



# PUBLIC PROTECTION

a service of Cornwall Council

## Terms and Conditions of Contract for 'Environmental Health – Technical Advice for Planning Applicants' (EH-TAP)

### 1 Interpretation

1.1 In these terms and conditions:

"Agreement" means the contract between (i) the Supplier (Us) and (ii) the Customer (You);

"Charges" means the charges for the Services as specified in the Specification;

"Confidential Information" means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;

"Customer" "You" "Your" means the applicant named or proposed to be named in the planning application or planning Decision Notice, as applicable (and includes your employees, contractors and agents) as stated on the Confirmation of Proposal;

"Expiry Date" means the date on which all of the Services have been provided;

"FOIA" means the Freedom of Information Act 2000;

"Confirmation of Proposal" means the document provided by the Supplier (Us) to the Customer (You) detailing the Services offered and incorporating these terms and conditions, for the Customer (You) to sign in Agreement;

"Party" means the Supplier (Us) or the Customer (You) (as appropriate) and "Parties" shall mean both of them;

"Planning Application"

means an application for planning permission or development consent order

"Services"

means the chargeable advisory services to be supplied by the Supplier (Us) to the Customer (You) under the Agreement relating to a planning application prior to it being formally submitted to the local planning authority and/or after such submission;

"Specification"

means the specification for the Services (including as to quantity, description and quality) as detailed in the Confirmation of Proposal

"Supplier" "We" "Us" "Our"

means Cornwall Council's Neighbourhoods & Public Protection Service (N&PP);

"Term"

means the period from the start date of this Agreement to the Expiry Date;

"VAT"

means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

"Working Day"

means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## **2 General**

- 2.1 The Services are managed and administered by Cornwall Council's Neighbourhoods and Public Protection Service (N&PP).
- 2.2 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 2.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both of the Parties.
- 2.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 2.5 Any waiver or relaxation of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver.

## **3 Basis of Agreement**

- 3.1 The Confirmation of Proposal constitutes an offer by the Supplier (Us) to the Customer (You) to undertake the Services subject to the Customer's (Your) acceptance by means of signature and in accordance with the terms and conditions of the Agreement.
- 3.2 Where it is possible for the Supplier (Us) to provide the Customer with immediate telephone advice, the Agreement may be concluded over the telephone and no Confirmation of Proposal will be provided to the Customer (You).
- 3.3 The Customer (You) will pay any Charges owing to the Supplier (Us) before the Services are commenced.

## **4 Supply of Services (Work We will do)**

- 4.1 In consideration of the Customer's (Your) agreement to pay the Charges, the Supplier (We) shall supply the Services to the Customer (You) for the Term subject to and in accordance with the terms & conditions of the Agreement.
- 4.2 We will provide the Customer (You) with Our advice as set out in the Confirmation of Proposal and as permitted under these terms & conditions.
- 4.3 We may consult other regulators and government bodies or other relevant authorities where we consider they are relevant.

- 4.4 We will use reasonable skill, care and diligence when We provide You with advice, which will be impartial and based on the information available to us at the time and the laws, policy, and guidance in place at the time.

## **5 Customer's obligations (Work You will do)**

- 5.1 You will request Our advice in accordance with the Confirmation of Proposal.
- 5.2 You will make available to Us such information (including maps, reports, plans and drawings as relevant), and provide such support, as We may reasonably require in relation to Your requests for Our advice.
- 5.3 Where providing Us with information in accordance with clause 5.2, You shall do this in a timely manner and ensure that it is accurate in all material aspects.
- 5.4 You will discuss with Us when You have any change in or additional requests for Our advice, however We are under no obligation in relation to such changes unless and until they have been agreed in writing as set out in Clause 2.3.

## **6 Term**

- 6.1 The Agreement shall take effect on the start date of this Agreement when the Customer (You) accepts the Supplier's (Our) Confirmation of Proposal to provide the Services and shall expire on the Expiry Date. We will agree these dates with You and set these dates out in the Confirmation of Proposal.

## **7 Acknowledgement and Statutory Duties**

- 7.1 You acknowledge and agree that when We give You Our advice it places Us under no obligation to You:
- 7.1.1 to make any favourable recommendation to a Local Planning Authority or the Planning Inspectorate in relation to Your planning application; or
- 7.1.2 to grant any related consents or permits which We are responsible for determining.
- 7.2 You must ensure that the advice and information We give You meets Your needs and You are responsible for the consequences of any use to which You put it.
- 7.3 Using the Services will not prejudice any future statutory function(s) by the Supplier (Us) or otherwise.
- 7.4 The Supplier (We) are empowered to enforce a variety of civil and criminal statutes, including a duty to investigate any allegations of breaches of such legislation. The provision of the Services does not affect this duty in any way whatsoever.
- 7.5 Nothing in this Agreement prohibits the Supplier (Us), or other local or central government authorities from taking legal action in line with statutory enforcement duties and in accordance with the Supplier's enforcement policy as amended from time to time.

