



**The Coal
Authority**



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CONDITIONS OF CONTRACT

FOR

CONSULTANCY SERVICES

MARCH 2009

THE COAL AUTHORITY

GENERAL CONDITIONS OF CONTRACT

FOR

CONSULTANCY SERVICES

MARCH 2009 EDITION

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THE COAL AUTHORITY

GENERAL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

RECITALS:

The Authority has issued an invitation to tender for the Services and the Consultant has indicated that it is willing and able to provide those Services.

The Authority therefore engages the Consultant to provide such Services and the Consultant accepts to provide such Services as set out in the Contract and on the following terms:-

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:-

"Adjudication"	means the dispute resolution procedure required by Condition 26.
"CDM Regulations"	means the Construction (Design and Management) Regulations 2007, together with Guidance Notes as shall be issued from time to time by the Health and Safety Commission including but not limited to "Managing Construction for Health and Safety: Approved Code of Practice", "A guide to managing Health and Safety in Construction" and any amendments and re-enactments thereof;
"Commencement Date"	means the date or response time for the commencement of the Services as specified in the Contract, or failing which the date to be agreed by both parties.
"Commercially Sensitive Information"	means the subset of Confidential Information detailed in the Contract.
"Confidential Information"	means all information (whether recorded or not and, if recorded, in whatever form or on whatever media and by whomsoever recorded), relating to any part of the Authority's

or its clients affairs which is marked secret or confidential or sensitive or which is treated as such by The Authority or would be deemed to be such by a reasonable person. All personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and any Commercially Sensitive Information.

"Construction Act"

means the Housing Grants Construction & Regeneration Act 1996.

"Consultant"

means the person, firm or company appointed to carry out the Services under the Contract and shall include any other person or persons taken into partnership by such person or firm during the currency of the Contract and the surviving member or members of any such partnership;

"Contract "

means the agreement between the Authority and the Consultant for the provision of the Services, the Authority's invitation to tender for the Services, the Consultant's tender (together with any documents referred to therein) and the Authority's acceptance thereof (or as the case may be the Authority's offer and the Consultant's acceptance thereof), any call-off order by the Authority issued in accordance with the Contract, and these Conditions of Contract together with such other documents incorporated into the Contract by express reference. In the event of conflict the Authority's documents will prevail.

"Contract Region"

means the whole of England, Wales and Scotland unless otherwise stated in the Contract;

"Contracting Authority"

means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other

than the Authority.

"Employee Liabilities"

means in relation to the employment of any person (whether or not by the person incurring the Employee Liability) all claims, demands, actions, proceedings and all damages, loss, costs and expenses (including legal costs) including (without limitation) claims in contract, in tort, under statute, for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for unlawful discrimination, claims for equal pay, and compensation for less favourable treatment of part-time or fixed workers or in relation to working time or national minimum wage complaints, personal injury, failure to carry out statutory consultation, data protection, human rights, payments made by way of settlement, and costs and expenses reasonably incurred in connection with a claim or investigation.

"Employees"

means the employees of the Consultant or such other persons under the direction or control of the Consultant from time to time engaged in the performance of the Services.

"Environmental Information Regulations"

means the Environmental Information Regulations 2004.

"Environmental Legislation"

means all applicable statutes, statutory instruments, common law, treaties, regulations, directives, codes of practice, including the Authority's Environmental Policy, and further including the Environmental Protection Act 1990, the Water Resources Act 1991, the Waste Management Licensing Regulations 1994 and the Environment Act 1995, and any amendments and re-enactments thereof;

"Fee"	means the fees exclusive of VAT to be paid to the Consultant by the Authority either a lump sum fixed priced fee, or, calculated in accordance with the Schedule of Rates and Prices incorporated in the Contract and payable as set out in Condition 9 and any additional fee agreed by the Authority for additional Services, calculated in accordance with the rates as set out in the Contract;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
"Health and Safety"	means all applicable statutes, statutory "Legislation" instruments", common law, treaties, regulations, directives, codes of practice, guidance notes, including, but without limitation, the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and the Work Place (Health and Safety and Welfare) Regulations 1992 and any amendments and re-enactments thereof;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000.
"Intellectual Property"	means any know-how, copyright, registered or unregistered trade marks, registered or unregistered patents or designs or similar rights or applications for any of the foregoing.
"Legislation"	means all statutes, statutory instruments, common law, treaties, regulations, directives, codes of

practice and guidance notes.

"Requests for Information"

shall have the meaning set out in the FOIA or any apparent request for information under the FOIA, the Environmental Information

Regulations or the Code of Practice on Access to Government Information.

"Services"

means the consultancy services set out in the Contract and such other ancillary tasks as the Authority may from time to time reasonably require the Consultant to perform within the Consultants' skill and expertise including any role defined in the CDM Regulations; where applicable, such fees to be payable in accordance with the Fee to be paid in accordance with Conditions 9.

