

Brandon Surveys Ltd

Terms and Conditions

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1. Interpretation

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services by the Supplier, as set out in [Schedule 2](#).

Conditions: these terms and conditions set out in clause 1 (Interpretation) to clause 9 (General) (inclusive).

Contract: the contract between the Client and the Supplier for the supply of the Services in accordance with the Contract Details, these Conditions and any Schedules.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Client Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Client to the Supplier.

Deliverables: all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the Contract, as described in [Schedule 1](#).

Services Start Date: the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

Site: the place where the Services are to be undertaken.

Supplier IPRs: all Intellectual Property Rights subsisting in the Deliverables excluding any Client Materials incorporated in them.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- (b) 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.
- (c) A reference to **writing** or **written** includes email.

2. Commencement and term

The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than 1 months' written notice [to terminate, expiring on or after the first anniversary of the Services Start Date]

3. Supply of services

3.1 The Supplier shall supply the Services to the Client from the Services Start Date in accordance with the Contract.

3.2 In supplying the Services, the Supplier shall:

- (a) perform the Services with reasonable care and skill;
- (b) use reasonable endeavours to perform the Services in accordance with the service description set out in **Schedule 1**;
- (c) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
- (d) comply with:
 - (i) all applicable laws, statutes, regulations and codes from time to time in force; and
 - (ii) the Client's reasonable business policies and codes (if any) as notified to the Supplier from time to time,

provided that the Supplier shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract.

- (e) observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Client's premises and have been communicated to the Supplier, provided that the Supplier shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract; and

- (f) take reasonable care of all Client Materials in its possession and make them available for collection by the Client on reasonable notice and request, always provided that the Supplier may destroy the Client Materials if the Client fails to collect the Client Materials within a reasonable period after termination of the Contract.

4. Client's obligations

4.1 The Client shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Site, Client's premises, office accommodation, data and other facilities as reasonably required by the Supplier or any of them;
- (c) provide, in a timely manner, such information as the Supplier may reasonably require, and ensure that it is accurate and complete in all material respects;
- (d) ensure that the Site is safe and suitable for the Supplier, its agents, subcontractors, consultants and employees, and the Client shall comply with all statutory requirements as regards health and safety at work and any other relevant rules and regulations. The Client shall inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply to the Site (or any part of it);
- (e) be responsible for providing the Supplier, its agents, subcontractors, consultants and employees with safety helmets, protective clothing and all other safety equipment (**Safety Equipment**) necessary for the safe completion of the Services and to ensure that such Safety Equipment is well maintained and complies with all relevant statutory requirements; and
- (f) for the duration of the Contract, grant the Supplier and its employees, agents and subcontractors a right of access to, and as necessary to occupy, the Site for the purposes of carrying out its obligations under the Contract.

4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Charges despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Intellectual property

- 5.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials.
- 5.2 The Supplier grants the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in the Client's business during the term of this Contract.
- 5.3 The Client grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of the Contract for the purpose of providing the Services to the Client in accordance with the Contract.
- 5.4 The Supplier shall indemnify the Client in full against any sums awarded by a court against the Client arising out of or in connection with any claim brought against the Client for infringement of a third party's rights (including any Intellectual Property Rights) arising out of or in connection with the receipt or use of the Services by the Client.
- 5.5 The Client shall indemnify the Supplier in full against any sums awarded by a court against the Supplier arising out of or in connection with any claim brought against the Supplier for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by the Supplier.

6. Charges and payment

- 6.1 In consideration for the provision of the Services, the Client shall pay the Supplier the Charges in accordance with this clause 6.
- 6.2 All amounts payable by the Client exclude amounts in respect of value added tax (VAT), which the Client shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 6.3 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Client at the intervals specified in **Schedule 2**. Each invoice shall include all reasonable supporting information required by the Client.
- 6.4 The Client shall pay each invoice due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 6.5 If the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 8 (Termination):

- (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) the Supplier may suspend all Services until payment has been made in full.

6.6 All amounts due under the Contract from the Client to the Supplier shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Limitation of liability

7.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

7.3 Subject to clause 7.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the greater of [FIGURE TO BE AGREED WITH PROFESSIONAL INDEMNITY INSURER] or one hundred per cent (100%) of the average annual Charges (calculated by reference to the Charges in successive 12-month periods from the Services Start Date) paid by the Client under the Contract.

7.4 The conditions 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 this agreement.

8. Termination

8.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) 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), 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;
- (c) 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
- (d) 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.

8.2 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 Client if the Client fails to pay any amount due under the Contract on the due date for payment.

8.3 On termination of the Contract for whatever reason:

- (a) the Client 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 may submit an invoice, which shall be payable immediately on receipt;
- (b) 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; and
- (c) termination or expiry of the Contract shall not affect any of the 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.

9. General

9.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

9.2 Assignment and other dealings.

- (a) The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Supplier's prior written consent.
- (b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

9.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 9.3. For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors 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, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party

agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

9.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.6 Waiver.

- (a) 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 breach or default.
- (b) 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.

9.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

9.8 Notices.

- (a) 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 email to such address as either party shall notify the other party from time to time.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 at the time recorded by the delivery service; or, if sent by email, on the next Business Day after transmission.
- (c) This clause shall not apply to the service of any proceedings or other documents in any legal action.

9.9 Third party rights.

- (a) 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.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

9.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

9.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1 Services :

Topographical Surveys

Measured Building Surveys

Underground Services Surveys

Rack Safety Inspections

Racks Safety Awareness and Inspection Training Courses.

CAD services.

Schedule 2 Charges

1. Charges for the services.

The fixed price quoted and agreed by both parties.

2. Invoicing arrangements

Generally on completion of the survey or at intervals agreed by both parties..