

# Terms & Conditions

## 1. DEFINITIONS

- 1.1. 'Consultant' means Planning Potential Ltd and its legal successors. 'Client' means the person, firm, company or organisation for whom the Consultant is performing the Services. 'Agreement' means the contract referred to in Clause 2. 'Services' means the services to be performed by the Consultant in accordance with the proposal from the Consultant. 'Project' means the project or works for which the Client has commissioned the Services.

## 2. GENERAL

- 2.1. Unless and until a formal agreement is entered into, the Client's acceptance of the proposal for Services from the Consultant or a request for some or all the Services to be performed by the Consultant, shall constitute a binding contract between the Client and the Consultant which contract will be subject to any terms and conditions contained or referred to in the aforementioned proposal and these terms and conditions. The Agreement so formed shall supersede all previous understandings, commitments or agreements whether written or oral between the Client and the Consultant relating to the subject matter hereof. No person or entity shall have any rights in relation to this Agreement, whether as third parties or otherwise, save the parties to this Agreement.

## 3. PERFORMANCE OF SERVICES AND SCOPE

- 3.1. The Consultant shall perform the Services using the degree of skill care and diligence to be expected from a consultant experienced in the provision of services of similar scope, size and complexity. The Consultant shall use reasonable endeavours to complete the Services within the time or programme agreed but shall not be responsible for any delay beyond the reasonable control of the Consultant.
- 3.2. The fee contained in the proposal is for the scope of services as defined therein. If not already contained in the proposal the Consultant and the Client shall agree as an initial activity a services programme to include the activities of all the parties to the Project relevant to the Services to be supplied by the Consultant. The aforesaid programme shall show the key dates for third party information and the delivery of such to the Consultant so as to enable the Consultant to carry out the services in an efficient and thorough manner to achieve the programme delivery dates for the Services.
- 3.3. Every care will be taken when carrying out Client instructions. No responsibility is accepted for errors or matters beyond our reasonable control.
- 3.4. Where the Consultant's services are of an advisory nature and dependent upon the degree of information and release thereof by the Client then the Client agrees that any reliance placed on the services by the Client shall take due account of such constraints.

### Planning Potential Ltd

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#### Harrogate

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T: 01423 502115

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Planning Potential is a Limited Company  
registered in England No. 5419507

Registered Office: 35 Ballards Lane,  
London, N3 1XW

- 3.5. The Consultant shall not sub-contract any part of the Services without first receiving approval in writing from the Client with a clear understanding of responsibilities.

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

- 4.1. The Consultant and the Client shall keep confidential all information pertaining to the Services. Copyright for all reports, documents and the like produced by the Consultant in the performance of the Services shall remain vested with the Consultant but the Consultant shall grant an irrevocable royalty free license to the Client to use such reports, documents and the like for any purpose in connection with the Project and Services

#### **5. LIABILITY**

- 5.1. The Consultant will endeavour to provide professional services with reasonable care and skill. However, the Consultant will not be held responsible for any losses arising from the supply by the Client or others of incorrect or incomplete information, or a failure of the Client or others to supply any appropriate information or the Client's failure to act on the Consultant's advice or respond promptly to communications from the Consultant or relevant authorities.
- 5.2. The Consultant shall be liable to pay compensation to the Client arising out of or in connection with the Agreement only if a breach of the duty of care in Clause 3 is established against the Consultant.
- 5.3. Notwithstanding any other term to the contrary in this Agreement or any related document and whether the cause of action for any claim arises under or in connection with the Agreement in contract or in tort, in negligence or for breach of statutory duty or otherwise the Consultant shall have no liability to the Client in respect of any claim for loss or damage arising from acts of war or terrorism but otherwise in relation to any cause of action as aforesaid the total liability of the Consultant in the aggregate for all claims shall be limited to a sum equivalent to ten (10) times the fee payable under this Agreement or £5,000,000, whichever is the lesser, or such other sum as may be expressly stated in the Consultant's proposal, and further but without prejudice to the aforesaid limit of liability any such liability of the Consultant shall be limited to such sum or sums as it would be just and equitable for the Consultant to pay having regard to the Consultant's responsibility for the same and on the basis that all other parties appointed or to be appointed by the Client to perform related services in connection with the Project shall be deemed to have provided undertakings on terms no less onerous than this Agreement and shall be deemed to have paid to the Client such contribution as it would be just and equitable for them to pay having regard to their responsibility for any loss or damage and providing that it shall be deemed that such other parties have not limited or excluded their liability to the Client for such loss or damage in any way which may be prejudicial to the Consultant's liability under this clause. Nothing in this clause shall operate to exclude or limit the Consultant's liability for death or personal injury.
- 5.4. The Client shall indemnify and keep indemnified the Consultant for and against all claims, demands, proceedings, damages, costs and expenses arising out of or in connection with this Agreement or the Project arising from acts of war or terrorism

or arising otherwise in excess of the liability of the Consultant under this Agreement or which may be made in respect of events occurring after the expiry of the period of liability stated in this Agreement.