"Supervising Officer"

means the person or persons, firm or company nominated by the Authority to supervise the Contract.

"the Adjudicator"

means the person appointed in accordance with Condition 26.

"the Authority"

means The Coal Authority, established pursuant to Section 1 of the Coal Industry Act 1994;

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Acquired Rights Directive (both as amended and as may in the future be amended or succeeded by similar legislation), laws based on that Directive, and any similar legislation aimed (in whole or in part) at preserving employment during the transfer of a business or a part of a business.

1.2 The headings in these Conditions are inserted for convenience and shall not affect their interpretation.

- 1.3 Where appropriate words denoting a singular number only shall include the plural and vice-versa.

2. ENTIRE AGREEMENT

- 2.1 The Contract constitutes the entire agreement and understanding between the parties in relation to the matters contemplated by the Contract and supersedes all previous Contracts between the Authority and the Consultant.
- 2.2 Each party acknowledges that it does not enter into the Contract in reliance on any warranty, representation or undertaking other than those contained in the Contract provided that this shall not exclude any liability which either party would otherwise have to the other party in respect of any statements made fraudulently by that party prior to the date of the Contract.

3. CONFLICTING TERMS

- 3.1 In the event of any conflict between any document or Condition incorporated into the Contract, the tender documents shall always prevail. In the event of any conflict between the documentation referred to in any Conditions and any Legislation, the latter shall prevail.

4. TERM OF THE CONTRACT AND COMMENCEMENT DATE

- 4.1 The Consultant shall begin to provide the Services on the Commencement Date and shall (subject to Condition 13) continue to provide the Services for the term specified in the Contract or as otherwise notified by the Authority. If after the expiry of the term, the Consultant has not fully discharged all obligations under the Contract and completed all its ongoing tasks (including any remedial acts, provision of information relating to the Services, any notices or other requirements, statutory or otherwise, which it is reasonable to expect the Consultant to complete have regard to the nature and overall objectives of the Services,) then the Authority may at its entire discretion extend the term of the Contract, at the rates and prices agreed in the Contract, provided such addition is made in accordance with the Fee and Condition 6 provisions.
- 4.2 The Consultant shall complete all individual tasks assigned to it under the Contract within the time specified in the Contract or as otherwise notified by the Authority. If no such time is specified, the assignment shall be completed within a reasonable time. Without prejudice to

Condition 4.1, in the event that such individual tasks have not been completed within the term or time, the Authority may at its entire discretion extend the term of the Contract, at the rates and prices agreed in the Contract.

- 4.3 In the event that the Authority extends the Contract then, by so doing, it does not waive any rights or actions in may have against the Consultant.

5. CONSULTANT'S WARRANTY

- 5.1 The Consultant warrants to the Authority that by entering into and performing his obligations under these Conditions it will not thereby be in breach of any obligations which it owes to a third party.

6. CONSULTANT'S OBLIGATIONS

- 6.1 Throughout the term of the Contract the Consultant agrees to make available sufficient and appropriate resources to perform the Services as and when required by the Authority within the Contract Region. When so required to perform those duties and exercise such powers consistent with them, which are from time to time necessary to perform the Services. To do so faithfully and diligently using the reasonable skill and care to be expected of an experienced Consultant in performing services of a similar scope and complexity to the Services.
- 6.2 In the performance of the Consultants obligations under the Contract the Consultant shall use its best endeavours to promote the interests of the Authority and be fully cognisant of the position of the Authority in relation to the Services and of all relevant legal requirements, statutory or otherwise, with which the Consultant must comply on the Consultant's own account or on behalf of the Authority.
- 6.3 The Consultant shall not bind the Authority to any financial commitment or course of conduct, enter into any contract or accept any liability on behalf of the Authority without the Authority's specific prior written authority to do so or as otherwise authorised in the Contract. Immediately upon being placed in a situation where the Consultant may exceed its authority, the Consultant shall write to all relevant persons drawing their attention to the limits on the Consultant's authority under the Contract.
- 6.4 The Consultant shall ensure that:-

