

General Terms & Conditions of Engagement for Consultancy Services (the "Services")

1. THE CONSULTANT'S OBLIGATIONS

1.1 The Party Wall Consultancy (the "Consultant") shall perform the Services with reasonable skill, care and diligence on behalf of the Client (the "Client"), but:

- (i) no liability shall attach to the Consultant in respect of the Services except such liability as ought to be covered by the Professional Indemnity Insurance referred to in the Appointment Agreement for Consultancy Services;
- (ii) such liability shall be limited to the sum specified in the Appointment Agreement for Consultancy Services;
- (iii) where during the course of any building works being undertaken as part of the Consultancy Agreement the Consultant makes periodic visits to site to monitor the contractor's workmanship and progress, to check the use of materials, conformity to specification and to report generally on the progress and quality of the works, the Consultant shall not be required to make exhaustive or continuous inspections. Liability for the works shall be limited to omissions or errors reasonably discoverable by the Consultant undertaking periodic inspections of the site. Where frequent or constant inspection is necessary or required, a resident Consultant, clerk of works or resident engineer should be appointed by the Client to supervise the day-to-day administration of the project;
- (iv) it is agreed that the purpose of such inspections is the provision of information, rather than for the purpose of giving any approval to the project as a whole;
- (v) where the Client directly appoints a specialist Consultant or contractor or a works contractor, the Consultant shall not be liable for any loss, injury or damage incurred through the actions of the specialist Consultant or other contractor. The Consultant shall be responsible for the direction and integration of the specialist's Services or contractor's works, only where expressly required as a part of the 'Services'.

1.2 The Client, not the Consultant, shall satisfy him or herself as to the adequacy of the Professional Indemnity Insurance (PII) of other specialists and Consultants referred to.

1.3 The Client shall be responsible for obtaining and satisfying him or herself of the adequacy of warranties from other specialists and Consultants. The Consultant shall not be obliged to provide any professional consultant's certificate (i.e. Council of Mortgage Lenders type), collateral warranty or guarantees of any sort.

1.4 The Consultant shall not, without the consent or authority of the Client, give to the main, or any other contractor, supplier or person, any instruction the necessary effect of which would be to materially vary the works, or increase the cost of, or time taken to complete, the works.

1.5 The Consultant shall promptly inform the Client in writing of the likely effect of anything relating to the Consultant's scope of work as defined herein which the Consultant believes would materially vary the works, increase the cost of, or time taken to complete, the works.

2. PAYMENT FOR THE CONSULTANT'S SERVICES

2.1 The Consultant shall be entitled to submit a fee invoice:

- (i) monthly, or at the conclusion of agreed service stages, whichever is the more frequent;
- (ii) at suspension or termination of the Services;
- (iii) when work proves to be abortive, in respect of that work;
- (iv) at conclusion of the Services.

2.2 Payments invoiced shall be calculated by reference to:

- (i) agreed hourly or unit rates;
- (ii) agreed service stage payments or lump sums;
- (iii) agreed fixed fees;
- (iv) agreed percentage fees;
- (v) agreed incentivised or contingency fees; or
- (vi) a fair proportion of any of the above at an agreed payment stage.

2.3 The Client shall pay the Consultant for the performance of the Services the fees and charges in such instalments as are set out in the Appointment Agreement. All fees and charges under the Agreement are exclusive of Value Added Tax (VAT), which if due at the time of billing, shall be paid concurrently in addition. The due date for payment shall be 14 (fourteen) days after the date of the submission of the invoice. The Consultant shall, on each invoice, confirm the basis on which the stated amount is calculated.

2.4 The final date for payment shall be 14 (fourteen) days after the due date for payment (unless otherwise stated), and payment shall be made no later than the final date for payment.

2.5 The Client must, not later than 5 (five) days after the due date for payment, give to the Consultant written notice stating the amount which the Client proposes to pay and the basis on which that amount is calculated. Where no such notice is given the amount to be paid is that stated in the invoice.

2.6 Where the Client intends to withhold payment of any amount either stated in the Consultant's invoice or in a written notice given by the Client under clause 2.5 above, the Client must give written notice to the Consultant not later than 5 (five) days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.

2.7 Any amounts due to the Consultant under this Agreement which remain unpaid by the Client after the final date for payment shall bear interest at a rate of 4% (four per cent) above the Bank of England Base Rate in force at the time, calculated from the date for final payment or from the date 7 (seven) days after publication of an adjudication settlement, whichever is the later.

