

## Terms & Conditions

### 1 Terms

1.1 These terms shall apply to the provision of services and goods under contracts into which they are expressly incorporated.

1.2 Once incorporated, these terms shall apply to the exclusion of all other terms and conditions including any terms which a Client may purport to apply under any confirmation of instruction or similar document.

The terms shall continue to apply to all services provided by the Consultant to the Client under any contract hereafter until expressly excluded in writing.

### 2 Assignment and Terms of Reference

2.1 The Consultant agrees to carry out the Assignment in accordance with the Terms of Reference.

2.2 The Client agrees to cooperate with the Consultant in the performance of the Consultant's services and to give such support, facilities and information as may be reasonably required.

### 3 Charges and Payments

3.1 The Client agrees to pay the charges and expenses in accordance with the provisions of the Terms of Engagement.

3.2 VAT at the standard rate is applicable to all fees.

3.3 Payment is due within 30 days of invoice.

3.4 Fees shall be invoiced monthly in arrears

### 4 Confidentiality

The Consultant undertakes not at any time to divulge or allow to be divulged to any person any confidential information relating to the business or affairs of the Client other than to sub-contractors who have signed an appropriate secrecy undertaking or others where the Client has expressly or impliedly consented to the disclosure.

### 5 Delegation

5.1 The Consultant shall have discretion as to which of its employees are assigned to perform its services but shall consult with the Client concerning any significant changes.

## 6 Intellectual Property

The Consultant undertakes not to cause or permit anything which may damage or endanger the intellectual property of the Client or the Client's title to it or assist or allow others to do so.

## 7 Liability and Insurance

7.1 The Consultant shall not be liable to the Client for loss or damage to the Client's property unless due to the negligence or other failure of the Consultant to perform its obligations under this agreement or the general law.

7.2 The Consultant shall have no liability to the Client for any indirect, special or consequential loss to the Client arising out of or in connection with the provision of any goods or services pursuant to this agreement (except in respect of death or personal injury resulting from negligence) and the total liability of the Consultant for any other loss of the Client arising pursuant to this agreement in respect of any one event or series of connected events shall not exceed the indemnity cover (if any) arranged pursuant to the Terms of Engagement or if no such cover has been agreed between the Client and the Consultant the charges payable by the Client in respect of the Consultant's services hereunder.

## 8 Termination for Breach

The following obligations are conditions of this agreement and any breach of them shall entitle the party not in breach to terminate this agreement by immediate written notice and the rights and liabilities of the parties shall then be determined in accordance with clause 9:

8.1 Failure on the part of the Client to make punctual payment of all sums due to the Consultant under the terms of this agreement.

8.2 Failure on the part of the Consultant to remedy any breach of its obligations hereunder within a reasonable time following written notice from the Client which: refers to this clause; specifies the breach with full particulars; indicates how the breach is to be remedied and specifies the Client's opinion of a reasonable time for remedy.

8.3 The levying of distress or execution against the Client or the making by it of any composition or arrangement with creditors or the presentation of a

petition for the Client's liquidation or bankruptcy or administration or the appointment of a receiver over any part of the Client's assets.

8.4 The doing or permitting of any act by which the Consultant's rights in any intellectual property may be prejudiced or put in jeopardy.

8.5 Any serious or persistent breach by the Client of its obligations hereunder.

## 9 Termination and Consequences

In the event of this agreement being terminated whether by effluxion of time, notice, breach or otherwise and without prejudice to any other remedy available to the Consultant the Client shall immediately pay to the Consultant:

9.1 any sums due under the terms of this agreement and

9.2 in the event of termination by reason of sub-clauses 8.1, 8.3, 8.4 or 8.5, any further sums which would but for the termination of this agreement have fallen due by the end of the Consultant's engagement less a discount for any accelerated payment at the rate of 5% per annum.

## 10 Consultant's Outputs, Materials and Information

10.1 The Client and the Consultant undertake with each other not during the course of this contract to infringe the intellectual property rights of any third party.

## 11 Consultant's References to Client

11.1 Subject to clause 4 (Confidentiality) the Consultant shall be entitled to refer to its provision of services to the Client for any purpose in connection with the Consultant's business provided that prior to any published reference to the Client the Consultant shall give the Client an opportunity to object to such reference and in the event of objection upon reasonable grounds shall not refer to the Client as proposed.

## 12 Force Majeure

Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this agreement impossible, whereupon all money accrued due under this agreement shall be paid.

## 13 Miscellaneous

### 13.1 Warranty

Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.

### 13.2 Whole agreement

Each party acknowledges that this agreement (as varied) and the conditions contain the whole agreement between the parties and that it is not relied upon any oral or written representations made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

### 13.3 Change of address

Each of the parties shall give notice to the other of the change or acquisition of any address or telephone, telex or similar numbers at the earliest possible opportunity but in any event within 24 hours of such change or acquisition.

### 13.4 Notices

Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or registered post to the address of the relevant party shown at the head of this agreement or such other address substituted in writing under clause 13.3 (and if more than one address any such address) or by facsimile transmission or by electronic mail or by telex and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail or by telex to the correct facsimile number or electronic mail number of the addressee (with correct answer back).

### 13.5 Headings

Headings contained in this agreement are for reference purposes only and should not be incorporated into this agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

### 13.6 Joint and several

All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this agreement shall include all genders and the plural and the successor in title to the parties.

### 13.7 Proper law and jurisdiction

13.7.1 This agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

13.7.2 Any proceedings arising out of or in connection with this agreement may be brought in any court of competent jurisdiction in England or Wales.

13.7.3 The submission by the parties to such jurisdiction shall not limit the right of the Consultant to commence any proceedings arising out of this agreement in any other jurisdiction it may consider appropriate.

13.7.4 Any notice of proceedings or other notices in connection with or which would give effect to such proceedings may without prejudice to any other method of service be served upon any party in accordance with clause 13.4.

13.7.5 In the event that the Client is resident outside England or Wales, its address for service in England or Wales shall be the address for such service nominated in this agreement and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Client.

#### 13.8 Waiver

Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or the right at any time subsequently to enforce all terms and conditions of this agreement.

#### 14 Mediation

In the event of any dispute arising between the parties in connection with this agreement, the parties will in good faith seek to resolve that dispute through mediation. The mediator shall be agreed upon within seven days of one party requesting mediation, failing which the mediator shall be appointed by the then Professional Standards Manager of the Institute of Management Consultancy. Unless otherwise agreed, the parties shall share equally the costs of the mediation. If the dispute is not resolved within 30 days or one of the parties refuses to participate in mediation, the dispute shall be resolved by way of litigation. Nothing in this clause shall prevent either party seeking a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary nor shall the Consultant be precluded from issuing proceedings or taking any other step in relation to the non-payment of monies due.

#### 15 Definitions

"The Assignment" means the Assignment referred to in the Terms of Engagement

"The Terms of Reference" means the Terms of Reference referred to in the Terms of Engagement

"The Terms of Engagement" means the written proposal submitted to the client by SPIRIT Public Sector Ltd.