

1 INTERPRETATION

i) In these Terms:

"Agreement" means the agreement between the Client and PCL Building Consultancy Ltd for carrying out the Service incorporating the Terms and operating under the trading name of Schedule of Condition UK;

"Client" means the person to whom PCL is to provide services in accordance with the Terms and includes the person to whom the Engagement Letter is addressed;

"Director" means any person whose title includes the word 'director' whether or not a statutory director;

"Engagement Letter" means the letter sent out by PCL to the Client setting out the basis on which it will carry out the Service;

"Force Majeure" means any circumstances beyond the reasonable control of PCL including without limitation, war or threat of war, actual or threatened terrorist activity, any form of industrial action, disaster, adverse weather, act of God or act of governmental or other regulatory bodies;

"PCL" means PCL Building Consultancy Limited whose registered office is at 8A Overland Road, Langland, Swansea. SA3 4LS

"Property" means the property which is the subject of the Client's instructions to PCL (and includes any element of the property defined by the client and PCL at the point of instruction forming part of the Agreement);

"RICS" means the Royal Institution of Chartered Surveyors;

"Scope of Service" means the schedule setting out the scope of service appended to or otherwise referred to in the Engagement Letter;

"Service" means the service to be performed by PCL under the Agreement;

"Terms" means the terms and conditions set out in this document and (unless the context otherwise requires) includes any other terms and conditions set out in the Engagement Letter or any other letter or document from PCL accompanying, supplementing or varying the Terms.

ii) In these Terms:

(a) A reference to "writing" includes facsimile transmission and electronic mail;

(b) A reference to any provision of a statute or regulation shall be construed as a reference to that provision as it is in force at the relevant time taking account of any amendment, re-enactment or extension;

(c) Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any gender include all genders and any reference to a "person" includes an individual, firm, corporation and/or other legal entity;

(d) References to a numbered Condition are to that condition in these Terms;

(e) The headings are for convenience only and shall not affect the interpretation of these Terms.

2 GENERAL

i) The Agreement shall be made when the Client receives a copy of the Terms or gives instructions to PCL, whichever shall be the later, and shall be subject to the Terms, which shall also apply to all or any part of the Service carried out prior to such date.

ii) PCL shall perform all Services on the basis of the Terms only, which shall apply to the exclusion of any other terms and conditions which the Client may seek to impose.

iii) No variation of the Terms shall be binding unless previously agreed in writing by a Director of PCL and in entering into the Agreement the Client acknowledges that it has not relied on any statement, promise or representation which has not been confirmed in writing by a 'Director' of PCL.

iv) In the event of any ambiguity or conflict between any of the documents comprising the Agreement, the Engagement Letter shall take precedence over any of the other Terms.

v) Nothing in the Agreement shall confer or purport to confer on any third party any benefit or right to enforce any terms of the Agreement. No term of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Agreement, although this shall not affect any right or remedy of any third party which exists or is available other than under such Act.

vi) PCL's duties under the Agreement shall be limited to those set out in the Terms.

vii) PCL shall be entitled to accept and act on any instruction given to PCL by any person who is an employee of, or agent, advisor or sub-contractor to, the Client.

viii) If any provision of the Terms shall become or be declared illegal, invalid or unenforceable for any reason such provision shall be divisible and shall be deemed to be deleted, from the Terms.

ix) Nothing in this Condition 2 shall exclude or limit PCL's liability for fraud or fraudulent misrepresentation.

x) The Client shall provide its authority, instructions or information required to PCL promptly

xi) It is a Condition of the Client's agreement with PCL that (save where PCL instructs independent experts, consultants or other third parties on the Client's behalf) the duties and responsibilities owed to the Client are solely and exclusively those of PCL and that no employee of PCL shall owe the Client any personal duty of care or be liable to the Client for any loss or damage howsoever arising as a consequence of the acts or omissions of such employee (including negligent acts or omissions) save and to the extent that such loss or damage is caused by the fraud, dishonesty, wilful misconduct or unauthorised conduct on the part of such employee.

