

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 11 (LIABILITY and INDEMNITY) and CLAUSE 7 (PAYMENT).

## 1 Application and Entire Agreement

- 1.1 These Terms and Conditions apply to the provision of the services detailed in our quotation ("**Services**") by Adjuvo Consulting Limited a company registered in England and Wales under number 11693818 whose registered office is at 3 The Mount, Trumps Green, Surrey, GU25 4EJ (**We** or **Us** or **Surveyor** or **Expert** or **Supplier**) to the person buying the services (**You** or **Appointer** or **Client** or **Customer**).
- 1.2 These Terms and Conditions and our quotation and specification (the **Contract**) constitutes the entire agreement between us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 1.3 You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
- 1.4 You are deemed to have accepted these Terms and Conditions when you accept our quotation in writing or from the date of any performance of the Services (whichever happens earlier).
- 1.5 The **Appointor** has appointed the **Expert** or **Surveyor** to provide **Services** in accordance with these Terms of Engagement for such period as to allow the Expert or Surveyor to complete his Instructions, unless determined by either party in writing.
- 1.6 No request for Services issued by the **Client** shall be deemed to be accepted by the Surveyor until a written acknowledgement of such request is issued by the Surveyor or (if earlier) the Surveyor performs the Services.
- 1.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 1.8 Any quotation given by the **Supplier** shall not constitute an offer and is only valid for a period of 15 Business Days from its date of issue.
- 1.9 Nothing in this clause shall limit or exclude any liability for fraud.

## 2 Interpretation

- 2.1 The headings in these Terms and Conditions are for convenience only and do not affect their interpretation.
- 2.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

- 2.3 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms
  - 2.4 Words imparting the singular number shall include the plural and vice-versa.
  - 2.5 References to the masculine gender shall be deemed to include the feminine.
- ## 3 Definitions – Unless the context otherwise requires
- 3.1 A "**business day**" means any day other than a Saturday, Sunday or bank holiday in England and Wales.
  - 3.2 "**Surveyor**" means the business whose quotation for the Work is accepted by and on behalf of the Client and includes the Surveyor's successors and permitted assigns. The Surveyor will be a member of the Royal Institution of Chartered Surveyors, who has the skills, knowledge, training, experience and expertise to provide the services.
  - 3.3 "**Expert**" means the person appointed to give or prepare expert evidence for the purpose of Court proceedings.
  - 3.4 "**Client**" means the person(s), government department, local authority, firm, company or other body for whose benefit the Expert or Surveyor has been instructed to provide his services, this definition including, if appropriate, the Appointor.
  - 3.5 "**Appointor**" means the lawyer, insurer, government department, local authority, firm, company or other body or person(s), including, in the event of a direct appointment, the Client, instructing the Expert, this definition including, if appropriate, the Client.
  - 3.6 "**Customer**" means the Client or Appointer purchasing the Service from the Supplier.
  - 3.7 "**Supplier**" means the Expert or Surveyor providing the Service.
  - 3.8 "**Contract**" means the agreement concluded between the Expert or Surveyor and the Client or Appointer for the supply of the Services including these Terms and Conditions, all Specifications and other documents which are relevant to the Contract.
  - 3.9 "**Work**" means the surveying, mapping, setting out, research, report writing, advocacy and advisory or any other service to be executed and all supporting Plans to be produced and supplied by the Surveyor in accordance with the Specification and includes any additional work requested by the Client
  - 3.10 "**Instructions**" includes, in addition to the Appointor's requirements, such services as may be required of the Expert to comply with an order, direction or rule of a Court.
  - 3.11 "**Service**" means the services, work and deliverables to be supplied by the surveyor or Expert as set out in the quotation, specification and any other supporting documentation

