

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Asbestos: has the meaning given to it in the Control of Asbestos Regulations 2012 (SI 2012/632).

Business Day: a day other than a Saturday, Sunday or public holiday in England.

BSR Completion Certificate: the completion certificate issued by the Building Safety Regulator under regulation 44 of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (SI 2023/909).

BSR Completion Certificate: Application: the completion certificate application as defined by the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (SI 2023/909).

Building Safety Laws:

- (a) the Building Safety Act 2022 (BSA 2022);
- (b) the Defective Premises Act 1972 (DPA 1972);
- (c) the Building Act 1984 (BA 1984);
- (d) the Building Regulations 2010 ("**Building Regulation**");
- (e) any statutory instrument, regulation, rule, order, code of practice or guideline made under the BSA 2022, the DPA 1972 the BA 1984 and the Building Regulation having the force of law which affects the Services, the project of which the Services form part or performance of any obligations under the Contract;
- (f) any guidance issued by a government department, the Building Safety Regulator and/or the Health and Safety Executive in connection with the BSA 2022, the DPA 1972 the BA 1984, the Building Regulation and/or any statutory instrument, regulation, rule, order, code of practice or guideline relating to the BSA 2022, the DPA 1972 the BA 1984 and/or the Building Regulation; and
- (g) any building safety laws and regulations now or from time to time in force which affect the Services, the project of which the Services form part or performance of any obligations under the Contract.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (2015/51).

Charges: the charges set out in the Fee Proposal payable by the Client for the supply of the Services in accordance with clause 5.

Client: the person or firm who purchases Services from Ingleton Wood as set out in the relevant Fee Proposal.

Client Default: has the meaning set out in clause 4.2.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.5.

Contract: the contract between Ingleton Wood and the Client for the supply of Services, which is formed of:

- (i) these Conditions;
- (ii) the applicable Fee Proposal; and
- (iii) any schedules, annexes or appendices or documents incorporated into these Conditions and/or the Fee Proposal.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time including:

the UK General Data Protection Regulation (Retained Regulation (EU) 2016/679);

the Data Protection Act 2018;

the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

all other legislation and regulatory requirements in force from time to time in any jurisdiction which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Deliverables: the deliverables set out in the Fee Proposal.

Fee Proposal: the client's fee proposal letter setting out the requirements of the person or firm purchasing various Services.

Force Majeure Event: means any unforeseeable circumstance that are not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors; and interruption or failure of utility service.

Ingleton Wood: Ingleton Wood LLP a limited liability partnership registered in England and Wales with company number OC306572.

Ingleton Wood Materials: has the meaning set out in clause 4.1(h).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Milestones: those dates by which all or part of the Services are to be completed and as further detailed in the Fee Proposal.

Principal Contractor: has the meaning set out in the CDM Regulations or Building Regulation (as applicable).

Principal Designer: has the meaning set out in the CDM Regulations or the Building Regulation (as applicable).

Schedules: those schedules setting out the services that are referenced in, and incorporated by, the Fee Proposal.

Services: the services, including the Deliverables, supplied by Ingleton Wood to the Client as set out in the Fee Proposal and relevant Schedule(s).

Services Start Date: such date(s) as set out in the Fee Proposal.

Site: the place at which the some or all of the Services are to be provided.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as at the Commencement Date. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email, but not faxes.

2. BASIS OF CONTRACT

- 2.1 This Contract is made up for the following:
 - (a) The Fee Proposal along with any appendices or annexes.
 - (b) These Conditions.
- 2.2 This Contract shall be deemed to come into force on the earlier of either:
 - (a) the date of the second party's signature to the Fee Proposal; or
 - (b) on receipt of the Fee Proposal, the Client confirms its Acceptance of the Fee Proposal in an email to Ingleton Wood,
such date being the "**Commencement Date**".
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 In the event of conflict between the terms of the Fee Proposal and these Conditions, the Fee Proposal will prevail.
- 2.5 The Client acknowledges that Fee Proposals are capable of being accepted for a period of three months from the date that the relevant Fee Proposal is shared by Ingleton Wood with the Client. In the event that the Client fails to accept a Fee Proposal within this three month period, the Fee Proposal will cease to be valid and Ingleton Wood reserves the right (at its sole discretion) to extend or amend the Fee Proposal (which may include increasing the fees) upon providing the Client with notice.

