

## **Chesterfield Borough Council Consultancy Services terms and conditions**

### **CONDITIONS**

#### **1. DEFINITIONS AND INTERPRETATION**

1.1 In these terms and conditions except where the context otherwise requires the following expressions will have the meanings hereby ascribed to them:

“Articles of Agreement”	means the above Articles of Agreement incorporating these terms and conditions and any other documents referred to in the Articles of Agreement which shall be collectively referred to as the Contract Documents
“Consultant”	Means the consultant named in the Articles of Agreement and such term will include its employees, agents, successors, and permitted assigns
“the Contract”	The contract created by the parties by the Articles of Agreement
“Customer”	means Chesterfield Borough Council and such term will include its employees, authorised agents, successors and assigns.
“Default”	means any breach the obligations of the Consultant under the Contract Documents or any default, act, omission or negligence of the Consultant in connection with or in relation to the Articles of Agreement
“Enactments”	means directives, statutes, regulations, orders,

instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced, or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines and references in their terms to Enactments will also include any secondary legislation made under them

“Goods”

means any goods or materials used or supplied by the Consultant in accordance with the Contract

“Intellectual Property Rights”

means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, patterns, models, designs, moral rights, title, proprietary rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world

“Personal Data”

means any data which can be used to identify a living individual

“Price”	means the Contract Price detailed in the Articles of Agreement
“Reports”	means any report produced by the Consultant for the Customer in respect of or in the course of provision of the Services
“Services”	means all Services that the Consultant is contractually obliged to provide under the Articles of Agreement and any variation to the Services agreed in writing between the parties during the period of the contract
“Specification”	means the specification referred to in the Articles of Agreement .
“Working Day”	means Monday to Friday from 9am to 5pm inclusive other than bank holidays and any other public holidays or the periods specified in the Contract.

- 1.2 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.
- 1.3 The headings are included in these terms and conditions for ease of reference only and will not affect the interpretation or construction of these terms and conditions.
- 1.4 References to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or

transferees.

- 1.5 The words 'include', 'includes' and 'including' are to be construed as if they were immediately followed by the words 'without limitation'.
- 1.6 Words importing the masculine gender include the feminine gender and words in the singular include the plural and vice versa.
- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise.

## **2. COMMENCEMENT AND DURATION OF THE CONTRACT**

- 2.1 The Contract will commence on the date detailed in and continue for the period specified in the Specification , unless terminated earlier in accordance with these terms and conditions.
- 2.2 The Customer may extend the Contract period by giving written notice to the Consultant if provided for and as specified in the Specification .

## **3. QUALITY STANDARDS**

- 3.1 The Consultant hereby warrants that the Services will be performed with due skill, care and diligence and the Consultant will comply with:-
  - 3.1.1 the terms and conditions of the Contract;
  - 3.1.2 any variation of the Contract agreed in writing by the parties;
  - 3.1.3 the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice or bye-law from time to time in force which is relevant to the Services;
  - 3.1.4 the professional standards which might reasonably be expected of the Consultant;
  - 3.1.5 any agreed recommendation or representation made by the

Consultant;

The Consultant will promptly draw any potential or actual conflict between any of the requirements of sub-clauses 3.1.1 to 3.1.5 to the attention of the Customer and will comply with the Customer's decision on the resolution of such conflict.

- 3.2 The Consultant will ensure that it appoints appropriately experienced, qualified and trained employees and/or permitted sub-Consultants ("Staff") in the performance of its obligations under the Contract and that its Staff comply with the provisions in clause 3.1.
- 3.3 Where a British Standard Specification or British Standard Code of Practice or other recognised standard laid down by a regulatory body for the industry concerned applies to any or all goods and materials used or supplied by the Consultant, the goods and materials used or supplied and the workmanship shall be at minimum to such standards required.
- 3.4 Unless otherwise agreed in writing, neither performance nor functionality of any part of the Services will be impeded by entry into the European monetary union.

#### **4. PRICE AND PAYMENT TERMS**

- 4.1 The Contract Price and method of payment will be as specified in the Specification . No invoices will be accepted or payments made in excess of the Contract Price without the Customer's prior agreement and the issue of an official Contract amendment. The Price will exclude VAT.
- 4.2 All invoices must state the relevant Contract details clearly.
- 4.3 Provided the Services are performed satisfactorily in compliance with the Contract, the Customer will pay the Consultant via its electronic payment

system as specified in the Contract or in default within 30 days, subject to receipt of a valid invoice from the Consultant.

