

STANDARD TERMS AND CONDITIONS

CLAGUE LLP

December 2023

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 10 (LIMITATION OF LIABILITY).

1. Interpretation

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

1.1 Definitions:

Basic Fee: the fee for the Services excluding VAT and any additional charges, such as expenses, disbursements, etc set out in the Fee Proposal Letter.

Building Contract: the contract between the Client and the Contractor for the construction of the Project.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

CDM Regulations 2015: the Construction (Design and Management) Regulations 2015 and any guidance as issued, amended or replaced from time to time by the Health & Safety Executive, which govern the management of health, safety and welfare for construction projects.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 7 (Charges and payment).

Collateral Warranty: a contract that provides contractual rights, including the right to recover losses, in favour of a third party who does not have a direct contractual relationship with the Supplier.

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 15.5.

Contract: the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions which shall only consist of the Fee Proposal Letter and these Conditions.

Contractor(s): the party referred to as the Contractor in the Building Contract.

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

Construction Cost: the Client's target cost for the building works as specified in the Project Brief, (being the Client's initial budget), and subsequently the latest estimate approved by the Client or, where applicable, the actual cost of constructing the Project upon agreement or determination of the final account for the Project. The Construction Cost includes the cost of any equipment and / or materials provided or to be provided by the Client to the Contractor for installation as part of the Project, and any direct works carried out by or on behalf of the Client. The Construction Cost excludes VAT,

professional fees, the cost of resolution of any dispute, the Client's legal and in-house expenses and any loss and/or expense payments made to the Contractor or any adjustment for any liquidated damages deducted by the Client.

Client: the person or firm who purchases Services from the Supplier as set out in the Fee Proposal Letter.

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

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: the deliverables set out in the Fee Proposal Letter.

Fee Proposal Letter: the letter produced by the Supplier setting out the Services and the fees for the Services to the Client.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), including all Intellectual Property Rights stored by any means (including without limitation hard copies such as paper or digital forms of storage) 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.

Novation: a procedure whereby the original client and a new client transfer the Supplier's appointment from the original client to the new client, so that after the Novation the Supplier carries out its duties for the benefit of the new client and is paid by the new client.

Novation Agreement: is a three-way agreement by which an existing contract between the Client and the Supplier is novated to the Contractor, on the same terms as the first contract, as if the Supplier and the Contractor had been the original Parties thereto from the outset (i.e. novation ab initio).

Order: the Client's order for Services as set out in the Client's written acceptance of the Supplier's quotation provided in the Fee Proposal Letter.

Other Client Appointments; other consultants or services appointments which have been, or will need to be, made by the Client to enable the Supplier to undertake its work in connection with the Project.

Party/Parties: the signatories to the Contract.

Practical Completion: when the works are so certified under the Building Contract.

Principal Contractor: is a contractor appointed by the Client as Principal Contractor under the COM Regulations 2015.

Principal Designer: is a designer appointed by the Client as Principal Designer under the CDM Regulations 2015.

Project: as set out in the Fee Proposal Letter.

Project Brief: as set out and agreed in the Fee Proposal Letter.

Project Programme: as set out and agreed in the Fee Proposal Letter.

Third Party Rights Schedule: the schedule defining the rights granted, as an alternative to a Collateral Warranty, to a third party who is not a party to the Contract, such as a funder, purchaser or tenant, to enforce certain benefits of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999.

Services: the services, including the Deliverables, supplied by the Supplier to the Client as set out and agreed in the Fee Proposal Letter.

Specification: the description or specification of the Services provided in writing by the Supplier to the Client in the Fee Proposal Letter.

Supplier: Clague LLP registered in England and Wales with company number OC335948.

Supplier Materials: has the meaning set out in clause 4.1(q).

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. 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.

2. Basis of contract

- 2.1 The Order constitutes an acceptance by the Client to purchase the Services in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 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 trade, custom, practice or course of dealing.
- 2.5 Please check that the details in this Contract are complete and accurate before committing to the Contract. If the Client thinks there is a mistake, please ensure the Supplier is asked to confirm any changes in writing, as the Supplier only accepts responsibility for statements and representations made in writing by its authorised employees, sub-contractors, consultants and agents.
- 2.6 The Client should ensure that this Contract has been carefully read and understood as the Client will be legally bound by it once signed. If the Client requires clarification on any of the terms and conditions of this Contract, please contact the Supplier before signing the Contract.
- 2.7 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.8 Non-commercial Clients have a 14 day cooling off period. Cancellation within the cooling off period must be received in writing within 14 days of the date of the signed Fee Proposal Letter. If the Client requires the Supplier to commence work within the cooling off period, the Supplier requires written confirmation of the Client's instruction to do so. If the Client then decides to terminate the contract, full fees for works completed up to date and including the notice period in accordance with clause 11.1 will become due on receipt of a written request to terminate.

