

# CEEQUAL TERMS AND CONDITIONS OF BUSINESS – From 26 March 2012

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## CEEQUAL Ltd

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A private limited company registered in England No. 4568928

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### 1 **DEFINITIONS**

- 1.1 '**CEEQUAL**' shall mean CEEQUAL Limited and where the context permits, its employees, agents or subcontractors.
- 1.2 '**The Applicant**' shall mean any person or persons, firm or corporate body that applies for a CEEQUAL award.
- 1.3 '**Application**' shall mean work related to the specific CEEQUAL award applied for.
- 1.4 '**Agreed**' shall mean agreed between **the Applicant** and **CEEQUAL**.
- 1.5 '**Assessor**' shall mean that person provided by **the Applicant** to conduct the scoping out and assessment(s).
- 1.6 '**Verifier**' shall mean that person provided by **CEEQUAL** to verify the scoping out and assessment(s).
- 1.7 '**Schedule of fees**' shall mean the schedule of fees as applicable to various Award types and project or contract values and regions of the world as shall be issued by **CEEQUAL** from time to time and as shall be current at the time of the **Application** or variation to the **Application** under consideration.
- 1.8 '**Data share**' shall mean supplying a feed of information on projects and term contracts attaining the **CEEQUAL** accreditation to a third party, which may be displayed on websites and supporting material.
- 1.9 '**Third party**' shall mean an organisation and/or company, or individual(s) that are not run or employed by **CEEQUAL**, but are an approved **Associate** of **CEEQUAL**.
- 1.10 '**Associate**' shall mean a third party organisation and/or company, or individual(s) that are approved by **CEEQUAL** to be trustworthy to assist **CEEQUAL** in any means of business and/or publicity.
- 1.11 '**Glenigan**' shall mean EMAP LIMITED trading as 'Glenigan' (company number 537204, registered office is at Greater London House, Hampstead Road, London NW1 7EJ).

### 2 **GENERAL**

- 2.1 These conditions shall apply to all work undertaken by CEEQUAL for the Applicant and are overridden only by any explicit other conditions related to the Application which have been agreed in writing between the Applicant and CEEQUAL.
- 2.2 CEEQUAL will conduct its business in accordance with professional standards and maintain a high standard of independence, objectivity, integrity and confidentiality.
- 2.3 CEEQUAL provides information, advice and makes CEEQUAL Awards in good faith based upon information available at the time. CEEQUAL accepts no liability for the consequences of its information, advice and decisions in respect of awards whether direct or indirect.
- 2.4 The failure by either party to enforce at any time or for any period any one or more of the terms and conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.
- 2.5 Any disputes or claims shall be governed by and construed in accordance with English law and the jurisdiction of the English courts.
- 2.6 All unresolved disputes between the Parties shall be referred to arbitration in London before a single arbitrator to be appointed, in default of agreement otherwise, by the person for the time being of the President of the Institute of Arbitrators. Both parties also agree that all disputes arising with respect to this contract will be arbitrated upon within the English legal system.
- 2.7 CEEQUAL reserves the right to decline an Application without being required to give a reason.

### 3 **FEES**

- 3.1 The fees payable by the Applicant shall be in accordance with the CEEQUAL's Schedule of fees current at the date of application and relevant to the Award applied for, subject to Clause 3.2 below.
- 3.2 CEEQUAL may at all times apply an adjustment for inflation to the fees where such fees are for future work, such adjustment to be in line with RPI.
- 3.3 Any variations to the Application, whether a change in the type of award applied for or an escalation in the project value, shall be agreed in writing by CEEQUAL and the Applicant, and CEEQUAL will adjust the fee in accordance with the schedule of fees for awards current at the date the variation is agreed, and reserve the right to charge an administration fee for the change, CEEQUAL will not normally agree to a reduction in fees in the event of a reduction in project value.
- 3.4 The project value shown on the Schedule of fees shall, except in the case of a Design Only award, be the value of civil engineering content (including the process plant works in projects such as water treatment works, waste management facilities of power stations) at contract award, unless there is a significant escalation of contract value before assessment takes place. For Design Only awards or Whole Project Awards applied for early, the project value will be taken to be the engineer's estimate of the construction contract value.
- 3.5 The fees exclude the time and fees of the Assessor, which are entirely the responsibility of the Applicant.
- 3.6 In the event of delay to verification(s) that is past the date shown on the original Application by a period in excess of twelve months CEEQUAL reserves the right to increase the amount of the fees related to said verification(s) to the amount calculated by application of the appropriate proportion to the total fees indicated in the Schedule of fees current at the date of the delayed verification(s).
- 3.7 Unless otherwise stated in the Application all transactions will be in Pounds Sterling. Both parties agree to accept this in respect of all invoices and payments. Unless otherwise explicitly provided by an individual Application, no account will be taken of any exchange rate fluctuations during the life of the project or award process. Each party accepts as their own responsibility the variation, whether favourable or unfavourable, that they may see in local currency terms in respect of the Application.
- 3.8 All quotations issued exclude VAT and local taxes unless otherwise stated. VAT and local taxes will be added at the rate ruling at the date the invoice is submitted.