4.4 If the Consultant's invoice is or appears to be in error and has to be investigated or is in dispute, the date of receipt and consequently the date by which payment is due will be measured from the date on which such query or dispute is satisfactorily resolved.

4.5 Without prejudice to any other right or remedy of the Customer, the Customer may make reductions in payment in respect of any Services which the Consultant has failed to provide or has provided inadequately.

## **5. PERFORMANCE AND REVIEW**

5.1 The Consultant will comply with the Customer's reasonable requests (on a free-of-charge basis) to keep records, to attend performance review meetings, to make any Reports and to permit any tests and inspections that the Customer may reasonably require during the period of the Contract.

5.2 The detailed requirements for audit, monitoring and review of the performance of the Contract are specified in the Contract.

5.3 Where the Consultant is providing services to third parties, the Consultant will provide the Customer with a copy of its complaints handling policy and procedures and (where applicable to the Contract) will discuss complaints and feedback from third party users of the services at performance review meetings.

5.4 The Consultant will permit appropriate and properly authorised and trained representatives of the Customer to enter upon a construction site and/or site of operation for the Services at any reasonable time and have free and unfettered access to each and every part of the area covered by the Contract

affected thereby.

## **6. VARIATION**

The terms of the Contract may be varied by written agreement between the parties. In the event of a variation the Contract Price may also be varied.

Such variation in the Price will be calculated and agreed in writing between the parties and will be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter will be determined by negotiation or mediation in accordance with the provisions of clause 22.

## **7. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

- 7.1 The Consultant warrants and represents that neither the performance of the Contract nor the provision or use of the Services will in any way constitute an infringement or other violation of any rights of any third party. Before using any material in relation to the performance of the Contract which is or may be subject to any third party rights the Consultant will procure the necessary licences to use such material at all times for the Customer's purposes at no cost to the Customer.
- 7.2 All rights (including without limitation title, proprietary rights, copyright) in any Intellectual Property Rights, specifications, data, information, instructions, plans, drawings or other material furnished to or made available to the Consultant by the Customer or arising in connection with the Contract including Reports, will remain vested solely in the Customer and will be kept confidential.
- 7.3 The Consultant will provide the Customer with an irrevocable non-exclusive unlimited royalty-free licence to use, copy and adapt any documentation or

publications delivered by the Consultant relating to the Services.

- 7.4 The Consultant will keep confidential and will not during the period of the Contract and at any time thereafter, disclose to any third party (except with the written agreement of the Customer or by any requirement of law) any Customer information, data or process (“Confidential Information”) which may have come to the knowledge of the Consultant by reason of their engagement.

This restriction will not apply to any Confidential Information which:-

- a) was at the time of receipt published or otherwise generally available to the public; or
- b) has after receipt been published or become generally available to the public otherwise than through any act or omission on the part of the Consultant; or
- c) was already lawfully in the possession of the Consultant at the time of receipt without any restrictions on disclosure; or
- d) was rightfully acquired from a third party without any undertaking of confidentiality imposed by such third party; or
- e) was developed independently of the Contract by the Consultant as demonstrated by documentation; or
- e) is communicated (against similar undertakings of confidence as are contained in the Contract) to any permitted third party insofar as necessary for the proper carrying out of the Contract; or f) is required to be disclosed by law or by any relevant regulatory body with jurisdiction; or g) is disclosed to any professional adviser or consultant of the party disclosing such as Confidential Information.

## **8. COMPLIANCE WITH LEGISLATION AND WHISTLE-BLOWING**



## 8.1 Human Rights Act and Discrimination

8.1.1 The Consultant will comply with the Equality Act 2010 (as amended and superseded from time to time) and any relevant codes of practice and best practice guidance issued by the Government and the appropriate agencies in the performance of its obligations under the Contract.

8.1.2 In addition to clause 8.1.1, the Consultant will in the performance of its obligations under the Contract act as if the Consultant were a public authority for the purposes of the Human Rights Act 1998.

8.1.3 The Consultant will provide the services in all respects in all respects in accordance with the Customer's policies in force from time to time; and in accordance with all relevant legislation

8.1.4 The Consultant will make all reasonable efforts to secure compliance with these provisions by its employees, agents and sub-Consultants employed in the execution of the Contract.