- 3.12 **"Specification"** means the detailed description or specification of the Services provided, in writing, by the Surveyor or Expert to the Appointor or Client.
- 3.13 **"Deliverables"** means the deliverables set out more specifically in the quotation and specification, produced by the Supplier for the Customer
- 3.14 **"Fee"** means the charges payable by the Customer to the Supplier for the supply of the Services in accordance with Clause 6 below.
- 3.15 **"Customer Default"** has the meaning specified in Clause 5 below
- 3.16 **"Plans"** means the drawings, digital data, photographs, listings, title documents, client papers, reports or any other supporting documentation. Where necessary Plans also refers to the plan deliverables produced by the supplier for the customer as part of the Service.
- 3.17 **"Site"** the place where Services are to be undertaken by the Surveyor or Expert, or the location under consideration and specified in the quotation, specification and Instruction.
- 3.18 **"Report"** means the report produced by, or on behalf of, the Expert or Surveyor under the Contract.
- 3.19 **"Court"** means any court of law, tribunal or arbitral body.
- 3.20 **"Conflict of Interest"** means a conflict of interest between the interests of the Expert or Surveyor and the Appointor or Client. In this regard, the Appointor agrees that the Expert or Surveyor may work for a variety of clients, who may look to the Expert or Surveyor for advice and assistance in a variety of circumstances, including but not limited to the supply of expert witness or consultancy services. Because of the potential range of client engagements, it is possible that there could be an adverse relationship between the Appointor or Client and one of the current or future clients of the Expert or Surveyor. If the Expert or Surveyor is not advising the Appointor in the matter which is the subject of the Instructions, the Appointor agrees that the Expert or Surveyor shall be free to represent the other client. The Expert or Surveyor may represent another client adverse to the Appointor in any matter unrelated to the matter which is the subject of these Instructions. The Expert or Surveyor's acceptance of the Instructions shall not include the acceptance of any instructions from or duty towards any individual or entities that are shareholders, officers, directors, joint venturers, partners, employees or members of the Appointor.
- 3.21 **"fees"** means the Expert or Surveyors scale of professional charges, or contract price, Disbursements and Value Added Tax (VAT), or equivalent tax where applicable, for services provided for carrying out the Instructions or Contract.
- 3.22 **"Deposit"** means the fee payable in advance of the start of the services more particularly described in clause 6
- 3.23 **"Disbursements"** means all reasonable expenses incurred in carrying out the Instructions or obligations arising therefrom. By way of non-exclusive example, they include the costs of relevant photography, video recordings, computer software, reproduction of drawings and diagrams, printing and duplicating, the cost of obtaining published documents, as well as all appropriate out of pocket expenses including car mileage, first class rail travel, business class air fares, reasonable refreshments and four-star hotel accommodation where an overnight stay is necessary. VAT or the equivalent tax will be charged where applicable
- 3.24 **"Data Protection Legislation"** means the Electronic Communications Data Protection Directive (2002/58/EC); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); the GDPR; any applicable legislation adopted by the United Kingdom pre or post the United Kingdom ceasing to be a Member State of the European Union (whichever is in force at the time of this Agreement); the Data Protection Act 2018; and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued from time to time by the Information Commissioner's Office or the European Data Protection Board; and any statutory modification or re-enactment thereof and any applicable codes of conduct.
- ## 4 Supply of Services – The Supplier Shall
- 4.1 Supply the Services to the Customer in accordance with the Specification in all material respects.
- 4.2 We warrant that we will use reasonable care and skill in our performance of the Services which will comply with the quotation, including any specification in all material respects.
- 4.3 The Supplier reserves the right to amend the Services or Specification if necessary, to comply with any applicable law or regulatory requirement or safety requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 4.4 We will use our reasonable endeavours to complete the performance of the Services within the time agreed or as set out in the quotation; however, time shall not be of the essence in the performance of our obligations.
- 4.5 Work which the Client reasonably considers fails to meet the standards contained in the Specification shall be returned to the Surveyor within 10 days of receipt for correction at the Surveyor's own expense. If such Work is found, on being checked by the Surveyor, to be within the standards specified then the costs incurred by the Surveyor in checking shall be payable by the Client.
- 4.6 The Surveyor or Expert shall perform the Services at the Site or other agreed location when necessary, and remotely for conducting office or desk-based work.
- 4.7 All these Terms and Conditions apply to the supply of any goods as well as Services unless we specify otherwise.
- ## 4.8 Expert Work
- 4.9 When engaged in Expert work the Expert will only undertake those parts of a case in respect of which the Expert considers that he has adequate