- 6.4.1 a sufficient number of appropriately qualified and experienced Employees are employed in the performance of the Services in order to fulfil its obligations under the Contract;
 - 6.4.2 that all Employees and agents involved in any particular task in the performance of the Services are made aware of the contents of the Contract and are adequately trained, qualified and supervised; and
 - 6.4.3 that a senior person is nominated who will personally have overall responsibility for the performance and delivery of the Services required by The Authority.
- 6.5 The Consultant undertakes to the Authority during the term of the Contract that its Employees shall:-
- 6.5.1 devote their full time and attention to the provision of the Services for such hours as necessary in order to perform the Services within the timescales required by the Authority;
 - 6.5.2 faithfully and diligently perform those duties and exercise such powers consistent with them, which are from time to time necessary in connection with the Services;
 - 6.5.3 obey all lawful and reasonable directions given directly to the Employee by the Authority;
 - 6.5.4 use their reasonable endeavours to promote the interests of the Authority;
 - 6.5.5 behave in an orderly and responsible manner whilst performing the Services; and
 - 6.5.6 comply with all statutory provisions and requirements affecting the Services or the locations at which they are performed;
- 6.6 The Authority shall be entitled to require the Consultant to:-
- 6.6.1 provide such information relevant to the Services relating to any Employee that the Authority may from time to time request from the Consultant and to do so within the timescale requested by the Authority. To the extent that if such information is personal data as defined in the Data Protection Act 1984 (or any subsequent enactment), the Consultant shall take all permissible steps necessary to comply with this obligation.
 - 6.6.2 replace immediately any Employee who in the reasonable

opinion of the Authority is guilty of misconduct or is incompetent or negligent in that Employee's performance of the Services or for any other reason;

- 6.6.3 to obtain the Authority's prior written authorisation before employing any person in relation to the Services, or changing any Employee proposed; and
 - 6.6.4 in the event that the Authority requests the replacement of an Employee the Consultant shall replace that Employee with a person possessing the necessary qualifications, experience, competence and suitability acceptable to the Authority.
- 6.7 The Consultant shall, in complying with Conditions 6.1 to 6.6 be entitled to the Fee for the Services payable in accordance with this Condition 6 as set out in Condition 9.

7. AUTHORITY'S OBLIGATIONS

- 7.1 The Authority will appoint a Supervising Officer under whose direction the Consultant shall perform the Services, and will advise of the appointment in writing. All communications to the Authority relating to the performance of the Services shall be addressed to the Supervising Officer. The Supervising Officer shall be entitled to delegate any of his powers, obligations or functions under the Contract and any such delegation shall be made in writing to the Consultant detailing the person so delegated and the extent of the powers, obligations or function so delegated.
- 7.2 Throughout the term of the Contract the Authority at its discretion shall afford the Employee such access to the Authority's offices and properties and to such of the Authority's information records as the Employee may require to provide the Services. Further, the Authority shall:-
 - 7.2.1 advise the Employee of the rules and regulations which are then in force for the conduct and safety of personnel at the Authority's offices and properties (and the Consultant shall ensure that the Employee complies with any such rules and regulations);
 - 7.2.2 make available such working space and facilities at the Authority's offices and properties as the Consultant may reasonably require for the Employees;
 - 7.2.3 make available appropriate personnel to liaise with the Employee; and
 - 7.2.4 use reasonable endeavours to secure and otherwise keep safe

all and any property of the Employee.

8. LEVEL OF WORK

- 8.1 The Consultant acknowledges that it is required under the Contract to perform specific tasks as and when required by the Authority and that the Authority is not obliged to provide the Consultant with any minimum level of work and the Consultant has not entered into the Contract in reliance on any representations by the Authority of the level of work to be provided under the Contract.

9. FEES

- 9.1 In accordance with Condition 9.4 and in consideration of the provision of the Services in accordance with the Contract, the Authority shall pay the Fee to the Consultant.

- 9.2 Where under the Contract the duration of the Services are less than 45 (forty five) days, the Fee shall be paid by the Authority on completion of the Services to the Authority's reasonable satisfaction or as otherwise stated in the Contract, provided that payment of the Fee by the Authority shall be without prejudice to any continuing obligations of the Consultant under the Contract.

- 9.3 Where the Services are to be provided under the contract for a period exceeding 45 (forty five) days the Consultant shall be paid on account an amount for the Services provided on an interim basis as calculated and specified in the Contract.

- 9.4 In addition, the Authority shall reimburse to the Consultant all hotel, travelling and other expenses which the Authority has approved in advance, or which the Authority at its entire discretion considers to have been properly and reasonably incurred by the Consultant in providing the Services. Subject to the production of vouchers or other evidence verifying the same provided the application for payment by the Consultant is made in accordance with Condition 9.4.

- 9.5 Fees will be rendered and paid on the following basis:-

- 9.5.1 the Consultant, when submitting an application for payment shall, on each application, state the basis on which the amount claimed is calculated in accordance with the rates contained in the Contract. The application should provide sufficient details for the Authority to be able to verify the application. The payment shall become due 22 days from the submission of the Consultant's application.