3. Supply of Services

- 3.1 The Supplier shall supply the Services to the Client in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Fee Proposal Letter, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services unless expressly agreed between the parties.
- 3.3 The Supplier reserves the right to amend the Specification 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 the Supplier shall notify the Client in any such event.

3.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

4. Client's obligations

4.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) inform the Supplier of the project brief, the construction cost, the project programme and the Services required and ensure these are all fully, clearly and accurately set out in the Order, and of any subsequent changes required and agree steps to mitigate the consequences;
- (d) provide the Supplier with such information and materials, free of charge, as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects (the Supplier shall be entitled to rely on such information);
- (e) provide the Supplier with all relevant baseline site data including but not limited to Measured Site Surveys, potential below ground constraints, utilities, services & associated restrictive easements.
- (f) the Client must provide a Title Plan clearly demonstrating the boundaries of the site which is pursuant to the appointment, including any known restrictive Legal Covenants, Third Party Access Rights etc. which would affect potential development forming part of The Order.
- (g) make decisions and give approvals as necessary for the proper and timely performance of the Services;
- (h) appoint or otherwise engage any Other Client Appointments required to perform work or services under separate agreements and require them to collaborate with the Supplier;
- (i) shall confirm in writing to the Supplier the work or services to be performed by any Other Client Appointments;
- (j) hold the Other Client Appointments, and not the Supplier, responsible for the proper carrying out and completion of the work or services entrusted to them under any Other Client Appointments;
- (k) hold the Contractor(s) appointed to undertake construction works, and not the Supplier, responsible for the proper carrying out and completion of construction works in compliance with the building contract;
- (l) not interfere with the Supplier's duties under the building contract where the Supplier is appointed as contract administrator for the building contract;

- (m) not hold the Supplier responsible for any instructions issues by the Client to the Other Client Appointments or Contractor;
- (n) pay any statutory charges and any fees, expenses and disbursements in respect of any obligations for planning, building control and any other consents;
- (o) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (p) if required prepare the Client's premises for the supply of the Services;
- (q) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (r) comply with all applicable laws, including health and safety laws;
- (s) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (t) comply with any additional obligations as set out in the Specification.

4.2 In the case of construction work the Client's attention is particularly drawn to their responsibilities under the CDM Regulations 2015 and the need to appoint a Principal Designer. The Supplier will not take responsibility for any Principle Designers' role unless formally instructed and engaged to do so by agreement in writing.

4.3 Responsibility for defining the VAT payable on any Projects remains with the Client.

4.4 The Client may issue reasonable instructions to the Supplier. The Client's named representative shall have full authority to act on behalf of the Client for all purposes in connection with the matters set out in the Contract.

4.5 If the Supplier'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, the Supplier 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 the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.5; and

- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

5. Supplier's obligations

5.1 In the performance of the Services and discharging all the obligations under the Contract, the Supplier will exercise the reasonable skill, care and diligence to be expected of a Supplier experienced in the provision of such Services for projects of a similar size, nature and complexity to the Project. Notwithstanding anything that may appear elsewhere to the contrary, whether under this Contract or otherwise, the Supplier's duties and obligations shall be deemed to be subject to the exercise of such reasonable skill, care and diligence and nothing contained in this Agreement or elsewhere shall be construed as imposing on the Supplier any greater duty than the exercise of such reasonable skill, care and diligence.

5.2 The Supplier shall;

- (a) perform the Services with due regard to the Order;
- (b) inform the Client of progress in the performance of the Services and, upon becoming aware, of any issue that may materially affect the Project Brief, Project Programme, Construction Cost or quality of the Project, and any information, decision or action required in mitigation;
- (c) inform the Client of a need to make any Other Client Appointments to perform work in connection with the Project and/or any information, decision or action required from the Client or Other Client Appointments in connection with the performance of the Services;
- (d) act on behalf of the Client in the matters set out in the Contract or in relation to any project procedures as agreed in writing with the Client from time to time;
- (e) if acting as Contract Administrator for the Building Contract, exercise impartial and independent judgement when acting as an intermediary between the Client and the Contractor;
- (f) collaborate with any Other Client Appointments or any other parties who might reasonably be expected to perform work or services and, where indicated in the Services, the Supplier shall coordinate relevant information received from such persons with the Supplier's design, but the Supplier shall not be responsible for the content of the information received; and
- (g) make no material alteration to the Services or the approved design without the prior written consent of the Client, except in an emergency, whereupon the Supplier shall confirm such actions in writing to the Client without delay.