2.8 In the event that the Client is in default over payment of amounts at the final date for payment and no notice of intention to withhold payment from such amount has been given under clause 2.6 above, the Consultant may suspend performance of any or all of the Services. This right is subjected to the Consultant first giving the Client not less than 7 (seven) days' written notice of such intention and stating the grounds for suspension. The right to suspend performance shall cease when the Client makes payment of the amount due including any associated accrued charges. Any such period of suspension shall be disregarded for the purpose of contractual time limits previously agreed for the completion of the Services. Such suspension shall not be treated as a suspension under clause 5 below.

2.9 The specified fees do not include, and the Consultant shall be entitled to reimbursement of expenditure comprising:

- (i) fees, other charges and disbursements of any main or other contractor, supplier, clerk of works, other Consultant, professional or Consultant engaged with the prior written consent of the Client whether directly or as agent for the Client, and whether or not working under the direction or supervision of the Consultant;
- (ii) the reasonable cost of producing or reproducing documents, drawings, maps, photographic and other records and presentation materials;
- (iii) reasonable travel and hotel expenses (including mileage for car travel);
- (iv) unit charges (but not standing charges) for communications by telephone, telex, facsimile transmission, post, messenger, etc;
- (v) fees and advertising costs in connection with applications for local government consents such as planning permission and building regulation consent;
- (vi) any other fees or expenses which the Client has authorised the Consultant in writing to incur.

2.10 Unless expressly agreed to the contrary, the specified fees do not include, and the Consultant shall be entitled to payment at the specified hourly rate for, any work arising out of or in connection with:

- (i) preparing maintenance manuals or other documents (drawings, maps, photographic and other records, models and presentation materials);
- (ii) varied instructions resulting in additional or abortive work;
- (iii) defects in materials or in the work of others;
- (iv) reinstatement of damaged work;
- (v) determination of a main or other contractor's employment under a building contract and the appointment of new (main or other) contractors;
- (vi) overrun of a contract administered by the Consultant where such overrun is beyond the Consultant's control;
- (vii) investigating, negotiating and agreeing loss and expense claims.

2.11 On written demand by the Client, the Consultant shall provide as appropriate:

- (i) time sheets where the fee is based on time charges;
- (ii) original receipts or other appropriate evidence of expenses or disbursement.

2.12 Where the Consultant's fees are expressed as a percentage of total construction costs, that total shall include:

- (i) adjustments consequent upon variations and fluctuations;
- (ii) expenditure of provisional, prime cost sums, or contingencies;
- (iii) value of materials, labour or Services provided by the Client free of charge, but shall exclude the value of any loss and expense claims.

2.13 The Consultant shall notify the Client in writing as soon as it becomes reasonably apparent that any work additional to the subject of the Agreement will be required.

2.14 Where the Consultant is involved in additional work because of:

- (i) changes in the scope of works; and/or
- (ii) changes in the programme of the works; and/or
- (iii) changes instructed to the Services; and/or
- (iv) the commencement of adjudication, arbitration or litigation, the Client shall pay to the Consultant additional fees calculated (unless otherwise agreed) on the time charge basis set out in the Appointment Agreement.

2.15 All fees quoted are exclusive of VAT which shall be added at the standard rate.

2.16 Unless otherwise stated, the agreed fees will include reasonable disbursements with the exception of costs incurred to safely access or inspect roofs, and travel disbursements, which shall be charged at 45 pence per mile.

2.17 Unless agreed otherwise, travel time to and from site, or for any other purpose associated with the appointment, will be charged at the full agreed time charge rate. Where travel is required on appointments agreed on a fixed fee basis or other such non-time charge arrangement, travel time will not be charged separately and will be deemed to be included in the agreed fee. Any chargeable mileage rates shall be as agreed; in the absence of express agreement, the default rate of 45p/mile shall be charged.

2.18 Time charge fees shall be rounded up to the nearest 15 minutes; minimum of one hour charge.

3. PROFESSIONAL INDEMNITY INSURANCE (PII)

3.1 The Consultant shall maintain Professional Indemnity Insurance commensurate with the nature of the instruction being undertaken. The Client is to ensure the level of cover is sufficient for the task in which the Consultant is appointed having due regard to the complexity of the Consultant's duties and associated risks.

4. COMMUNICATIONS BETWEEN THE CLIENT AND THE CONSULTANT

4.1 If the Client's representative has ceased for any reason to act as such, the Client shall promptly inform the Consultant in writing of the identity of the new representative.

4.2 All the Client's instructions to the Consultant with regard to the Services (including those to vary, add to or suspend the Services) shall be given to the Consultant in writing, or, if given orally, confirmed in writing within 7 (seven) days.