3. SUPPLY OF SERVICES

- 3.1 Ingleton Wood shall supply the Services to the Client in accordance with the Fee Proposal and any relevant Schedule(s) in all material respects.
- 3.2 Ingleton Wood shall use reasonable endeavours to meet any performance dates specified in the Fee Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Ingleton Wood reserves the right to amend any of its Fee Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Ingleton Wood shall notify the Client in any such event.
- 3.4 Ingleton Wood shall provide the Services to the Client using reasonable skill and care.
- 3.5 Unless otherwise stated in the Fee Proposal, the Client agrees that the Services provided by Ingleton Wood do not include:
 - (a) intrusive investigations or testing;
 - (b) the arrangement of utilities or responsibility for third party statutory service providers; or
 - (c) the fulfilment of the duties of any dutyholders (including, without limitation, the duties of Client, Principal Designer and Principal Contractor dutyholders) under or in connection with the Building Regulation.
- 3.6 For the avoidance of doubt, the Client acknowledges and agrees that the roles of 'Principal Designer' and 'Principal Contractor' under the CDM Regulations are separate to the

roles of 'Principal Designer' and 'Principal Contractor' under the Building Regulation.

- 3.7 Where Ingleton Wood are appointed as Principal Designer under the CDM Regulations it does not automatically follow that Ingleton Wood are also appointed as Principal Designer for Building Regulation purposes. These are separate appointments and should be treated as such.
- 3.8 Further to the above clause, where Ingleton Wood are appointed as Principal Designer under the CDM Regulations, they should not be named as Principal Designer within any Building Regulation application.

4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
 - (a) ensure that the terms set out in the Fee Proposal are complete and accurate;
 - (b) co-operate with Ingleton Wood in all matters relating to the Services;
 - (c) provide Ingleton Wood, its employees, agents, consultants and subcontractors, with unobstructed access to the Site, Client's premises, office accommodation and other facilities as reasonably required by Ingleton Wood;
 - (d) provide Ingleton Wood with such information and materials as Ingleton Wood may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the Services Start Date;
 - (f) comply with all applicable laws, including health and safety laws;
 - (g) provide Ingleton Wood with all information relating to health and safety and any particular Site including, without limitation, risk assessments and/or asbestos surveys prior to Ingleton Wood commencing the Services;
 - (h) keep all materials, equipment, documents and other property of Ingleton Wood (**Ingleton Wood Materials**) at the Client's premises in safe custody at its own risk, maintain Ingleton Wood Materials in good condition until returned to Ingleton Wood, and not dispose of or use Ingleton Wood Materials other than in accordance with Ingleton Wood's written instructions or authorisation; and
 - (i) comply with any additional obligations as set out in this Contract.
- 4.2 If Ingleton Wood's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
 - (a) without limiting or affecting any other right or remedy available to it, Ingleton Wood shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Ingleton Wood's performance of any of its obligations;
 - (b) Ingleton Wood shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Ingleton Wood's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Client shall reimburse Ingleton Wood on written demand for any costs or losses sustained or incurred by Ingleton Wood arising directly or indirectly from the Client Default.