5.3 The Supplier shall have the right to publish photographs of the Project, and the Client shall give reasonable access to the Project for this purpose for 2 years after Practical Completion. The Supplier shall obtain written consent from the Client, which shall not be

unreasonably withheld or delayed, before the publication of any information about the Project.

- 5.4 The Client acknowledges that the Supplier does not warrant;
- (a) that planning permission and other approvals from the third parties shall be granted at all or, if granted, will be granted in accordance with any anticipated time-scale;
 - (b) compliance with the Project Programme and Construction Cost, which may need to be reviewed for, and as a result of but not limited to;
 - (i) variations instructed by the Client;
 - (ii) fluctuations in market prices;
 - (iii) delays caused by any Other Client Appointments, the Contractor or any other factor that is not caused by the Supplier or is not the responsibility of the Supplier under the Contract;
 - (iv) the discovery at any time of previously unknown conditions which were not reasonably foreseeable at the date of the Contract.
 - (c) the competence, performance, work, services, products or solvency of any Other Client Appointments or the Contractor.

6. Assignment, Sub-contracting, Other Client Appointments, Supplementary Agreements and Novation

- 6.1 Neither the Supplier nor the Client shall at any time assign the benefit of the Contract or any rights arising under it without the prior written consent of the other. Such consent shall not be unreasonably withheld or delayed.
- 6.2 The Supplier shall not sub-contract performance of any part of the Services without the prior written consent of the Client, and such consent shall not be unreasonably withheld or delayed. Any such sub-contracting shall not relieve the Supplier of its responsibility for carrying out and completing the Services in accordance with the Contract. Such consent shall not be required for agency or self-employed staff.
- 6.3 If during the performance of the Services it would, in the opinion of the Supplier, be of benefit to the Client for it to engage Other Client Appointments with appropriate knowledge and experience to perform part of the Services and the Client agrees to make such an appointment, it shall be made without undue delay and the Client shall give written notice accordingly to the Supplier. The Supplier shall be relieved of responsibility and liability for that element of the Services. The Supplier shall and the Other Client Appointments shall collaborate to perform the Services.
- 6.4 The Supplier shall execute Collateral Warranties within fourteen working days of a request to do so by the Client, or grant third party rights under the Contract (Rights of Third Parties) Act 1999, to such parties and on such terms as are indicated in writing.

6.5 Novation

- (a) Subject to clause 6.5(e), the Client, having engaged the Supplier under the Contract in respect of the provision of consultancy services for a traditional form of Building Contract, may subsequently novate the Contract to a Contractor appointed to carry out the design and construction of the development under a design and build form of Building Contract by means of the Novation Agreement set out on terms to be agreed based on the template clauses in clause 6.5(c).
- (b) Novation shall be on terms which shall provide that from the point of Novation of the Contract both the Client and the Supplier shall release each other from all past and future obligations and liabilities under the Contract and the Supplier shall accept the Contractor in lieu of the Client in respect of all past and future obligations and liabilities, and the Contractor shall accept the appointment of the Supplier as if the Contractor had been a party to the Contract in lieu of the Client from the outset of the Contract, save that the Parties will acknowledge that, prior to the date of the Novation Agreement, the Supplier was performing the Services for the benefit of and solely on the instructions of the Client and not the Contractor.
- (c) In the event of a Novation, it is agreed that the terms set out in clauses 6.5(c)(i), 6.5(c)(ii), 6.5(c)(iii) and 6.5(c)(iv) or similar terms in all material aspects, shall be included in a separate Novation Agreement to be entered into by the Client, the Supplier and the Contractor;
 - (i) the Client hereby agrees to release and discharge the Supplier from further performance of its obligations under the Supplier's appointment and from all duties, liabilities, claims and demands whatsoever, whether under the Supplier's appointment or otherwise and whether arising prior to, on or subsequent to the date of the Novation Agreement. (Where the Supplier has provided a Collateral Warranty or granted third party rights to the Client pursuant to clause 6.4, this wording shall be prefaced by: 'Without prejudice to any other rights or remedies the Client may have under a Collateral Warranty or Third Party Rights Schedule pursuant to clause 6.4').
 - (ii) the Client and the Supplier and the Contractor hereby agree that the Supplier's appointment shall be deemed to have been made with the Contractor in place of the Client from the outset for all purposes and in respect of all rights, benefits, liabilities and duties thereunder, whether arising prior to, on or subsequent to the date of the Novation Agreement, including, without restriction, any limitation or exclusion of liability therein so that the Supplier shall have no greater or longer liability to the Contractor hereunder than it would have owed to the Client under the Supplier's appointment. The Supplier agrees that it shall not assert that the Contractor has suffered no loss solely because a breach of the Supplier's appointment occurred prior to the date of the Novation Agreement but the Parties acknowledge that the Supplier in carrying out its obligations under the Supplier's appointment prior to the date of the Novation Agreement was acting for the benefit of and solely on the instructions of the Client.

