

Terms and Conditions of Appointment

1. INTERPRETATION

The following definitions and rules of interpretation apply:

1.1 Definitions:

Consultant: Optimis Consulting Limited

Client: the person, firm, company or organisation to which the Consultant is providing the Services in consideration of the Fee.

Fee: the fee payable under these terms and conditions in consideration of the Services.

Insolvent: a party is insolvent if:

- (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it (being a company);
- (e) the holder of a qualifying floating charge over its assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets; or

- (g) being an individual, it is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen days; or
- (i) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

Programme: the programme agreed by the Consultant and the Client.

Project: the project identified by the Client to the Consultant.

Property: the property identified by the Client to the Consultant.

Required Standard: the reasonable skill and care to be expected of a member of the Consultant's profession undertaking the Services on works similar to the Project.

Services: the service to be provided by the Consultant in respect of the Project stated in its fee proposal.

VAT: value added tax imposed by the Value Added Tax Act 1994, or any similar tax in addition to or replacing it from time to time.

1.2 A reference to **writing** or **written** includes email.

1.3 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

2. **DATE OF EFFECT**

2.1 These terms and conditions take effect from the date when the Consultant begins performing the Services.

3. **CONSULTANT'S OBLIGATIONS**

3.1 The Consultant shall, using the Required Standard and subject to these terms and conditions, carry out the Services and shall:

- (a) not, without the Client's consent, make any material change to the designs or specifications for the Project after they have been settled or approved,
- (b) notify the Client if its performance of the Services is delayed, or is likely to be delayed; and
- (c) comply with any laws or regulations affecting the Project and/or the Property

in consideration of the payment by the Client of the Fee.

4. REMUNERATION

- 4.1 The Client shall pay the Fee in consideration of the execution of the Services.
- 4.2 The Client shall reimburse the Consultant for his reasonable expenses or disbursements. Expenses or disbursements will be charged on account in addition to the upfront payment noted in clause 5.1. Those expenses or disbursements incurred later in the project, which are not charged as part of an upfront invoice shall be included in the next invoice after they are incurred. All will be paid by the Client in accordance with clause 5.
- 4.3 The Client shall pay in addition to the Fee any VAT properly chargeable on the Services.

5. PAYMENT

- 5.1 Clients will be required to pay a proportion of the total fee on account for work to start. The sum required will be agreed with the client in advance and will be detailed on the Confirmation of Instruction. Subsequent Fees shall be calculated and paid in instalments at regular intervals after the Consultant begins performing the Services.
- 5.2 For Ecology and Viability clients, draft reports will be released for client review and approval, however payment in full will be required before finalised reports are issued.
- 5.3 The Consultant shall submit to the Client an invoice for each instalment of the Fee, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Consultant considers will become due in respect of the instalment of the Fee.
- 5.4 Payment shall be due and payable on the due date stated in the invoice.

5.5 If the Client fails to pay an amount due to the Consultant by the final date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date for payment until actual payment of the overdue amount, whether before or after judgment. The Client shall pay interest together with the overdue amount. The parties acknowledge that the Client's liability under this clause 5.4 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998. An administration charge of £50+VAT for late payments will also be applied.

5.6 If the Client fails to pay an amount due to the Consultant by the final date for payment, then the Consultant reserves the right to discontinue the contracted service (including finalising any reports) until such time as payment is made in full, including any interest and administrative charge that may have accrued in the intervening period.

6. LETTERS OF RELIANCE

6.1 Letters of Reliance on documents that are relevant post consent can be provided at a cost of £1,000 + VAT for each report prepared by Optimis.

7. ADJUSTING THE FEE

7.1 The Fee shall be adjusted if the performance of the Services is materially delayed or disrupted due to a change in the Project; additional services requested by the Client or made necessary for the successful delivery of the Project; or any other cause outside the Consultant's reasonable control and which it could not have foreseen at the date of the Fee proposal provided that the Consultant shall not be entitled to any adjustment of the Fee where delay or disruption arises from the Consultant's default or negligence, or the default or negligence of the Consultant's sub-consultants or suppliers (if any).

7.2 Unless the parties agree otherwise, the increase in the Fee due to circumstances described in clause 6.1 shall be a reasonable amount.

8. SUSPENSION

8.1 The Client may, on no less than one month's written notice, suspend performance of all or part of the Services. Subject to clause 5.2, the Consultant shall resume performance of the Services as soon as reasonably practicable after receiving written notice of no less than once month to do so from the Client.

- 8.2 In the event of a suspension in accordance with clause 7.1, the Client shall pay the Consultant a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant and any adjustment to the Fee due under clause 6.1.

9. TERMINATION

- 9.1 If a suspension of the Services in accordance with clause 7.1 continues for a continuous period of six months and the Client does not instruct the Consultant to resume the Services within fourteen days of receiving a written notice from the Consultant requiring it to do so then the Consultant may, subject to clause 9.1, immediately terminate its engagement under these terms and conditions by giving written notice to the Client.

- 9.2 Either party may immediately terminate the Consultant's engagement under these terms and conditions by giving written notice to the other party if:

- (a) the other party is in material breach of its obligations under these terms and conditions and fails to remedy that breach within fourteen days of receiving written notice requiring it to do so; or
- (b) the other party becomes Insolvent.

10. CONSEQUENCES OF TERMINATION

- 10.1 On termination in accordance with clause 8 the Client shall pay the Consultant:
- (a) any amount properly due for payment under these terms and conditions at the date of termination; and
 - (b) a fair and reasonable proportion of the next instalment of the Fee, together with any expenses and disbursements, commensurate with the Services performed at the date of termination.
- 10.2 If the Consultant's engagement under these terms and conditions is terminated the Client shall also pay any expenses and disbursements necessarily incurred by the Consultant as a direct result of termination provided that such termination was not as a result of the Consultant's default.
- 10.3 Termination of the Consultant's engagement under these terms and conditions shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of these terms and conditions which existed at or before the date of termination.

11. COPYRIGHT AND INTELLECTUAL PROPERTY

- 11.1 The Client and the Consultant shall each retain all intellectual property rights (including copyright) relating to the Material it produces and shall grant to the other party an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by it, or on its behalf, the other for any purpose relating to the Project and the Property.
- 11.2 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

12. PROFESSIONAL INDEMNITY INSURANCE

- 12.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £3,000,000 for any one occurrence or series of occurrences arising out of any one event for a period beginning on the date of commencement of the Services and ending 6 years after the completion of the Services, provided that such insurance is available at commercially reasonable rates and terms.

13. COMPLAINTS

Complaints should be made within one month of the incident taking place. If the complainant was not aware that there was cause for complaint, they have three months from when they became aware of it, or six months from the date of the incident - whichever is shorter.

14. LIABILITY PERIOD

Neither party shall commence any legal action against the other under these terms and conditions after 6 years from the date of completion of the Services.

15. THIRD PARTY RIGHTS

A person who is not a party to these terms and conditions shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these terms and conditions.

16. GOVERNING LAW AND JURISDICTION

These terms and conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales

shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these terms and conditions or its subject matter or formation (including non-contractual disputes or claims).