## CEEQUAL TERMS AND CONDITIONS OF BUSINESS – From 26 March 2012

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### **4 INVOICING AND PAYMENT TERMS**

- 4.1 For all Applications to which the minimum fee applies, except Whole Project Awards with an Interim Award, an invoice for the full amount will be sent on receipt and registration of the Application.
- 4.2 For all other Applications, except Whole Project Awards with an Interim Award, an invoice for 50% of the amount will be sent on application and an invoice for the balance will be sent in advance of the verification date provided by the applicant. For Whole Project Awards with an Interim Award, fees will be invoiced in three approximately equal instalments, the first on application, and the second and third prior to the verification dates provided by the Applicant unless other terms have been agreed with CEEQUAL in accordance with Clause 2.1.
- 4.3 In the event of delay to the verification date(s) shown on the application forms (or as subsequently amended in accordance with this clause) the new date must be provided in writing to CEEQUAL a minimum of six weeks prior to the previously notified date of verification.
- 4.4 In all cases payment must be received in full in advance of CEEQUAL commencing work on that stage of the project award to which the invoice relates. Payment shall be made by the Applicant within thirty days of an invoice being submitted by CEEQUAL.
- 4.5 In the event of an error or query on the invoice this shall be notified to CEEQUAL without delay. A credit note will be issued to correct errors or omissions and payment of the net amount is then due.
- 4.6 CEEQUAL shall be entitled to charge interest on accounts outstanding for more than 30 days and for any sums unjustifiably withheld under clause 4.4 at 2% above the prevailing minimum lending rate of the Bank of England.
- 4.7 In the event of insolvency of the Applicant, CEEQUAL will be entitled to have a general lien on all goods and property of the Applicant that is within CEEQUAL's possession and, following 14 days notice to dispose of such goods and property in such manner and at such prices as CEEQUAL thinks fit to apply the proceeds towards sums owing to the CEEQUAL by the Applicant.
- 4.8 All invoices shall be paid without deduction. CEEQUAL does not accept discounting of any description unless agreed in advance in accordance with Clause 2.1
- 4.9 CEEQUAL's Bank details are as follows, where all payments should be made by the Applicant unless otherwise agreed:  
National Westminster Bank Plc, PO Box 113, Cavell House, 2a Charing Cross Road, London WC2H 0PD  
Sort Code 60-40-05                      Swift Code NWBKGB2L                      Bank Account No.32028598

### **5 OPERATION OF CONTRACT**

- 5.1 The Applicant shall provide an accredited Assessor, who may be a member of the applicant's staff or a sub-contractor of the Applicant. Assessors must have successfully completed the CEEQUAL training course. Details of the courses, including dates, locations and costs, can be supplied by CEEQUAL on request and are published by CEEQUAL on the website [www.ceequal.com](http://www.ceequal.com). CEEQUAL can supply details of qualified Assessors to the Applicant on request, but can play no part in assessing the appropriateness of an Assessor or in any commercial arrangements made by the Applicant with an Assessor.
- 5.2 CEEQUAL will appoint a suitable qualified Verifier to carry out the work. That appointment and any subsequent change to that appointment shall be entirely at the discretion of CEEQUAL.
- 5.3 CEEQUAL will give reasonable consideration to any representation made by the Applicant concerning the appointment of the Verifier but any appointment or change to an appointment shall be entirely at the discretion of CEEQUAL.
- 5.4 CEEQUAL may appoint an assistant or apprentice Verifier or other persons to assist the Verifier in carrying out his or her duties. Clauses 5.2 and 5.3 shall also apply to such persons.
- 5.5 The fee includes provision of one copy of the CEEQUAL Assessment Manual relevant to the Award applied for, access to the Online Assessment Tool for the capture of scores and evidence or such alternative methods as may be in use at the time, the time and expenses of an accredited CEEQUAL Verifier, Ratification fees and Award Certificates for all project partners. Award recipients will be invited to receive their award at an appropriate event given by a CEEQUAL project partner or at an ICE meeting or Award ceremony or at another suitable event and will be invited to submit material for publication on the CEEQUAL website.
- 5.6 The fee also includes a licence to display CEEQUAL approved signage relating to the project in respect of which an Application has been made at the project site.
- 5.7 All awards will be granted on the basis of the CEEQUAL version current at the time of Application unless the Applicant voluntarily and at no cost to CEEQUAL upgrades to a later version during the assessment.
- 5.8 Where visits are to be made to site the Applicant shall be responsible for obtaining any necessary permission or permit for the Verifier or his/her assistants or representatives to have access to all relevant parts of the premises. The Applicant shall ensure that the owners or occupiers of the premises have insurances to cover any liabilities that may arise from injury to such persons while on the premises, accidental damage to equipment or property of CEEQUAL while on the premises, damage or injury to third parties caused by or resulting from the tests or investigations of CEEQUAL.
- 5.9 For use of CEEQUAL for International Projects, the CEEQUAL International Projects Assessment Manual and other supporting material/documents may be translated into another language at cost to the Applicant and at no cost to CEEQUAL. See Clause 5.10 and 5.11.
- 5.10 CEEQUAL will not pay any individual(s) to translate the Assessment Manuals. Any Assessor or project/contract team wishing to have the Manual translated into another language will have to do so at their own expense and must comply with Clause 5.11.
- 5.11 Translated Manuals may only be distributed and used by the individual(s) associated with the project or contract in order to complete the CEEQUAL Assessment in question. Manuals should not be distributed to any third parties not associated with the project or contract being assessed.

