



## TERMS AND CONDITIONS

**1. DEFINITIONS**

'Consultant' means JSH Consulting Ltd and its legal successors. 'Client' means the person, firm, company or organisation for whom the Consultant is performing the Services. 'Agreement' means the contract referred to in Clause 2. 'Services' means the services to be performed by the Consultant in accordance with the proposal from the Consultant. 'Project' means the project or works for which the Client has commissioned the Services.

**2. GENERAL**

- (i) Unless and until a formal agreement is entered into, the Client's acceptance of the proposal for Services from the Consultant or a request for some or all the Services to be performed by the Consultant, shall constitute a binding contract between the Client and the Consultant which contract will be subject to any terms and conditions contained or referred to in the aforementioned proposal and these terms and conditions. In the event of any conflict, the terms and conditions in the proposal shall prevail over these terms and conditions. The Agreement so formed shall supersede all previous understandings, commitments or agreements whether written or oral between the Client and the Consultant relating to the subject matter hereof. No person or entity shall have any rights in relation to this Agreement, whether as third parties or otherwise, save the parties to this Agreement.
- (ii) Should any term or condition of the Agreement be held to be unenforceable then such term or condition shall remain in full force and effect.

**3. PERFORMANCE OF SERVICES AND SCOPE**

- (i) The Consultant shall perform the Services using the degree of skill care and diligence to be expected from a consultant experienced in the provision of services of similar scope size and complexity. The Consultant shall use reasonable endeavours to complete the Services within the time or programme agreed but shall not be responsible for any delay beyond the reasonable control of the Consultant.
- (ii) The fee contained in the proposal is for the scope of works defined therein. If not already contained in the proposal the Consultant and Client shall agree as an initial activity an integrated project design programme to include the activities of all the parties to the Project relevant to the Services to be supplied by the consultant. The aforesaid programme shall show the key dates for final information and the delivery of such to the Consultant so as to enable the Consultant to carry out the design in an efficient once through manner to achieve the programme delivery dates for the Services.
- (iii) Where the Consultant is required by the Agreement to perform "pre-tender" design services the Client shall determine the elements of the project to be designed and the level of detail and refinement required for each element. The Client agrees that such "pre-tender" design will be commensurate with the information available at the time and that the design may require changes and/or additions when such is finally completed. The Client accepts that any reliance placed on the incomplete elements of the design shall be at the Client's risk. Where any element of the fee for work already carried out is deferred to a later stage of the Project such elements shall become payable immediately should the Client not proceed with the Project for any reason.

**4. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

- i). The Consultant and the Client shall keep all confidential information pertaining to the Services.
- ii). Copyright for all reports, documents and the like produced by the Consultant in the performance of the Services shall remain vested with the Consultant but the Consultant shall grant an irrevocable royalty free licence to the Client to use such reports, documents and the like for any purpose in connection with the Project.

**5. LIABILITY**

- (i) The Consultant shall be liable to pay compensation to the Client arising out of or in connection with this Agreement only if a breach of the duty of care in Clause 3 is established against the Consultant.
- ii). Notwithstanding any other term to the contrary in the Agreement or any related document and whether the cause of action for any claim arises under or in connection with the Agreement in contract or in tort, in negligence or for breach of statutory duty or otherwise the Consultant shall have no liability to the Client in respect of any claim for loss or damage arising from acts of war or terrorism but otherwise in relation to any cause of action as aforesaid the total liability of the Consultant in the aggregate for any claims shall be limited to a sum equivalent to ten (10) times the fee payable under the Agreement or £1,000,000, which ever is the lesser, or such other sum as may be stated in the Consultants proposal, provided always that any such liability of the Consultant shall be limited to such sum or sums as it would be just and equitable for the Consultant to pay having regard to the Consultant's responsibility for the same and on the basis that all other parties appointed or to be appointed by the Client to perform related services in connection with the Project shall be deemed to have provided undertakings on the terms no less onerous than this Agreement and shall be deemed to have paid to the Client such contributions as it would be just and equitable for them to pay having regard to their responsibility for any loss or damage and providing that it shall be deemed that such parties have not limited or excluded their liability to the Client for such loss or damage in any way which may be prejudicial to the Consultant's liability under this clause.
- iii). The Client shall indemnify and keep indemnified the Consultant from and against all claims, demands, proceedings, damages, costs and expenses arising out of or in connection with this Agreement or the Project in excess of the liability of the Consultant under this Agreement or which may be made in respect of events occurring after the expiry of the period of liability stated in this Agreement.
- iv). No action or proceedings under or in connection with this Agreement shall be commenced against the Consultant after the expiry of six (6) years from completion of the Services.