3 SERVICE

PCL shall seek to provide a service such as would be expected of a firm of consultant surveyors in a proper professional manner and shall perform the Service with all reasonable care and skill and shall act in good faith at all times.

The Service shall, however, be provided on the basis that:

- i) PCL reserves the right to carry out instructions in accordance with such procedures, principles or methodologies as PCL deems to be appropriate. Where appropriate, PCL shall comply with the relevant Practice Statements and Guidance Notes published by the RICS;
- ii) PCL should carry out a visual inspection of all accessible internal and external parts of the Property available at the time of the inspection only and PCL shall not be obliged and shall usually not carry out any inspection of parts of the Property that require opening up or invasive investigations or of concealed or inaccessible areas and PCL shall not be under any duty to identify or deal with any concealed defects or generally any closed up areas or spaces and PCL shall not be obliged and will not usually carry out any inspection of external parts of the Property above 2 metres high and, in any event, will only carry out external inspections to the extent that a fixed and safe form of appropriate access is available or if the Client instructs PCL and PCL agrees to hire specialist access equipment at the Client's expense.
- iii) The Client shall indemnify PCL in the event that PCL are required or if it is reasonably necessary to carry out any form of opening up or invasive investigation to the Property or in the event that PCL agree to hire or procure specialist access equipment and such indemnity is in respect of all actions, claims, demands, expenses and proceedings arising out of or in connection with or incidental to the carrying out of such inspections with or without specialist access equipment in respect of the Client's Property or any third party or third party's property other than those arising by virtue of the negligent or wilful default of PCL or its employees or agents and the Client shall specifically indemnify PCL against the cost of any remedial or reinstatement works required following the carrying out of such investigations.
- iv) No building materials including the fabric of the Property or any constituent parts or services shall be tested or analysed unless specifically requested and agreed by PCL.
- v) PCL shall not be under any obligation to inspect any service media, conduits, drains or shafts including lift shafts, service ducts, suspended ceilings or floors and any advice or comments made by PCL about any such areas must not be relied on by the Client without specialist survey.
- vi) The Services shall be limited to matters upon which it is suitable and usual for a Chartered Building Surveyor to advise and unless the Client specifically instructs and PCL accepts such instruction in writing, PCL will not undertake any detailed engineers, service installations, plant and machinery or structural inspections or reports regarding the Property.
- vii) PCL shall not be obliged and will not usually carry out any assessment or advice in respect of environmental or contamination issues relating to the Property and in all cases a specialist shall be instructed to this purpose.
- viii) PCL shall not be obliged to provide estimates for any likely cost of works or quantities or other such specialist advice unless the Client instructs PCL and PCL agree in writing to perform such services and PCL shall not be obliged and will not usually carry out any service including the certification or approval of works or stages of works or payments to contractors or due under any form of contract or otherwise unless the Client instructs PCL to do so and PCL agrees in writing to perform such services.
- ix) PCL will not provide advice regarding IT management infrastructure or services including computers, data chip information sensitivity, compliance issues, software or hardware in connection with climate control or other facility management systems.
- x) Estimates of times for performance of all or any part of the Service have been made upon the basis of information available to PCL at the time and are approximate only so that PCL shall not be bound by any such estimate;
- xi) PCL may, if it considers it appropriate, secure performance of any or all Services by instructing one or more other persons (whether as sub-contractor or in any other capacity) upon such terms as PCL considers appropriate. In circumstances where PCL secures the performance of another person, no additional fee shall be payable by the Client in the absence of prior agreement to such additional fee but the Client shall be liable to pay all fees and other sums payable to PCL as if all Services had been performed by PCL;
- xii) The Client shall provide PCL (or ensure that PCL is provided) with details of any other consultants or contractors appointed or to be appointed by the client relevant to the Service and shall provide PCL with details and shall facilitate access to the Property and the Clients shall be liable to pay PCL for any abortive time incurred in travelling, waiting or otherwise in connection with access and inspection arrangements.