4.3 The Client shall promptly convey to the Consultant any decision or information held by the Client necessary for the proper performance of the Services.

4.4 Any formal notice shall be deemed to have been duly given if mailed by registered post to the representative at the address specified in the Appointment Agreement for Building Surveying Services.

5. SUSPENSION AND TERMINATION

5.1 The Client may suspend performance by the Consultant of all or any of the Services by giving 7 (seven) days' notice to the Consultant. If the Services have been suspended for a period of more than 12 (twelve) months, either party may terminate the Agreement by giving written notice to that effect.

5.2 The Client may terminate the appointment of the Consultant under this Agreement by giving 7 (seven) days' written notice to the Consultant.

5.3 Where the Services have been suspended by the Client and the Agreement has not been terminated, the Client may, by giving reasonable notice to the Consultant, require the Consultant to resume the performance of the Services.

5.4 If the Client materially breaches their obligations under this Agreement, the Consultant may serve on the Client a notice specifying the breach and requiring its remedy within 28 (twenty-eight) days, and if the Client thereafter fails to remedy that breach within that period, the Consultant may terminate this Agreement given written notice to the Client.

5.5 If either party:

- (i) commits an act of bankruptcy or has a receiving or administrative order made against it; and/or
- (ii) goes into liquidation; and/or
- (iii) becomes insolvent; and/or
- (iv) makes any arrangements with its creditors; the other may suspend performance of the Services or may terminate the appointment by giving written notice.

5.6 These rights are in addition to those granted to the Consultant under clause 2 above.

5.7 Abortive fees incurred by the Client's termination of the Agreement shall be charged as set out in the Supplemental Terms & Conditions of Engagement for the relevant service. In the absence of any information on abortive fees in the Supplemental Terms & Conditions of Engagement, abortive fees shall be charged on a quantum meruit basis based on time expended.

6. CONSEQUENCES OF SUSPENSION AND TERMINATION

6.1 If performance of the Services has been suspended under clause 2 or clause 5 above, or the Agreement has been terminated pursuant to the provisions of clause 5 above:

- (i) the Client shall pay the Consultant any instalments of the fees due to the Consultant up to the date of suspension or termination together with a fair and reasonable proportion of the next following instalment commensurate with the Services performed by the Consultant.
- (ii) unless the Agreement has been terminated by the Client because of a material breach by the Consultant, the Client shall pay the Consultant within 28 (twenty-eight) days of written demand the consequential costs necessarily incurred as a result of the suspension or termination.

6.2 Termination of the Agreement shall be without prejudice to the rights and remedies of the parties.

7. COMPLAINTS

7.1 In the event that the Client has a complaint in respect of the performance of the Consultant's Services under this Agreement, without prejudice to any other remedy available under the Agreement, he or she shall be entitled, upon request, to a copy of the Complaints Handling Procedure ("CHP") held and maintained by the Consultant.

7.2 The CHP shall not apply to appointments held by the Consultant pursuant to Section 10(1) of the Party Wall etc. Act 1996.

8. COPYRIGHT

8.1 Unless otherwise agreed in writing, the Consultant shall retain copyright in and ownership of all specifications, schedules or other documents, drawings, maps, photographic and other records, models and presentation materials prepared by the Consultant.

8.2 All documents drafted, written and published by the Consultant are to be treated as copyrighted and subject to copyright law.

8.3 The Consultant may publish or join in publishing any description or illustration of the works without the prior consent of the Client.

9. ASSIGNMENT (England and Wales)

9.1 The Client may assign or transfer all (but not part) of this Agreement upon giving written notice to the Consultant to that effect.

9.2 The Consultant may assign or transfer all or part of this Agreement but only with the prior written consent of the Client which shall not be unreasonably withheld.

10. WAIVER

10.1 No acquiescence in a breach shown by either the Client or the Consultant shall prevent the other subsequently insisting upon his or her rights and remedies under this Agreement.

11. DISPUTES

11.1 If a dispute arises out of this Agreement, the Client and the Consultant shall attempt to reach a settlement in good faith. The internal complaints procedure mentioned in clause 7.1 of the Selection and Appointment Advice should facilitate this for disputes less than £50,000.

11.2 If the dispute is not thus resolved, either the Client or the Consultant may at any time give notice to the other that he or she wishes to refer the dispute to an adjudicator, provided the contract is in writing. The person who is to act as the adjudicator shall be agreed between the Client and Consultant within 28 (twenty-eight) days of such notice having been given or, failing agreement at the end of that period, be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators (or in Scotland, the Chairman or Vice-Chairman of the Chartered Institute of Arbitrators (Scottish Branch)) within 5 (five) days of such notice having been given. The referring party shall refer the dispute in writing to the adjudicator with 7 (seven) days of such notice having been given.