- qualifications and experience.
- 4.10 Use reasonable skill and care in the performance of the Instructions received, giving due consideration to all material facts and documentation disclosed to him by the Appointer and taking care to ensure that such report in its final form as may be issued by him shall accurately represent the Expert's opinion, honestly held, as to the matters in issue.
- 4.11 Comply with the appropriate codes of practice and guidelines.
- 4.12 Act with objectivity and independence with regard to his Instructions and, in the event of a conflict between his duties to the Client and to the Court, shall hold his duties to the Court paramount.
- 4.13 Promptly notify the Appointer of any matter including a Conflict of Interest or lack of suitable qualifications and experience which could disqualify the Expert or render it undesirable for him to have continued involvement in the case.
- 4.14 Endeavour to make himself available for all hearings, meetings and other appointments of which he has received adequate written notice.
- 4.15 Not without good cause discharge himself from the appointment as Expert.
- 4.16 Preserve confidentiality save as expressly or by necessary implication authorised to the contrary. The Expert shall be entitled to comply with any legislation, order or rule of Court or of law that may oblige him to disclose information to third parties and to grant thereby to authorities such as the police, tax, customs, regulatory or judicial authorities, rights of inspection and copying of documentation. If practicable and permitted, the Expert shall use reasonable endeavours to notify the Appointer of any request for such access to information or documentation. The Expert shall be entitled to charge for his reasonable costs of dealing with such requests as a result of having accepted the Instructions.
- 4.17 The Expert may wish to disclose that he has advised the Appointer for the purposes of marketing, publicising or selling his services. To the extent that such matters have properly become publicly known, the Expert shall be entitled to identify the Appointer by name and indicate the general nature of the Instructions.
- 4.18 The Expert may disclose any information to his liability underwriters, brokers, advisers, regulators and auditors pursuant to his duties to provide information to such persons.
- 4.19 In the interests of efficiency and cost, the Expert shall be entitled at his sole discretion and upon notice to the Appointer, to engage the services of outsourced assistance and service providers. The Expert shall utilise only such parties as have agreed to preserve the confidentiality of the Instructions.
- 4.20 Process personal data received pursuant to and for the purposes of performing the Instructions in accordance with the relevant law and Clause 10 below. If an individual requests in writing access to personal data relating to them which is processed by the Expert, such data as is not privileged may be provided by the Expert to them, and the work and costs involved in providing that data shall be treated as part of the Instructions.
- 4.21 Not negotiate with an opposing party, expert or adviser unless specifically instructed by the Appointer so to do. For avoidance of doubt this clause does not apply to any order or direction of a Court.
- 4.22 Attend such meetings of experts as ordered by the Court or may be issued by him shall accurately represent the Expert 's as required by the Appointer; and at any such meeting adhere strictly to any terms of reference set down in writing.
- 4.23 Provide as part of the Instructions all relevant information to allow the Appointer to defend or recover the Expert's Fees at any assessment of costs.
- 4.24 Promptly respond to any complaint of the Appointer.
- 4.25 Be entitled to rely on the completeness and accuracy of all materials supplied to him by the Appointer, save to the extent otherwise advised by the Appointer in writing at the time of supply thereof, or within a reasonable time such as to allow the Expert to review and if necessary, revise his opinion in relation thereto.
- 4.26 Be entitled to send documents and communicate by email unless otherwise expressly requested or directed by the Appointer.
- 5 Your obligations – The Appointer or Client shall:**
- 5.1 Warrant that all relevant information has been provided regarding the nature and scope of the Work and any unusual conditions which may apply.
- 5.2 Obtain any permission, consents, licenses or otherwise and provide access to any and all relevant information, documents, materials, properties and any other matters which Adjuvo Consulting Ltd requires in order to provide the Services before the Service is to start.
- 5.3 Promptly deliver to the Expert full instructions in writing supported by legible copies of all relevant documents together with a timetable for the provision of the Expert 's services and at such times as the timetable is revised then such revision shall be notified promptly to the Expert.
- 5.4 Where it is necessary for the Surveyor to have access on to private property the Client will be responsible for obtaining any necessary permissions. The Client will also furnish the Surveyor with a list of the occupiers and any letters of identification which may be needed before the Service is to start.
- 5.5 For the duration of the Contract, the Client grants the Surveyor and its employees, agents and sub-contractors a right of access and as necessary to occupy The Site for the purposes of carrying out its obligations under the Contract.
- 5.6 The Client shall ensure that the Site is safe, and the Client and Appointer shall comply with all statutory requirements as regards health and safety at work and any other relevant rules and regulations.
- 5.7 The Client shall inform the Surveyor of all health and safety rules and regulations, Risk Register and Issues, Induction Routines and any other reasonable Security requirements that apply to the Site, or any part of it.
- 5.8 Neither personally, nor permit others to, alter add to or remove any text of or document supporting a

report delivered by the Expert or Surveyor nor by any act or omission compromise or otherwise seek to influence the Expert's overriding duty to the Court in relation to Expert Work.

