



## 1 DEFINITIONS

### THE FOLLOWING DEFINITIONS SHALL APPLY TO THESE TERMS AND CONDITIONS:

"Contract"	shall mean these Terms and Conditions and the Service Level Agreement.
"Clause"	shall mean a clause of these terms and conditions.
"Client"	shall mean the person or entity identified in the Service Level Agreement as the client.
"Company"	shall mean The Culham Consultancy
"Confidential Information"	shall mean information, which the Company receives solely pursuant to its deliverance of the Services, and which the Client has clearly indicated to the Company is confidential and which is not in the public domain.
"Consultant"	shall mean any director, employee, sub-contractor or associate of the Company authorised by the Company to deliver Services on its behalf.
"Cost"	shall mean the sums payable by the Client to the Company for services delivered to the Client, which are described in the Service Level Agreement.
"Engagement"	shall mean the creation of a business relationship with a Consultant, either directly or indirectly, outside of the Contract for services considered similar to the Services.
"Proposal"	shall mean the proposed services offered to the Client under a draft Service Level Agreement.
"Services"	shall mean the health and safety services which the Company is to deliver which are described in detail within the Service Level Agreement.
"Service Level Agreement"	shall mean the detailed breakdown of services agreed within a proposal and accepted by the Client.

## 2 RESPONSIBILITIES OF THE CLIENT

- a. The Client shall use its reasonable endeavours to ensure that the Company and its Consultants shall have unhindered and reasonable access to the subject matter of the Services identified in the Service Level Agreement.
- b. The Client shall disclose to the Company (in writing where possible) all facts which are material to the provision of the Services and which the Client or any of its directors or employees should reasonably be aware of, as soon as is practicable.
- c. The Client shall pay the Cost in accordance with the Service Level Agreement.
- d. The Client shall reserve the right to increase the Cost charged (except where a fixed fee has already been agreed) by serving the Client notice in writing at least 30 days before the date on which such increase is to take effect. The increase shall, subject to the Client's right to terminate in accordance with clause 4c, take effect from the date specified in the notice.
- e. All invoices, which the Company shall provide to the Client pursuant to this Contract, shall be settled within 28 days from the date of such invoice. In default of this provision, the Client shall pay to the Company interest on money due at 2.5% over the "Bank of England" base rate.

## 3 RESPONSIBILITIES OF THE COMPANY

- a. Subject to the terms of this Contract, the Company shall deliver the Services.
- b. The Company shall deliver the Services solely in relation to the subject matter of the Services as expressly identified in the Service Level Agreement.
- c. Reasonable failure by the Company to deliver the Services in accordance with the timelines specified in the Service Level Agreement shall not amount to material breach of this Contract.
- d. The Company shall not disclose Confidential Information to any third party, unless necessary in the delivery of the Services or as may be required by law.
- e. Each Consultant will conduct himself professionally and with courtesy and tact in undertaking work pursuant to this Contract.
- f. Each Consultant shall have such qualifications and/or experience as may reasonably be necessary for the work he/she undertakes pursuant to this Contract.
- g. The Company undertakes to deal with each Client in a manner described within the Company's "Ethical Charter" which is freely available from the Company.
- h. The Client and the Company shall each be entitled to request that the other agree that the Service Level Agreement be amended such as to increase the Services. In the event that such request is made, the Company shall notify the Client of the corresponding increase in the Cost. If the Client and the Company both agree the specified increase in the Services and the corresponding increase in the Cost, then that Contract shall be effected by amendment to this Contract as specified at Clause 6(c).
- i. Insofar as the Company shall receive or become aware of any information pursuant to this Contract, the Company shall not consider the materiality of that information for the purposes of the Client's obligations or disclosure under any contract of insurance or reinsurance and the Company shall not disclose such information to underwriters on behalf of the Client, unless may be expressly instructed in writing by the Client.

