

APPENDIX 5

CONTRACT TERMS AND CONDITIONS

1. Performance of Contract

- a. The Contractor agrees that at all times it will carry out the Services and perform the Contract in compliance with the following conditions:
 - i. The Contractor 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 Contractor shall notify the Authority as soon as practicable and in any event within 24 hours if the Contractor is unable to carry out any part of the Services or perform any of its obligations under the Contract.
 - iii. The Contractor shall be responsible for any loss or damage caused by the Contractor's negligence or lack of care.
 - iv. Any damage or loss which may occur during the Contract in relation to the 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 Contractor or sub-contractor which shall arise from theft, spoiling, decay, waste, wind, rain or fire shall immediately be made good by the Contractor at the Contractor's cost to the satisfaction of the Authority.

2. Signs

- a. The Contractor shall not affix signs, notices or advertisements on Site without the prior written approval of the Authority

3. Employees

- a. The Contractor 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 Contractor shall remove or procure the removal within a reasonable period (or immediately if required) any person employed by the Contractor or sub-contractor 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 Contractor 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 Contractor or any of its employees in relation to such action or removal and the Contractor 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 Contractor'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 Contractor forthwith.
- e. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statement.
- f. The Contractor 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 Contractor 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 Contractor 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 Contractor shall notify the Authority of the equipment it is to use and obtain the Authority's approval to any change.
- c. No wheeled equipment will be allowed on soft, wet or environmentally sensitive locations without the prior approval of the Authority.
- d. Any damage arising from any breach of this **Clause 4** by the Contractor any sub-contractor or their employees agents or invitees shall be immediately repaired or replaced at the Contractor's expense and to the satisfaction of the Authority.

- e. The Contractor shall ensure that all highways or other rights of way in the vicinity of the site that the Contractor uses are kept clean of mud and other debris caused by its equipment.

5. Environmental Provisions

- a. All chemicals will need to fully comply with the Control of Substances Hazardous to Health Regulations 1992 (COSHH).
- b. The Contractor must comply with the Control of Pollution (Oil Storage) (England) Regulations 2001.
- c. All waste disposal must comply with the Agricultural Waste Regulations 2006.
- d. Plants and animals protected under the Schedules of the Wildlife and Countryside Act 1981 and other Acts are not to be harmed or their habitat damaged. Nesting birds are not to be disturbed and are to be reported immediately to the Authority.
- e. Any public complaints must be immediately reported to the Authority and the Contractor shall at its own cost promptly deal with any requests arising from such complaints.
- f. The Site must be left clean and tidy at all times.
- g. Dogs and smoking are not permitted on site.
- h. The Contractor shall make arrangement for the storage of fuel and other hazardous materials to the satisfaction of the Authority. The Contractor must ensure that no spillage takes place on Site and must immediately inform the Authority of any spillage and take such action appropriate to remedy such breach and will make good the area at the Contractor's expense to the satisfaction of the Authority.
- i. The Contractor shall take all precautions to ensure that no pollution arises from the execution of the Services which may result in contamination either on, in, under or off the Site. The Contractor shall indemnify the Authority against any costs or damages or claims related to this liability.
- j. The Contractor must comply with all relevant environmental legislation.

6. British Standards

- a. Except where specified to the contrary in the Contract Documents all materials are to comply with the latest British Standard Specification and shall be fit for purpose.

7. 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.

8. Payment

- a. On completion of the Contract pursuant to a Purchase Order Form (and provided that the Contractor shall have performed his duties, obligations and functions under the Contract to the satisfaction of the Authority) the Contractor 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.

9. Value Added Tax

- a. All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.

10. Assignment

- a. The Authority shall be entitled to assign or transfer the benefit of the Contract.
- b. The Contractor 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 Contractor from liability or obligation under the Contract and it shall be responsible for the acts defaults omissions and neglects of any sub-contractor, its agents, servants or workmen as fully as if they were acts defects or neglects of the Contractor and the Contractor 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-contractor its agents servants or workmen.

11. CDM Regulations – if applicable

- a. The Authority and the Contractor acknowledge that they are aware and undertake to the other that in relation to the site he will duly comply with the CDM Regulations to the extent applicable to the Contract.

