

## **STANDARD TERMS OF ENGAGEMENT**

### **Parties:**

1. **The Client** which expression shall mean the party for whom the Agreed Work is being undertaken pursuant to the Proposal as herein defined.
2. **PA Group** whose registered office is The Granary, Pinden Farm, Dartford, Kent, DA2 8EA (hereafter referred to as "PA")

### **Recitals:**

1. The Client has requested PA to provide professional environmental consultancy services upon the terms set out in detail in additions or amendments thereto agreed in writing.
2. The services to be carried out under the Proposal in accordance with these Standard Terms of Engagement and the Proposal.

### **The Terms:**

#### **1. Engagement**

- 1.1 The Client agrees to engage PA and PA agree to undertake the Agreed Work in accordance with these Standard Terms of Engagement and the Proposal.

#### **2. Standard of Care**

- 2.1 PA shall perform the Agreed Work using the reasonable standard of skill and care normally exercised by the professional environmental consulting firms in performing similar services under similar conditions.
- 2.2 PA shall use all reasonable endeavours to perform the Agreed Work in accordance with all relevant environmental and safety legislation.

#### **3. Obligations of the Client**

- 3.1 Throughout the period of this agreement the Client shall afford to PA or procure the affording to PA of access to any sites where access is required for the performance of the Agreed Work.
- 3.2 The Client will inform PA in writing of all special site and/or plant conditions including without prejudice to the generality of the foregoing the existence of any underground cables, pipes drains or underground buildings or constructions and shall also inform PA of any relevant site operating procedures and site safe operating procedures and any other regulations relevant to the carrying out of the Agreed Work the notification of such matters to be acknowledged in writing by PA if they are to be binding upon them.
- 3.3 The Client shall take all steps to secure and otherwise keep safe all and any property and personal of PA.
- 3.4 The Client shall afford to PA access at all reasonable times to any relevant site for the purpose of removing any plant equipment or records owned or hired by it that are present on the site.
- 3.5 The Client shall provide free of charge such information and drawings as are available to the Client as may reasonably be required by PA for the performance of the Agreed Work.
- 3.6 Where the Agreed Work requires PA to enter upon any site whether or not owned or occupied by the Client then the Client shall notify PA of any hazards known or suspected by the Client to exist upon such site and shall indemnify PA against all cost claims demands and expenses arising as a result of any non-disclosure in this respect.
- 3.7 The Client undertakes not at any time without the prior written consent of PA during the performance of the Agreed Work and for a period of six months thereafter to directly or indirectly solicit, entice, procure or employ any person who during the performance of the Agreed Work was an employee of PA and who had material contact of involvement with the Agreed Work.

#### **4. Confidentiality**

- 4.1 The Client undertakes not to divulge or disclose to any third party without the written consent of the Client information, which is designated confidential by the Client prior to the acceptance of the contract or which can reasonably be considered to be confidential and arises during the performance of the Agreed Work unless Required to do so by law.
- 4.2 Subject to 4.1 above PA shall be permitted to use information related to the Agreed Work for the purposes of marketing its services and in proposals for work of a similar type.

#### **5. Insurance**

- 5.1 PA Group Ltd holds professional indemnity insurance in an amount for not less than £1,000,000 in the aggregate in any one year.
- 5.2 PA agrees to maintain the insurance referred to in 5.1 above the period of six years from the date of this agreement provided that such insurance continues to be available upon reasonable terms at reasonable commercial rates in the insurance market for environmental consultants and shall when reasonably requested by the Client produce for inspection evidence of such insurance.

#### **6. Liability**

- 6.1 PA confirms that it will be responsible to the Client for all costs claims and demands properly incurred by the Client and which represent the reasonably foreseeable damage suffered by the Client as a direct result of the negligent act of omission of PA in the performance of the Agreed Work under these Terms. Without prejudice to the foregoing the Client acknowledges that PA shall have no liability to the Client or to any third party for any indirect, economic or consequential loss howsoever arising and whiter pursuant to the performance of the Agreed Work under these Terms of howsoever otherwise arising.
- 6.2 PA is carrying out the Agreed Work solely for the benefit of the Client and the Client shall indemnify PA against any claims from any third parties in respect of the Agreed Work unless PA has without being requested by the Client to do so provided advice of information direct to such parties or has in writing permitted disclosure of such advice or information to such persons.
- 6.3 The total liability of PA under or in connection with this Agreement and the Agreed Work whether in contract, tort, breach of statutory duty or otherwise shall not exceed 6x fees for the building in question and the client shall indemnify and keep indemnified PA from and against all

costs, claims, demands, proceedings, charges and expenses arising out of or in connection with the Agreed Work in excess of such liability and limitation provided that in the event of the insurance referred to in clauses 5.1 and 5.2 no longer being available upon reasonable terms at reasonable commercial rates then the liability of PA shall be restricted to £100,000 under this clause.

