



WILBOURN ASSOCIATES LIMITED

STANDARD TERMS OF ENGAGEMENT

Parties:

1. **the ‘Client’**, meaning the party for whom the Agreed Work is being undertaken pursuant to the Proposal; and
2. **the ‘Company’**, meaning Wilbourn Associates Limited (company number 3392663) whose registered office is at 30 Jessops Riverside, 800 Brightside Lane, Sheffield S9 2RX.

Recital

The Client has engaged the Company to provide professional environmental property consultancy services upon the terms set out in detail in the proposal given to it by the Company (the ‘Proposal’), which expression shall include any additions or amendments thereto agreed in writing, and the Company has agreed to perform such services in accordance with the Proposal and these Standard Terms of Engagement. The services detailed in the Proposal are herein referred to as the ‘Agreed Work’.

The Terms

1. Engagement

1.1 The Client agrees to engage the Company and the Company agrees to undertake the Agreed Work in accordance with these Standard Terms of Engagement and the Proposal.

2. Standard of Care

2.1 The Company shall perform the Agreed Work using the reasonable standard of skill and care normally exercised by a firm of Chartered Environmental Surveyors in performing similar services under similar conditions.

2.2 The Company shall use all reasonable endeavours to perform the Agreed Work in accordance with all relevant environmental and safety legislation, and by the times and dates quoted in the Proposal. Failure to meet any time or date quoted shall not give rise to liability unless the parties have expressly agreed in writing that it should.

3. Obligations of the Client

3.1 Throughout the period of this agreement, the Client shall afford to the Company or procure the affording to the Company of access to any site where access is required for the performance of the Agreed Work.

3.2 The Client will inform the Company in writing of all special site and/or plant conditions including without prejudice to the generality of the foregoing the existence of any underground cables, pipes, drains or underground buildings or constructions and shall also inform the Company of any relevant site operating procedures and site safe operating procedures and any other regulations relevant to the carrying out of the Agreed Work the notification of such matters to be acknowledged in writing by the Company if they are to be binding upon them.

3.3 The Client shall take all reasonable steps to secure and otherwise keep safe all and any property and personnel of the Company.

3.4 The Client shall afford to the Company access at all reasonable times to any relevant site for the purpose of removing any plant equipment or records owned or hired by it which are present on the site.



3.5 The Client shall provide free of charge such information and drawings as are available to the Client as may reasonably be required by the Company for the performance of the Agreed Work.

3.6 Where the Agreed Work requires the Company to enter upon any site whether or not owned or occupied by the Client then the Client shall notify the Company of any hazards known or suspected by the Client existing upon such site and shall indemnify the Company against all costs claims demands and expenses arising as a result of any non-disclosure in this respect.

3.7 The Client shall pay the charges quoted in the Proposal or, if none are quoted, the Company's standard charges, and any additional sums which are agreed between the Company and the Client for the provision of the Agreed Work or which, in the Company's discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any instructions or any other cause attributable to the Client.

4. Confidentiality

4.1 Each party undertakes not to divulge or disclose to any third party, without the written consent of the other party, information and documents which are designated confidential by the disclosing party prior to the acceptance of the contract or which can reasonably be considered to be confidential and which arise during the performance of the Agreed Work, unless required to do so by law or unless such information or documents become available to the public through no fault of the receiving party.

4.2 Subject to 4.1 above the Company shall be permitted to use information related to the Agreed Work for the purposes of marketing its services and in proposals for work of a similar type.

5. Insurance

5.1 The Company holds professional indemnity insurance (other than cover in respect of pollution and contamination) in an amount of not less than £5,000,000 for each and every claim.

5.2 The Company holds professional indemnity insurance for pollution and contamination in an amount of not less than £5,000,000 in the aggregate in any one year.

5.3 The Company holds public liability insurance (other than cover in respect of pollution and contamination) in an amount of not less than £1,000,000 for any one occurrence or series of occurrences arising out of any one event.

5.4 The Company agrees to maintain the insurances referred to in 5.1, 5.2 and 5.3 above for the period of six years from the date of this agreement provided that such insurance continues to be available upon reasonable terms at reasonable commercial rates and shall when reasonably requested by the Client produce for inspection evidence of such insurance.