- 5.9 In particular but without limitation, the Appointor shall not seek to induce the Expert or Surveyor to provide extended credit terms or other indulgences or arrangements in return for promises or potential opportunities for future work, or inclusion of the Expert on the Appointor's list or panel of approved experts
- 5.10 As soon as is reasonably practicable notify the Expert in writing of those services which the Expert shall provide pursuant to any Court order and shall promptly deliver to the Expert a copy of such order. The Appointor shall advise the Expert of any change or correction to any information as soon as it occurs or is discovered.
- 5.11 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 5.11.1 Without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 5.11.2 The Supplier shall be under no obligation to refund any part of the Price or any other sums paid in advance in respect to the Services or additional services not provided during a period of suspension.
- 5.11.3 The Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 5.11
- 5.11.4 The Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 5.12 Ensure that The Customer is at all times in funds promptly to discharge the Fees of the Expert or Surveyor.
- 5.13 Unless otherwise expressly agreed, pay in full the Expert 's Fees irrespective of the outcome of any assessment of costs or any claim that may be made against or in relation to the Expert or his services.
- 5.14 Adjuvo Consulting Ltd is not liable for any delay or failure to provide the Services if this is caused by Your failure to comply with the provisions of this section.
- 5.15 If You do not comply with clauses in this section Adjuvo Consulting Ltd can terminate the Services.
- 6 Charges - Fees, Disbursements and Deposit**
- 6.1 The fees ("**Fees**") for the Services are set out in the quotation and are on a time and materials basis and defined in the Expert or Surveyor's letter confirming

the Appointment which shall form part of these Terms.

- 6.2 In addition to the Fees, we can recover from you
- 6.2.1 a) reasonable incidental expenses including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses,
- 6.2.2 b) the cost of services provided by third parties and required by us for the performance of the Services, and
- 6.2.3 c) the cost of any materials required for the provision of the Services such as, but not limited to, Her Majesty's Land Registry ("HMLR") Title Plans and Office Copy entries, historic mapping and aerial photography and Site pegs and markers.
- 6.3 You must pay us for any additional services provided by us that are not specified in the quotation in accordance with our then current, applicable hourly rate in effect at the time of performance or such other rate as may be agreed between us. The provisions of Clause 6.2 also apply to these additional services.
- 6.4 For the avoidance of doubt the rate of Fees charged is the same for all activities and includes but is not limited to the following:
- 6.4.1 Inspection, analysis and study of documents, data or sites inspection and surveys, consultation, drawings, preparation, advice, completion and engrossment of reports, attendance at meetings or hearings.
- 6.4.2 Preparation of reports and answers pursuant to Court rules, orders or practice directions.
- 6.4.3 Travel and waiting for client, appointer, court attendance or Client's Agent.
- 6.4.4 Time reserved by instruction, witness summons or order of the Court for a hearing, meeting or other engagement, even if the Expert's services are not in the event called upon.
- 6.4.5 Where specific instructions have been given to the Expert for an inspection, examination, meeting, visit, report or Court appearance and where, due to settlement of the dispute or any other reason not being the default of the Expert, the reservation of time has been cancelled or the Appointment has been terminated.
- 6.4.6 Requests by the Expert for directions from the Court.
- 6.5 The Fees are exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.
- 6.6 Deposit**
- 6.7 You must pay us a deposit ("**Deposit**") of 50% of the total estimated fee as detailed in the quotation within 5 business days of acceptance to confirm the engagement.
- 6.8 If you do not pay the Deposit to us according to the clause above, we can either withhold provision of the Services until the Deposit is received or can terminate under the clause below ("**Termination**").
- 6.9 The Deposit is non-refundable unless we fail to provide the Services and are at fault for such failure (where the failure is not our fault, no refund will be made).

