

## The Environment Partnership (TEP) Limited

### *Terms of Engagement for Environmental Consultancy*

#### General

1. These Terms of Engagement and offer of services, and the Client's acceptance thereof, shall constitute the contract between the Client and TEP ("the Agreement").
2. This Agreement shall apply in preference to and supersede any previous terms and conditions referred to, offered or relied upon by the client, whether in writing or otherwise.
3. This agreement shall be governed by and construed and interpreted in accordance with English law, and the parties submit to the non-exclusive jurisdiction of the English Courts.

#### Definitions

4. The following definitions shall apply to this Agreement:
  - "Client" means the organisation to whom the offer of services is addressed.
  - "Consultant" means The Environment Partnership (TEP) Limited.
  - "Works" means the Works, Project or Scope set out in the offer of services in connection with which the Client has engaged the Consultant to perform the Services.
  - "Services" means the scope of the work defined in the Consultant's offer of services.
  - "Additional Services" means any services undertaken by the Consultant beyond those defined in the offer of services.
  - "Fee" means the fees and costs for the performance of the services and Additional Services.
  - "Insolvency" means either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, compounding with their creditors or having a receiver or administrative receiver or administrator appointed of the whole or any part of their assets.

#### Obligations of the Consultant

5. The Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and the Additional Services if any. If in the performance of its services the Consultant has a discretion exercisable as between the Client and any contractor, the Consultant shall exercise that discretion fairly.
6. The obligations of the Consultant do not include a duty to advise as to the risk of actual or possible presence of pollution or contamination or deleterious materials or asbestos or as to the risks of such matters having occurred, being present or occurring in the future except where the provision of such advice is specifically detailed with the Services.
7. The Consultant may sub-contract the performance of any of the Services to a sub-consultant. The Consultant shall be responsible for the performance and the payment of any such sub-consultant. When requested, the Consultant will seek prior written approval of the Client before sub-contracting.
8. Subject always to conditions beyond its reasonable control the Consultant shall use reasonable endeavours to perform the Services in accordance with the programme agreed between the Consultant and Client and any subsequent programmes agreed between the two parties.
9. For the avoidance of doubt, it is understood by all parties that ecological work is subject to vagaries of weather, seasonality, migration and dispersion of species and other factors. Completion is therefore subject to such environmental variables.

#### Obligations of the Client

10. The Client shall nominate a representative who shall have full authority to act on behalf of the Client for all matters set out in these Terms of Engagement.
11. The Client shall use reasonable endeavours to provide to the Consultant without charge and in such time so as not to delay or disrupt the performance of the Services by the Consultant all necessary and relevant data and information in the possession of the Client, their agents, servants, other consultants or contractors and give such assistance and make such decisions as shall reasonably be required by the Consultant in the performance of the Services.
12. It is the responsibility of the Client to declare in advance any known access issues or dangers pertaining to the site or its environs such as but not limited to shooting, subsidence, mine shafts and unsafe structures, livestock, polluted waters, chemical toxicity and dangerous substances. TEP will perform its duties subject to its obligations under the Health and Safety at Work etc. Act 1974. If TEP is of the opinion that the site is dangerous then it may decline to continue or may renegotiate additional terms/safeguards as a condition of continuing.

#### Payment

13. Payment by the Client to the Consultant for the performance of the Services shall comprise the Fees and expenses agreed.
14. Fees for the performance of the Services and the Additional Services if any shall be paid in accordance with the offer of services.
15. TEP undertakes a credit check to ensure risk of non-payment is minimised. If the credit check returns a precautionary note the decision on how to proceed will be taken by a TEP Director. This may result in part or full payment being required in advance of work or work stages (e.g. before undertaking a site visit or releasing a report) being undertaken. Any requirement for part or full payment will be fully discussed and agreed prior to commencement of the job.
16. Payment due to the Consultant under this Agreement shall become due for payment on submission of the Consultant's invoice and the final date for payment shall be 30 days thereafter. The Consultant may at its discretion charge interest and collection costs on all amounts remaining unpaid thereafter in accordance with the Late Payments of Commercial Debts (interests) Act 1998.
17. Where time-based fees are to be paid, they shall be paid by instalments as set out in the offer of services and calculated by multiplying the hourly or daily rates stated therein applicable to the persons in performing the Services or Additional Services including time spent in travelling in connection with the Works.
18. The Client may not withhold any payment after the final date for payment of any sum due under this Agreement unless the Client gives not later than seven days before such final date a notice specifying the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground each ground and the amount attributable to it.
19. The Client shall not later than five days after the date on which payment becomes due send a remittance advice or equivalent notice specifying the amount of the payment made or proposed to be made and the basis on which that amount was calculated.
20. All Fees are exclusive of Value Added Tax, the amount of which, at the rate and in the manner prescribed by law, shall be paid by the Client to the Consultant.