- (iii) the Supplier hereby agrees to release and discharge the Client from further performance of the Supplier's appointment and all duties, liabilities, claims and demands whatsoever, whether arising prior to, on or subsequent to the date of the Novation Agreement and the Supplier accepts the Contractor in place of the Client under the Supplier's appointment.
- (iv) the Contractor agrees to perform all of the duties and accepts all the obligations of the Client under the Supplier's appointment and to be bound by all its terms and conditions in every way as if it had been named as a party to the Supplier's appointment in place of the Client from the outset.
- (d) In the event of a Novation, where a separate Novation Agreement, deed of appointment or similar agreement has not been entered into by the Client, the Supplier and the Contractor, the terms as set out in this clause 6.5 (Novation) shall apply.
- (e) Notwithstanding the above provisions, the Supplier is under no obligation to agree to the Novation Agreement and may terminate the Contract by giving at least 7 days' written notice and complying with clause 11.

7. Charges and payment

7.1 The Charges for the Services shall be calculated on a time and materials basis:

- (a) the Charges shall be calculated in accordance with the Supplier's relevant hourly fee rates, as set out in the Fee Proposal Letter; and
- (b) the Supplier shall be entitled to charge (calculated in accordance with the Supplier's relevant hourly fee rates) the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

7.2 The Supplier reviews its relevant hourly fee rates in September of each calendar year for adoption from 1 October in the same calendar year. If these reviewed rates are applied to the Client's Project, the Supplier will notify the Client immediately.

7.3 Lump sums and rates for time charges, mileage and printing shall be revised every 12 months. Each 12-month period for this purpose commences on the anniversary of the date of the Contract.

7.4 Any lump sum quotations are based on undertaking the design once only. Any changes or revisions may result in amendments to the Supplier's design or as result of Other Client Appointment may be subject to further charges. In the absence of further agreement, the additional charges will be on a time spent basis in accordance with the Supplier's relevant hourly fee rates.

- 7.5 The Basic Fee for performance of the Services shall be as specified in writing and may be any or a combination of:
- (a) the specified percentage or percentages applied to the Construction Cost. Until the actual cost of the building work is known, the percentages are applied to the latest approved estimate of the cost of the building works or the Building Contract sum. The total fee shall be adjusted based on the final Construction Cost on completion of the Services. The cost shall exclude VAT, fees and any claims made by or against the Contractor(s);
 - (b) the separate percentages specified for each RIBA Plan of Work stage applied to the Construction Cost at the end of the previous stage;
 - (c) the specified lump sum or sums;
 - (d) the time charges ascertained by multiplying the time reasonably spent in the performance of the Services by the specified hourly or daily rate for the relevant personnel. Time 'reasonably spent' includes the time spent in connection with performance of the Services in travelling from and returning to the Supplier's office; and/or
 - (e) any other agreed method.
- 7.6 The Basic Fee shall be adjusted in the following, but not limited to, circumstances:
- (a) for any loss and/or expense, if material changes are made to the Project Brief and/or the latest approved estimate of the cost of the building work and/or the Project Programme save to the extent that any changes arise from a material breach of Contract by the Supplier and/or the Services are varied; and/or
 - (b) where percentage fees in accordance with clause 7.5(a) and 7.5(b) apply to compensate for any reduction of the Construction Cost arising solely from deflationary market conditions not prevailing at the date of the Contract.
- 7.7 If the Supplier is involved in extra work or incurs extra expense for reasons beyond the Supplier's reasonable control, additional fees shall be calculated on a time basis in accordance with the Supplier's relevant hourly rate(s) set out in the Fee Proposal Letter unless otherwise agreed in writing. Matters in relation to which the Supplier shall be entitled to additional fees include, but are not limited to;
- (a) the cost of any work, installation or equipment, in connection with which the Supplier performs Services, is not included in the Construction Cost;
 - (b) the Supplier is required to vary any Service already commenced or completed or to provide a new design after the Client has authorised development of an approved design;
 - (c) the nature of the Project reasonably requires that substantial parts of the design are not completed or that they are specified provisionally or approximately before construction commences; or

(d) performance of the Services is delayed, disrupted or prolonged.

