

## TERMS AND CONDITIONS

### 1 INTERPRETATION

#### 1.1 In the Agreement:

**"Agreement"** means these Terms and Conditions and the Proposal to which they are attached, as supplemented, amended, or replaced from time to time in accordance with its terms.

**"Applicable Laws"** means all applicable laws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

**"Bribery"** means giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other Applicable Law.

**"Business Day"** means any day which is not a Saturday, Sunday or public or bank holiday in England.

**"Charges"** means the charges to be paid by Client for the Services calculated in accordance with Clause 5 (*Charges*) and the pricing as set out in the Proposal.

**"Client"** means the client organisation whose details are set out in the Proposal.

**"Commencement Date"** means the date set out as such in the Proposal.

**"Confidential Information"** means all information of a confidential nature in the disclosing party's possession or control, whether created before or after the date of the Agreement, whatever its format, and whether or not marked "confidential", including business plans, information relating to Above Surveying's technology and Services and the terms of the Agreement, and negotiations relating to it, but not including the existence of the Agreement, or information which is or comes into the public domain through no fault of the other party, was already lawfully in the other party's possession or comes into the other party's possession without breach of any third party's confidentiality obligation to the disclosing party, or is independently developed by or on behalf of the other party.

**"Deliverable"** means all work product that is required to be delivered or made available to Client that is made by or on behalf of Above Surveying during the performance of the Services (whether individually, collectively or jointly with Client and on whatever media), including text, diagrams, documentation, photographs, videos, presentations, reports, sounds and data.

**"Derived Data"** means any data created by Above Surveying in the course of providing the Services, including any data derived by Above Surveying from data provided by Client or uploaded to an Online Tool.

**"Force Majeure Event"** means an event beyond the reasonable control of a party which is not attributable to its fault or negligence, including acts of God, expropriation or confiscation of facilities, any form of government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency (including medical emergencies, epidemics and pandemics), sabotage or riots, and floods, fires, explosions or other catastrophes.

**"Initial Period"** means the initial period, if any, set out as such in the Proposal starting from the Commencement Date.

**"Intellectual Property Rights"** means all vested and future rights of copyright and related rights, design rights, database rights, patents, rights to inventions, trade marks and get-up (and goodwill attaching to those trade marks and that get up), domain names, applications for and the right to apply for any of the above, moral rights, goodwill (and the right to sue for passing off and unfair competition), rights in know-how, rights in confidential information, rights in computer software, and any other intellectual or industrial property rights or equivalent forms of protection, whether or not registered or capable of registration, and all renewals and extensions of such rights, whether now known or in future subsisting in any part of the world.

**"Minimum Notice Period"** means the minimum notice period, if any, set out as such in the Proposal.

**"Proposal"** means the Proposal (or similar document) to which these Terms and Conditions are attached.

**"Services"** means the services to be provided by Above Surveying set out in the Proposal.

**"Subscription Initial Period"** means the initial period for provision of a Subscription Service as set out in the Proposal.

**"Subscription Notice Period"** means the minimum notice period for cancelling a Subscription Service as set out in the Proposal.

**"Subscription Renewal Period"** means the length of each renewal of a Subscription Service as set out in the Proposal.

**"Subscription Services"** means the recurring Services described as such in the Proposal.

**"Subscription Start Date"** means the date on which a Subscription Service begins as set out in the Proposal or, if no date is specified, the date defined in Clause 2.2.

**"Term"** means the period during which the Agreement is in force.

**"Termination"** means the termination or expiry of the Agreement, howsoever occurring.

**"VAT"** means value added tax, sales tax or any similar tax levied in any applicable jurisdiction.

#### 1.2 In the Agreement reference to:

- (a) a statute or statutory provision includes a reference to:
  - (i) any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time;
  - (ii) all orders, regulations, instruments or other subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made under it to the extent in force from time to time; and
  - (iii) any statute or statutory provision of which it is an amendment, consolidation or re-enactment;
- (b) the terms **"holding company"**, **"subsidiary"**, **"parent undertaking"** and **"subsidiary undertaking"** shall be interpreted in accordance with the Companies Act 2006, and the term **"associated company"** shall be

interpreted in accordance with section 449 of the Corporation Tax Act 2010;

1.3 The headings in the Agreement are for ease of reference only and are to be ignored when interpreting the Agreement.

1.4 The interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1.5 Unless otherwise stated, time shall not be of the essence for the performance of any obligation.