## 8.2 Freedom of Information and Environmental Information

8.2.1 The Customer has obligations and duties under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

8.1.2 The Consultant will facilitate the Customer's compliance with the Customer's obligations under these provisions and comply (at its own cost) with any reasonable request from the Customer for that purpose. The Consultant will note particularly that the Customer may be required to provide information relating to the Contract or the Consultant to a third party in order to comply with its obligations under these

provisions.

8.1.3 In respect of any information submitted by a Consultant in accordance with the Freedom of Information Act that it considers to be commercially sensitive, the Consultant should:-

- a) clearly identify such information as commercially sensitive;
- b) explain the potential implications of disclosure of such information; and
- c) provide an estimate of the period of time during which the Consultant believes that such information will remain commercially sensitive.

Where a Consultant identifies information as commercially sensitive, the Customer will endeavour to maintain confidentiality. Consultants should note, however, that even where information is identified as commercially sensitive the Customer might be required to disclose such information. Accordingly, the Customer cannot guarantee that any information marked 'commercially sensitive' will not be disclosed.

### 8.3 Audit Requirements

The Customer has obligations and duties under the Audit Commission Act 1998, The Consultant will facilitate the Customer's compliance with the Customer's obligations under these provisions and comply (at its own cost) with any reasonable request from the Customer for that purpose. If either the Customer's internal or external auditors or if the Local Government Ombudsman wish to investigate the Contract, then the Consultant will provide such information, access and co-operation as those persons may reasonably require.

- 8.4 Where the Consultant is undertaking Services which involve contact with children and/or vulnerable adults, the Consultant will ensure that its employees, agents and sub-Consultants have been subject to all relevant and appropriate checks with the Disclosure and Barring Service. The Consultant will monitor the level and validity of the checks required under this clause 8.4 throughout the provision of the Services.
- 8.5 The Consultant will ensure it maintains effective whistle blowing policies whereby the Consultant's employees may raise in confidence without fear of victimisation discrimination or disadvantage concerns about possible malpractice.
- 8.6 The Customer may terminate the Contract by written notice if the Consultant is in breach of any of the provisions of this clause 8. No period of notice will be required but the notice will state the date on which it is to take effect.

## **9. INDEMNITY AND INSURANCE**

- 9.1 The Consultant will fully indemnify and keep the Customer fully indemnified against all actions, claims, costs, expenses and liabilities including legal fees arising under statute or common law from:
- 9.1.1 injury to or the death of any person; and/or
  - 9.1.2 the loss of or damage to any property including property belonging to the Customer; and/or
  - 9.1.3 any other financial loss;
  - 9.1.4 any claims by the Consultant's employees;
- as a result of any act, omission, Default or negligence by the Consultant or its employees agents and sub-Consultants, insofar as they arise from matters pertaining to the Services (except and to the extent that such actions, claims,

costs, expenses and liabilities may arise solely out of the act, omission, default or negligence of the Customer, its employees or agents).

9.2 Without prejudice to the Consultant's liability detailed in 9.1 above, the Consultant will obtain and maintain appropriate insurance policies with a reputable insurer to cover the risks contemplated in respect of the Contract in such sum as is deemed prudent in all circumstances by the Consultant but with the minimum limits of indemnity set out in the Contract or in default as specified below:

9.2.1 Public Liability Insurance - £10 million each and every incident;

9.2.2 Employer's Liability Insurance (if applicable) – £5 million each and every incident;

9.2.3 Insurance for any of the Consultant's own equipment used for the Services;

9.2.4 (where applicable to the Contract) Product Liability Insurance; and

9.2.5 (where applicable to the Contract) Professional Indemnity Insurance - £5 million in aggregate for the year, with cover to be maintained for a period not less than 6 years (for as long as cover is commercially available);

and will at the request of the Customer produce the relevant policy or policies together with receipts or other evidence that premiums are paid up to date.

9.3 If through any Default of the Consultant, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Consultant will be liable for the cost of reconstitution of that data and will provide a full credit in respect of any charge levied for its transmission

and will fully indemnify the Customer against any costs charged in connection with such Default of the Consultant.