**6. INSURANCE**

The Consultant shall arrange Professional Indemnity Insurance cover for the amount stated in Clause 5(II). The Consultant will use all reasonable endeavours to maintain Professional Indemnity Insurance cover for the period stated in 5(IV) above, providing such insurance remains available to the Consultant at commercially reasonable rates.

**7. CLIENT'S OBLIGATIONS**

The Client shall supply, without charge and in such time so as not to delay or disrupt the performance of the Consultant in carrying out the Services, all necessary and relevant information, in his possession or available to him from his other agents or consultants and all necessary approvals or consents. The approval or consent by the Client to the Services shall not relieve the Consultant from any liability under this Agreement.

**8. PAYMENTS**

- (i) The Client shall pay the Consultant for the Services in accordance with the proposal and this Agreement. If the Consultant performs any additional services or if the Services are delayed or disrupted for reasons beyond the reasonable control of the Consultant then the Consultant shall be entitled to such additional fees as are fair and reasonable in the circumstances. The Consultant may render an invoice at monthly intervals for services properly performed. The agreed invoice, or in the event of a dispute the undisputed element, shall be paid within 28 days of receipt of the invoice by the Client (the final date for payment).
- (ii) The Client shall not withhold any payment of any sum or part sum due to the Consultant under the Agreement by reason of claims or alleged claims against the Consultant unless the amount to be withheld has been agreed between the Client and the Consultant as due to the Client or such sum arises from an award in adjudication, arbitration or litigation in favour of the Client and arises under or in connection with the Agreement. Save as aforesaid all rights of set off in common law, in equity or otherwise which the Client may otherwise be entitled to exercise are hereby expressly excluded.
- (iii) Failure by the Client to make payment as aforesaid shall entitle the Consultant to suspend further work on the Project and charge interest on the amount outstanding. The Consultant understands and will exercise their right to interest under the Late Payment of Commercial Debts (Interest) Act 1988 (as amended) if payment is not made according to agreed credit terms. Additionally, the Consultant will charge a compensation fee for actioning debt recovery as follows: £40 for debts less than £1000, £70 for debts between £1000 and £10,000 and £100 for debts above £10,000.

**9. TERMINATION**

If a party is in breach of a material term of this Agreement and despite written notice from the other party fails to remedy such breach within thirty (30) days or such other period as may be agreed between the parties, then the other party shall be entitled to terminate the Agreement forthwith.

**10. DISPUTE RESOLUTION**

Any dispute between the parties that cannot be settled by mutual agreement shall be referred for final settlement to the arbitration of a person agreed between the parties or failing such agreement appointed upon the application of either party by the Chartered Institute of Arbitrators. Where the Agreement is subject to the law of England, Wales or Northern Ireland, but not otherwise, the arbitration shall be carried out in accordance with the Construction Industry Model Arbitration Rules 1998 or such other version current at the time of the referral under this clause, and such Rules are deemed to be incorporated into this Agreement by reference.

**11. COMPLIANCE WITH LAW**

This Agreement shall be governed by and construed in accordance with the law of England and Wales, Northern Ireland or Scotland as determined by the location of the Project.