7.6 The Supplier (We) reserve the right to take enforcement action against any individual or business that neglects its legal obligations and/or deliberately sets out to harm the interests of consumers or other legitimate businesses. The criteria governing enforcement action are set out in the enforcement policy, the current version of which can be found [here](#).

## **8 Charges, Payment, Losses and Liabilities**

8.1 The Charges for the Services shall be the option offered by the Supplier (Us) and accepted by the Customer (You) from those set out in the Specification. In the event that the Supplier (We) agrees in writing to any variation to the scope of the Services, the Charges shall be agreed in writing between the Customer (You) and the Supplier (Us).

8.2 Payment is to be made to Cornwall Council by debit or credit card. Regrettably the Supplier is unable to accept cash, cheques or BACS payments for the Services.

8.3 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate.

8.4 If there is a dispute between the Parties as to the Charges, the Customer (You) shall pay the undisputed amount. Any disputed amounts shall be resolved through the dispute resolution procedure in clause 15.

8.5 If a payment of an undisputed amount is not made by the Customer (You) by the due date, then the Customer (You) shall pay the Supplier (Us) interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

8.6 In the event that the Customer (You) does not pay the Supplier (Us) in accordance with clauses 3.3, 8.4 or 8.5 above then the Supplier (Us) has the right either not to commence or to cease providing the Services to the Customer (You) until the outstanding amounts including VAT and interest are settled in full. Subject to clause 12 below the Supplier (We) will not bear any liability to the Customer (You) as a result of the cessation of the Services in accordance with this clause.

8.7 The Supplier (We) reserves the right to charge the Customer (You) additional sums if, due to circumstances reasonably unforeseen by the Supplier (Us), additional advice is necessary. In the event that this occurs, the Supplier (We) shall agree these extra charges with the Customer (You) in advance, before the additional advice is provided.

8.8 If the Supplier's (Our) performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (You), its agents, subcontractors, consultants or employees, the Supplier (We) shall not be liable for any costs, charges or losses sustained or incurred by the Customer (You) that arise directly or indirectly from such prevention or delay.

8.9 The Customer (You) shall be liable to pay to the Supplier (Us), on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (Us) that arise directly or indirectly from the Customer's (Your) fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement, subject to the Supplier (Us) confirming such costs, charges and

losses to the Customer in writing.

8.10 The Customer (You) shall provide the Supplier (Us) with at least 48 hours' notice of site visit cancellations, failing which the Supplier (We) shall be entitled to charge the Customer (You) for lost travel time at the rate of £70.00 per hour excluding VAT plus travel expenses at the rate of £0.40 per mile.

## **9 Intellectual Property Rights**

9.1 As between the Customer (You) and the Supplier (Us), all intellectual property rights and all other rights shall be owned by the Supplier (Us).

9.2 The Supplier licences all such rights to the Customer (You) free of charge and on a non-exclusive, worldwide basis to such extent as is necessary and to enable the Customer (You) to make reasonable use of the Advice and the Services. If this Agreement is terminated, this licence will automatically terminate.

9.3 The provision of the Services by the Supplier (Us) to the Customer (You) does not entitle the Customer (You) or the Customer's (Your) business to claim any affiliation with or approval by Cornwall Council or the Supplier (Us). The Customer (You) is not permitted to use any of Cornwall Council's or the Supplier's (Our) logos.

## **10 Confidentiality and Freedom of Information**

10.1 Subject to clause 10.2 below, each Party shall:

10.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

10.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

10.2 The Supplier (We) may disclose Confidential Information which it receives from the Customer (You) to the extent that the Supplier (Us) (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions or if disclosure is required by applicable law or by a court of competent jurisdiction.