6. Liability

6.1 The Company confirms that it will be responsible to the Client for all costs claims and demands properly incurred by the Client and which represent the reasonably foreseeable damage suffered by the Client as a result of the negligent act or omission of the Company in the performance of the Agreed Work under these Terms.

6.2 The Company is carrying out the Agreed Work solely for the benefit of the Client and the Client shall indemnify the Company against any claims from any third parties in respect of the Agreed Work unless the Company has, without being requested by the Client to do so, provided advice or information direct to such parties or has in writing permitted disclosure of such advice or information to such persons.



6.3 Except in respect of death or personal injury caused by the Company's negligence, or as expressly provided in this agreement, the Supplier shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this agreement, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the provision of the Agreed Work (including any delay in providing or failure to provide the Agreed Work) or its use by the Client, and the entire liability of the Company under or in connection with this agreement shall not exceed £500,000 for any one occurrence or series of occurrences arising out of any one event or, in the event of the insurance referred to in clause 5 no longer being available upon reasonable terms at reasonable commercial rates, £50,000 for any one occurrence or series of occurrences arising out of any one event, except as expressly provided in this agreement.

6.4 The Company shall not be liable to the Client for any loss, damage, costs, expenses or other claims arising from any documents or information or instructions supplied by the Client which are incomplete, incorrect, illegible, or arising from their late arrival or non-arrival or any other fault of the Client.

7. Ownership of Documents and Copyright

7.1 The property and copyright, and any other intellectual property rights, in all drawings, reports, specifications, bills of quantities, calculations and other documents and information (hereinafter termed 'Intellectual Property') prepared by or on behalf of the Company in connection with the Agreed Work for delivery to the Client shall remain vested in the Company.

7.2 When so agreed by the Company and recorded in writing prior to the delivery of such Intellectual Property, and subject to the Company and its sub-consultants or sub-contractors having received payment of all fees and disbursements properly due under this agreement, the Client shall have a non-exclusive licence to copy and use such Intellectual Property for purposes directly related to the Agreed Work. Such licence shall enable the Client to copy and use the Intellectual Property but solely for his own purposes and such use shall not include any licence to reproduce any conceptual designs or professional opinions contained therein.

7.3 Save as aforesaid, the Client shall not make copies of such Intellectual Property nor shall he use the same in connection with any other works or for any other purpose nor pass them to any third party without the prior written approval of the Company and upon such terms as may be agreed by the Company. The Company shall not be liable for the use by any person of such Intellectual Property for any purpose other than that for which the same were prepared by or on behalf of the Company.

7.4 The Company shall not without the written consent of the Client such consent not to be unreasonably withheld, publish alone or in conjunction with any other person any articles photographs or other illustrations relating to the Agreed Work.

7.5 The Company shall not disclose to any person any information provided by the Client as private and confidential unless so authorised by the Client or required by a Court of Law or competent authority.

7.6 Proposals submitted to the Client are solely for his use and the ownership of such proposals not confirmed as Agreed Work with the Client remain with the Company and must not be used as the basis for any future work undertaken either by the Client or a third party and no liability can be accepted howsoever arising from such proposals.



8. Payment

8.1 Where the Company and the Client have agreed that payment is to be made on a monthly basis then the Company shall submit monthly invoices to the client for services performed up to the end of the calendar month or up to the date of completion of the Agreed Work.

8.2 Where the Company and the Client have agreed that fees shall be payable otherwise than on a monthly basis the invoices shall be submitted to the Client at such times and in accordance with the rates or fees set out in the Proposal.

8.3 Payment shall be made by the Client within thirty days of the date of any invoice and payment shall be made in full (without any deduction or retention for any claim or counter claim or otherwise) in pounds sterling and interest at the rate of four per cent (4%) above National Westminster Bank base lending rate will be payable on all overdue payments such interest being calculated from the date of the invoice to the actual receipt of payment by the Company.

8.4 All sums payable by the Client under the terms of the Proposal are exclusive of Value Added Tax which will be payable by the Client in addition to such sums and shall be chargeable at the prevailing rate and in the manner prescribed by law.

