

APPENDIX 5

TERMS & CONDITIONS - NO SITE SERVICES

1. Performance of Contract

- a. The Consultant agrees that at all times it will carry out the Services and perform the Contract in compliance with the following conditions:
 - i. The Consultant shall perform his obligations and functions in compliance with these Conditions (and any authorised modifications) and carry out the Services in a manner consistent with the Contract Documents and to the entire satisfaction of the Authority and in any event with all the reasonable skill care and diligence that would be expected of a qualified competent and experienced person undertaking the Services.
 - ii. The Consultant shall notify the Authority as soon as practicable and in any event within 24 hours if the Consultant is unable to carry out any part of the Services or perform any of its obligations under the Contract.

2. Employees

- a. The Consultant shall not engage, employ or cause to be employed in the supervision and performance of the Contract any person without the necessary qualifications, skill and experience to perform the duties that they are trained and employed to do.

3. Variation of Contract

- a. No variation of Contract shall be valid or have any effect unless it is agreed in writing and signed by the Authority. No other variations to the Contract shall be accepted or paid by the Authority.

4. Payment

- a. On completion of the Contract pursuant to a Purchase Order form (and provided that the Consultant shall have performed his duties, obligations and functions under the Contract to the satisfaction of the Authority) the Consultant may submit to an invoice ('Invoice') for the sum due to him in respect of that Order.
- b. Provided that the Invoice is valid and not disputed, the Invoice shall be paid within thirty (30) days of its receipt in accordance with Section 68 of the Procurement Act 2023. All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.

5. Assignment

- a. The Authority shall be entitled to assign or transfer the benefit of the Contract.
- b. The Consultant shall not assign the Contract or any part or it or any benefit or interest within in (including subcontracting) without the written consent of the Authority.

6. Agency

- a. The Consultant is not and shall not in any circumstance hold itself out as being the agent of the Authority.

7. Liability of the Consultant

- a. The Consultant hereby indemnifies and shall keep indemnified the Authority from and against any liability to any person whatsoever arising directly or indirectly out of or connected with the performance, non performance or breach of the Contract or any act neglect default or omission of any employee, agent, servant invitee or visitor of the Consultant or any sub-Consultant including, without limitation:
 - i. any and all losses, costs, expenses, (including professional and legal fees) liabilities and damages;
 - ii. any and all proceedings, claims (including any claim for infringement of copyright), demands, penalties, statutory charges and fines;
 - iii. death, illness or injury to any third party or for any loss of or damage to any property belonging to the Authority or to any third party and against all losses, costs, expenses, liabilities, damages, claims, demands or causes of action resulting therefrom;
 - iv. any claim for professional liability in respect of any advice given under the terms of the contract.in each case to the extent arising out the Consultant's or any of its sub-Consultant's breach or failure in performance of the Consultant's obligations in the Contract whether arising from breach of contract, negligence or default or otherwise, except and to the extent that such losses, costs, expenses, liabilities, damages, claims, demands were wholly and directly caused by the negligence or wilful misconduct of the Authority or its officers, agents or employees.

8. Insurance

- a. The Consultant shall at all times from and including the commencement of the Services maintain in force with reputable insurers or underwriters a policy of insurance to cover the liability of the Consultant in respect of:
 - i. public and employers liability in the sum of at least £5,000,000 per individual claim, and
 - ii. professional negligence of at least £2,000,000 per individual claim
 - iii. product liability of at least £5,000,000 per individual claim
 - iv. data protection liability of at least £10,000,000 per individual claimand will provide satisfactory evidence of insurance against such claims to the Authority.

- b. The Consultant shall be liable for and indemnify the Authority against and insure and procure any sub-Consultant to insure against any expense, liability, loss, claim, action, or proceedings in respect of any damage whatsoever (whether directly or indirectly) to private property real or personal in so far as such damage arises out of or in the course of or by reason of carrying out the Contract and which is due to any negligence, omission or default of the Consultant or person for whom the sub-Consultant is responsible.
- c. The Consultant shall, prior to the commencement of the Services supply the Authority with copies of all insurance policies, cover notes, premium receipts.
- d. In the event that the Consultant is in breach of this **Clause 8** the Authority shall be at liberty to obtain such insurance as is required at the cost of the Consultant (payable on demand).