### Additional Payment

21. If the Consultant has to carry out additional work and/or suffers delay or disruption in the performance of the Services for reasons beyond the Consultant's control the Client shall make an additional payment to the Consultant in respect of the additional work carried out and the additional resources employed and/or the delay or disruption suffered. The additional payment shall be calculated by the Consultant and issued to the Client in advance of invoicing. The Consultant shall where practicable and if so requested by the Client give an initial estimate of the Additional payment likely to be incurred.

### Limitation of Liability

22. Unless otherwise agreed between the parties and notwithstanding anything to the contrary contained elsewhere in this Agreement the total liability in the aggregate of the Consultant under or in connection with the Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed the sum of:
- For Fees less than £50,000 total liability is limited to £1,000,000 (one million).
  - For Fees in excess of £50,000 total liability is limited to £3,000,000 (three million).
23. Additional levels of indemnity may be provided for specific contracts.
24. Subject to paragraph 22, but notwithstanding otherwise anything to the contrary contained in this Agreement, such liability of the Consultant for any claim or claims shall be further limited to such sum as the Consultant ought reasonably to pay having regard to its responsibility for the loss or damage suffered as a result of the occurrence or series of occurrences in question, on the basis that all other consultants and all contractors and sub-contractors shall be deemed to have provided contractual undertakings on terms no less onerous than those set out in paragraphs 5 to the Client (whether or not they shall have been so provided to the Client) in respect of the carrying out of their obligations and shall be deemed to have paid to the Client such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility.

### Insurance

25. The Consultant shall maintain professional indemnity insurance sufficient to cover the Consultant's liabilities hereafter for any one occurrence or series of occurrences arising out of this Agreement and for the period of six years after completion of the Services, provided always that such insurance is available at commercially reasonable rates.

### Contracts (Rights of Third Parties) Act 1999

26. Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999. The Client shall indemnify TEP where it passes TEP's results, reports, designs, specifications or any other document to a third party and the third party takes action against TEP.
27. Neither party may assign the benefit or burden of the Services to a third party without the express written consent of the other.

### Copyright, Licence, Publicity and Confidentiality

28. The copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents provided by the Consultant in connection with the Works shall remain vested in the Consultant, but the Client shall have a licence to use all completed drawings and other documents issued to the Client, other consultants or contractors for the purpose of the construction, completion,

maintenance and repair of the Works. In the event of the Client being in default of the payment of any Fees or other amounts due to the Consultant under this Agreement, the Consultant may revoke that licence herein granted on seven days' written notice to the Client. The Consultant shall not be liable for the use by any person of any such drawings or documents for any purpose other than that for which the same were prepared on behalf of the Consultant.

29. The Consultant shall not without the written consent of the Client, not to be unreasonably withheld, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Works.
30. TEP will respect the commercial confidentiality of Clients' affairs and will not release details of any studies or reports which are not in the public domain to third parties without Clients' permission other than as a list of client names and of project titles used in presenting TEP's experience.

### Data Protection

31. Information and data provided by the client will be processed and stored securely to comply with the General Data Protection Regulations (GDPR).

### Adjudication

32. Where this agreement is a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996, either party may refer any dispute arising under the Agreement to adjudication in accordance with the statutory scheme.
33. Where the agreement is not a construction contract, in the event of a disagreement between the parties which cannot be resolved between them the parties shall have recourse to whichever of the following professional bodies is most relevant to the services to provide arbitration: the Landscape Institute, the Royal Town Planning Institute, the Institute of Chartered Foresters, the Chartered Institute of Ecology and Environmental Management, the Institute of Environmental Management and Assessment or the Chartered Institute for Archaeologists. Arbitration will be governed by the Arbitration Act 1996 and the award shall be final. Nothing in this clause shall however prevent either party seeking injunctive relief.

### Termination

34. Either party may terminate the Appointment by:
- giving reasonable notice in writing stating the reasons for doing so and the services affected; or
  - giving notice immediately if the other party is declared bankrupt, becomes bankrupt, enters into receivership, liquidation or administration.
35. On termination of the services the Consultant will provide any outstanding information relating to the Works as set out in the agreement on demand of the Client subject to payment of all outstanding fees due.

### Equality and Diversity

36. The Consultant is committed to promoting equality and diversity in all of our dealings with clients, third parties and employees. The Consultant will not discriminate in the way it provides its services on the grounds of sex (including gender reassignment), marital status, sexual orientation, disability, race, colour, religion, age, nationality or ethnic or national origins.

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