- 6.4 The liability of PA in respect of the Agreed Work shall be limited to that proportion of the Client's losses and damages which it would be just and equitable to require PA to pay having regard to the extent of PA's responsibility for the same and on the basis that any other consultants contractors and sub contractors shall be deemed to have provided contractual undertakings to the Client in respect of their services in connection with the project of which the Agreed Work is part in terms no less onerous than under these Standard Terms and shall be deemed to have paid to the Client such proportion which it would be just and equitable for them to pay having regard to the extent of their respective responsibilities.

- 6.5 Nothing contained in these standard terms shall exclude or restrict the liability of PA in respect of death or personal injury resulting from the negligence of PA.

#### **7. Ownership Of Documents and Intellectual Property.**

- 7.1 The Client acknowledges and agrees that any and all intellectual property rights (including without limitation any trade marks, patents and any copyright in drawings, reports, specifications, bills of quantities, calculations software, algorithms, work processes and graphic images and other documents and information) created developed subsisting of used by PA or any third party in performance of the Agreed Work ("the intellectual property") shall vest in or (as the case may be) remain the exclusive property of PA or of any relevant third party.
- 7.2 When so agreed by PA and recorded in writing prior to the delivery of such intellectual property and subject to PA and its sub-consultants having received payment of all fees and disbursements properly due under this agreement the Client shall have a non exclusive licence to copy and use such intellectual property for the purposes directly related to the Agreed Work. Such Licence shall enable the client to copy and use the intellectual property but solely for his own purpose and such use shall not include any licence to reproduce any conceptual designs of professional opinions contained therein. The Client shall have no right to grant sub-licences.
- 7.3 Save as above, the Client shall not make copies of such intellectual property nor shall he use the same in connection with any other works of for any other purpose nor pass them to any third party without the prior written approval of PA and upon such terms as may be agreed by PA. PA shall be liable for the use by any person of such intellectual property for any purpose than that for which the same were prepared by or on behalf of PA. The licence granted in terms of this clause 7 may be terminated by PA forthwith if the Client is in material and/or persistent breach of any term of condition of these Terms or if the Client (whether under these Terms or otherwise) within 14 days of the due date therefore. Unless expressly stated, no other licence to any intellectual property is implied of granted under these Terms.
- 7.4 PA shall not without the written consent of the Client such consent not to be unreasonably withheld, publish alone or in conjunction with any other person any articles, photographs of other illustrations relating to the Agreed Work. For the avoidance of doubt nothing herein shall prevent or restrict PA from using the intellectual property for its own purposes or for the provision of services to third parties.
- 7.5 Proposals submitted to the Client are solely for his use and the ownership of such proposals not confirmed as Agreed Work with the Client remain with PA and must not be used as the basis for any future work undertaken either by the Client of a third party and no liability can be accepted howsoever arising from such proposals.

#### **8. Payment**

- 8.1 PA shall submit invoices and payment shall be made by the Client in accordance with the rates and fees and timetable set out in the Proposal. If no payment terms are specified in the Proposal invoices can be submitted monthly.
- 8.2 Payment shall be made by the Client within fourteen days of the date of any invoice and payment shall be made in full (without any deduction of retention for any claim or counter claim of otherwise) in pounds sterling and interest at the rate of four per cent (8%) above the Bank of England base lending rate will be payable on all overdue payments such interest being calculated from the date of the invoice to the actual receipt of payment by PA.
- 8.3 All sums payable by the Client under the terms of the Proposal are exclusive of Value Added Tax which will be payable by the Client in addition to such sums and shall be chargeable at the prevailing rate and in the manner prescribed by law.

#### **9. Limitation**

- 9.1 No action in proceedings under or in respect of this agreement whether in contract or in tort or in negligence or for breach of statutory duty or otherwise shall be commenced against PA after the expiry of a period of six years from the date of commencement of the Agreed Work of such other date as may be agreed in writing between the parties.

#### **10. Waiver**

- 10.1 No failure by PA to seek redress for breaches by the Client, or failure by PA to exercise any right or remedy to which it may be entitled in terms of these Terms unless in writing by an authorised officer of PA shall in any way affect or prejudice the rights of PA or be taken as a waiver of the terms of this or any other clause of these terms.

## **11. Entire Agreement and Exclusion of Representations**

- 11.1 These Terms and the Proposal to which they apply represent the entire agreement of the parties hereto with respect to the Agreed Work and supersede any prior written or oral warranties, terms, conditions and representations whether express or implied and any claim against PA in respect of the Agreed Work can only be made in contract under the provisions of these Standard Terms or the Proposal, and not under the law of tort or otherwise.
- 11.2 PA will not be bound by any standard or printed terms, conditions, warranties or representations furnished by the Client in any of its documents unless PA specifically states in writing separately and the Client acknowledges such notification in writing.
- 11.3 For any variation to these Terms to be effective the variations must be in writing and signed by both PA and the Client.