9. Intellectual Property, Confidentiality and Data Protection

- a. The intellectual property rights (including copyright and design) of all work, documentation, data, and materials and of any copies thereof ("Materials") produced for the Authority pursuant to the contract by or on behalf of the Consultant will vest solely in the Authority. The Consultant shall not make or permit others to make any copies of materials without the Authority's consent, such consent not to be unreasonably withheld. Copyrights attached to the source data must be strictly adhered to. The Consultant shall maintain adequate security measures during the term of the Contract to safeguard materials from unauthorised access use or copying, and shall notify the Authority immediately if the Consultant becomes aware of any unauthorised access to, use or copying of any materials by any person.
- b. Each party will procure that all information which may already have come into the ownership, possession or control of it or of a subsidiary prior to the execution of the Contract, or which may at any time after the date of Contract come into the ownership, possession, or control of either of them relating to the other party or its operation or management, or otherwise in connection with or in anticipation of the performance of the Contract or that the receiving party is notified is confidential (hereinafter referred to as "the Confidential Information"), shall strictly:-
 - i. not be used for any purpose other than the performance of the Contract;
 - ii. not to be disclosed during the continuance of the Contract to any third party including for the avoidance of doubt any company, organisation or individual whatsoever employed by the Consultant now or at any time in the future; and
 - iii. not after termination be used for any purpose whatever or disclosed to any third party.
- c. The party receiving the Confidential Information shall inform the disclosing party immediately if it comes to the notice of the receiving party that any Confidential Information has been improperly disclosed or misused.
- d. The above obligations shall cease to apply to any particular piece of Confidential Information once it becomes public knowledge other than through any act or default of the receiving party or any person acting or employed by them or acting on their behalf.
- e. Upon termination hereof, or at the request of the Authority the Consultant shall procure that all documents and other written material (including material on disks and tape) containing Confidential Information shall be returned (together with all copies thereof) to the disclosing Party.
- f. The Consultant shall comply with its obligations as data controller and data processor of any Personal Data or Sensitive Personal Data within the provisions of the Data Protection Act 2018 and the General Data Protection Regulations ((EU) 2016/679).

10. Bribery and Corruption

- a. The Consultant warrants and undertakes to the Authority that:
 - i. it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Anti-Bribery Law");
 - ii. it has not and shall not give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
 - iii. it will comply with the Authority's anti-bribery policy as may be amended from time to time, a copy of which will be provided to Consultant on written request;
 - iv. it will procure that any person who performs or has performed services for or on its behalf ("Associated Person") in connection with the Contract complies with this **Clause 10**;
 - v. it will not enter into any agreement with any Associated Person in connection with the Contract, unless such agreement contains undertakings on the same terms as contained in this **Clause 10**;
 - vi. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;

- vii. from time to time, at the reasonable request of the Authority, it will confirm in writing that it has complied with its undertakings under this **Clause 10** and will provide any information reasonably requested by the Authority in support of such compliance;
 - viii. it shall notify the Authority as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.
- b. Breach of any undertakings in this clause shall be deemed to be a material breach of the Contract for the purposes of **Clause 11**.

11. Termination

- a. The Authority shall be entitled immediately upon the happening of any of the following events to terminate this Contract by the service of a notice (a "Termination Notice"), such events being:
 - i. The failure to perform the obligations under **Clause 1** of these Conditions;
 - ii. The Consultant having failed to perform a material part of the Contract for a period of 5 consecutive days;
 - iii. The Consultant being treated as insolvent.
- b. A Termination Notice shall be in writing and shall be given by the Authority.
- c. Upon receipt of a Termination Notice, in addition to such consequences as are set out in other provisions of the Contract:
 - i. The Consultant shall immediately cease to perform of the Services;
 - ii. The Consultant shall fully and promptly indemnify the Authority in respect of:
 - a. all losses damages and costs (including professional costs) and expenses incurred or suffered by the Authority from such termination; and
 - b. the cost of completing the remainder of the Services.
 - iii. The Authority shall be under no obligation to make any further payments to the Consultant and shall be entitled to retain any payments which may have fallen due to the Consultant before termination until the Consultant has paid to the Authority all sums due under this Contract.
 - iv. All rights and obligations of the parties shall automatically terminate except for such rights of action as have accrued prior to such termination and any rights or obligations which expressly or by implication are intended to come into or continue in force on or after such termination, in particular but without prejudice to the generality of the foregoing, those relating to copyright, design and other intellectual property rights.

12. Contract Suspension

- a. In the event that a Termination event occurs in accordance with **Clause 11** above, the Authority may at its option on written notice to the Consultant suspend this Contract for such reasonable period as the Authority shall notify the Consultant (the "Contract Suspension Period") and the Authority shall have the right to instruct another Consultant to carry out the Services during the Contract Suspension Period and the cost of the Authority in relation to such suspension shall be deducted from the Price.
- b. The exercise of the rights in this **Clause 12** above shall be without prejudice to any antecedent claim by the Authority and shall not prohibit the Authority from serving a Termination Notice at any time.