- 9.5.2 the Authority, may, no later than 27 days after the date of receipt of the application in accordance with Condition 9, give to the Consultant a written notice stating the amount which the Authority proposes to pay and the basis on which the amount is calculated. Where no such notice is given, the amount to be paid shall be the amount properly due under the Contract;
- 9.5.3 where, the Authority intends to withhold payment of any amount placed in the application, written notice must be given to the Consultant no later than 30 days from the date of receipt of the application. It must state the amount to be withheld and the grounds for withholding payment and if there is more than one ground, each ground and the amount attributable to it. Fees in respect of amounts not disputed shall not be withheld.
- 9.6 The Contractor shall submit a revised application for payment for the amounts notified by the Authority under Condition 9.5.2 less the amount which the Authority intends to withhold in accordance with Condition 9.5.3 in the form of a valid tax invoice dated the date on which it is submitted. The final date for payment by the Authority shall be 60 days from the date of this invoice.

10. DIRECTION OF EMPLOYEES

- 10.1 The Consultant and its Employees shall comply with all instructions given by the Authority's authorised personnel and with any guidelines, policies or other pronouncements from time to time issued by the Authority in connection with the performance of the Services. Such instructions and pronouncements shall not be regarded as variations to the Services.

11. HEALTH AND SAFETY AND THE ENVIRONMENT

- 11.1 The Consultant will, at all times be responsible for compliance with Health and Safety and Environmental Legislation and will ensure that its Employees comply likewise. The Consultant will use its best endeavours to ensure that it does not put the Authority in breach of Health and Safety or Environmental legislation, and will advise the Authority of any areas of Health and Safety and, or Environmental Legislation with which the Authority needs to comply.
- 11.2 The Consultant will, at all times, comply with its method statements, and will put in place all necessary Health and Safety, Environmental policies and risk assessments which are necessary to ensure the safety of its own Employees, the Authority's personnel and members of the public. The Consultant shall ensure compliance by Employees with the Authority's health and safety, environmental policies and practices

to protect the environment.

12. RELATIONSHIP BETWEEN AUTHORITY AND CONSULTANT

- 12.1 The Consultant acknowledges to the Authority that the Employees are throughout the period of the Contract the Consultant's Employees exclusively and that their services will be supplied to the Authority as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to such Employees as Employees (including the payment of taxation) shall be discharged wholly by the Consultant. As between the Consultant and the Authority all incidents relating to the relationship of Employer and Employee shall fall upon and be discharged wholly and exclusively by the Consultant and the Employees.
- 12.2 In the event that any person should seek to establish any liability (including, without limiting the generality, liability for any tort committed by the Employee) or obligation upon the Authority on the grounds that the Employee are Employees of the Authority the Consultant shall indemnify the Authority upon demand and keep it indemnified in respect of any such liability or obligation and any related costs, expenses or other losses which the Authority shall incur.
- 12.3 The Consultant shall bear exclusive responsibility for and shall pay all charges, taxes and National Insurance contributions or like contributions and levies required by law to be paid arising out of the fees paid under Condition 9 as payment for the Services.
- 12.4 Employees means the Consultant if he carries out the Services under the Contract in person, the employees of the Consultant or such other person under the direction or control of the Consultant from time to time engages in the performance of the Services.
- 12.5 The Consultant means the person, firm or company appointed to carry out the *Services* under the Contract and shall include any other person or persons taken into partnership by such person or firm during the currency of the Contract and the surviving member or members of any such partnership.

13. TERMINATION

- 13.1 The Authority shall be entitled to terminate the Contract immediately upon giving written notice to the Consultant if:-
- 13.1.1 an order shall be made or valid resolution passed for the winding up of the Consultant;

- 13.1.2 the Consultant shall become insolvent or unable to pay its debt as the same fall due or shall have any administrator, receiver, administrative receiver or similar officer appointed over any of its assets;
- 13.1.3 the Consultant (being an individual or firm) has a bankruptcy petition presented against it or has a bankruptcy order or interim order made against it;
- 13.1.4 if the Consultant enters into any voluntary arrangement or any other composition, scheme or arrangement with its creditors;
- 13.1.5 if the financial position of the Consultant deteriorates to such an extent that in the opinion of the Authority, the capability of the Consultant adequately to fulfil its obligations under the Contract has been placed in jeopardy;
- 13.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Contractor.
- 13.1.7 the Consultant ceases or threatens to cease to carry on business or there is at any time a material change in the management, ownership or control of the Consultant;
- 13.1.8 the Consultant seriously or persistently fails to provide the Services for whatever reason or otherwise breaches the terms of the Contract;
- 13.2 Either party shall be entitled to terminate the Contract immediately upon giving written notice to the other if that other shall be in default of any of the provisions of the Contract and where the default is capable of remedy shall fail to remedy the same within seven days of having been given written notice to remedy the same by the party not in breach.
- 13.3 Termination of the Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Contract as at the date of termination and in particular but without limitation the right to recover damages against the other and all provisions which are expressed to survive the Contract shall remain in force and effect.