12. Health and Safety

- a. The Contractor 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.
- b. Site safety considerations:
 - i. No representation is made by the Authority as to the existence of ground contamination or stability and the Contractor should make its own enquiries in that regard.

- ii. The Contractor is to liaise with all relevant statutory authorities as to the location of any services that may affect completion of the Services. Follow HSE: HS G47 guidance note.

13. Agency

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

14. Liability of the Contractor

- a. The Contractor 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 Contractor or any sub-contractor 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;in each case to the extent arising out the Contractor's or any of its sub-contractors' breach or failure in performance of the Contractor'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.

15. Insurance

- a. The Contractor shall at all times effect and maintain in force such policies of insurance with reputable insurers approved by the Authority in respect of its liabilities hereunder and shall fully insure and indemnify the Authority against liability;
- b. The Contractor 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 £10,000,000 per individual claim, and
 - ii. professional liability insurance of at least £1,000,000 per individual claimand will provide satisfactory evidence of insurance against such claims to the Authority.
- c. The Contractor shall be liable for and indemnify the Authority against and insure and procure any sub-contractor 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 Contractor or person for whom the sub-contractor is responsible.
- d. The Contractor shall also maintain public liability insurance arising out of or in connection with any matter involving or relating to the Services.
- e. The Contractor shall, prior to the commencement of the Services supply the Authority with copies of all insurance policies and cover notes,
- f. In the event that the Contractor is in breach of this **Clause 15** the Authority shall be at liberty to obtain such insurance as is required at the cost of the Contractor (payable on demand).

16. Bribery and Corruption

- a. The Contractor 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 Contractor 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 16**;
 - 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 16**;
 - 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 17**.

17. 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 Contractor of any other provision of the Contract;
 - iii. The Contractor having failed to perform a material part of the Contract for a period of 3 consecutive days;
 - iv. The Contractor 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 Contractor shall immediately cease to perform of the Services;
 - ii. The Contractor 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 for the duration of the Contract Period.
 - iii. The Authority shall be under no obligation to make any further payments to the Contractor and shall be entitled to retain any payments which may have fallen due to the Contractor before termination until the Contractor has paid to the Authority all sums due under this Contract.

18. 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 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).

19. Notices

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

20. 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.

21. Observation of Statutory Requirements

- a. The Contractor 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 Contractor) and the Contractor shall indemnify the Authority accordingly.

22. 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). Contractors are expected to work to the Authority's high standards of equality and inclusivity.

23. Warranty

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

24. Freedom of Information Act 2000 and GDPR

- a. The Contractor 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 Contractor 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 Contractor 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 Contractor 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.
- c. The Contractor and Authority will comply with their respective obligations under the General Data Protection Regulations and the Data Protection Act 2018.

25. 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 Contractor is the party affected by the Force Majeure Event, the Authority shall be relieved of its liability to make any payments to the Contractor 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 Contractor shall give all assistance and information necessary to such third party to enable such third party to fulfil the obligations of the Contractor 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 contractor

not being able to continue and complete the Services, fire, earthquake, epidemic pandemic, nuclear disaster, act of terrorism or other natural physical disaster.

26. 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.

27. COVID-19

- a. The Contractor shall at all times comply with the current Covid-19 operating procedure guidance appropriate for the Services.
- b. The Contractor shall cease the 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 the Contract. Recommencement of the Contract shall be on the basis set out in this clause and any other reasonable requirements of the Authority.
- c. If the Contractor, or its subcontractors, fails to observe or becomes aware of any failure to observe Covid-19 site operating procedures, the Contractor shall immediately cease the Services and inform the Authority of the date, nature and duration of the breach. The Services shall not recommence until such time as the Authority is satisfied that the Contractor has instituted appropriate procedures to ensure that the breach is remedied and not repeated.
- d. A breach of this clause shall be treated as material breach of contract.
- e. 'Covid-19' means the Covid-19 pandemic or any other epidemic as determined by HM Government.

28. Conditions

- a. In the event of any contradiction between the conditions provided by the Consultant then these Conditions shall take precedence. In the event of any contradiction between the Standard Terms and Conditions and the Conditions of the Invitation to Tender, the Invitation to Tender shall take precedence.