1.6 Any order forms or other correspondence that the parties may use for the fulfilment or ordering of any Services or otherwise for administering the Agreement (such as purchase orders, receipts or invoices) shall be for administrative convenience only, and any terms and conditions included or referred to in such forms shall have no effect and shall not modify the Agreement (even if such forms or correspondence state otherwise).

1.7 To the extent of any conflict between the Proposal and the remainder of the Agreement, the Proposal shall prevail.

## 2 TERM

2.1 The Agreement shall commence on the Commencement Date.

2.2 For Subscription Services, each Subscription Service shall commence on its Subscription Start Date and shall (except as expressly provided otherwise in the Agreement) continue for its Subscription Initial Period. At the end of the Subscription Initial Period the Subscription Services shall automatically extend for further Subscription Renewal Periods unless either party gives written notice of at least the Subscription Notice Period (or 90 days if no Subscription Notice Period is specified) such notice to expire at the end of the Subscription Initial Period or then-current Subscription Renewal Period. Where no Subscription Start Date is set out in the Proposal for a particular Subscription Service that date shall be:

- (a) if the Subscription Service is purchased together with inspection services, the date on which the first inspection report is published by Above Surveying, and the Subscription Initial Period shall run from the date the final inspection report is published;
- (b) if the Subscription Service is purchased separately from any inspection services, the date on which the first payment is received in respect of that Subscription Service.

2.3 For all other Services, the Agreement shall (except as expressly provided otherwise in the Agreement) continue in force for the Initial Period. If no Initial Period is specified then the Agreement shall continue until the Services have been completed. After the Initial Period, the Agreement shall (except as expressly provided otherwise in the Agreement) continue in force unless and until terminated by either party giving notice of termination to the other party, such notice to expire at any time on or after the end of the Initial Period and the notice period to be at least the Minimum Notice Period (or 30 days if no Minimum Notice Period is specified).

## 3 SERVICES

3.1 Client appoints Above Surveying to provide the Services. Above Surveying shall provide the Services from the Commencement Date and for the Term.

3.2 In performing its obligations under the Agreement, Above Surveying shall at all times:

- (a) provide the Services with the skill and care to be expected of an experienced provider of services of the same type as the Services;
- (b) use reasonable endeavours to provide the Services in the timeframes set out in the Proposal; if no timeframe is specified, the parties shall promptly agree a project plan covering all activities required by both parties to carry out the Services;
- (c) provide all tools, materials, software and equipment required to carry out the Services; and
- (d) comply with all Applicable Laws.

3.3 Any changes to the Services (including the addition of new services) must be set out in writing and signed by both parties.

3.4 As part of the Services (in particular the Subscription Services) Client may be given access to browser and mobile application tools for interacting with inspection and other data ("**Online Tools**"). The following terms apply to the use of the Online Tools:

- (a) any mobile application made available to Client is licensed non-exclusively to Client for the Term or, if shorter, the period during which the Service to which the mobile applications relates is provided to Client;
- (b) Client is responsible for safeguarding the user names and passwords which secure access to the Online Tools. Client is responsible for any activity which occurs on the Online Tools using its assigned user names. Client's authorised users must be employees of Client;
- (c) Client may only use the Online Tools for its own internal business purposes. Client may permit the Online Tools to be accessed by its authorised third parties; Client shall be responsible for all use of the Online Tools by such third parties;
- (d) Client shall not access or use the Online Tools in a way that circumvents any security mechanism or usage limit (such as numbers of users or storage limits);
- (e) Client shall not access the Online Tools in order to design or build (whether for internal or external use) a competing product or service;
- (f) Above Surveying will use reasonable endeavours to make the Online Tools available in accordance with any service level agreement set out in the Proposal, but does not give any warranty or guarantee that the Online Tools will be error-free or available without interruption;
- (g) Above Surveying may suspend Client's access to the Online Tools if Client is not complying with the Agreement (including non-payment) and/or to protect the security and integrity of the Online Tools generally;
- (h) the Online Tools will provide the features described in the Proposal but Above Surveying reserves the right to change the features available using the Online Tools at any time;
- (i) Client must retain copies of any data that it uploads to the Online Tools or that it generates using the Online Tools; Above Surveying will have no liability for any loss of Client's data (howsoever caused); and
- (j) Above Surveying reserves the right to delete any data stored on the Online Tools relating to the Client on Termination or expiry of the relevant Subscription Service; it is Client's responsibility to ensure that prior to such Termination or expiry it has taken copies of any Client data that it wishes to retain. On Client's request

Above Surveying will provide technical support to assist Client to extract Client data; this support will be chargeable at Above Surveying's standard rate for professional services;

- (k) access to any Online Tool will cease on Termination or expiry of the relevant Subscription Service.