## **10. HEALTH AND SAFETY**

- 10.1 The Consultant in providing the Services will have full regard to the safety of persons who may be affected in any way and will comply with the requirements of the Health and Safety at Work etc Act 1974 and its subordinate regulatory framework, and of any other Acts pertaining to the health and safety of persons.
- 10.2 The Consultant will operate a system of risk assessment to comply with appropriate Health and Safety legislation. The Consultant will provide copies of any risk assessments (or a summary of the said documents if they are unable to be released for any justifiable reason) as and when required by the Customer.
- 10.3 The Consultant will notify the Customer immediately in the event of any incident occurring in the performance of the Services on the Customer's Premises where that incident causes any personal injury, or damage to property that could give rise to personal injury.
- 10.4 Each party will promptly notify the other of any health and safety hazards which may arise in connection with the performance of the Services including those that may exist or arise at the Customer's premises and that may affect the Consultant in the performance of the Services.
- 10.5 While on the Customer's premises, the Consultant will comply with any health and safety measures implemented by the Customer in respect of employees and other persons working on such premises.
- 10.6 The Customer may suspend the Contract in whole or in part without paying

compensation if the Customer is reasonably of the opinion that the Consultant is in breach of this clause 10.

## **11. NO AGENCY, EMPLOYMENT OR PARTNERSHIP**

11.1 Nothing in the Contract will be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the Customer and the Consultant and the Consultant will not at any time or in any circumstances take any action so as to bind (or purport to bind) the Customer nor will the Consultant hold itself out as having authority to bind the Customer and will ensure that its employees and agents do not hold themselves out likewise.

11.2 Where the Consultant is an individual he/she will be an independent Consultant and not an employee of the Customer. In such capacity, the Consultant will bear exclusive responsibility for the payment of his/her national insurance contributions, income tax and VAT liabilities arising out of remuneration for the Services performed by him/her under the Contract.

## **12. TERMINATION**

12.1 The Customer may terminate the Contract in whole or in part (and where applicable enter upon and expel the Consultant from any premises or site to which it has been given access) by written notice if any of the events specified in clause 12.2 occur. No period of notice will be required but the notice will state the date on which it is to take effect.

12.2 The events referred to in clause 12.1 are:

12.2.1 the Consultant has breached the Contract in a way which the

Customer reasonably regards as irremediable, which may include, without limitation, fundamental breach or repeated and/or persistent remediable breaches of the Contract;

12.2.2 the Customer has given the Consultant at least one month's notice to remedy a breach of contract which can be remedied and the Consultant has failed to do so;

12.2.3 the Consultant has without reasonable cause failed to proceed diligently with or wholly suspends performance of any activity under the Contract;

12.2.4 (if an organisation) the Consultant makes any arrangement with its creditors or is subject to winding up or dissolution, or has an administrator, administrative receiver, receiver or liquidator appointed;

12.2.5 (if an individual) the Consultant makes any arrangement with its creditors or is declared bankrupt or adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or dies;

12.2.6 the Consultant or anyone acting on the Consultant's behalf do any of the following things:-

- a) offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Customer contract (even if the Consultant does not know what has been done); or
- b) commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
- c) commits any fraud in connection with this or any other Customer contract whether alone or in conjunction with a Customer

Member, other Consultant, or Customer employee;

any clause limiting the Consultant's liability will not apply to this sub-clause.

- 12.3 Where the Consultant is providing a named individual whose qualifications, skill and experience is of primary importance to the provision of the Services under the Contract and that individual ceases to be provided by the Consultant, the Consultant will, if permitted under the Contract, immediately provide a replacement individual of similar qualifications, skill and experience subject to approval by the Customer. If replacement of the individual is not permitted under the Contract or the Consultant does not provide such a replacement individual or the Customer reasonably objects to the replacement individual, the Customer may, without prejudice to any of its other rights or remedies, terminate the Contract by notice in writing, such notice to have effect from the date specified in it.
- 12.4 Where the Customer terminates the provision of the whole or any part of the Contract under this clause 12 and must make other arrangements for the provision of the Services, the Customer will be entitled to recover from the Consultant as a debt the costs reasonably incurred of making those other arrangements throughout the remainder of the term of the Contract or any extension of the term of the Contract in excess of the total value of Contract. The Customer will take all reasonable steps to mitigate such costs. Where the Contract is terminated under clause 12.2 no further payments will be payable by the Customer to the Consultant until the Customer has established the final cost of making those other arrangements.



### **13. EFFECTS OF TERMINATION**

13.1 The expiry or termination of the Contract for whatever reason will not affect any provisions of clauses capable of surviving or operating in the event of termination of the Contract and termination of the Contract will be without prejudice to the rights and remedies of one party against the other party.