11.3 The adjudication shall be conducted in accordance with the Construction Industry Council Model Adjudication Procedures (subject to amendments if the adjudication is in Scotland - see clause 4.3 on p.8) current at the time of entering into this Agreement. Clause 30 of the Construction Industry Council Model Adjudication Procedures shall be amended to add the following sentence: No party shall be entitled to raise any right of set-off, counterclaim and/or abatement in connection with any enforcement proceedings'.

11.4 The adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law.

11.5 The adjudicator shall reach a decision:

- (i) within 28 (twenty-eight) days of the referral of the dispute to the adjudicator; or
- (ii) within 42 (forty-two) days of the referral of the dispute to the adjudicator if the referring party so consents; or (c) in a period exceeding 28 (twenty-eight) days from referral of the dispute to the adjudicator as the Client and the Consultant may agree after such a referral.

11.6 The adjudicator is not liable for anything he or she does or omits to do so in the discharge or purported discharge of his or her functions as adjudicator unless the act or omission is in bad faith. Any employee or agent of the adjudicator shall be similarly protected from liability.

11.7 The decision of the adjudicator shall, subject to the provisions of clauses 11.8 and 11.9 below, be binding until the dispute is finally determined by arbitration either under the contract, or as part of the Consultant's internal complaints procedure for disputes less than £50,000.

11.8 The Client and the Consultant may agree to accept the decision of the adjudicator as finally determining the dispute.

11.9 If the Client or the Consultant is dissatisfied with the decision of the adjudicator, then:
(i) the dispute may be determined by agreement between the parties; or
(ii) the dispute may be referred at the instance of either of the parties to be determined by an arbitrator in accordance with clause 12 below.

11.10 The Client agrees not to commence any proceedings in litigation or arbitration against the Consultant arising out of, under, or in connection with, any adjudication Award until the Award has been finally determined by legal proceedings by arbitration or by agreement between the parties, and/or until the work subject to the project in connection with which the Consultant is appointed shall be completed, whichever is the later, and irrespective of whether the project is completed by the original contractor or any subsequent contractor or by the Client.

11.11 Enforcement of Awards. It is hereby agreed that:

(i) non-payment of any Award without cause will constitute a separate breach of the contract contained herein; and
(ii) any Award may be enforced as a judgement.

11.12 It is hereby agreed that the provisions of the Construction Act 1996 have been incorporated into contracts effected by simple exchange of letters and may be incorporated by reference in telephone conversations to the use by the parties or a standard form of building contract.

11.13 Any dispute concerning fees awarded under the Party Wall etc. Act 1996 shall be resolved through the statutory appeal process pursuant to Section 10(17) of the Party Wall etc. Act 1996.

12. ARBITRATION

12.1 Any dispute under this Agreement, including those for more than £50,000 and/or those where adjudication would not apply, may be referred at the instance of either of the parties to be determined by an arbitrator. The person who is to act as an arbitrator shall be agreed between the parties within 28 (twenty-eight) days of the one giving written notice of his or her wish to refer the decision to an arbitrator or, failing agreement at the end of that period, shall be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators (or in Scotland, the Chairman or Vice-Chairman of the Chartered Institute of Arbitrators (Scottish Branch) at the instance of either party. The arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules current at the time of entering into this Agreement.

13. LIABILITY

13.1 The liability of the Consultant shall be limited to such sum as it would be just and equitable for the Consultant to pay having regard to the extent of the responsibility of the Consultant for the loss or damage suffered, on the basis that all other Consultants, the contractor and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those applying in the case of this Agreement. They shall be deemed to have paid to the Client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage.

13.2 The liability of the Consultant shall be limited to the amount of the Professional Indemnity Insurance required by virtue of clause 3.1 above.

13.3 The Consultant will not be liable for any consequential, special, indirect, or exemplary damages, costs or losses attributable to lost profits or opportunities.

13.4 Save as provided under clause 13.5, no term within the Agreement shall be enforceable by any third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

13.5 The duties and responsibilities owed to the Client are solely and exclusively those of The Party Wall Consultancy. No Consultant or employee of The Party Wall Consultancy shall be liable to the Client for any loss or damage, howsoever arising, as a consequence of the acts or omissions of such personnel (including negligent acts or omissions) save and to the extent that such loss or damage is caused by the fraud, dishonesty, wilful misconduct or unauthorised conduct on the part of such personnel (this term is intended to be enforceable by and for the benefit of any employees or Consultants of The Party Wall Consultancy in accordance with RICS requirements).