## **12. Notices**

- 12.1 Any notice to be given by the Client under this agreement shall be deemed to be duly given if it is in writing and delivered by hand or dent by registered post to PA at the address of PA shown at the head of these Standard Terms. Any notice to be given by PA shall be duly given if it is in writing and delivered by hand or sent by registered post to the Client at the address of the Client as set out in the Proposal or if there is no such proposal the registered office of the Client. These notices shall, if sent by registered post, be deemed to have been received forty-eight hours after being posted.

## **13. Delay and Force Majeure**

- 13.1 PA will comply with the programme for the achievement of the Agreed Work unless delayed or prevented by circumstances beyond its reasonable control and in the event of any such circumstances arising PA undertakes to complete the Agreed Work as promptly as is reasonable but will not be liable to the Client for any delay resulting from such circumstances beyond PA' reasonable control.
- 13.2 If PA through no fault of its own is unable to carry out the Agreed Work according to an agreed timetable by reason of other works being unfulfilled or for any other reason which is the responsibility of the Client additional expenses of staff subsistence travel mobilisation as appropriate will be met by the Client and shall include the cost of the hire of equipment of additional sub-contractors' costs reasonably incurred.

## **14. Governing Law**

- 14.1 This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdictions of the English Courts.

## **15. Termination**

- 15.1 The appointment of PA may be terminated in the event of either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved compounding with its creditors or having a receiver of an administrative receiver or administrator appointed to the whole or any part of its assets. Notice of termination must be given to the party that is insolvent by the other party.
- 15.2 If for any reason the performance of the Agreed Work is suspended for a period in excess of one calendar month then PA shall be entitled to terminate its appointment in respect of the Agreed Work by seven days written notice to the Client.
- 15.3 Any termination of the appointment of PA howsoever caused shall be without prejudice to the right of PA to require payment for all services performed up to the date of such termination.

## **16. Assignment**

- 16.1 The Client shall not be entitled to assign transfer or pass the benefit of the whole or any part of this Agreement without the consent in writing of PA and signed by a Board Director.

## **17. Conflict**

- 17.1 In the event of any conflict between the wording of these Terms of Engagement and the terms of the Proposal the terms of the latter shall prevail.

## **18. Disputes**

- 18.1 If the Agreed Work is of a 'Construction Contract' within the definition in Section 104 of the Housing Grants Construction and Regeneration Act of 1996 then the following provisions shall apply.
- 18.2 In the event of any dispute or difference arising under or by reason of breach of this Agreement (other than with regard to the meaning or construction of this Agreement) such disputes or difference whether arising before or after the determination of this Agreement may be referred to some independent and fit person to be nominated by the President or Vice President for the time being of the Chartered Institute of Arbitrators within seven days of the application of either of the parties hereto but in the event of any such dispute or difference arising under or by reason of breach of this Agreement then the matter may be referred to a leading Counsel of proven ability and experience to be nominated by the President for the time being of the Law Society within seven days of the application of either of the parties to the person hereto and any fees and expenses which may become payable to the person appointed shall be within the award of that person.
- 18.3 Any such adjudicator appointed in the terms of clause 18.1.1 hereof shall have twenty eight days from the date of referral within which to reach a decision on the dispute, or such longer period as is agreed between the parties after the dispute has been referred, but without prejudice to the forgoing the adjudicator shall be permitted to extend the said period of twenty eight days up to fourteen days, with the consent of the party by whom the dispute was referred. The adjudicator shall act fairly, reasonably and impartially and shall conduct the adjudication in accordance with rules 13 to 25 (inclusive) of the

Technology and Construction Solicitors Association Adjudication Rules 1999 (version 1.3) except that 19(ix) shall not apply thereto.

- 18.4 The adjudicator shall be required to issue a written decision to the parties to the dispute, within seven days of reaching a decision, giving detailed reasons for his decision. The decision of the adjudicator shall be binding on both parties until the dispute is finally determined by agreement of the parties or by legal proceedings.

- 18.5 When issuing his decision, the adjudicator shall be entitled, but not bound, to award damages and interest thereon to such parties as he may think fit.

- 18.6 If the Agreed Work does not constitute a Construction Contract' as defined above then the following provisions shall apply.

- 18.7 If any dispute arises between the parties with respect to any matter then such dispute shall at the instance of either party be referred to a person agreed between the parties, and, in default of agreement within twenty-one days of notice from either party by the President for the time being of the Institution of Civil Engineers. Such person shall be appointed to act as an expert and not as an arbitrator. The costs of such expert shall be borne to equally by the parties unless such experts shall decide one party has acted unreasonably in which case he shall have discretion as to costs.

## **19. Severance**

- 19.1 If any term or provision in these Terms shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision or part shall to that extent be deemed not to form part of these Terms but the validity and enforceability of the remainder of these Terms shall not be affected.

## **20. Contracts (Rights of Third Parties) Act 1999**

- 20.1 The provisions of the Contract (Rights of Third Parties) Act 1999 are expressly excluded from applying to these Terms or the Proposal to which they relate and accordingly no benefit it to any third party is intended nor shall be implied under such Terms or Proposal.