#### 4 CLIENT OBLIGATIONS

4.1 Client shall provide to Above Surveying without charge and in good time so as not to delay or disrupt the performance of the Services:

- (a) access to all necessary premises and land;
- (b) all necessary and relevant data and information as reasonably required by Above Surveying for the performance of the Services; and
- (c) all necessary visas, work permits, licences and permissions required by Above Surveying for the performance of the Services.

4.2 Above Surveying will rely on the accuracy and completeness of all data and information supplied by Client. Client may incur additional charges if data and information supplied are incorrect or incomplete.

4.3 Above Surveying shall not be responsible for failure or delay in carrying out any of its duties under the Agreement to the extent to which the failure or delay is caused by a Force Majeure Event.

4.4 When the Services include thermographic surveying, the Client acknowledges that an "Anomaly" is an observed and recorded thermal anomaly captured during the aerial inspection process. The "Anomaly Type" is an assigned categorisation made during the inspection data review and is not a conclusive diagnosis of the recorded Anomaly. The normalised temperature gradient value  $\Delta T_n$  is an adjusted value based on a mathematical extrapolation to standard irradiance conditions and is not derived by actual physical measurements. Further onsite assessment of identified Anomalies is recommended before any remedial work is carried out to fully qualify the nature of the Anomaly and its likely cause.

#### 5 CHARGES

5.1 Client shall pay Above Surveying the Charges calculated in accordance with the Proposal. Above Surveying shall be entitled to charge Client additional charges at its prevailing standard rates for (i) any additional services requested by Client and (ii) any additional time and expense incurred by Above Surveying as a result of delay or disruption in the performance of the Services caused by acts or omissions of Client or a Force Majeure Event.

5.2 Client shall reimburse Above Surveying all reasonable travel and accommodation expenses incurred by Above Surveying in connection with the provision of the Services.

5.3 The Charges are exclusive of VAT. Client shall in addition to the Charges pay VAT at the rate and in the manner prescribed by law.

5.4 All amounts due to be paid to Above Surveying shall be paid in full without set-off or counterclaim and without any deduction or withholding for or on account of any present or future taxes, duties, levies, imposts or charges of any nature. If Client is required by any law or regulation to make any deduction or withholding (on account of tax or otherwise) from any payment, Client shall, together with such payment, pay such additional amount as will ensure that Above Surveying receives, free and clear of any tax or other deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required. Client shall promptly forward to

Above Surveying copies of official receipts or other evidence showing that the full amount of any such deduction or withholding has been paid over to the relevant taxation or other authority

#### 6 PAYMENT

6.1 Above Surveying shall invoice Client the Charges in accordance with the payment terms set out in the Proposal (or monthly in arrears if no payment terms are specified).

6.2 Above Surveying shall issue all invoices in respect of the Charges in the currency specified in the Proposal. Client shall make payment to a UK bank account notified to Client by Above Surveying.

6.3 Unless the subject of a genuine dispute, Client shall pay the Charges within the time set out in the Proposal (or ten (10) days of receipt of Above Surveying's invoice if no time is specified). If a genuine dispute exists in relation to part only of an invoice, Client shall pay the undisputed amount.

6.4 If Client fails to pay in full on the due date any sum payable by it under or in connection with the Agreement then (i) Above Surveying may suspend the performance of any further Services until payment in full has been made and (ii) Client shall be liable to pay interest on the outstanding amount which shall accrue on a daily basis from the due date until the date of payment (whether before or after judgment) at the rate of 5% per annum above the base rate of Barclays Bank PLC from time to time.

6.5 The parties agree that Clause 6.4 is a substantial remedy and is fair for the purposes of section 8 of the Late Payment of Commercial Debts (Interest) Act 1998.