### **6 TERMINATION**

- 6.1 Other than by virtue of 6.2 or 6.3 below, an award Application may only be terminated by either party before completion where the underlying project is cancelled, is aborted, fails to obtain planning approval or is fundamentally changed from that originally conceived. In any other cases of abandonment of an award Application by the Applicant, CEEQUAL's fees shall immediately become payable in full as if all the award processes had been carried out.
- 6.2 Where an event caused by third party events outside either party's control or influence causes such delay that the purpose of the contract is wholly or significantly destroyed, either party shall be entitled in these circumstances to cancel the remaining portion of the Application. In such circumstances the Applicant shall not make any further payments of fees but there will be no refund of payments already made (including any payments for that part of the contract that remains unfulfilled) and CEEQUAL shall be entitled to recover any additional costs already incurred but not paid for.

## CEEQUAL TERMS AND CONDITIONS OF BUSINESS – From 26 March 2012

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6.3 CEEQUAL shall have the right to discontinue immediately all work for the Applicant should he or another person petition for his bankruptcy, or he be declared insolvent, or he be placed into administrative receivership or be generally unable to pay his bills as they become due.

### **7 COPYRIGHT & INTELLECTUAL PROPERTY**

7.1 CEEQUAL shall retain copyright in all reports, certificates, presentations, manuals or other material delivered in whatever form.

### **8 CONFIDENTIALITY**

8.1 CEEQUAL agrees to hold all information provided by the Applicant confidential where the Applicant so specifies, save where such information is known to CEEQUAL already, or exists already in the public domain, until, either the information enters the public domain, or CEEQUAL is given the same information by a third party, or is released from its confidentiality requirement by CEEQUAL, or the Applicant is found in breach of contract with CEEQUAL by a court of law (including non-payment of account).

### **9 LIMITATION OF LIABILITY**

9.1 CEEQUAL will exercise all reasonable skill, care and diligence in the discharge of the duties performed and in scoring any Application and in making any award. However, CEEQUAL will not be liable for any loss or damage, whether direct or indirect, arising from its work or the scoring or any award given.

9.2 CEEQUAL will not be liable for any damage, loss or expense suffered by the Applicant by reason of any delay in carrying out any test, investigation or verification or in issuing any awards, scores, reports or certificates to the Applicant.

9.3 Without prejudice to other more restrictive limitations elsewhere in this contract, liability on the part of CEEQUAL shall be limited to the value of the contract with the Applicant or the value of the loss whichever is the smaller. CEEQUAL accepts no liability for the consequences of its information, opinions, scores, awards and advice, whether direct or indirect.

9.4 Whilst CEEQUAL agrees to use its best endeavours to perform the contract for the Applicant as specified, CEEQUAL will not be responsible for any delays or failure to complete the contract that are beyond CEEQUAL's control and which could not have been reasonably predicted.

9.5 Neither party shall be liable to the other for any indirect, special or consequential damages.

### **10 ILLEGAL ACTIVITIES**

10.1 CEEQUAL will not carry out any illegal activities on behalf of the Applicant nor will it incite employees or subcontractors to act in breach of the law. Any requirement in this respect will nullify the Application and CIRIA will be entitled to recover in full its fee and expenses.

10.2 The Applicant agrees not to make any illegal use of any information provided by CEEQUAL.

### **11 PUBLICITY**

11.1 For all applications where the Applicant has not ticked the 'No Publicity' box on the application form, CEEQUAL may use for publicity purposes details of projects and term contracts that have used the CEEQUAL award scheme, and companies and organisations within the project and/or contract teams associated with their completion.

11.2 CEEQUAL will use the following means of publicity for publicising itself and/or projects and term contracts using the CEEQUAL award scheme: CEEQUAL website (including 'Case studies'), CEEQUAL press releases, articles written by CEEQUAL for external publications, CEEQUAL publications and supporting material (including training course material, flyers, leaflets and presentations), and data sharing with Glenigan.

11.3 By leaving the "No Publicity?" box on the Application Form un-ticked, the Applicant agrees to clauses 11.1 and 11.2