responsible for determining.

6.2 We will use reasonable skill, care and diligence when we provide our advice, which will be based on the information available to us at the time and the laws, policy and guidance in place at the time. You must ensure that the advice and information we give meets your needs and you are responsible for the consequences of any use to which you put it.

7. Confidential information

7.1 Subject to Condition 1.2, we will only disclose confidential information you send us to any third party where it is disclosable by operation of law or the order of any competent authority. You should note that we are subject to public sector disclosure obligations, including the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, so may be required to disclose information upon request notwithstanding its confidential nature.

7.2 The restrictions on disclosure of confidential information in Condition 7.1 shall not apply where we have obtained the information in question separately without confidentiality obligations or where it becomes publicly available otherwise than by a breach of obligation or confidentiality.

7.3 Condition 7.1 shall not prevent us providing a copy of any advice provided under this agreement in relation to a formal application or discharge of conditions.

8. Termination

8.1 Either party (the “notifying party”) may terminate this agreement by:

(a) at any time, giving the other party not less than 14 days’ written notice of its intention to terminate (save that we will not unreasonably terminate this agreement); or

(b) giving the other party written notice with immediate effect if the other party (the “defaulting party”) materially breaches this agreement and if:

(i) the defaulting party has not remedied, or commenced and is diligently proceeding to remedy, the breach to the notifying party’s reasonable satisfaction within 14 days after service of a written notice specifying the breach and requesting it to be remedied; or

(ii) the breach is not capable of remedy; or

(iii) the breach is a fundamental breach of this agreement; or

(iv) the other party becomes insolvent, is declared bankrupt, has a receiver appointed, enters into an arrangement with its creditors, or an order is made or a resolution passed for its winding up except where it is for the purpose of restructuring and the resulting institution agrees to be bound by this agreement.

8.2 If at the time this agreement is terminated we have any outstanding costs which would otherwise have been payable under Condition 5 or any costs (including contingent costs) in relation to contracts with third parties which cannot be immediately terminated, you must pay any such costs.

8.3 All provisions which would be required to survive this agreement in order to have their intended effect shall be deemed to survive termination.

8.4 Without limiting our other rights or remedies, we may suspend the provision of our advice under this agreement if:

(a) you become, or threaten to become, subject to any of the events listed in Condition 8.1(b)(iv);

(b) you fail to pay any sums you owe to us as they fall due, whether arising under this arrangement or otherwise; or

(c) we reasonably believe that you are about to default on paying any sums you owe to us as they fall due, whether arising under this arrangement or otherwise;

and we shall not be required to recommence work unless and until such matter has been finally resolved to our reasonable satisfaction.

9. Disclaimer

9.1 Neither party excludes or limits liability to the other for death or personal injury caused by its negligence or for any breach of any obligations which it is not permissible to exclude by law.

9.2 Subject to Condition 9.1 we shall not be held liable in contract, negligence or otherwise for the consequences of you following or relying upon comments or views given by us or any act, omission, event or circumstance or series of acts events or circumstances relating to this agreement or with respect to the matters contemplated by it.

10. General

10.1 Any variation of this agreement shall only be valid if it is in writing and signed by both parties.

10.2 Our obligations to you under this agreement may be suspended because of any event which is beyond our reasonable control and which means we can't carry out the work.

10.3 This agreement is subject to the law of England and, subject to Condition 11.1, to the exclusive jurisdiction of the English courts.

10.4 This agreement is the whole agreement between the parties in respect of the advice and supersedes all previous communications, representations and agreements, whether oral or in writing.

10.5 If any part of this agreement is or becomes unlawful or unenforceable it shall be deemed deleted but that shall not affect the validity of the remainder of this agreement and the parties shall negotiate in good faith to agree an alternative provision that, to the greatest extent possible, achieves the same intended result.

11. Dispute resolution

11.1 Any dispute between the parties arising out of this agreement shall be referred first to your project manager and our senior manager for resolution before any court proceedings are taken by either party. This Condition shall not prevent either party from applying to the court for injunctive relief.