4 THE PROPERTY

i) Information

The Client warrants, represents and undertakes to PCL that (save as specifically notified to PCL by the Client in writing):

- (a) PCL shall be entitled to rely upon information and documents provided by or on behalf of the Client including those relating to matters such as Health & Safety, the Asbestos Register and details of tenure, tenancies, use, contamination, building costs, costs of development, town planning consents and building regulation consents and the like as being, to the best of the Client's knowledge, information and belief, accurate and not misleading (either on their face or by inference or omission) and the Client shall advise PCL and shall instruct any advisor to inform PCL in the event that the Client and/or any advisor receives notice or becomes in any other way aware that any information given to PCL is or may be misleading or inaccurate.
- (b) It shall provide legible true copies of any relevant documents reasonably required by PCL including all/any Court Orders and directions where PCL are appointed as expert witness.
- (c) It shall make arrangements for the inspection of or attendance at the Property by PCL on reasonable notice in order to carry out the Service.
- (d) there are no facts known to the Client which ought to be brought to the attention of PCL to enable it to ensure that access to or inspection of the Property by any person is safe and without risks to health.

ii) Assumptions

Except where disclosed to PCL in writing, PCL shall be entitled to assume the following as appropriate:

- (a) PCL shall not take account of any item in the nature of the tenant's fixtures and fittings, improvements, plant equipment, and machinery and PCL may (without any obligation to do so) make any reasonable assumptions to identify if any fixtures and fittings are part of the Property and which would pass, with the Property, on reversion, back to the landlord and that all such tenant's improvements or fixtures and fittings have all necessary consents and are not subject to any onerous conditions.
- (b) The Property has the benefit of full planning consent or established use rights and building regulations and other statutory, regulatory or contractual approvals;

(c) The Property complies with all relevant statutory requirements including Fire Regulations and that a Fire Certificate if required will be issued if it has not already been issued;

(d) The Property is not contaminated or potentially contaminated. Unless specifically instructed, PCL shall not undertake any investigation into the past or present uses of either the Property or any adjoining or nearby land, to establish whether there is any potential for contamination from these uses and shall assume that none exists.

iii) Other matters

Unless otherwise agreed by PCL in writing:

(a) PCL shall not be responsible for making any local search or other enquiries of local or any other authorities, including town planning enquiries or investigation of title regarding the Property, which shall be the Client's sole responsibility, and PCL may rely on any such information provided by the Client or the Client's advisors without further enquiry. If PCL shall make oral or other enquiries regarding the Property to third parties, the results of such enquiries shall not be relied on by the Client unless the Client has been separately advised by its solicitor that they may be relied on;

(b) Subject to agreement of the terms of any subsequent instruction, PCL shall not be responsible for making any structural or site survey or audit of the Property such as may be required under the Disability Discrimination Act 1995 or the Control of Asbestos at Work Regulations 2002 or with respect to any other statutory regulations or recommendations or for testing any services to or on the Property, including the availability of broadband or other communications or information technology infrastructures;

(c) Any advice, approval or representation made by PCL or any person on behalf of PCL regarding the legal meaning or effect of any lease or contract shall not be relied on by the Client and such advice shall be limited to matters upon which it is suitable for a Chartered Surveyor to advise and shall not constitute advice regarding legal interpretation or drafting issues. Unless otherwise agreed in writing between the Client and PCL, PCL shall not be obliged to advise upon the interpretation or drafting of any draft agreements, leases or other legal or technical documents;

(d) Unless the Client shall specifically commission a formal management arrangement with relevant obligations and PCL accept such instruction on terms to be agreed, the Client shall remain responsible for the insurance of the Property and for notifying its insurers should the Property become vacant. PCL shall not be responsible for the management, security or deterioration of the Property or, except in respect of death or personal injury caused by the negligence of PCL or its employees or agents, for any other like matter or loss however caused. If the keys for the Property are held by PCL then the Client shall be deemed to have given authority to PCL to supply keys to any persons who wish to inspect the Property or carry out works or inspections at the Property and PCL shall accept no responsibility for the action of such persons. The Client shall effect and maintain full insurance cover against any claim that may be made by PCL or any representative or employee of PCL or by any third party in respect of any loss, damage or injury however caused arising directly or indirectly under or in respect of the Agreement.