- 4.3 Without prejudice to clause 4.1 (f), the Client undertakes to Ingleton Wood that it will duly comply with all applicable CDM Regulations. In particular, but without limitation:
- (a) where Ingleton Wood is not the Principal Designer for the purposes of the CDM Regulations, the Client shall ensure that the Principal Designer carries out its duties under and in accordance with the CDM Regulations;
 - (b) the Client shall ensure that the Principal Contractor for the purposes of the CDM Regulations carries out its duties under and in accordance with the CDM Regulations; and
 - (c) if the Client appoints a replacement for the Principal Designer and/or Principal Contractor for the purposes of the CDM Regulations, the Client shall immediately upon that appointment notify Ingleton Wood with details of the new appointee.
- 4.4 Without prejudice to clause 4.1 (f), the Client undertakes to Ingleton Wood that it will duly comply with all applicable Building Safety Laws. In particular, but without limitation, the Client shall:
- (a) ensure that the duties of the Client, Principal Designer and Principal Contractor (each for the purposes of the Building Regulation) are carried out and completed under and in accordance with the Building Safety Laws;
 - (b) collate and submit to the Building Safety Regulator of the BSR Completion Certificate Application in accordance with the Building Safety Laws;
 - (c) liaise and co-operate with the Building Safety Regulator in relation to the BSR Completion Certificate Application as may be required by the Building Safety Regulator and the Building Safety Laws; and
 - (d) supply such documents and information as is necessary in respect of the issuance of a BSR Completion Certificate.
- ## 5. CHARGES AND PAYMENT
- 5.1 The Client shall pay the Charges for the Services to Ingleton Wood in accordance with the Fee Proposal and as set out in this clause 5.
- 5.2 In the event that:
- (a) Ingleton Wood is requested by the Client to undertake services not provided for in the Fee Proposal;
 - (b) Supply of the Services becomes delayed or protracted through no fault of Ingleton Wood; or
 - (c) the Client requests a change to the Services, then Ingleton Wood shall be entitled to charge additional fees, calculated on a time and materials basis.
 - (d) Ingleton Wood appoint sub-consultants / sub-contractors for Clients, Ingleton Wood reserves the right to charge a minimum 10% handling fee and issue an upfront invoice for the sub-consultant / sub-contractor costs. This is unless otherwise agreed in Ingleton Wood's appointment with the Client in a Fee Proposal.
- 5.3 Subject to clause 5.2, the Charges shall be calculated and paid in instalments in accordance with the Fee Proposal. If not set out in the Fee Proposal, the Charges shall be paid at monthly intervals beginning one month after Ingleton Wood begins performing the Services.
- 5.4 Ingleton Wood shall submit to the Client an invoice for each instalment of the Charges and any additional monies due and owing to it by the Client under this Contract. The invoice shall specify the sum that Ingleton Wood considers will become due on the payment due date in respect of the instalment, and the basis on which that sum is calculated.
- 5.5 Payment of each invoice shall be due on the date that Ingleton Wood submits the invoice to the Client.
- 5.6 No later than five days after payment of an invoice becomes due, the Client shall notify Ingleton Wood of the sum that the Client considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.
- 5.7 The final date for payment of an invoice shall be 30 days (or such shorter number of days for which the Fee Proposal provides) after the date on which payment becomes due.
- 5.8 Unless the Client has served a notice under clause 5.9, it shall pay Ingleton Wood the sum referred to in the Client's notice under clause 5.6 (or, if the Client has not served notice under clause 5.6, the sum referred to in the invoice referred to in clause 5.4) (in this clause 5.8, the **"notified sum"**) on or before the final date for payment of each invoice.
- 5.9 Not less than seven days before the final date for payment (in this clause 5.9 the **"prescribed period"**), the Client may give Ingleton Wood notice that it intends to pay less than the notified sum (in this clause 5, a **"pay less notice"**). Any pay less notice shall specify:
- (a) the sum that the payer considers to be due on the date the notice is served; and
 - (b) the basis on which that sum is calculated.
- 5.10 The Client shall reimburse all reasonable expenses properly and necessarily incurred by Ingleton Wood in the course of providing the Services.
- 5.11 Where Ingleton Wood is requested to make an application on behalf of the Client which requires the payment of a fee, Ingleton Wood shall not make such an application until such fee is paid to Ingleton Wood by the Client.
- 5.12 Unless otherwise agreed in writing by the parties, the Client shall be solely responsible for costs in relation to planning, building regulations and the Client's contractors. The Client agrees that it shall make all such payments directly and undertake their own financial due diligence checks.
- 5.13 In the event that Ingleton Wood is unable to provide Services due to being unable to access the Site, Ingleton Wood shall be entitled to charge an abortive fee.
- 5.14 The Client shall pay each invoice submitted by Ingleton Wood in full and in cleared funds to a bank account nominated in writing by Ingleton Wood in accordance with the payment terms set out in the Contract.
- 5.15 Time for payment shall be of the essence of the Contract.
- 5.16 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Ingleton Wood to the Client, the Client shall, on receipt of a valid VAT invoice from Ingleton Wood, pay to Ingleton Wood such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.17 If the Client fails to make a payment due to Ingleton Wood under the Contract by the final date for payment and fails to give a pay less notice under clause 5.9 then, without limiting Ingleton Wood's remedies under clause 13, the Client shall pay interest on the overdue sum in accordance with the provisions of the Late Payments of Commercial Debts (Interest) Act 1998.
- 5.18 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- ## 6. STORAGE AND RETENTION OF FILES AND DOCUMENTS
- 6.1 Ingleton Wood shall store and retain files and documents pertaining to the Services for a period of 12 years.

6.2 The Client consents to Ingleton Wood destroying hard-copy files at any time after the Services have been completed provided that such files and documents are kept electronically in accordance with clause 6.1.

6.3 Ingleton Wood reserves the right to make a charge for the retrieval of any files or documents, any photocopying costs incurred, any postage costs incurred and any time spent in relation to the retrieval of files and documents.

7. ASBESTOS

7.1 The Client acknowledges that Ingleton Wood is not qualified to comment on or make recommendations in respect of Asbestos or Asbestos-related matters.

7.2 The Client acknowledges that owners of non-domestic premises are required to manage any Asbestos within their premises pursuant to the Control of Asbestos Regulations 2012.