## 7 Payment

- 7.1 We will invoice the Client or Appointer an estimate of the anticipated fees and disbursements;
  - 7.1.1 a) Before starting the service for all non-court-based work;
  - 7.1.2 b) At such intervals as The Expert considers fit for court work, but not less than monthly.
- 7.2 Payment of each invoice is due on presentation, subject to any written waiver or indulgence granted by the Expert, save that such indulgence shall apply only to the invoice in question.
- 7.3 Full settlement of all invoices for non-court-based work is required before delivery of any reports, documents, drawings or data to the customer.
- 7.4 No payment shall be deemed to have been received until the Surveyor has received cleared funds.
- 7.5 The instruction and remuneration of the Expert shall not be made on any contingent or conditional basis.
- 7.6 You must pay the Fees due within 7 days of the date of our invoice or otherwise in accordance with any credit terms agreed between us.
- 7.7 All payments due under these Terms and Conditions must be made in full without any deduction or withholding except as required by law and neither of us can assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
- 7.8 All payments must be made in British Pounds unless otherwise agreed in writing between us.
- 7.9 Receipts for payment will be issued by us only at your request.
- 7.10 The Appointer and the Client shall be jointly and severally liable for payment of the Expert's Fees.
- 7.11 If you do not pay within the period set out above, we can suspend any further provision of the Services and cancel any future services which have been ordered by, or otherwise arranged with, you.
- 7.12 The Supplier shall at his discretion be entitled to invoice and recover interest at 1.5% per month above the base lending rate of the Bank of England from time to time on all unpaid invoices after 30 days and shall be entitled to recover the full amount of his administrative and legal costs and expenses incurred in recovering unpaid Fees.

## 8 Cancellation and amendment

- 8.1 We can withdraw, cancel or amend a quotation if it has not been accepted by you, or if the Services have not started, within a period of 7 days from the date of the quotation, (unless the quotation has been withdrawn).
- 8.2 Either we or you can cancel an order for any reason prior to your acceptance (or rejection) of the quotation.
- 8.3 If you want to amend any details of the Services, you must tell us in writing as soon as possible. We will use reasonable endeavours to make any required changes and additional costs will be included in the Fees and invoiced to you.
- 8.4 If, due to circumstances beyond our control, including those set out in the clause below (**Circumstances beyond a party's control**), we have to make any

change in the Services or how they are provided, we will notify you immediately. We will use reasonable endeavours to keep any such changes to a minimum.

## 9 Intellectual property

- 9.1 We reserve all copyright and any other intellectual property rights which may subsist in all original work created by the Expert or Surveyor and any goods supplied in connection with the provision of the Services. The Expert or Surveyor asserts all his moral rights.
- 9.2 We reserve the right to take any appropriate action to restrain or prevent the infringement of such intellectual property rights.
- 9.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 9.4 Upon settlement of all outstanding invoices presented by the Supplier (subject only to such indulgence as the Supplier may grant ), the Supplier shall be deemed to grant to the Appointor a non-exclusive licence to use all the Supplier's work covered by such Fees, such licence to extend to the purpose of carrying out the Client's instructions in the matter in which this Appointment has been made, and such parallel or related matters in other tribunals and jurisdictions as may arise, but for no other purpose nor for any other matter, subject to a Court order to the contrary.
- 9.5 Such licence may not be transferred to a Third Party without the written agreement of the Surveyor. The Surveyor may provide Plans prior to the issue of an invoice, under a temporary licence arrangement. The Client shall not remove any markings identifying the Surveyor as the owner of the Copyright.
- 9.6 Each party (the "indemnifier") shall indemnify and keep indemnified the other party (the "recipient") against, and hold it harmless from, all claims, liabilities, costs (including reasonable legal fees and disbursements) expenses, demands or damages brought or made against or incurred by the recipient pursuant to any claim by a third party that any intellectual property, information, material and/or data supplied by or on behalf of the indemnifier and used or processed by the recipient or any of its sub-contractors in connection with the Contract infringes the intellectual property of any third party