9. Limitation

9.1 Except in respect of personal injury or death caused by the Company's negligence, or any other liability it is not legal to limit by contract, no action or proceedings under or in respect of this agreement whether in contract or in tort or in negligence or for breach of statutory duty or otherwise shall be commenced against the Company after the expiry of a period of six years from the date of commencement of the Agreed Work or such other date as may be agreed in writing between the parties.

10. Waiver

10.1 No forbearance shown or granted to the Client unless in writing (other than email) by an authorised officer of the Company shall in any way affect or prejudice the rights of the Company or be taken as a waiver of any term of this agreement.

11. Entire Agreement and Exclusion of Representations

11.1 These Terms and the Proposal to which they apply represent the entire agreement of the parties hereto with respect to the Agreed Work and supersede any prior written or oral warranties, terms, conditions and representations whether express or implied.

11.2 The Company will not be bound by any standard or printed terms, conditions, warranties or representations furnished by the Client in any of its documents unless the Company specifically states in writing separately from such documents that it intends such terms and conditions to apply and the Client acknowledges such notification in writing.

11.3 For any variation to these Terms to be effective the variations must be in writing and signed by both the Company and the Client.



12. Notices

12.1 Any notice to be given by the Client under this agreement shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the Company at the address of the Company shown at the head of these Standard Terms. Any notice to be given by the Company shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the Client at the address of the Client as shown at the head of these Standard Terms. These notices shall, if sent by registered post, be deemed to have been received forty-eight hours after being posted.

13. Delay and Force Majeure

13.1 The Company will comply with the programme for the achievement of the Agreed Work unless delayed or prevented by circumstances beyond its reasonable control and in the event of any such circumstances arising the Company undertakes to complete the Agreed Works as promptly as is reasonable but will not be liable to the Client for any delay resulting from such circumstances beyond the Company reasonable control.

13.2 If the Company through no fault of its own is unable to carry out the Agreed Work according to any agreed timetable by reason of other works being unfulfilled or for any other reason which is the responsibility of the Client additional expenses for staff subsistence travel and mobilisation as appropriate will be met by the Client and shall include the cost of the hire of equipment or additional sub-contractors' costs reasonably incurred.

14. Governing Law

14.1 This agreement shall be governed by and construed in accordance with English law and the parties hereto irrevocably and unconditionally submit to the exclusive jurisdiction of the English Courts.

15. Termination

15.1 The appointment of the Company may be determined in the event of either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved compounding with its creditors or having a receiving or an administrative receiver or administrator appointed to the whole or any part of its assets. Notice of determination must be given to the party which is insolvent by the other party.

15.2 If for any reason beyond the reasonable control of the Company the performance of the Agreed Work is suspended for a period in excess of one calendar month then the Company shall be entitled to determine its appointment in respect of the Agreed Work by seven days' written notice to the Client.

15.3 For the avoidance of doubt, any determination of the appointment of the Company under clause 15.1 or 15.2 shall be without prejudice to the right of the Company to require payment for all services performed and costs incurred up to the date of such determination.

15.4 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any material breach of this agreement and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so.



16. Assignment

16.1 The Client shall not be entitled to assign, transfer or pass the benefit of the whole or any part of this Agreement without the consent in writing of the Company, such consent not to be unreasonably withheld. The Company shall be entitled to subcontract or assign the benefit or the burden of any of its obligations under this agreement provided that it ensures that the subcontractor is contractually bound to obligations no less favourable to the Client than the Company's obligations in this agreement.

17. Conflict

17.1 In the event of any conflict between the wording of these Terms of Engagement and the terms of the Proposal the terms of the latter shall prevail.

18. Disputes

18.1 If any dispute arises between the parties with respect to any matter within the expertise of a technical expert then such dispute shall at the instance of either party be referred to a person agreed between the parties, and, in default of agreement within twenty-one days of notice from either party to the other calling upon the other so to agree, to a person chosen on the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors. Such person shall be appointed to act as an expert and not as an arbitrator and the decision of such person shall be final and binding. The costs of such expert shall be borne equally by the parties unless such expert shall decide one party has acted unreasonably in which case he shall have discretion as to costs.

19. Severance

19.1 If any term or provision in these Terms shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision or part shall to that extent be deemed not to form part of these Terms but the validity and enforceability of the remainder of these Terms shall not be affected.

20. Third Party Rights

20.1 A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.