7.3 Ingleton Wood requires a copy of an Asbestos report from the Client along with any related documents prior to commencing the Services. In the event that such a report does not exist, the Client will be responsible for furnishing Ingleton Wood with a report prior to the commencement of Services. The Client's Asbestos report will need to cover all areas and voids required to be accessed to deliver the Services, and if not received, Ingleton Wood will be unable to access those areas and voids.

7.4 The Client acknowledges that Ingleton Wood is unable to provide a recommendation in respect of Asbestos consultants or contractors but is able to provide a list of specialist consultants and contractors without any recommendation.

7.5 In the event that a specialist Asbestos consultant or contractor is required, the Client agrees that such a consultant or contractor must be engaged directly by the Client and not by way of subcontract via Ingleton Wood.

7.6 The Client acknowledges and agrees that Ingleton Wood will have no liability in respect of claims arising out of or in connection with Asbestos.

8. COLLATERAL WARRANTIES

8.1 The Client agrees that where Ingleton Wood is required to enter into a collateral warranty with a party or parties who are not a party to the Contract, Ingleton Wood shall do so only on terms which are acceptable to Ingleton Wood and only where Ingleton Wood's insurers provide their consent.

8.2 Subject to clause 8.1, Ingleton Wood reserves the right to charge the Client an additional fee of £1,000 plus VAT to cover its additional costs and expenses arising from entering in to such a warranty.

9. ANTI-BRIBERY AND ANTI-CORRUPTION

9.1 The parties shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**); and
- (b) have and shall maintain in place throughout the term of this agreement their own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

9.2 Breach of this Clause 9 shall be deemed a material breach under clause 14.2.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Ingleton Wood.

10.2 Ingleton Wood grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, revocable, royalty-free licence to receive and use the Services and the Deliverables in its business.

10.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 10.2.

10.4 The Client grants Ingleton Wood a fully paid-up, non-exclusive, perpetual, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Ingleton Wood for the term of the Contract for the purpose of providing the Services to the Client.

10.5 The grant of the licences in clause 10.2 are subject to the Client performing its payment obligation under clause 5. In the event that a licence is granted and the Client subsequently defaults on its payment obligations, then Ingleton Wood may, at its sole discretion, give notice to the Client of not less than seven days of the revocation of any such licences.

11. DATA PROTECTION

11.1 Both parties agree to comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and Ingleton Wood is the processor.

11.3 Without prejudice to the generality of clause 11.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Ingleton Wood for the duration and purposes of the Contract.

11.4 Without prejudice to the generality of clause 11.1, Ingleton Wood shall, in relation to any personal data processed in connection with the performance by Ingleton Wood of its obligations under the Contract:

- (a) process that personal data only on the documented written instructions of the Client unless Ingleton Wood is required by Data Protection Legislation to otherwise process that personal data. Where Ingleton Wood is relying on the Data Protection Legislation as the basis for processing personal data, Ingleton Wood shall promptly notify the Client of this before performing the processing required by the Data Protection Legislation unless they prohibit Ingleton Wood from so notifying the Client;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (d) not transfer any personal data outside of the UK and/or the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- (i) the Client or Ingleton Wood has provided appropriate safeguards in relation to the transfer;
 - (ii) the Client and Ingleton Wood enter into an appropriate international data transfer agreement;
 - (iii) the data subject has enforceable rights and effective legal remedies;
 - (iv) Ingleton Wood complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (v) Ingleton Wood complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
- (e) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by the Data Protection Legislation to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and promptly inform the Client if, in the opinion of Ingleton Wood, an instruction infringes the Data Protection Legislation.
- exceed £100,000), **where the Services relate to fire safety;** or
- (b) £1,000,000 where the Charges are less than or equal to £100,000 and the Services do not relate to fire safety; or
- (c) £5,000,000 where the Charges are greater than £100,000 and **the Services do not relate to fire safety.**
- 12.7 Subject to clause 12.5, Ingleton Wood's liability under or in connection with the Contract shall not exceed, in the aggregate, the amount, if any, recoverable by Ingleton Wood against the claim or claims in question under the professional indemnity insurance taken out and maintained by it in accordance with clause 12.1.
- 12.8 Subject to clause 12.5, Ingleton Wood shall, in no circumstances be liable to the Client for:
- (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) pure economic loss;
 - (vi) loss of use or corruption of software, data or information;
 - (vii) loss of or damage to goodwill; and
 - (viii) indirect or consequential loss.
- 12.9 This clause 12 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY

- 12.1 Ingleton Wood has obtained insurance cover in respect of its own legal liability for individual claims. The limits and exclusions in this clause reflect the insurance cover Ingleton Wood has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 12.2 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.3 Subject to clause 12.6, the liability of Ingleton Wood shall be limited to such sum as would be just and equitable for Ingleton Wood to pay having regard to the extent of the responsibility of Ingleton Wood for the loss or damage suffered on the basis that all other consultants, contractors, organisations and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those applying in the case of the Contract and shall be deemed to have paid to the Client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage.
- 12.4 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 12.5 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.6 Subject to clauses 12.5, 12.7 and 12.8, Ingleton Wood's total aggregate liability to the Client shall not exceed:
- (a) either (i) £100,000 (where the Charges are equal to, or less than, £100,000); or (ii) £250,000 (where the Charges

13. INSURANCE

- 13.1 Subject to the availability of insurance in the market at commercially reasonable rates and terms and any restriction on cover, during the term of the Contract and for a period of six years afterwards, each party shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent business-person in connection with the risks associated with this Contract, and produce to the other party on demand, any relevant insurance certificates.

14. TERMINATION

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract for convenience by giving the other party one month's written notice.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.3 Without affecting any other right or remedy available to it, Ingleton Wood may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Client.

14.4 Without affecting any other right or remedy available to it, Ingleton Wood may suspend the supply of Services under the Contract or any other contract between the Client and Ingleton Wood if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d) (inclusive), or Ingleton Wood reasonably believes that the Client is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Contract:

- (a) the Client shall immediately pay to Ingleton Wood all of Ingleton Wood's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Ingleton Wood shall submit an invoice, which shall be payable by the Client immediately on receipt; and
- (b) the Client shall return all of Ingleton Wood Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then Ingleton Wood may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

16. DISPUTES

16.1 Neither party shall commence any action or proceedings against the other under the Contract after six years from the date of completion of the Services (or termination of the Contract, if sooner) and any adjudicator's decision under clause 16.5 shall be finally binding on them unless either party has referred that dispute for final determination by arbitration or legal proceedings before that date.

16.2 Complaints will be initially dealt with under the provisions of Ingleton Wood's Complaints Handling Policy, a copy of which is available upon request.

16.3 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, a director of the Client and a director of Ingleton Wood shall attempt in good faith to resolve the Dispute;
- (b) if the director of the Client and the director of Ingleton Wood are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To

initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.

16.4 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute which shall apply at all times.

16.5 If a dispute or difference arises under this agreement which either party wishes to refer to adjudication, the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended) ("**the Scheme**") shall apply except that for the purposes of the Scheme the adjudicator nominating body shall be the Royal Institution of Chartered Surveyors.

17. FORCE MAJEURE

17.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly. As soon as reasonably practicable after the start of the Force Majeure Event, the Affected Party shall notify the other party of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract. If a Force Majeure Event continues for a period of more than four weeks, either party may terminate this Agreement with immediate effect by providing the other party with written notice.

18. GENERAL

18.1 **Marketing and Promotion.** Subject to clause 18.3, unless otherwise agreed in writing, Ingleton Wood may use the Client's name, standard logo, photos and other information gathered during the course of providing the Services for marketing material and social media use. Such photos or information shall be used anonymously by Ingleton Wood unless the Client agrees to the contrary in writing.

18.2 **Assignment and other dealings.**

- (a) Ingleton Wood may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Ingleton Wood.

18.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or contactors of the other party, except as permitted by clause 18.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority (provided that, to the extent permitted by law, the receiving party notifies the disclosing party in advance

of such disclosure and uses commercially reasonable efforts to maintain the confidentiality of the information that is required to be disclosed).

- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

18.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 18.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 18.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 18.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18.7 shall not affect the validity and enforceability of the rest of the Contract.

- 18.8 **Regulated by the RICS.** Regulated by the RICS. Ingleton Wood is regulated by the RICS for the provision of surveying services. This means Ingleton Wood agrees to uphold the RICS Rules of Conduct for Firms and all other applicable mandatory professional practice requirements of RICS in connection with the surveying services that it delivers, which can be found at www.rics.org. As a RICS regulated firm, Ingleton Wood has committed to cooperating with RICS in ensuring compliance with its standards. Ingleton Wood's nominated RICS Responsible Principal is Simon Gorst, partner, email: simon.gorst@ingletonwood.co.uk, tel: 020 7680 4400.

18.9 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Fee Proposal.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

(iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.9(b)(iii), "**business hours**" means 9.00am to 5.00pm Monday to Friday on a Business Day in the place of receipt.

- (c) This clause 18.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

- 18.10 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 18.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

- 17.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.