13. Notices

- a. Notices should be served upon the Authority for the attention of the Head of Law, Aldern House, Baslow Road, Bakewell, Derbyshire DE45 1AE.

14. Dispute Resolution

- a. Any disagreements will normally be resolved amicably at working level. In the event of failure to reach consensus between the parties then such failure shall be handled in the following manner:
 - i. The dispute shall in the first instance be referred to the relevant Authority Director or manager in the Authority of similar standing and the Consultant's project manager for resolution at a meeting to be arranged as soon as practicable after the failure to reach consensus arises, but in any event within ten business days;
 - ii. If the dispute has not been resolved following a meeting in accordance with **Clause 14a**, the Parties shall settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR.

15. Observation of Statutory Requirements

- a. The Consultant shall at all times observe and comply with all the relevant Acts of Parliament, regulations and codes of practice (the Statutory Requirements) relating to the performance of the Services including (but not limited to) compliance with any obligations that may be imposed upon the Authority resulting from the Services (where the same are within the power and control of the Consultant) and the Consultant shall indemnify the Authority accordingly.

16. Warranty

The Consultant and the Authority warrant their power to enter into this Contract and have obtained all necessary approvals to do so.

17. Equality

- a. As a local authority the Authority is subject to the Public Sector Equality Duty which requires us, in our work and decision making, have due regard to the need to:
 - i. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
 - ii. Advance equality of opportunity between people who share a protected characteristic and those who do not;
 - iii. Foster good relations between people who share a protected characteristic and those who do not.
- b. The Authority's statutory responsibility is outlined in its Equality Policy (available on the Authority's website). Consultants are expected to work to the Authority's high standards of equality and inclusivity.

18. Freedom of Information and Transparency

- a. The Consultant **acknowledges** that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR") and the Local Government Transparency Code 2014 ("the Transparency Code"). The Consultant shall assist and co-operate with the Authority as necessary to comply with these requirements and acknowledge that the Authority may be required to disclose information pursuant to the FOIA, the EIR or the Transparency Code. The Consultant shall provide all necessary assistance reasonably requested to enable the Authority to respond to a request for information within the time for compliance and permit the Authority to inspect such records as requested from time to time.
- b. The Consultant acknowledges that all payments over £250 are published in the public domain in accordance with guidelines issued by the Department of Communities and Local Government.

19. Force Majeure

- a. Neither party shall be liable for any failure to fulfil or delay in fulfilling its obligations under the Contract (other than an obligation to pay monies due) where such delay or failure is due to a Force Majeure Event Provided That:
 - i. the party so affected could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure Event and all relevant factors, it ought reasonably to have taken but it did not take; and
 - ii. the party so affected has taken all steps as are reasonably necessary to mitigate the effect of the Force Majeure Event and to carry out its obligations under the Contract in any other way that is reasonably practicable; and
 - iii. the party so affected shall immediately notify the other in writing of the existence of the Force Majeure Event and of its anticipated duration.
- b. If the Consultant is the party affected by the Force Majeure Event, the Authority shall be relieved of its liability to make any payments to the Consultant for the duration of the Force Majeure Event and shall be entitled to obtain services the same as or similar to the Services from any third party during such period that the Force Majeure Event continues and the Consultant shall give all assistance and information necessary to such third party to enable such third party to fulfil the obligations of the Consultant under the Contract.
- c. A "Force Majeure Event" means civil commotion, riot, invasion, war (or threat of war), explosion, biological disaster, epidemic or pandemic, severe weather event which would result in a reasonably prudent Consultant not being able to continue and complete the Services, fire, earthquake, epidemic, nuclear disaster, act of terrorism or other natural physical disaster.

20. Rights and Duties Reserved

- a. For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Authority's rights or powers duties and obligations in the exercise of its functions as a local authority for the enforcement of or pursuance of any enactment by-law or regulation for the time being in force.

21. COVID-19

- a. The Consultant shall at all times comply with the current Covid-19 operating procedure guidance and the Authority's requirements appropriate for the Services.
- b. The Consultant shall cease provision of such Services upon instruction from the Authority in the event of imposition of restrictions relating to Covid-19 by HM Government that, in the opinion of the Authority, frustrates those Services. Resumption of the Services shall be on the basis set out in this clause and any other reasonable requirements of the Authority.
- c. A breach of this clause shall be treated as material breach of contract.

- d. 'Covid-19' means the Covid-19 pandemic or any other epidemic as determined by HM Government .

22. Conditions

- a. In the event of any contradiction between the conditions provided by the Consultant then these Conditions shall always take precedence.