(e) PCL shall not be responsible for advising in respect of, or effecting the service of, any notice or schedule required to be given under statute or under the provisions of any contract or lease or otherwise and shall not be liable for advice, interpretation or compliance with any time periods or other provisions under statute, regulation (including the Civil Procedure Rules for the time being) or provided for in any contract or lease including any notice of appeal or for making payments or carrying out any other actions in accordance with such time periods or provisions including, unless agreed in writing by PCL otherwise, any form of certification or approval of works;

(f) Whilst PCL shall endeavour to treat all information which is relevant to the Client's instruction as confidential, PCL may at its sole discretion provide any information to other professionals or third parties associated with this instruction and, in any event, PCL may be required to provide such information to a court, tribunal or the other party in any proceedings;

(g) PCL shall not be under any duty to carry out conflict checks in relation to any third party (such as related companies) other than the Client or any other relevant party notified in writing by the Client to PCL.

5 TERMS OF PAYMENT

i) Unless otherwise stated in the Engagement Letter the Client shall be liable to pay PCL its remuneration or a due proportion of its remuneration at intervals to be determined by PCL or on completion of the Service at PCL's discretion. Payments are due on issue of the invoice and the final dates for payment by the Client shall be 28 days' from the date of issue of the invoice.

ii) PCL shall be entitled to submit accounts for disbursements at the time when incurred or ordered by PCL and such accounts shall be payable by the Client whether or not the Client withdraws its instructions. Accounts for disbursements are due for settlement on presentation. Alternatively PCL may arrange for the suppliers to invoice the Client directly for services supplied.

iii) VAT will be payable where applicable at the prevailing rate on all fees and disbursements.

iv) PCL reserves the right to charge the Client interest (both before and after any judgment) on any unpaid invoice at the rate of 3% per annum above the base lending rate of the Bank of Scotland calculated on a daily basis from 28 days after the date of issue of its invoice until the date of settlement in full.

v) If any sum due to PCL from the Client remains unpaid for more than 28 days after the date of issue of the invoice and no withholding notice has been issued in respect of such sum PCL shall be entitled to suspend all further work for the Client until the outstanding sum is paid to PCL in full. In these circumstances PCL shall not be liable for any delays, losses or expenses resulting from such suspension.

vi) The Client shall not withhold any payment after the final date for payment of any sum due unless notice is provided to PCL in writing by the Client not less than seven days before the final date specifying the amounts to be withheld and the reasonable grounds for withholding payment or, if there is more than one ground, each ground and the amount attributable to it.

vii) Where there are two or more clients in the case of a joint or multiple instruction by multiple parties invoices for an appropriate share of any fees or disbursements as determined in PCL's sole discretion shall be issued to all or any client simultaneously or otherwise and each client shall be jointly and severally liable for the full amount of PCL's fees or disbursements in the event that payment is not received from one or more clients.

6 FEES AND DISBURSEMENTS

i) Fees shall be charged at the rate set out in the Engagement Letter or as otherwise agreed in writing between PCL and the Client. In the event of a change in the Scope of Service or PCL being required to carry out additional Services, PCL reserves the right to charge an additional fee.

ii) In addition to the fees referred to in Clause 6i) the Client shall be responsible for the out of pocket expenses and disbursements in respect of the Property which may include without limitation photography, travel, mileage, messenger delivery and copying of documents and plans. Such costs shall be passed on to the Client at gross cost unless otherwise stated. PCL shall be entitled to retain any discounts or commissions which are available or paid to PCL in order to offset administrative expenses. A copy of PCL's rates where applicable shall be made available upon request, such rates being subject to amendment from time to time by PCL on written notice.

iii) If it is agreed with the Client, in connection with the service, that the resolution of a dispute with a third party is referred or if such dispute is otherwise referred to an adjudicator, arbitrator, expert, mediator, court or tribunal, all costs in connection with such referral shall be the sole liability of the Client and will either be paid for direct by the Client or be recharged to the Client as a disbursement and the Client will indemnify PCL in respect of any liability or costs in such matters.

iv) Unless specifically provided for in the Terms or Engagement Letter or as otherwise agreed in writing between PCL and the Client the fees do not include remuneration for acting as expert witness for which service a separate fee shall be required.