- 7.8 The Supplier shall inform the Client on becoming aware that any additional Services or expenses are to be incurred. Additional charges shall not apply to the extent that any change or extra work or expense arises from a breach of the Contract by the Supplier.
- 7.9 The Client shall reimburse the Supplier for any additional charges as specified in writing.
- 7.10 The Supplier shall maintain records of time spent on Services performed on a time basis and for any expenses and disbursements to be reimbursed at net cost. The Supplier shall make such records available to the Client on reasonable request.
- 7.11 Where the Supplier is instructed by the Client to invite a tender or tenders for work or services in connection with the Project but no tender is submitted or accepted, the Supplier shall be entitled to fees due up to and including the receipt of tenders based on the construction work or that part of it relating to the Services current at the date of tender.
- 7.12 The Supplier shall invoice the Client monthly in arrear to cover fees on a percentage complete basis, determined by the Supplier, at the current scale rates together with any reimbursable costs and expenses associated with the Service. Invoices shall also include charges for sub-contractor services where applicable.
- 7.13 The Client shall pay each invoice submitted by the Supplier:
- (a) on presentation of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 7.14 If the Client intends to pay an amount less than what is required in the invoice, the Client shall notify the Supplier in writing within 5 days of receipt of the invoice, specifying;
- (a) the amount that the Client considers to be due on the date the notice is served;
 - (b) the basis on which that sum is calculated (together with a reasoned explanation); and
 - (c) the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it.

The Supplier reserves the right to reasonably reject the Client's intention to pay less and demand full payment of the invoice in accordance with clause 7.13.

- 7.15 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 the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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.

- 7.16 If the Client fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 11, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.16 will accrue each day at 8% a year above the Bank of England's base rate from time to time.
- 7.17 The Supplier reserves the right to charge the Client any reasonable expenses incurred associated with collection of fees and interest including but not limited to, legal costs, court fees and collection agency fees.
- 7.18 If the Supplier's invoice is 30 days or more overdue in addition to any other rights or remedies the Supplier reserves the right to suspend the Services without liability until such time as all outstanding amounts are paid in full.
- 7.19 In the event of non-payment of any amount properly due to the Supplier under the Contract the Supplier is entitled to interest on the unpaid amounts under the provisions of clause 7.15. The Supplier may:
- (a) suspend use of the copyright licence under the provisions of clause 8;
 - (b) suspend or terminate performance of the Services and other obligations under the provisions of clause 11; and/or
 - (c) commence dispute resolution procedures and/or debt recovery procedures.
- 7.20 The Client shall not be entitled to defer or withhold payment on the grounds of any claim or counterclaim. 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).

8. Intellectual property rights

- 8.1 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 the Supplier, including but not limited to the drawings and documents produced in performing the Services, and all such Intellectual Property Rights must identify the Supplier (Clague LLP) as the author of such work.
- 8.2 The Client shall have a non-exclusive licence to copy and use such of the drawings and documents for which all fees and other amounts properly due have been paid, only for purposes related to the construction of the Project or its subsequent use or sale, but they may not be used for reproduction of the design for a part of any extension of the Project or any other project without the Supplier's written consent.
- 8.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 8.2. The licence under clause 8.2 shall be a perpetual worldwide licence.