## 10 Data Protection

- 10.1 When supplying the Services to the Customer, the Service Provider may gain access to and/or acquire the ability to transfer, store or process personal data of employees of the Customer.
- 10.2 The parties agree that where such processing of personal data takes place, the Customer shall be the 'data controller' and the Service Provider shall be the 'data processor' as defined in the General Data Protection Regulation (**GDPR**) as may be amended, extended and/or re-enacted from time to time.
- 10.3 For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and

- 'Data Subject' shall have the same meaning as in the GDPR.
- 10.4 For the purposes of Data Protection Legislation the Service Provider shall only Process Personal Data, to the extent reasonably required to enable it to supply the Services as mentioned in these terms and conditions or as requested by and agreed with the Customer, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party's purposes.
- 10.5 The Customer warrants to the Supplier that where they are sharing information about an identifiable individual, that the Customer has authority to share this information with the Supplier.
- 10.6 The Service Provider shall not disclose Personal Data to any third parties other than employees, directors, agents, sub-contractors or advisors on a strict 'need-to-know' basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.
- 10.7 The Service Provider shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Service Provider on behalf of the Customer.
- 10.8 Further information about the Service Provider's approach to data protection are specified in its Privacy Notice, which can be found on our website. For any enquiries or complaints regarding data privacy, you can email: martin@adjuvo.biz.
- 11 Liability and Indemnity - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 11.1 The Supplier as a Chartered Surveyor and in compliance with the regulations laid down by RICS, has obtained insurance in respect of our own legal liability to cover Public Liability for individual claims not exceeding (£1m) per claim and cover Professional Indemnity for individual claims not exceeding (£500k). The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 11.2 Our liability under these Terms and Conditions, and in breach of statutory duty, and in tort or misrepresentation or otherwise, shall be limited as set out in this section.
- 11.3 The total amount of our liability is limited to the total amount of the Expert's professional fees charged and paid in respect of the Instructions under this contract. For this purpose, fees shall not include disbursements or VAT or any equivalent tax.
- 11.4 We are not liable (whether caused by our employees, agents or otherwise) in connection with our provision of the Services or the performance of any of our other obligations under these Terms and Conditions or the quotation for:
- 11.4.1 any indirect, special or consequential loss, damage, costs, or expenses or;
- 11.4.2 any loss of profits; loss of anticipated profits; loss of sales or business; loss of agreements or contracts; loss of use or corruption of software, data or information; loss of reputation or goodwill; business interruption; or, other third-party claims;
- 11.4.3 any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; or
- 11.4.4 any losses caused directly or indirectly by any failure or your breach in relation to your obligations; or
- 11.4.5 any losses arising directly or indirectly from the choice of Services and how they will meet your requirements or your use of the Services or any goods supplied in connection with the Services.
- 11.5 The Surveyor or Expert shall not be liable for any inaccuracy of the Plans beyond the specified scale or accuracy, or for any matters resulting from their use for purposes other than that stated in the Contract. No liability shall attach to the Surveyor or Expert in respect of any consequential loss or damage suffered by the Client.
- 11.6 The surveyor shall not be responsible for the insurance of Work installed in or on property or the Site under the control of the Client.
- 11.7 No liability is accepted, and no reliance shall be placed on any advice not given in writing, or any draft version of any report prepared by the Expert or Surveyor.
- 11.8 You must indemnify us against all damages, costs, claims and expenses suffered by us arising from any loss or damage to any equipment (including that belonging to third parties) caused by you or your agents or employees.
- 11.9 The Supplier has given commitments as to compliance of the Services with relevant specifications in Clause 4 (Supply of Services). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.10 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred **OR** its having grounds to make a claim in respect of the event and shall expire 2 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.11 In the event that a loss is caused to the Appointor or Client which is caused partly by the Expert and partly by the contributory acts or omissions of others acting on the Appointor or Client's behalf, the Expert's liability (subject always to any other provisions of this Agreement) shall not exceed the Expert's proportionate responsibility for such loss, having regard to the proportionate responsibility for that loss of the others acting for the Appointor, as agreed, or as may be decided by a court or other competent tribunal.