13.6 The Consultant shall not be liable for any use of published documents for any purpose other than that for which they were prepared, or for any use by a third party and the Client shall indemnify The Consultant against any claims made by a third party.

14. NOTICE

14.1 Any notice to be given under this Agreement shall be in writing and delivered by hand or sent by recorded delivery post to the party at the address shown in the Agreement or to such an address as the other party may have specified from time to time by written notice to the other.

14.2 Such notice shall be deemed to have been received on the day of delivery if delivered by hand and otherwise on the next working day.

14.3 Where under this Agreement an act is required to be completed within a specified period of days after or from a specified date, the period shall begin immediately after that

date. Where the period would include a day which is Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday, that day shall be excluded.

15. THE PARTY WALL ETC. ACT 1996

15.1 The Party Wall etc. Act 1996 (the "Act") shall take precedence over these General Terms & Conditions of Engagement where the Consultant holds a statutory appointment under the Act.

15.2 Once appointed properly in accordance with Section 10 of the Act, the Consultant will be known as a Party Wall Surveyor and will undertake his duties in accordance with the Act; as such, any previous Client-surveyor relationship in the matter will be supplanted until such time the parties contract out of the Act.

15.3 Any fees Awarded shall become payable in accordance with the Act and shall take precedence over any other fee agreement or arrangement set out in these General Terms & Conditions of Engagement or any other prior arrangement with the Client; see clauses 11.11 and 11.13.

15.4 In the event the parties agree to contract outside the Act, or dispense with their dispute such that the Act no longer applies, any fees due shall become contractually payable by the appointing party, which shall be the time expended multiplied by the Consultant's time charge rate pursuant to the instruction.

16. CONSULTANTS AND LEGAL ADVICE — Client guide

16.1 The Consultant may advise on which form of contract is suitable, but they cannot advise as to whether the Housing Grants, Construction & Regeneration Act 1996 will or will not apply.

16.2 The Client should therefore employ a solicitor to advise on this issue. The Consultant will at the written request of the Client employ a solicitor to address and advise on this issue. If the Client does so request, then the Consultant will be under no liability in relation to any advice obtained. As for other professionals, the Client should employ and brief the solicitor themselves rather than the Consultant doing so, and should bear the costs of instructing the solicitor.

16.3 If the Client does not obtain advice from a solicitor it is agreed that no liability will attach to the Consultant for any loss and damage howsoever suffered by the Client arising out of, under, or in connection with the application, or non-application of the Housing Grants, Construction & Regeneration Act 1996.

16.4 The Consultant may provide legal advice on the areas within their competence in accordance with the Legal Services Act 2007.

17. PRIVACY & DATA

17.1 For the purposes of the Party Wall etc. Act 1996, we will process the Client's personal data, which is limited to their name and address, as obtained from the Land Registry, or as provided by the Building Owner, for the sole purpose of ensuring the legal validity of any notice we serve pursuant to the Party Wall etc. Act 1996. External recipients of the Client's data will be limited to those contemplated by the Party Wall etc. Act 1996. The Client's data will be stored for no longer than is required for the purposes of any procedure under the Party Wall etc. Act 1996 or any other applicable law. The Client has the right to request a copy of their data, its amendment (if erroneous) and its deletion, subject to the procedural requirements of the Party Wall etc. Act 1996 or any other applicable law having been fulfilled and no appeal period being outstanding. The Client also has the right to object to the processing of their data and the right to lodge a complaint with the Information Commissioner's Office if they consider they have valid grounds to do so. The Consultant accepts no responsibility or liability for any errors in your data where that data is obtained from third parties for the purposes of fulfilling duties under the Party Wall etc. Act 1996. The Consultant accepts no responsibility or liability for the information contained in third party documents referred to or relied upon in the discharge of the Services.

17.2 For all other purposes, the Consultant shall hold no database with the Client's information.

18. GENERAL

18.1 'The Party Wall Consultancy' is a trading name of The Dilapidations Consultancy Limited, registered in England & Wales (No. 06424855).

18.2 By appointing The Party Wall Consultancy, the Client agrees to be bound by these General Terms & Conditions of Engagement for Consultancy Services and the relevant Supplemental Terms & Conditions of Engagement as provided separately.

18.3 In the event of a conflict between these General Terms & Conditions of Engagement for Consultancy Services and any Supplemental Terms & Conditions of Engagement for Consultancy Services, these terms shall prevail.