- 8.4 Where produced using CAD, BIM or other proprietary software, drawings and documents shall be provided to the Client in PDF format only, unless an alternative format has been agreed and set out in the writing.
- 8.5 Copying or use of the drawings and documents by any Other Client Appointments providing services to the Project shall be deemed to be permitted under a sub-licence granted by the Client whether such drawings and documents were issued by the Client or on the Client's behalf. Otherwise, no person other than the Client shall have any right to use any Intellectual Property Rights created by the Supplier in any way.
- 8.6 The Supplier shall not be liable for any use of the electronic drawings and documents other than for the purpose for which they were prepared.
- 8.7 The Supplier shall be liable to the Client in respect of any reasonably foreseeable and fully mitigated expenses, losses or damages suffered by the Client as a result of the work of the Supplier being in breach of copyright or any other intellectual property rights of any third party.
- 8.8 If at any time the Client is in default of payment of any fees or other amounts properly due, the Supplier may suspend further use of the licence and any sub-licences for the drawings and documents to which the unpaid monies relate on giving 7 days' notice of the intention to do so. Use of the licence may be resumed on receipt of such outstanding amounts.
- 8.9 The licence shall stay in force, notwithstanding the expiry or termination of the Contract, unless it is suspended at the date of such expiry or termination.
- 8.10 The Basic Fee for the performance of the Services shall include all royalties, licence fees or similar expenses for the making, use or exercise by the Supplier of any invention or design patents, etc. for the purpose of performing the Services.

9. Data protection

- 9.1 The Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 9, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.

10. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 10.1 The Supplier has obtained Professional Indemnity insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The Supplier has been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

- 10.2 The Supplier, when reasonably requested by the Client, shall produce for inspection a broker's letter or certificate confirming that such insurance has been obtained and/or is being maintained.
- 10.3 The Supplier shall inform the Client if such insurance ceases to be available on commercially reasonable terms or, subsequent to the date of the Contract, any restrictions are attached to the policy or an aggregate limit applies to any matters other than those specified in writing in order that the Supplier and the Client can discuss the best means of protecting their respective positions.
- 10.4 In any such action or proceedings:
- (a) the Supplier's liability for loss or damage shall not exceed the amount of the Supplier's professional indemnity insurance specified in writing.
 - (b) no employee of the Supplier or any agent of the Supplier shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from performance of the Services.
- 10.5 In respect of any claim by the Client under the Contract, and without prejudice to the provisions of clause 10.5(a), the Supplier's liability shall be limited to such sum as shall be agreed between the Parties or adjudged by the court to be the proportion of the loss to the Client caused by the Supplier's failure to exercise reasonable skill, care and diligence in the performance of its duties under the Contract. This proportion is to be calculated on the basis that:
- (a) all other consultants, contractors and Other Client Appointments providing work or services for the Project are deemed to have provided to the Client contractual undertakings in respect of their work or services on terms materially no less onerous than those which apply to the Supplier under the Contract;
 - (b) there are deemed to be no exclusions or limitations of liability or joint insurance or co-insurance provisions between the Client and any other persons referred to in this clause; and
 - (c) all the persons referred to in this clause are 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 that loss and/or damage.
- 10.6 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).

The parties agree that to the greatest extent possible allowed by law that any implied warranties are excluded from the Contract.

10.7 This clause 10 shall survive termination of the Contract.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 7 days' written notice.

11.2 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 7 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (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, such as but not limited to, bankruptcy proceedings.

11.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

11.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Client and the Supplier 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 11.2(b) to clause 11.2(d), or the Supplier reasonably believes that the Client is about to become subject to any of them.

12. Consequences of termination

12.1 On termination of the Contract:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices, expenses/disbursements and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;

- (b) the Client shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them subject to the terms of the licence in accordance with clause 8. 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.

12.2 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.

12.3 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.

13. Complaints Procedure

If the Client has any questions or complaints, please contact the Supplier by telephone at Tel: +44 (0) 1227 762 060 or in writing at Email: info@clague.co.uk or 62 Burgate, Canterbury, Kent CT1 2BH.

14. Dispute Resolution

14.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute), then 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, the Client (or a Director of the Client if it is a company) and a Partner of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the Client and Partner of the Supplier are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Partner of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the Managing Partner of the Supplier and the Client are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, 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, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.

- 14.2 No party may commence any arbitration proceedings under clause 14.4 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 14.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that period, the Dispute shall be finally resolved by arbitration proceedings in accordance with clause 14.4.
- 14.4 Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.
- (a) The number of arbitrators shall be one.
 - (b) The seat, or legal place, of arbitration shall be Canterbury, Kent.
 - (c) The language to be used in the arbitral proceedings shall be English.
 - (d) The governing law of the contract shall be the substantive law of England.

15. General

15.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

15.2 Assignment and other dealings.

- (a) The Supplier 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 the Supplier.

15.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.3(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 15.3; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

15.4 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.

15.5 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).

15.6 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.

15.7 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 shall not affect the validity and enforceability of the rest of the Contract.

15.8 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 writing by the Supplier.
- (b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt; and
 - (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 15.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 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.

15.9 **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.

15.10 **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.

15.11 **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.