14. LIABILITY AND INSURANCE

- 14.1 The Consultant shall indemnify the Authority against any costs, claims, demands, expenses, fines, losses or damages suffered or expenditure

incurred by the Authority arising out of the death of or injury to any person or loss of or damage to any property (including property of the Authority) to the extent that such death, injury or damage is due to:-

- 14.1.1 any breach of contract by the Consultant; or
 - 14.1.2 any negligence, default or breach of statutory duty on the part of the Consultant or the Employees; or
 - 14.1.3 any breach of statutory duty on the part of the Authority to the extent that it results from an act or omission of the Consultant or the Employees.
- 14.2 The Consultants liability to indemnify the Authority under Condition 14.1 shall not be affected by any vicarious liability which the Authority may have in respect of the Consultant or any of the Employees and the Consultant shall indemnify the Authority in respect of any such vicarious liability.
- 14.3 The Consultant shall at all times during the Contract maintain at his own cost a proper and adequate comprehensive policy of insurance sufficient to cover the Consultant's liability under the Contract. The Consultant shall at the request of the Authority provide any evidence to satisfy the Authority that the Consultant is in full compliance with this Condition.

15. RIGHTS IN CONSULTANT'S WORK

- 15.1 If the Consultant shall during the continuance of the Contract create, make or discover any work, invention or design or make any addition, modification improvement or development to or derivation from any existing work, invention or design whether or not the same has or is capable of having Intellectual Property protection and whether alone or in conjunction with an Employee or any other person, he shall treat such work, invention or design as confidential and shall immediately disclose them to the Authority whereupon such Intellectual Property and all intellectual property rights or other rights therein and the benefit thereof will be the sole and absolute property of the Authority. The Consultant shall notwithstanding any prior termination of the Contract, at the Authority's request and expense do all such acts and execute all such documents as may be necessary to vest all rights in or relating to any such work, invention, design or improvement in the name of the Authority to the intent that all such rights and any such works, inventions, designs or improvements shall become the absolute property of the Authority. Nothing contained in this provision shall limit any statutory or other right of the Authority in relation to any such work, invention, design or other right.

- 15.2 The Consultant shall whether during or after termination of the Contract at the request and cost of the Authority sign, execute and do all such deeds and documents, acts and things as the Authority or its authorised agents may reasonably require to defend any proceedings in respect of any Intellectual Property works, inventions, designs or similar rights to which Clause 15.1 applies and any opposition proceeding or petitions or applications for revocation of such rights and to assist the Authority in relation to any litigation, arbitration or other proceedings relating to any such rights.
- 15.3 The Consultant shall indemnify the Authority against any costs, damages, expenses, losses or royalties arising out of proceedings brought against the Authority by any third party in respect of any Intellectual Property used or provided by the Consultant in connection with the performance of its duties under the Contract, and the Consultant shall, at its own expense, provide all such assistance and execute all such deeds and documents as the Authority or its authorised agents may reasonably require in order to defend such proceedings.
- 15.4 If, at any time during the continuance of the Contract, the Consultant (whether alone or in conjunction with any other person or persons) creates any copyright work, the Consultant shall, at the request of the Authority, and in recognition of the provisions of Condition 15.1 above, indicate the Authority's ownership of the copyright in the work by means of the inclusion of one or both of the following copyright notices:
© Coal Authority [DATE]

OR

"No part of this publication may be re-produced or transmitted in any form or by any means, or stored in any retrievable system of any nature without prior written permission, except according to permitted fair dealing under the Copyright Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material shall be made to the Coal Authority. Full acknowledgement of author, publisher and source must be given".

16. CONFIDENTIALITY

- 16.1 The Consultant undertakes to the Authority that it shall not (and it shall procure that the Employees shall not) whether during the continuance of the Contract (except in the proper performance of its or their duties under the Contract) or at any time after it shall have been terminated (howsoever arising) make use of or divulge or communicate to any

person any of the Confidential Information or information of the Authority which may have come to its knowledge during the period of the Contract provided that the said undertaking shall not apply in relation to any of the said Confidential Information which comes into the public domain other than by reason of any breach of the Contract by the Consultant (or by the Employee) or which the Consultant (or the Employee) is required to disclose by statute or any legislative or judicial order or decree, to the extent so required.

16.2 Each Party:-

16.2.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

16.2.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

16.3 The Consultant shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:-

16.3.1 is given only to such of the Employees and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract

16.3.2 is treated as confidential and not disclosed (without prior Approval) or used by any Employees or such professional advisors or consultants otherwise than for the purposes of the Contract.

16.4 Where it is considered necessary in the opinion of the Authority the Consultant shall ensure that Employees or such professional advisors or consultants sign a confidentiality undertaking before commencing Services in connection with the Contract. The Consultant shall ensure that Employees or its professional advisors or consultants are aware of the Consultant's Confidentiality obligations under this Contract.