10.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Customer (You) hereby gives its consent for the Supplier (Us) to publish the Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Supplier (We) may consult with the Customer (You) to inform its decision regarding any redactions but the Supplier (We) shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

10.4 The Supplier (We) does not guarantee the confidentiality of information it holds. The Supplier (We) may receive requests under the FOIA, the Environmental Information Regulations 2004 or any other applicable legislation or codes that govern access to information and the

- Supplier (We) may be under an obligation to provide such information on request. Such information may include matters relating to, or arising out of this Agreement.
- 10.5 The Customer (You) shall not make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Supplier (Us).
- 11 Data Protection**
- 11.1 The Supplier (We) will not keep information longer than is necessary and whilst in the Supplier's (Our) possession will safeguard the Customer's (Your) personal information according to the requirements of the Data Protection Act 1998 or any equivalent legislation.
- 11.2 The Supplier (We) will use the information the Customer (You) has supplied only for the purposes of maintaining a record of the Services and invoicing. The information will be retained for 7 years.
- 12 Liability and Insurance - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 12.1 Nothing in the Agreement limits or excludes the Supplier's (Our) liability for:
- 12.1.1 death or personal injury caused by its negligence;
- 12.1.2 fraud or fraudulent misrepresentation; or
- 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or any other liability which cannot be limited or excluded by applicable law.
- 12.2 Subject to clause 12.1 the Supplier (We) shall not be liable to the Customer (You), whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:
- 12.2.1 loss of profits;
- 12.2.2 loss of sales or business;
- 12.2.3 loss of agreements or contracts;
- 12.2.4 loss of anticipated savings;
- 12.2.5 loss of or damage to goodwill;
- 12.2.6 loss of use or corruption of software, data or information;
- 12.2.7 any indirect or consequential loss.
- 12.3 Subject to clauses 12.1 and 12.2, the Supplier's (Our) total aggregate liability to the Customer (You), whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to 125% of the Charges.
- 12.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 12.5 Each of the Parties agrees that they will at their own cost effect and maintain appropriate policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Parties pursuant to this Agreement.
- 13 Force Majeure**
- 13.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.
- 14 Termination**
- 14.1 The Supplier (We) may terminate the Agreement at any time by giving one (1) months' notice in writing to the Customer (You).
- 14.2 Without prejudice to the other remedies or rights a Party may have, either Party may terminate the Agreement with immediate effect on written notice to the other Party if the other Party:
- 14.2.1 is in material breach of any obligation under the Agreement which is not capable of remedy;
- 14.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- 14.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the other Party receiving notice specifying the breach and requiring it to be remedied.
- 14.3 If the Supplier (We) terminates the Agreement pursuant to clause 14.2 above the Customer (You) shall immediately pay to the Supplier (Us) all of the outstanding unpaid Charges and interest.
- 14.4 For the purposes of clause 14.2, the Customer (You) shall be deemed to be in material breach of its obligations if it has not paid any undisputed amounts within 28 days of them falling due.
- 14.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has effect after termination.
- 15 Dispute Resolution**
- 15.1 If the Customer (You) or the Customer's (Your) business has any complaints or is not satisfied with the quality of the Services in the first instance the Customer (You) should telephone: 0300 1234 212 or email: [businessadvice@cornwall.gov.uk](mailto:businessadvice@cornwall.gov.uk)

- 15.2 In the event that any dispute is not resolved in accordance with clause 15.1, the Customer (You) shall then refer to Cornwall Council's Complaints Procedure available on Cornwall Council's website and/or from the Customer's (Your) local Council Office.
- 15.3 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and may agree to alternative dispute resolution, such as mediation. Either Party may exercise any remedy it has under applicable law.

## **16 Notices**

- 16.1 Any notice to be given under the Agreement shall be in writing and shall be sufficiently served by personal delivery, or by being sent by first class post in a registered letter to the address of the relevant Party set out in the Confirmation of Proposal, or such other address as that Party may from time to time notify to the other Party.

## **17 Severance**

- 17.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

## **18 Governing Law and Jurisdiction**

- 18.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## **19 REVIEW**

- 19.1 These "Terms and Conditions" will be subject to an annual review.

For further help or information please contact:

Telephone: 0300 1234 212

E-mail: [businessadvice@cornwall.gov.uk](mailto:businessadvice@cornwall.gov.uk)

Website: [www.cornwall.gov.uk/environment-and-planning/environmental-protection/environmental-protection-planning-guidance/](http://www.cornwall.gov.uk/environment-and-planning/environmental-protection/environmental-protection-planning-guidance/)

## **Disclaimer**

- This service is provided by Cornwall Council via its Officers within the Neighbourhoods & Public Protection Service who are considered competent for this purpose (qualifications, skills and/or other qualities). Any views or opinions expressed by Council Officers are given in good faith, and whilst we will do our utmost to ensure this is technically correct, they are provided without prejudice to the formal consideration of any planning application.
- Other sources of professional advice are available and there is no legal requirement for You to accept Our offer of advice.
- Fees and charges associated with this service are to cover costs and not for profit.

**As stated in Clause 3.1, signing of the Confirmation of Proposal constitutes acceptance that the Services will be provided in accordance with these terms and conditions which will automatically bind the parties.**