7 COPYRIGHT

i) Copyright in any information documents or other material provided by the Client to PCL in relation to the Property shall remain the property of the Client.

ii) The copyright in all reports, forecasts, drawings, accounts and other documents originated by PCL in relation to its instructions shall remain the property of PCL and no text or document may be produced or amended without the written permission of PCL including in respect to the proposed use and context of any such document or amendment.

iii) If in each case an appropriate licence shall be granted to the other to use any the copyright referred to above it shall be for the purposes and duration of the Agreement only. PCL shall be entitled to use in perpetuity on a royalty free basis any information, documents or other material provided by the Client and incorporated in documents produced by PCL in connection with the Services for the purposes of advertising or promoting PCL and its business.

iv) The parties to the Agreement shall have a licence to copy and use the materials referred to in clauses 7i) and 7ii) but only for the purposes related to the Property. Such purposes shall include the operation, maintenance, repair, alteration, extension, promotion, reinstatement, leasing and/or sale of the Property provided that:

(a) The designs in any such materials shall not be used for any extension of the Property or for any other project; and

(b) PCL shall not be liable for the use of any such materials for a purpose other than that for which they were prepared.

8 INDEMNITY

i) The Client shall indemnify and keep indemnified PCL from and against all and any liability, losses, damages, penalties, fines, costs and expenses (including legal costs and expenses) suffered or incurred by PCL arising out of or by virtue of:

(a) The breach by the Client of any of its obligations under the Terms;

(b) The Client's instructions to PCL other than any losses, damages, costs and expenses arising by virtue of the negligence or wilful default of PCL its employees or agents; or

(c) Any allegation that the Property (including without limitation the means of access to or egress from the same or any plant or substances in such premises provided for the use of any person) were not safe or posed a risk to health except where PCL had been notified in writing of all facts necessary to bring to the attention of PCL the fact that the Property (including without limitation the means of access to or egress from the same or any plant or substances in such premises) was not safe or posed a risk to health.

9 LIMITATION AND LIABILITY

i) Nothing in this Agreement shall limit PCL's liability for death and/or personal injury caused by PCL.

ii) Subject to clause 9(i) above, in respect of this Agreement, the aggregate liability of PCL to the Client whether arising from negligence, tort, breach of contract or other obligation or duty or otherwise shall be limited to one million pounds sterling (£1,000,000.00).

iii) Subject to clause 9(i) above, PCL shall not be liable for any claim to the extent that such claim is or can be characterised as a claim for (or arising from):

(a) Loss of revenue or profits;

(b) Loss of business opportunity or loss of contracts;

(c) Loss of goodwill or injury to reputation;

(d) Indirect, consequential or special loss or damage; or

(e) Anticipated savings.

iv) In the event of the Client engaging PCL together with other advisers, service providers and/or suppliers, PCL's liability shall, in addition to the limitations contained in clauses 9(ii) and 9(iii) above, be limited to that proportion of any loss or damage suffered by the Client as it would be just and equitable for PCL to bear having regard to PCL's responsibility for it and on the basis that all other advisers, service providers and/or suppliers shall be deemed to have paid such proportion of the relevant loss or damage suffered by the Client which is just and equitable for them to have paid having regard to the extent of their respective responsibilities.

v) All risks and/or liabilities in relation to toxic mould, deleterious materials, contamination, radon gas, HAC or calcium chloride shall remain with the Client and the Client shall take such steps as it deems necessary to insure against or otherwise address such risks and liabilities.