16.5 The Consultant shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.

16.6 The Provisions of Conditions 16.1 to 16.4 shall not apply to any Confidential Information received by one Party from the other:-

- 16.6.1 which is or becomes public knowledge (otherwise than by breach of this Condition);
 - 16.6.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - 16.6.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 16.6.4 is independently developed without access to the Confidential Information; or
 - 16.6.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, the Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Condition 31 (Freedom of Information)
- 16.7 Nothing in this Condition shall prevent the Authority:-
- 16.7.1 disclosing any Confidential Information for the purpose of:-
 - 16.7.1.1 the examination and certification of the Authority's accounts; or
 - 16.7.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
 - 16.7.2 disclosing any Confidential Information obtained from the Consultant:-
 - 16.7.2.1 to any governing department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
 - 16.7.2.2 to any person engaged in providing any services to

the Authority for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph (16.7.2) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 16.8 In the event that the Consultant fails to comply with this Condition 16, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

17. DOCUMENTS

- 17.1 All documents (including copies) disks, tapes and other material (in whatever medium) held by the Consultant (or by any Employee) containing or referring to Confidential Information or relating to the affairs or business of the Authority whether or not the same were prepared by the Consultant or the Employee or were supplied by the Authority shall belong to the Authority and shall:

17.1.1 be kept by the Consultant in a safe and secure manner in accordance with a disaster recovery/risk management policy, the terms of which have been agreed between the Authority and the Consultant; and

17.1.2 be delivered by the Consultant to the Authority (without copies of the same having been retained by either the Consultant or the Employee) forthwith upon request by the Authority and in any event upon the termination of the Contract (howsoever arising).

18. OWNERSHIP OF DOCUMENTS

- 18.1 Any drawings, documents, computer discs and data prepared by the Consultant in connection with Services shall become the property and copyright of the Authority. The Consultant shall not be entitled either directly or indirectly to make use of such documents and /or drawings without prior approval of the Authority, which approval shall not unreasonably be withheld.
- 18.2 All information held in respect of the Services will be returned to the Authority on completion of the Services.

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1 The Contract shall not be binding on the Authority's successors in title and neither party shall assign the benefit or burden of the Contract without the prior written consent of the other, such consent not to be unreasonably withheld.
- 19.2 The Consultant shall not without the prior written consent of the Authority sub-contract the execution of any part of the Services, unless and to the extent that the Contract so provides.
- 19.3 Neither the Authority's consent nor any term of the Contract shall relieve the Consultant from any liability or obligation under the Contract, and the Contract shall continue to apply in full as between the Authority and the Consultant as though any sub-contracted Services were being performed by the Consultant, who shall at all times be liable for the acts and defaults of any sub-contractor, his servants or agents as if those acts or defaults were committed by the Consultant.
- 19.4 If requested by the Authority, the Consultant shall inform the Authority as to the amount due to any sub-contractor and the Authority shall be entitled to make direct payments to any sub-contractor and deduct that amount from the sums due to the Consultant under the Contract. Notwithstanding direct payment under this Condition, no contractual relationship shall be implied or inferred between the Authority and any sub-contractor nor shall the Contractor be relieved of any liability to the Authority in respect of any sub-contracted Services.

20. BRIBERY AND CORRUPTION

- 20.1 The Consultant shall neither:-
- 20.1.1 offer or give or agree to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Contract or any other contract with the Authority or for showing or forbearing to show favour or disfavour to any person to the Contract or any other contract with the Authority; nor
- 20.1.2 enter into the Contract if in connection with it any commission, gift or other consideration has been paid or agreed to be paid to any person at the Authority by the Consultant or on the Consultant's behalf or to the Consultant's knowledge, or to the Consultant by any employee, consultant, contractor or agent of the Authority, unless before the Contract is made particulars of any such commission and of the terms and conditions of any

agreement for the payment thereof have been disclosed in writing to the Authority.

- 20.2 In the event of any breach of the terms of this Condition 20 by the Consultant or by anyone employed by the Consultant or acting on the Consultant's behalf (whether with or without the knowledge of the Consultant) or the commission of any offence by the Consultant or by anyone employed by the Consultant or acting on behalf of the Consultant under the prevention of Corruption Act 1889 to 1916 in relation to the Contract or any other contract with the Authority, the Authority may summarily terminate the Contract by notice in writing to the Consultant and the provisions of Condition 13.3 shall apply to such termination, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and provided always that the Authority may recover from the Consultant the amount or value of any such gift, consideration or commission.

21. RECOVERY OF SUMS DUE FROM THE CONSULTANT

- 21.1 Whenever under the Contract a sum of money is recoverable by the Authority from the Consultant or payable by the Authority to the Consultant the sum may be deducted from, or reduced by, the amount of any sum then due (which may at any time afterwards become due) to, or from the Consultant under the Contract or any other dealing with the Consultant.