## 4 DURATION

- a. This Contract shall come into force on the commencement date specified in the Service Level Agreement and shall continue in force until either the Company and the Client have completed deliverance of all obligations under this Contract or (if applicable) the termination date specified in the Service Level Agreement, unless and until terminated in accordance with the following provisions of this clause 5.
- b. The Company shall be entitled to terminate this Contract with immediate effect in the event that the Client fails to pay any sum due under this Contract within 60 days of the date of the Company's corresponding invoice.
- c. The Client shall be entitled to terminate this Contract by giving written notice of termination within 30 days of service on it of a notice of Cost increase pursuant to clause 2(d). In the event that the Client gives such notice, this Contract shall terminate 30 days following service of the same.
- d. If there is no specification as to when delivery of the Services shall be completed, then the Client and the Company shall each be entitled to terminate this Contract by written notice to take effect 60 days following the service of such notice.
- e. The Client and the Company shall each be entitled to terminate this Contract by written notice to the other with immediate effect:
  - i. If the other commits any continuing or material breach of this Contract (Save for any breach which is caused by the party seeking to rely on it) and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
  - ii. If either the Company or the Client takes possession of a receiver who is appointed over any of the property or assets of the other; or
  - iii. If the other makes any voluntary arrangement with its creditors or becomes subject to an administration order; or
  - iv. If the other goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that another company resulting from the reorganisation



which is acceptable to the party entitled to terminate (such acceptance not to be unreasonably withheld) effectively agrees to be bound by or to assume the obligations imposed on that other party under this Contract); or If the other ceases, or threatens to cease, to carry on business.

- f. Termination of this Contract shall not prejudice any rights or remedies under this Contract that may have accrued to the Company or the Client as at the date of termination.
- g. The Company's obligations under clause 3(d) shall not lapse until 12 months following termination.

## **5 EXTENT OF LIABILITY**

- a. The Company shall be liable for, and shall fully indemnify the Client against any expense, loss, liability, claim or proceedings arising under any statute or at common law in respect of personal injury to or the death of any person, or in respect of any loss or damage whatever to any property real or personal in so far as such injury, death, loss or damage arises out of the deliverance of the services and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Company or its agents.
- b. In no event shall the Company be liable to the Client for loss of profits or other indirect or consequential loss of any kind whether arising from negligence, breach of contract or otherwise.
- c. Subject to Clauses 5(a) and 5(b), under no circumstances shall the aggregate liability of the Company to the Client under this Contract or in tort exceed the lower of one million pounds sterling or ten times the total amount paid and/or due and owing by the Client to the Company under this Contract.
- d. The Client shall fully indemnify the Company in respect of any liability, which the Company may incur directly, or indirectly in relation to any loss or damage (other than death or personal injury resulting from the negligence of the Company or its agents) suffered by any third party by reason of the deliverance by the Company of its Services.

## **6 MISCELLANEOUS**

- a. In the event of conflict between these terms and conditions and the Service Level Agreement, then these terms and conditions shall take precedence.
- b. Unless specified to the contrary elsewhere in this Contract, any variation to this Contract shall be effective only if agreed in writing and agreed by both the Client and the Company.
- c. If any provision of this Contract is held by any court or other competent authority to be void or unenforceable in whole or in part, the other provisions of this Contract and the remainder of the affected provisions shall continue to be valid.
- d. In the event the circumstances outside the Company's or the Client's reasonable control prevent that party from or delay it in delivering some of all of its obligations under this Contract, then that party shall not be liable to the other in respect of the same, save that this provision shall not apply to obligations under Clauses 3(c), 3(e) and 3(f).
- e. This Contract shall be governed by and construed in accordance with English law and the Courts of England shall have exclusive jurisdiction.
- f. No breach of this Contract by the Company or the Client shall be or shall be deemed to be waived by the other unless it is expressly waived. Waiver of one breach shall not be deemed to be waiver of another substantially similar or identical breach.
- g. This Contract comprises the entire Contract between the Company and the Client and no facts shall give rise to additional or different obligations in contract or tort or otherwise in relation to the subject of this Contract, unless may be required by law.
- h. The Company shall retain ownership of its intellectual property and other proprietary rights, insofar as intellectual property or other proprietary rights may be developed by the Company in its deliverance of the Services, such rights shall be the property of the Company.