vi) The Consultant is not qualified to and will not provide any advice or services in connection with asbestos. The Client acknowledges that all risks relating to asbestos howsoever arising remain with the Client who shall take such steps as it deems necessary to address such risks. If appropriate the Client will arrange for the appointment by the Client of specialist asbestos consultants.

vii) Should the Client want PCL to undertake a more extensive potential liability than the limit of one million pounds sterling (£1,000,000.00), the Client must inform PCL in writing, and PCL will consider such request. PCL will endeavour to procure insurance cover to cover such increased liability, but the increased costs of any insurance premium resulting from the additional insurance cover will be paid for by the Client in addition to the fees and charges payable under this Agreement.

10 TERMINATION OF INSTRUCTIONS

i) The instruction from the Client to PCL may be terminated by the Client by giving not less than 30 days' notice in writing to PCL whereupon PCL shall be entitled to charge (at PCL's option):

(a) A fair and reasonable proportion of the full fee which would have been payable if the work had been carried through to a conclusion and as if PCL had become entitled to payment in accordance with Conditions 5 and 6; or

(b) A reasonable sum for all the work undertaken up to and including the date of termination based on quantum merit; or

(c) The fee as PCL are entitled to under Conditions 5 and 6

together in each case with marketing expenses and disbursements already incurred.

ii) The instruction from the Client to PCL may be terminated by PCL on the following terms by giving not less than 30 days' notice in writing:

(a) If, as a result of circumstances outside the control of both parties, it becomes impossible to perform the Services within a reasonable period. In these circumstances the Client shall pay to PCL a fee for all work which has been done up to and including the date of termination on a quantum merit basis; or

(b) If the Client has made it impossible to complete the instruction within a reasonable period or has not made payment by the due date of any sum payable by the Client to PCL. In these circumstances the Client shall pay to PCL the full fee which would have been charged if the work had been carried through to a conclusion; or

(c) The fee as PCL are entitled to under Conditions 5 and 6 together in each case with marketing expenses and disbursements already incurred.

iii) Any outstanding fees, out of pocket expenses and disbursements due to PCL shall be paid in full by the Client on or before the expiry of the notice period for termination of instructions. For the avoidance of doubt in the event of termination of instructions, whether by PCL or by the Client, PCL shall not be liable to repay the Client any fees, out of pocket expenses and disbursements previously paid by the Client to PCL.

iv) Where any fees are to be charged on a quantum merit basis such fees shall be calculated by reference to PCL's hourly charges from time to time, details of which are available from PCL on request.

11 COMPLAINTS

i) PCL aims to carry out any instructions received from the Client in an efficient and professional manner. PCL, therefore, hopes that the Client will not find cause for complaint but recognises that in an isolated circumstance there may be complaints. These should be addressed initially to the Director of PCL.

ii) PCL adopts the complaints handling procedures that are required by the RICS, a copy of which is available from PCL on request.

12 ASSIGNMENT

The Agreement is not assignable by the Client without the prior written consent of PCL.

13 DATA PROTECTION

i) The Client hereby consents to PCL use of personal data ('personal data' shall have the meaning ascribed to it in the Data Protection Act 1998) as provided by the Client to PCL insofar as is required to provide the Services. The Client further consents to PCL using the personal data provided by the Client to provide the Client with information relating to the products and/or services of PCL and its affiliated companies. Any such information may be provided by email. If the Client does not wish to receive any marketing information relating to PCL and/or its affiliated companies, the Client should notify PCL in writing.

ii) Personal data provided by the Client to PCL may be disclosed to third parties where necessary to enable PCL to perform the Services. In addition such personal data may be disclosed by PCL to any person which may acquire that part of PCL 's business which performs any Services on behalf of the Client.

iii) If PCL is provided with personal data relating to any prospective purchaser or tenant of the Property, PCL shall use that data only for the purposes of the Client's instructions and for no other purpose unless directed by the Client to do so and the Client shall comply in all respects with the Data Protection Act 1998 in respect of any such personal data.