13.2 At the end of the Contract or on termination by either party, the Consultant will immediately deliver to the Customer:

13.2.1 all or any records of the Customer and any records, documentation, drawings, data or other information produced or received for the purposes of the Contract stored on whatever medium and all copies of the whole or any part thereof; and

13.2.2 all of the property issued or made available to the Consultant by the Customer including (but not limited to) materials, clothing, equipment, vehicles, documents, information and access keys in its possession or under its control.

### **14. DATA PROTECTION**

14.1 The Supplier will comply with any notification requirements under the Data Protection Act 2018(DPA) and the UK General Data Protection Regulation 2016 (UK GDPR) and both parties will comply with all their obligations under the DPA or UK GDPR which arise in connection with the Contract.

14.1.1 Notwithstanding the general obligation in clause 14.1, where the Supplier is processing Personal Data as a Data Processor (as defined in the DPA) and the UK GDPR) for the Customer, the Supplier will ensure that it has in place appropriate technical and contractual measures to ensure the security of Personal Data and against accidental loss or destruction of, or

damage to, Personal Data, as required under the DPA and the UK GDPR);  
and;

14.1.2 provide the Customer with such information as the Customer may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA and the UK GDPR)

14.1.3 promptly notify the Customer of any breach of its security measures;

14.1.4 ensure it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA and the UK GDPR).

14.2 The Supplier will be liable for and fully indemnify the Customer against all losses, damages, costs, expenses and liabilities (including legal fees) incurred by or awarded against the Customer or its officers, agents, employees, Customer Members and its successors in interest, in connection with any proceedings, claim or action against the Customer as a result of any failure by the Supplier to comply with its obligations under this clause.

14.3 The Supplier will be liable for and fully indemnify the Customer against any material adverse reputational damage as a result of any failure by the Supplier to comply with its obligations under this clause.

14.4 The provisions of this clause will apply during the Contract and continue after its completion or termination.

[INSERT BELOW CLAUSE IF NO PERSONAL DATA IS TO BE SHARED]

14.5 notwithstanding the provisions of clause 47.1-47.5 the Consultant and Customer acknowledge they expect no personal data to be shared between them for the purposes of providing the Services to be delivered under this

Agreement other than business contact details of the relevant employees shared for the purposes of facilitating the provision of the Services (in respect of which the parties agree they shall each act as independent 'controllers' for the purposes of the DPA and the UK GDPR) but in the event personal data is shared the provisions of clause 14.1- 14.5 will apply

## **15. ASSIGNMENT AND SUB-CONTRACTING**

- 15.1 The Consultant will not assign, sub-contract or in any other way deal in or dispose of the benefit or burden of the whole or any part of the Contract without the Customer's prior written agreement.
- 15.2 Assigning or sub-contracting the whole or any part of the Contract will not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract and the Consultant will be responsible for the acts omissions defaults and negligence of its assignees and sub-Consultants as though they are its own. The Consultant will include a term in its contract with its sub-Consultants requiring them to comply with the terms of the Contract. The Consultant will not use the services of self-employed individuals without the Customer's prior written agreement.
- 15.3 Where the Consultant enters into a sub-contract with a third party for the purpose of performing the Contract, it will include a term in such sub-contract that the sub-Consultant will comply with the terms of the Contract and a term that provides that payment will be made by the Consultant to the sub-Consultant of undisputed sums within a specified period not exceeding 30 days from the receipt of a valid invoice (as defined by the sub-contract requirements).

15.4 The Customer may assign, transfer or in any other way deal in or dispose of the benefit or burden of the whole or any part of the Contract if it has a requirement to do so and will notify the Consultant in writing of any such dealing.

## **16. STATUTORY OBLIGATIONS AND PUBLIC ACCOUNTABILITY**

16.1 The Consultant will, in the provision of the Services and the performance of its obligations under the Contract, comply with all Enactments.

16.2 Where the Consultant purchases goods, works or services on behalf of the Customer in the course of providing the Services under the Contract, it will comply with the European Public Procurement Directives, the Public Contracts Regulations 2015 and the Customer's policies and procedures as though it was a Customer employee. The Consultant will ensure that the Customer receives the benefit of all guarantees and warranties provided by any such suppliers of goods, works or services, either directly or through a collateral warranty agreement (as applicable).

