

## WARIS Consulting Terms of Consultancy Services

1.1 "Agreement" means the contract referred to in clause 2.

1.2 "Client" means the person, firm, company or organisation for whom the Consultant is performing the Services.

1.3 "Consultant" means WARIS Consulting.

1.4 "Project" means the Project referred to in any proposal/offer.

1.5 "Services" means the Services to be performed by the Consultant on behalf of the Client in accordance with the proposal/offer.

1.6 "Third Party" means any person other than the Consultant, the Client or their respective employees or agents.

## 2 GENERAL

2.1 These terms and conditions together with any associated proposal/offer for Services and any attached Schedule of Hourly Fee Charges and/or Disbursements shall constitute a contract between the Client and the Consultant which shall be subject to any terms and conditions stated in the proposal/offer and these terms and conditions.

2.2 These terms and conditions take precedence to and supersede any terms and conditions referred to, offered or relied upon by the Client, whether in negotiation or at any stage in the dealings between the Client and the Consultant with respect to the Services. The Consultant shall not be bound by any other terms and conditions provided by the Client unless the Client notifies in writing that it intends such terms and conditions to apply and the Consultant accepts such terms and conditions in writing.

## 3 PERFORMANCE OF SERVICES

3.1 The Consultant shall exercise reasonable skill and care in the performance of the Services.

3.2 The Consultant retains the right, subject to written notice, to withdraw from the project if, in his view, project development falls below an acceptable professional standard or, in particular fails to provide adequate measures for the reasonable protection of the environment.

## 4 COMPLIANCE WITH LAW

This Agreement shall be governed by and construed in accordance with English law.

## 5 CONFIDENTIAL INFORMATION

The Consultant shall keep confidential all information as to the business of the Client which shall come or has come to the knowledge of the Consultant in the course of performing the Services, provided that this restriction shall not apply to any information which is in, or legitimately enters, the public domain.

## 6 COPYRIGHT

Copyright for all reports, documents and the like (including material in electronic form) produced by the Consultant shall remain vested in the Consultant. The Consultant shall not be liable for any use of such reports and documents other than by the Client for the purposes for which they were commissioned and prepared.

## 7 LIABILITY AND INSURANCE

7.1 Notwithstanding anything to the contrary contained elsewhere in this Agreement, the total liability of the Consultant under or in connection with this Agreement for any claim whether in contract or in tort, in negligence or for breach of statutory duty or otherwise, (other than in respect of personal injury or death), shall be limited to the lesser of:

(a) £50,000 (fifty thousand pounds) including costs and expenses; or (b) such liability of the Consultant for any claim or claims as would be just and equitable for the Consultant to pay having regard to the extent of his responsibility for the loss or damage suffered as a result "the loss and damage" in question and on the assumptions that:

(i) all other consultants and all contractors and subcontractors appointed by the Client or his agents in connection with the Project shall have provided contractual undertakings to the Client on terms no less onerous than those provided by the Consultant in respect of the carrying out of their obligations;

(ii) there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage; and

(iii) all other consultants and all contractors and subcontractors have paid to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

7.2 Provided that and without prejudice to the generality of the foregoing, the total liability of the Consultant in respect of all such claims under or in connection with this Agreement arising out of or in connection with force majeure, pollution, contamination or consequential loss is excluded.

7.3 The Client shall indemnify and keep indemnified the Consultant from and against all claims, demands, proceedings, damages, costs, charges and expenses arising out of or in connection with this Agreement, the Works and/or the Project in excess of the liability of the Consultant agreed in clauses 7.1 and 7.2 above, or which may be in respect of events occurring after expiry of the period of liability stated in clause 7.4.

7.4 No action or proceedings under or in respect of this Agreement, whether in Contract, Tort or negligence or for breach of statutory duty or otherwise shall be commenced against the Consultant following completion of the Services or other such minimum period as may be prescribed by law. The date of completion of the Services shall be that upon which the Consultant completes the Services originally specified.

7.5 The Consultant shall maintain professional indemnity insurance cover for an amount of not less than £50,000 (fifty thousand pounds) for each and every claim, including costs and expenses.

7.6 The Consultant shall use all reasonable endeavours to maintain cover as stated in clause 7.5 above, providing such insurance remains available to the Consultant at commercially reasonable rates within the United Kingdom insurance market.