22. VARIATION

- 22.1 The Contract shall not be amended, modified, varied or supplemented except in writing signed by a duly authorised representative of each of the parties.

The Consultant shall carry out the Services in accordance with any instructions given to the Consultant by the Authority's Supervising Officer or persons authorised person. Instructions may be given adding to, reducing or changing the Services which the Consultant is required to perform.

- 22.2 The value of any variation ordered in accordance with this Condition shall be added to or deducted from the price payable under the Contract for the Services.
- 22.3 The Consultant shall ensure that its Employees are properly informed of and comply with the Authority's instructions.

23. NOTICES

- 23.1 Each party may give any notice or other communication under the Contract in writing or by electronic media to the other party at the address set out above or such other address as the party may from time to time designate by written notice to the other party.
- 23.2 Any such communication will be deemed to be served:-
- 23.2.1 if personally delivered, at the time of delivery and, in proving service, it shall be sufficient to produce receipt for the notice signed by or on behalf of the addressee.
 - 23.2.2 if by letter, two working days after such a letter was posted and in proving service, it shall be sufficient for the letter to be properly stamped first class and addressed and delivered to the postal authorities, if by facsimile or other electronic media, during the business hours of the addressee on the day of transmission, otherwise on the next following business day.
- 23.3 All such notices and documents shall be in the English language.

24. GOVERNING LAW AND JURISDICTION

- 24.1 The Contract shall be construed in accordance with English law and all disputes, claim or proceedings between the parties relating to the validity, construction or performance of the Contract. Subject to the adjudication provision contained in Condition 26 and, shall be subject to the non-exclusive jurisdiction of the High Court of Justice in England to which the parties irrevocably submit themselves.

25. ILLEGALITY

- 25.1 If any provision or term of the Contract shall become or be declared illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of any Court or other body or authority having jurisdiction over the parties or the Contract such terms or provisions shall be divisible from the Contract and shall be deemed to be deleted from the Contract provided always that if any such deletion substantially affects or alters the commercial basis of the Contract the parties shall negotiate in good faith to amend and modify the provisions and terms of the Contract as may be necessary or desirable in the circumstances.

26. ADJUDICATION

- 26.1 If any dispute arises between the Parties they shall and shall procure their representatives shall, in good faith, attempt to resolve such dispute with the assistance of the Parties' personnel engaged in the performance of this Contract.
- 26.2 If the attempts by the Parties and/or their representatives to resolve the dispute are not successful within 15 Business Days of the dispute being notified by one Party to the other Party in writing, either Party will be able to request in writing that a senior executive officer of each Party shall meet to resolve the dispute.
- 26.3 Within 15 Business Days of such request the senior executive officers shall meet and attempt to resolve the dispute on the basis of the utmost good faith.
- 26.4 In the event of a dispute arising between the parties relating to part of the works which constitutes a Construction Operation as defined by the Construction Act and the same has not been determined by agreement between the parties in accordance with Condition 26.1 it shall be determined by an adjudicator (the "Adjudicator") appointed in accordance with the Institute of Civil Engineers Adjudication Procedure 1997.
- 26.5 The dispute referred to the Adjudicator shall be determined by the Institute of Civil Engineers Adjudication Procedure 1997 subject to the provisions of this Condition 26.
- 26.6 The Adjudicator shall be a qualified professional in the relevant field in relation to the dispute and shall be an experienced adjudicator.
- 26.7 The decision of the Adjudicator shall be binding until the dispute is finally determined by the Court or by agreement.
- 26.8 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omissions is in bad faith and any employer or agent of the Adjudicator is similarly not liable.
- 26.9 Costs including without limitation professional fees and disbursements and the fees and disbursements of the Adjudicator arising in relation to the dispute and related dispute which are referred for determination to the Adjudicator shall be borne as between the Consultant and the Authority as the Adjudicator shall in his absolute discretion direct on the usual principals that costs follow the event and for the avoidance of doubt paragraphs 6.5 and 6.6 of the ICE Adjudication Procedure (1997) are excluded from the Contract.
- 26.10 The Adjudicator shall provide reasons for his decision together with copies of any advice that he has obtained from other parties pursuant

to his decision.