## **17. ENTIRE AGREEMENT**

17.1 This agreement and the documents annexed to it constitute the entire agreement and understanding of the parties and supersede any previous agreement between them relating to the subject matter of the Contract.

The Consultant acknowledges and agrees that in entering into the Contract, it does not rely on and will have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or the documents annexed to it.

17.2 The Contract between the parties will be constituted by and comprise only the Contract. No terms and conditions put forward at any time by the Consultant will form any part of the Contract. Any act made in response to the Contract will be taken as unconditional acceptance of this clause and any additional terms accompanying the Contract will be invalid. The terms and conditions may only be varied with the written agreement of the Customer.

17.3 Nothing in this clause will operate to limit or exclude any party's liability for fraud or fraudulent misrepresentation.

## **18. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS ('TUPE')**

18.1 The parties agree that no relationship of employer and employee will arise or be deemed to arise between the Consultant's employees and the Customer regardless of the degree of supervision that may be exercised over the Consultant's employees by the Customer.

18.2 Where applicable to the Contract, when the Contract ends the Consultant will, in compliance with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006, provide the Customer with such information as the Customer may reasonably require. The Consultant agrees that this information may be shared with potential alternative Consultants in situations where TUPE might apply. The Consultant undertakes to indemnify the Customer and any alternative Consultant to whom the Consultant's employees may be transferred, against any losses costs damages or expenses arising from any act omission or negligence by the Consultant prior to the transfer.

## **19. CONFLICT OF INTEREST**

19.1 The Consultant will use its best endeavours to avoid being engaged in any

activity where there is, or is likely to be, an actual or reasonably perceivable conflict with the interests, aims or objectives of the Customer further to the Contract.

19.2 The Consultant will as soon as is practicably possible disclose to the Customer any potential or actual conflict and will comply with any reasonable measures required by the Customer to mitigate such conflict.

19.3 The Customer agrees that this will not restrict the Consultant from being involved in other activities and holding other interests.

## **20. PUBLICATION OF EXPENDITURE OVER £500**

The Consultant hereby confirms that it:

- a) understands that Local Authorities are required by the Government to publish details of all spending over £500, including details of contracts and tenders over £500; and
- b) agrees that the Customer may therefore publish details (to the extent and in the manner required by the Government) of its Contract with the Consultant; and
- c) that it will comply with any reasonable request from the Customer in order to assist the Customer in complying with its obligations in respect of this requirement.

## **21. NOTICES**

21.1 A notice given by a party to the other party under or in connection with these terms and conditions will be in writing and delivered by hand or sent by pre-paid first class post or other next working day delivery service (providing proof of postage or proof of delivery) or by facsimile transmission to the other party's address given at commencement of the Contract or as notified by each

party to the other from time to time.

21.2 Any notice or communication will be deemed to have been received:-

- a) if delivered by hand: when left at the relevant address referred to in this clause; or
- b) if sent by pre-paid first-class post or other next working day delivery service: at 12 noon on the second working day after posting; or
- c) if delivered by commercial courier: on the date and at the time that the courier's delivery receipt is signed;
- d) if sent by facsimile: on confirmation of successful transmission to the address referred to in this clause.

21.3 For the purpose of this clause, 'in writing' will not include e-mail.

## **22. DISPUTE RESOLUTION**

22.1 A dispute relating to the provisions of the Contract which cannot be resolved between the parties' representatives within a month will be referred to each party's relevant director (or equivalent).

22.2 Nothing in this clause will prejudice the right of either party to apply to the court for interim relief to prevent the violation by the other party of any proprietary interest or any breach of that party's obligations.

22.3 If any dispute cannot be resolved between the parties within a month of referral as set out in clause 22.1 then at the instance of either party it will be referred to mediation in accordance with the Centre for Effective Dispute Resolution's ("CEDR") Model Mediation Procedure.

22.4 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this clause. The initiating party will send a copy of such request to CEDR.

22.5 If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.

22.6 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation, either party may commence proceedings.

### **23. SEVERANCE**

Each provision in these terms and conditions will be separately construed. If any of the provisions are held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions in these terms and conditions will continue in full force and effect.

In the event of a holding of invalidity, illegality or unenforceability so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties will immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability.