#### 7 WARRANTIES

7.1 Each party represents and warrants that it has the power and authority to enter into and perform the Agreement, which constitutes valid and binding obligations on it in accordance with its terms.

#### 8 INTELLECTUAL PROPERTY RIGHTS

##### 8.1 Pre-existing IPR

(a) The parties acknowledge that there shall be no change as a result of the Agreement in the ownership of Intellectual Property Rights in anything existing as at the Commencement Date, nor does the Agreement assign any Intellectual Property Rights which are created or developed by or on behalf of either party outside the Agreement.

(b) Client retains ownership of the Intellectual Property Rights in any data it uploads to an Online Tool.

##### 8.2 Deliverables and Derived Data

(a) Above Surveying retains ownership of all Intellectual Property Rights in the Deliverables and the Derived Data. Above Surveying grants Client a perpetual, royalty-free, worldwide licence to use the Deliverables for its own internal business purposes.

(b) Nothing in the Agreement shall prevent Above Surveying from using any general concepts, ideas, know-how, methodologies, processes, techniques or algorithms, which were developed under the Agreement.

#### 9 CONFIDENTIALITY

9.1 Each party shall safeguard all Confidential Information as it would its own confidential information, and shall use, copy and disclose that Confidential Information only in connection with the proper performance of the Agreement.

9.2 Nothing in the Agreement shall be construed so as to prevent a party from disclosing Confidential Information where required to do so by a court or other competent authority, provided that, unless prevented by law, the party promptly notifies the other party in advance and discloses only that part of the Confidential Information that it is compelled to disclose.

9.3 Each party shall tell the other party immediately if it discovers that this Clause has been breached and shall, on request and on Termination, return to the other party all of the Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

9.4 The obligations in this Clause shall continue without limit in time.

## 10 LIMITATIONS ON LIABILITY

10.1 Subject to Clause 10.3, the liability of Above Surveying (including its personnel and subcontractors) under or in connection with the Agreement, whether arising from contract, negligence or howsoever else occurring, shall be limited in any 12 month period (i) in respect of damage to tangible property to £5,000,000 and (ii) in respect of any other liability to the Charges payable during that 12 month period.

10.2 Subject to Clause 10.3, Above Surveying (including its personnel and subcontractors) shall not be liable to Client for any of the following types of loss or damage even if, in each case, Above Surveying has been advised of the possibility of such loss or damage: special, indirect or consequential loss; pure economic loss, costs, damages or charges; loss of profits, revenue, contracts, anticipated savings, business, use of assets, or goodwill; and loss or damage arising from loss, damage or corruption of any data

10.3 The exclusions and limitation of liability set out in Clauses 10.1 to 10.2 do not apply to:

- (a) liability arising from death or injury to persons caused by negligence;
- (b) liability arising as a result of Bribery;
- (c) anything else which cannot be excluded or limited by Applicable Law.

## 11 TERMINATION

11.1 A party may terminate the Agreement with immediate effect by giving the other party notice if:

- (a) the other party commits a material breach of the Agreement which:
  - (i) is not capable of remedy; or
  - (ii) is capable of remedy, but which the other party fails to remedy within 30 days of receiving notice specifying the breach and requiring the breach to be remedied;
- (b) the other party or any of its staff is found to have been responsible for any Bribery directly or indirectly in connection with the subject matter of the Agreement;

11.2 Above Surveying may terminate the Agreement if Client fails to pay any amount when due and Client does not remedy the non-payment within 30 days of receipt of notice of the breach being given by Above Surveying.

11.3 Either party may terminate the Agreement with immediate effect by giving the other party notice if:

- (a) such other party becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended);

- (b) such other party ceases or threatens to cease to carry on the whole or a substantial part of its business;
- (c) any distress or execution shall be levied upon such other party's property or assets;
- (d) such other party shall make or offer to make any voluntary arrangement or composition with its creditors;
- (e) any resolution to wind up such other party (other than for the purpose of a *bona fide* reconstruction or amalgamation without insolvency) shall be passed, any petition to wind up such other party shall be presented and not withdrawn or dismissed within seven days or an order is made for the winding up of such other party;
- (f) such other party is the subject of a notice of intention to appoint an administrator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order, or has an administrator appointed over it;
- (g) a receiver or administrative receiver is appointed over all or any of such other party's undertaking property or assets;
- (h) any bankruptcy petition is presented or a bankruptcy order is made against such other party;
- (i) an application is made for a debt relief order, or a debt relief order is made in relation to such other party;
- (j) such other party is dissolved or otherwise ceases to exist; or
- (k) the equivalent of any of the events described in Clause 11.3(a) to Clause 11.3(j) occurs in relation to such other party under the laws of any jurisdiction.