- 11.12 The Expert's overriding duty is to the Court. Subject thereto, the Expert owes his duty to the Appointor and to no other party. The Appointor shall make it clear to any person to whom the Expert's work product is disseminated that no liability is accepted by the Expert to anyone other than the Court and the Appointor.
- 11.13 If it were finally determined by a court or other competent tribunal that a Loss has been suffered as a result of recklessness, bad faith, fraud, or willful misconduct by the Expert, such Loss shall not be covered by the indemnity in Clause 11. For the avoidance of doubt, nothing in this Clause shall relieve the Appointor or Client of its obligations to make payment pursuant to Clauses 5.13 and Clause 7&6 respectively unless and until such final determination is made.
- 11.14 Nothing in these Terms and Conditions shall limit or exclude our liability for death or personal injury caused by our negligence, or for any fraudulent misrepresentation, or for any other matters for which it would be unlawful to exclude or limit liability.
- 11.15 This clause 11 (Liability and Indemnity) shall survive termination or expiry of the Contract.

## 12 Termination

- 12.1 Without affecting any other right or remedy available to it;
- 12.2 Either party may terminate the Contract by giving the other party 10 business days written notice
- 12.3 Either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.3.1 the other party commits a material breach of any term of the Contract and if such a breach is remediable fails to remedy that breach within 10 days of that party being notified in writing to do so;
- 12.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 12.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 12.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.4 Without affecting any other right or remedy available to it; the Supplier may terminate the Contract with

immediate effect by giving written notice to the Customer if:

- 12.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 12.4.2 there is a change of control of the Customer.
- 12.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- 12.5.1 the Customer fails to pay any amount due under the Contract on the due date for payment.
- 12.5.2 the Customer becomes subject to any of the events listed in Clause 12.3.3 or Clause 12.3.4, or the Supplier reasonably believes that the Customer is about to become subject to them
- 12.5.3 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in Clause 12.3.2

## 13 Consequences of Termination

- 13.1 On termination or expiry of the Contract:
- 13.2 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 13.3 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 13.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 14 GENERAL

### 14.1 Force Majeure - Circumstances beyond a party's control

- 14.1.1 Neither party is liable for any failure or delay in performing our obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question. If the delay continues for a period of 90 days, either of us may terminate or cancel the Services to be carried out under these Terms and Conditions.

## 14.2 Sub-Contracting and Assignment

- 14.2.1 We can at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of our rights under these Terms and Conditions and can subcontract or delegate in any manner any or all of our obligations to any third party.
- 14.2.2 All sub-contracted Land Survey work will be to a responsible and experienced sub-contractor but will remain the responsibility of the supplier as if it had not been sub-contracted.
- 14.2.3 You must not, without our prior written consent, assign, transfer, charge, sub-contract, or deal in any other manner with all or any of your rights or obligations under these Terms and Conditions.

## 14.3 Confidentiality.

- 14.3.1 Each party undertakes that it shall not at any time **OR** at any time during the Contract, and for a period of six months after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clauses 14.3.2 – 14.3.4 below.
- 14.3.2 Each party may disclose the other party's confidential information:
- 14.3.3 to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this Clause 14.3
- 14.3.4 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3.5 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract

## 14.4 Notice and Communications

- 14.4.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office, if a company, or its principal place of business in any other case; or sent by fax to its main fax number or sent by email to the address specified in the contract
- 14.4.2 Any notice or communication shall be deemed to have been received:
- 14.4.3 if delivered by hand, at the time the notice is left at the proper address;
- 14.4.4 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 14.4.5 if sent by fax or email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause business hours means 9.00am to 5.00pm Monday to

Friday on a day that is not a public holiday in the place of receipt.

- 14.4.6 This Clause 14.4 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution

## 14.5 Variation

- 14.5.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties or their authorised representatives.

## 14.6 No waiver

- 14.6.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 14.7 Severance

- 14.7.1 If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions will be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

## 14.8 Third party rights

- 14.8.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.8.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

## 14.9 Complaints Handling Procedure

- 14.9.1 In compliance with RICS rules and regulations the Chartered Surveyor will operate an internal complaint handling procedure ("CHP") which applies to all complaints and also sets a minimum standard of complaints handling. Complaints will be considered by a senior member of the firm or a designated complaints handler; if the complaint cannot be resolved it will be referred to an independent redress scheme. There are a number of redress schemes and the firm's CHP must give details of the redress scheme to which it refers complaints. The Surveyor will give you a copy if you ask.

## 14.10 Governing Law and Jurisdiction

- 14.10.1 This Agreement shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.

END.