

Annexure 6:

CONTRACT TERMS AND CONDITIONS

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.
 - iii. The Consultant shall be responsible for any loss or damage caused by the Consultant's negligence or lack of care.
 - iv. Any damage or loss which may occur during the Contract in relation any services or to any materials implements or property whatsoever of the Authority which may at any time for the purpose of the Services be in the custody or use of the Consultant or sub-Consultant which shall arise from theft, spoiling, decay, waste, wind, rain or fire shall immediately be made good by the Consultant at the Consultant's cost to the satisfaction of the Authority.

2. Signs

- a. The Consultant shall not affix or erect any signs, notices or advertisements without the prior written approval of the Authority

3. 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.
- b. At the request of the Nominated Officer the Consultant shall remove or procure the removal within a reasonable period (or immediately if required) any person employed by the Consultant or sub-Consultant in or about the performance of the Contract or any part for any reason (provided the Authority shall not act vexatiously). The Authority shall within 3 working days provide to the Consultant written reasons for such request. Such persons shall not be again employed in the performance of Contract without the permission of the Nominated Officer.
- c. The Authority shall not in any circumstances be liable to the Consultant or any of its employees in relation to such action or removal and the Consultant shall fully and promptly indemnify the Authority in respect of any claims brought against it by any such employee.
- d. The Nominated Officer shall have the right at any time to interview any member of the Consultant's staff in connection with the performance of the Contract. The Nominated Officer shall also be entitled to request any information relating to the performance of the Contract. Any information so requested shall be supplied by the Consultant forthwith.
- e. The Consultant shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statement.
- f. The Consultant shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any persons employed by the Consultant and shall fully indemnify and keep indemnified the Authority in respect of any liability of the Authority in respect thereof.

4. Vehicles and Equipment

- a. The Consultant shall at all times at its own cost provide in good and serviceable repair, such equipment, vehicles and materials as is necessary for the proper performance of the Contract and execution of the Services and shall at all times be fully responsible for licensing fees, taxes and insurances required in connection with such equipment.
- b. The Consultant shall notify the Authority of the equipment it is to use and obtain the Authority's approval to any change.
- c. Any damage arising from any breach of this **Clause 4** by the Consultant any sub-Consultant or their employees agents or invitees shall be immediately repaired or replaced at the Consultant's expense and to the satisfaction of the Authority.

5. Environmental Provisions

- a. Any public complaints must be immediately reported to the Authority and the Consultant shall at its own cost promptly deal with any requests arising from such complaints.
 - b. The Consultant must comply with all relevant environmental legislation.
6. **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.
7. **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. Subject to **Clause 7(a)**, the invoice shall be paid within thirty (30) days of its receipt.
8. **Value Added Tax**
- a. All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.
9. **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. Such consent does not relieve the Consultant from liability or obligation under the Contract and it shall be responsible for the acts defaults omissions and neglects of any sub-Consultant, its agents, servants or workmen as fully as if they were acts defects or neglects of the Consultant and the Consultant shall indemnify and keep indemnified the Authority from and against any costs claims demands and liabilities howsoever arising out of or in respect of any breach by any sub-Consultant its agents servants or workmen.
10. **Health and Safety**
- a. The Consultant will be required to comply with the Health and Safety at Work etc Act 1974 and all other regulations made under the Act and all other legislation and regulations relevant to the performance of the Contract.
11. **Agency**
- a. The Consultant is not and shall not in any circumstance hold itself out as being the agent of the Authority.
12. **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-Consultants' 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.
13. **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 £5,000,000 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 also maintain public liability insurance arising out of or in connection with any matter involving or relating to the Services.
- d. The Consultant shall, prior to the commencement of the Services supply the Authority with copies of all insurance policies, cover notes, premium receipts.
- e. In the event that the Consultant is in breach of this **Clause 13** the Authority shall be at liberty to obtain such insurance as is required at the cost of the Consultant (payable on demand).

14. Intellectual Property and Confidentiality

- 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 will comply with the requirements of the Data Protection Act 1998 and 2018 as both data processor and data controller and with any relevant ICO Guidance.

15. 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 this Agreement complies with this **Clause 15**;
 - v. it will not enter into any agreement with any Associated Person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this **Clause 15**;
 - vi. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;
 - 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 16** 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 16**.

16. 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 this Section;
 - ii. Any breach by the Consultant of any other provision of the Contract;
 - iii. The Consultant having failed to perform a material part of the Contract for a period of 5 consecutive days;
 - iv. The Consultant being treated as insolvent.
- b. A Termination Notice shall be in writing and may 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.

17. 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.

18. Arbitration

- a. All disputes under this Contract shall be settled by arbitration under the Arbitration Act 1996 (or any statutory modification or re-enactment thereof for the time being in force) by a single Arbitrator to be appointed in default of agreement between the parties by the President of the Institute of Arbitrators.

19. 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.

20. Warranty

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

21. Equality

- a. As a local authority the PDNPA 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.

22. 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.

23. 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.

24. Conditions

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