### **24. RIGHTS OF THIRD PARTIES**

Except where expressly provided for in the Contract including clauses 15 and 18, the parties agree that a person who is not a party to the Contract may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

### **25. WAIVER**

25.1 The failure of either party to insist upon strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy will not constitute a waiver of that right or remedy and will not cause a diminution



of the obligations established by the Contract.

25.2 No waiver will be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of clause 21.

25.3 A waiver of any right or remedy arising from a breach of the Contract will not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **26. FORCE MAJEURE**

26.1 Neither party will be liable for breach of its obligations under these terms and conditions to the extent that any such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the party in default), lightning strike, earthquake, pandemic outbreak of an infectious illness, war, military operations, act of terrorism or riot, but nonetheless each party will use all reasonable endeavours to perform its obligations under the Contract.

26.2 Where an event specified in 26.1 occurs the affected party will notify the other party in writing of the cause and likely duration of the non-performance.

Where performance is affected for more than the number of days specified in the Contract, or in default for more than 30 days, the Customer will notify the Consultant whether it requires the Services to be recommenced, varied or cancelled (without further liability to either party). Where the Services are recommenced, if required the Contract will be subject to a formal amendment agreed between the parties to validate the extension of the time for completion or delivery of the Services by the period concerned.

## **27. PURCHASE OUTSIDE THE CONTRACT**

The Customer will have the right to employ a person or organisation other than the Consultant to provide services of the same type as is contemplated by the Contract if the Customer acting reasonably thinks it is appropriate to do so.

## **28. FUNDING AND ACCOUNTS**

28.1 Where the Customer provides funding to the Consultant during the Contract for the provision of Services to third parties ('Funds'), the Consultant will keep full accounting records of the use of the Funds and provide a copy to the Customer annually or at the periods set out in the Contract.

28.2 Any Funds received by the Consultant that are not used for the provision of the Services ('Surplus Funds') will be refunded to the Customer on the dates or at the periods set out in the Contract or in default on expiry or earlier termination of the Contract.

## **29. ENVIRONMENT**

29.1 Where applicable the Consultant warrants that it will comply with all environmental laws and guidance and obtain, maintain and comply with all environmental permits relevant to the provision of the Services. The Consultant will deliver to the Customer such management information in relation to the Services in evidence of its compliance with this clause as the Customer may reasonably request in writing.

## **30. THE CUSTOMER'S PREMISES AND ASSETS**

30.1 Where required under the Contract the Customer will provide the Consultant (and its sub-Consultants) with access to such parts of the Customer's Premises as the Consultant reasonably requires for the purposes only of

properly providing the Services.

- 30.2 Where appropriate the Customer will provide the Consultant with such accommodation and facilities in the Customer's Premises as is specified in the Contract or which is otherwise agreed in writing by the parties from time to time.
- 30.3 On the expiry or earlier termination of the Contract, the Customer will on reasonable notice from the Consultant provide the Consultant with such access as the Consultant reasonably requires to the Customer's Premises to remove any of the Consultant's equipment. All such equipment will be promptly removed by the Consultant.
- 30.4 The Consultant will ensure that:
- a) where using the Customer's Premises and any Customer assets they are kept properly secure and it will comply and cooperate with the Customer's reasonable directions and policies and procedures regarding the same;
  - b) only those of the Consultant's employees, sub-Consultants or agents that are duly authorised enter upon the Customer's Premises for the purposes of providing the Services;
  - c) any Customer assets used by the Consultant are maintained or restored at the end of the Term in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Customer's Premises unless expressly permitted under the Contract or otherwise in writing by the Customer.
- 30.5 The Customer will maintain and repair Customer assets, however, where such maintenance or repair arises directly from the act, omission, default or

negligence of the Consultant (fair wear and tear excepted) the costs incurred by the Customer in maintaining and repairing the same will be recoverable from the Consultant as a debt.

- 30.6 The Consultant will notify the Customer immediately on becoming aware of any damage caused by the Consultant, its employees, agents or sub-Consultants in the course of providing the Services to any property of the Customer, to any of the Customer's Premises or assets, or to any property of any recipient of the Services.

### **31. THE CUSTOMER AS LOCAL AUTHORITY**

Nothing contained in the Contract will prejudice, override, modify or in any other way affect the rights, powers, duties and obligations of the Customer in the exercise of its statutory powers as a local authority.

### **32. APPLICABLE LAW AND JURISDICTION**

The Contract will be governed by and interpreted in accordance with English law and will be subject to the jurisdiction of the courts of England.