7.7 The Client shall not at any time pursue any claim in contract, tort or statute (including negligence) against any individual employed by the Consultant, (whether named expressly or not), as a result of its carrying out the Services or preparing any information, documents and correspondence howsoever issued, under or in connection with these Terms & Conditions. All Employees of the Consultant are specifically excluded from having any personal liability to the Client or any third party.

## 8 SUPPLY OF INFORMATION AND PROJECT CHANGE

The Client shall supply in a timely fashion and without charge all necessary and relevant information (including any relevant instructions consents and approvals) in his possession or available to him from his other agents, contractors or consultants. If the Consultant has to carry out additional, repeat or revised work as a result of further or delayed information received, the Consultant shall appropriately advise the Client who shall be responsible for payment of such Services at the Consultants daily rates in force at the time.

## 9 DISPUTES AND DIFFERENCES

The parties shall attempt in good faith to settle any dispute by mediation. However, where this Agreement is a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996 either party may refer any dispute arising under the Agreement to adjudication in accordance with the Construction Industry Council Model Adjudication Procedure.

## 10 PAYMENT

10.1 In consideration of the Services performed under this Agreement, the Consultant shall be paid as set down in the proposal offer, being either monthly in arrears, or on a staged or lump sum basis, for all work completed. All sums shall become due for payment by the Client on submission of the Consultants invoice. All Reports, drawings, calculations, designs and the like remain the property of the Consultant until paid for in full by the Client. Any sums remaining unpaid at the expiry of the payment timeframe issued on the invoice, shall bear an additional fee of £100 for every 14 day period. The Consultant shall also be entitled to compensation for debt recovery costs incurred.

10.2 The Client may not withhold any payment after the final date for payment of any sum due under this Agreement unless the Client gives not later than seven days before such final date a notice specifying the amount proposed to be withheld and the ground for; withholding payment or if there is more than one ground, each ground and the amount attributable to it.

10.3 Where standing orders or electronic funds transfers are set for the payment of membership fees, should the Client cancel payments before the agreed terms of payment, the remaining balance shall become payable immediately. Failure to make payments will result in legal action and the Consultant reserves the right to appoint third party debt collection agencies to recover the remaining balance. The Client agrees to pay for the costs related to the appointment of such services.

## 11 THIRD PARTIES

11.1 All documents prepared by the Consultant in connection with the Services are for use by the Client only in connection with the Project and shall not be used nor relied upon by any Third Party without the written consent of the Consultant, or used for any other project. The Consultant accepts no responsibility or liability for any report or document prepared by it in connection with the Project to any party other than the Client.

11.2 Nothing in this Agreement confers or purports to confer on any Third Party any benefit or any right to enforce any term of this Agreement Pursuant to the Contract (Rights of Third Parties) Act 1999.

## 12 DETERMINATION

12.1 The Client may determine the Appointment of the Consultant at any time by 4 weeks notice in respect of all or any part of the Services.

12.2 If circumstances arise for which the Consultant is not responsible, making it irresponsible for it to perform all or any part of the Services, the Consultant shall be entitled to determine the Appointment by 4 weeks notice in respect of all or such part of the Services. Furthermore, in the event of failure by the Client to make any payment due to the Consultant in accordance with clause 10, the Consultant may, upon not less than two weeks notice, determine this Agreement.

## 13 LIMITATIONS OF SERVICES

13.1 Unless otherwise agreed in writing, travel/accommodation costs are not included for audits.

13.2 Unless otherwise agreed in writing, travel/accommodation costs are not included for training.

13.3 Prices quoted for documents will in most cases be in template format, with the exception of Gold and Platinum members who are entitled to receive documents with their logos and company details on should they so wish.

13.4 All documentation will either be sent as email attachments, or a link will be provided where the Client is to download the relevant document(s) from. Gold & Platinum members may request a CD free of cost with their requested documents.

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13.5 Audits of business sites are restricted to 1 site per business in UK mainland, unless pre-agreed as part a membership package.

13.6 Though the Consultant endeavours to respond to queries within an agreed timescale, in no event will Consultant be liable for any loss or damage including without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising from loss of data or profits arising out of, or in connection with, the subscription of membership packages or advice services.

13.7 PAT Testing services may incur additional travel costs depending on location.