11.4 For the purposes of this Clause 11 (*Termination*) a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

## 12 ANTI-BRIBERY

12.1 Each party shall comply with all Applicable Law relating to anti-bribery and anti-corruption including the Bribery Act 2010. The parties shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

12.2 Each party shall have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the relevant laws, and will enforce them where appropriate.

## 13 GENERAL

### 13.1 Assignment

- (a) Subject to Clause 13.1(b), neither party may without the written consent of the other (which may be granted or withheld in its absolute discretion) assign, transfer, grant any security interest over or hold on trust any of its rights or obligations under the Agreement or any interest in them.
- (b) Above Surveying may assign or transfer this Agreement to any associated company or to any purchaser of any part of the assets of Above Surveying.

### 13.2 Third parties

- (a) The parties do not intend any third party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise, except where such third party is an assignee of rights under the Agreement and such assignment is in accordance with Clause 13.1 (Assignment).
- (b) The parties may terminate or vary the Agreement without the consent of any third party.

### 13.3 Entire agreement

The Agreement is the entire agreement between the parties, and replace all previous agreements and understandings between them, relating to its subject matter. The parties agree that no representations, warranties, undertakings or promises have been expressly or impliedly given in respect of the subject matter of the Agreement other than those which are expressly stated in the Agreement. Neither party shall have any remedy in respect of any statement not set out in the Agreement upon which it relied in entering into the Agreement, unless the statement was made fraudulently.

### 13.4 Relationship of the parties

Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties. No party shall have the authority to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.

### 13.5 Survival of clauses

Termination shall not affect either of the parties' accrued rights or liabilities, or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such Termination.

### 13.6 Waiver

A failure or delay in exercising any right or remedy under the Agreement shall not constitute a waiver of that right or remedy. A single or partial exercise of any right or remedy shall not prevent the further exercise of that right or remedy. A waiver of a breach of the Agreement shall not constitute a waiver of any other breach.

### 13.7 Variations

No variation of the Agreement shall be effective unless it is in writing and signed by or on behalf of each party.

### 13.8 Invalidity

- (a) The illegality, invalidity or unenforceability of any provision of the Agreement under any law of any jurisdiction shall not affect or impair the legality, validity or enforceability of the rest of the Agreement, nor the legality, validity or enforceability of that provision under the law of any other jurisdiction.
- (b) If any provision of the Agreement is held to be illegal, invalid or unenforceable under any law of any jurisdiction, the parties shall negotiate in good faith to agree any revision necessary to make the provision legal, valid and enforceable so as best to give effect to the intention of the parties as recorded in the Agreement.

### 13.9 Cumulative rights

The rights and remedies expressly conferred by the Agreement are cumulative and additional to any other rights or remedies a party may have.

### 13.10 Counterparts

The Agreement may be executed in any number of counterparts, which shall each constitute an original and together constitute one agreement. If the Agreement is executed in counterpart, it shall not be effective unless each party has executed at least one counterpart.

### 13.11 Communications

Communications under the Agreement shall be in writing and delivered by email, by hand or sent by recorded delivery post to the relevant party at its address as set out in the Agreement. Without evidence of earlier receipt, communications are deemed received: if delivered by hand, at the time of delivery; if sent by recorded delivery, at 9.00 am on the second Business Day after posting, and in the case of post it shall be sufficient to prove that the communication was properly addressed and posted.

### 13.12 Governing law and jurisdiction

- (a) The Agreement and any non-contractual obligations arising in connection with it shall be governed by and construed in accordance with English law.
- (b) Subject to Clause 13.12(d), the English courts have exclusive jurisdiction to determine any dispute arising in connection with the Agreement, including disputes relating to any non-contractual obligations.
- (c) Each party irrevocably waives any objection which it may now or later have to proceedings being brought in the English courts (on the grounds that the English courts are not a convenient forum or otherwise).
- (d) Nothing in the Agreement shall prevent a party from applying to the courts of any other country for injunctive or other interim relief.