- 26.11 All matters certified or otherwise determined by any adjudication shall be performed or otherwise carried into effect on the date determined by the Adjudicator or in default of any such decision not later than the fifth working day of such decision provided that where the Adjudicator certifies or otherwise determines that an amount is due from the payer to the payee but does not determine a date upon which the amount should be paid the amount shall not become due and payable as a debt until the fifth working day after the day on which the payee demands the same in writing. The amount shall accrue interest monthly for each day on which any payment is overdue compounded at a rate of 2% per annum above the base lending rate of the National Westminster Bank.
- 26.12 Subject to the provisions of the contract and termination, the performance of this Contract shall continue during discussions, adjudication, mediation, conciliation or court proceedings pursuant to the foregoing provisions of the Condition 26 provided that, if it is subsequently determined that a party has done or refrained from doing anything which it is not obliged to do or refrained from doing in accordance with this Contract, such party should be entitled to receive compensation from the other party in respect of a loss and/or expenses incurred in doing or refraining from doing the same.
- 26.13 In the event that either party shall not give effect to the decision of the Adjudicator within the time specified by the Adjudicator or otherwise by Condition 26 the decision of the Adjudicator shall be enforced by summary proceedings within the High Court.
- 26.14 No party to an adjudication under this Condition 26 (including but not limited to the Adjudicator) shall without the approval of the Authority part to any third party details of the procedure or dispute except as far as is necessary to determine the dispute or give effect to the decision.
- 26.15 The parties agree that the decision of any Adjudicator shall be binding upon them unless and until the dispute is finally determined by way of proceedings in the High Court and agree to abide by and given immediate effect to the said decision.

27. RIGHT OF AUDIT

- 27.1 For the purpose of the examination and certification of the Authority accounts, or any examination pursuant to section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which the Authority has used its resources, the Consultant shall agree that the Comptroller and Auditor General may examine such documents as he may reasonably require which are

owned, held or otherwise within the control of the Consultant an may require the Consultant to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Consultant is not a function exercise under the Contract. The Consultant shall agree that the Authority, or it's appointed agent shall be allowed to examine such documents as required to ensure that the Services are being performed correctly and the protection of the Authority's interest.

28. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 28.1 Except for third part beneficiaries of the rights in clause 50 of this Contract who shall be entitled to enforce their rights under clause 50 in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999, any other party who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

29. COMPLIANCE WITH INSTRUCTIONS, STATUTORY REQUIREMENTS AND CONSENTS

- 29.1 The Consultant shall comply at its own expense with all the Authority's policies, codes, procedures applicable to the Services. Along with instructions of the Supervising Officer given under the Contract and any local arrangements or requirements for the proper conduct of the Services.
- 29.2 The Consultant shall be responsible for obtaining on behalf of the Authority and notifying to the Contractor in due time any consent, authorisation, approval, licence or permission but only to the extent that the same may be necessary for the Services.
- 29.3 The Consultant shall ensure that all his Employees are aware of and comply in all respects with all Statutory Requirements.

30. TUPE INDEMNITY

- 30.1 The parties agree that upon partial or complete termination of this Contract the parties shall proceed on the basis that TUPE will not apply and that accordingly the Authority and any subsequent supplier of the Services to the Authority shall have no obligation to employ any person engaged by the Consultant in the provision of the Services. The

Consultant shall fully indemnify and hold harmless and keep fully indemnified the Authority and any subsequent supplier of the Services to the Authority in respect of all Employee Liabilities including those:

30.1.1 arising out of or in connection with any claim by any person who alleges or establishes that TUPE applies to transfer any such person's employment to

30.1.1.1 The Authority; or

30.1.1.2 a subsequent supplier of the Services to the Authority; or

30.1.2 relating to any Employee or former employee of the Consultant, responsibility for which passes by virtue of TUPE or otherwise to

30.1.2.1 the Authority ; or

30.1.2.2 a subsequent supplier of the Services to the Authority ; or

30.1.3 which relates to the dismissal or termination of employment of any Employee or former employee of the Consultant whether by the Consultant, the Authority or any subsequent supplier of the Services; or

30.1.4 arising out of or in connection with any failure to comply with Regulation 13 of TUPE.

30.2 The parties agree that upon partial or complete termination of this agreement the Authority or any subsequent supplier of the Services to the Authority shall be permitted to make to any Employee of the Consultant performing the Services at the date of partial or complete termination an offer of employment and that where such an offer is made and accepted by the target Employee, the Employee shall be permitted to leave employment of the Consultant without working the Employee's full notice period, if the Employee so requests.

31. FREEDOM OF INFORMATION

31.1 The Consultant acknowledges that the Authority is subject to the requirements of the Code of Practice on Access to Government Information, the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Consultants expense) to enable the Authority to comply with these Information disclosure requirements.

31.2 The Consultant shall and shall procure that its sub-consultants shall:

- 31.2.1 transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 31.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - 31.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 31.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 31.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information, the FOIA or the Environmental Information Regulations;
 - 31.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 31.4 The Consultant acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Codes of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information:-
- 31.4.1 without consulting with the Consultant, or
 - 31.4.2 following consultation with the Consultant and having taken its views into account.
- 31.5 The Consultant shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 31.6 The Consultant acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Condition 31.4.