- 5.5. No action or proceedings under or in connection with this Agreement shall be commenced against the Consultant after the expiry of six years from completion of the Services.
- 5.6. In so far as any advice or action is provided, or procedures or notices filled in and completed, or anything calculated or undertaken by the Consultant in relation to the Project, so far as it relates the Community Infrastructure Levy (CIL), the Consultant shall not be liable for any payment or liability arising. The Consultant will only act in relation to assisting the Client on CIL matters to the best of our knowledge and ability, however the sole responsibility for complying with and satisfying the CIL Regulations (as amended from time to time) remains the responsibility of the Client, and the Client indemnifies the Consultant against any claims, liability or penalty that may arise during or after the Agreement (as may be amended) between the Consultant and the Client.

## **6. INSURANCE**

- 6.1. The Consultant shall arrange appropriate Professional Indemnity Insurance cover for the duration of the performance of the Services. The Consultant will use all reasonable endeavours to maintain Professional Indemnity Insurance cover for the period stated in 5.5 above, providing such insurance remains available to the Consultant at commercially reasonable rates.

## **7. CLIENT'S OBLIGATIONS**

- 7.1. The Client shall supply, without charge and in such time so as not to delay or disrupt the performance of the Consultant in carrying out the Services, all necessary and relevant information, in his possession or available to him from his other agents or consultants and all necessary approvals or consents. The approval or consent by the Client to the Services shall not relieve the Consultant from any liability under this Agreement.

## **8. FEES AND PAYMENT**

- 8.1. The Consultant's fees are calculated on the basis of the time spent on the Client's affairs by the principals and staff, and on the level of skill and responsibility involved.
- 8.2. The Client shall pay the Consultant for the Services in accordance with the proposal and this Agreement. If the Consultant performs any additional services or if the Services are delayed or disrupted for reasons beyond the reasonable control of the Consultant, then the Consultant shall be entitled to such additional fees as are fair and reasonable in the circumstances. The Consultant may render an invoice at monthly intervals for services properly performed. The agreed invoice, or in the event of a dispute the undisputed element, shall be paid within 30 days of receipt of the invoice by the Client. The Consultant reserves the right to exercise a statutory claim for interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to the credit terms. We reserve the right to suspend work on projects where accounts are outstanding after 42 days other than by prior agreement.

- 8.3. The Client shall not withhold any payment of any sum or part of a sum due to the Consultant under this Agreement by reason of claims or alleged claims against the Consultant unless the amount to be withheld has been agreed between the Client and the Consultant as due to the Client or such sum arises from an award in adjudication, arbitration or litigation in favour of the Client and arises under or in connection with the Agreement. Save as aforesaid all rights of set off at common law, in equity or otherwise which the Client may otherwise be entitled to exercise are hereby expressly excluded.
- 8.4. Any delay in receiving information, changes in Clients instruction or any matter outside the Consultant's control which leads to additional work may result in an additional fee.
- 8.5. All fees and charges submitted by other specialists sub-contracted by prior agreement with the Client shall be the responsibility of and payable by the Client.

## **9. CLIENT MONIES**

- 9.1. The Consultant may, from time to time, hold money on a Clients behalf. Such money will be held in trust in a client bank account.

## **10. TERMINATION**

- 10.1. If a party is in breach of a material term(s) of this Agreement and despite written notice from the other party fails to remedy such breach within 30 days or such other period as may be agreed between the parties, then the other party shall be entitled to terminate this Agreement forthwith.

## **11. DISPUTE RESOLUTION**

- 11.1. The parties shall attempt to resolve any difference or dispute between them by mutual agreement. If such cannot be resolved then any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one and the place of arbitration shall be England.

## **12. COMPLAINTS**

- 12.1. Any concerns over the level of service received should be dealt with in the first instance by a Director of the practice.

## **13. COMPLIANCE WITH LAWS**

- 13.1. This Agreement shall be governed by and construed in accordance with the law of England and Wales unless stated otherwise in the proposal for services from the Consultant.
- 13.2. The Consultant will observe the byelaws, regulations and ethical guidelines of the Royal Town Planning Institute and accept instructions to act for the Client on the basis that the Consultant will in accordance with those guidelines.