



Homes  
England

To: All Consultants on Property Professional  
Services Framework

Your ref:  
Our Ref: DP 69 5 1 18 1

Date: [X] October 2018

Dear ■

## **HOMES ENGLAND PROPERTY PROFESSIONAL SERVICES FRAMEWORK**

I write further to your firm's appointment to the above Framework earlier this year.

Homes England has decided to revise Clause 35 of the Framework Contract ('the Contract') relating to 'Limit of Liability', and add an additional paragraph to the Insurance Schedule 1.

The new clause set out below will replace the existing Clause 35 in the contract:

- 35.1 Notwithstanding any other term of this contract the total liability of the Consultant to Homes England under or in connection with this contract whether in contract, tort, for breach of statutory duty or otherwise shall be limited to £5,000,000 (Five million pounds) for each and every claim save that the Consultant's liability shall be unlimited in respect of:*
- (a) Death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);*
  - (b) Fraud or fraudulent misrepresentation by it or its employees;*
  - (c) Breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or*
  - (d) Any liability to the extent it cannot be limited or excluded by Law;*
  - (e) The Consultant's liabilities in respect of the indemnities in Clause [11.5/12.5] (Vesting of Material, Copyright and Publication of Results), Clause [37.6/38.6] (Status and Tax Liabilities) and Clause 10.6 and paragraph 2.16 of Schedule 8 (Personal Data); and*
  - (f) Intentional, maliciously negligent or wilfully negligent actions or omissions of the Consultant, its employees, agents or sub-contractors (as applicable).*

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35.2 *For the avoidance of doubt, the parties acknowledge and agree that the Consultant's liability as set out in this clause 35 also applies to any individual Instruction from Homes England (and any instruction from a Public Sector Body pursuant to clause 2.13), unless the Consultant's liability has been specifically and differently provided for in such Instruction (or instruction from a Public Sector Body as the case may be) PROVIDED THAT liability for the matters set out in clause 35.1 for which liability is unlimited, shall remain unlimited.*

35.3 *In relation to claims relating to asbestos, for any period where professional indemnity insurance cover is not available for the amount referred to in clause 35.1 above, at commercially reasonable rates and upon commercially reasonable terms, then the Consultant's liability to Homes England in relation to such claims shall be capped at sum as would be available on such terms, provided that such sum shall not be less than £5,000,000 (Five million pounds) in aggregate.*

Additionally, the following new paragraph 1.2 shall be inserted in Schedule 1 Insurance:

1.2 *For the avoidance of doubt, the Insurances specified above shall be required in respect of individual Instructions by Homes England (or instructions by Public Sector Bodies pursuant to clause 2.13) unless different requirements are specified in such Instruction (or in such Instruction from a Public Sector Body as the case may be).*

Under Clause 40.3 of the Contract, any variation of the Contract must be in writing and signed or initialled by the duly authorised representative of Homes England and the Consultant, and be annexed to the Contract.

Please arrange for an authorised signatory of your firm to sign this letter (where indicated), and the enclosed duplicate, to signify your firm's agreement to the variation of the Contract as set out above. Please then keep one signed version of this letter and attach it to the Contract in your possession, and return the other signed letter to me by [ ].

Finally, please note that Homes England will expect pricing at appointment (where direct award) or further competition stage to have due regard to the revised positions outlined above.

Yours faithfully

For and on behalf of Homes England

**SIGNED by way of acknowledgement of the above by:**

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Duly authorised representative of [ ]

Dated:

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