

## 1.0 Conditions

### 1.1 Services and Obligations of Meridian Consult Ltd (MCL)

- 1.1.1 MCL shall carry out the Services and any Additional Work with reasonable skill, care and diligence in accordance with this Agreement and Scope of Work.
- 1.1.2 MCL shall have due regard to the CIC Code of Conduct for Approved Inspectors, Building Control Performance Standards, during the course of its appointment
- 1.1.3 MCL have the right to request and reasonable additional information, testing, expert reports, and/or certificates as is necessary for it to fulfil the statutory function of an Approved Inspector.

### 1.2 Obligations of the Client

- 1.2.1 The Client shall provide such information and assistance as MCL reasonably requires from time to time in order to allow the timely provision of the Services and Additional Work
- 1.2.2 The Client shall be responsible for safe access to the Project being provided when MCL reasonably requires it in order for MCL to fulfil its obligations under this agreement and also the statutory function as an Approved Inspector.
- 1.2.3 MCL will act as agent for the Client only for the purposes of signing the Initial Notice
- 1.2.4 The Client will ensure that MCL is provided with written notification of commencement and completion of work on site

### 1.3 Design, Permits and Approvals

- 1.3.1 Except where permitted by law, and to the extent of the Services, the Client shall be entirely responsible for the design, construction and management of the Project and any Additional Work
- 1.3.2 The Client shall also be entirely responsible for obtaining and implementing all necessary permits, licences and approvals, except those which form part of the Services or any Additional Work.

### 1.4 Compliance with Building Regulations

- 1.4.1 The Client shall be responsible for the Project's compliance with the Building Regulations and the Services do not include advising the Client, or managing the Project, to ensure that compliance is achieved.
- 1.4.2 Meridian Consult Ltd shall take such steps as are reasonable to enable it to be satisfied as to the Project's compliance with the Building Regulations, and if so satisfied, is shall issue a Final Certificate. The Final Certificate is not a representation that every aspect of the Project complies with Building Regulations.

### 1.5 Payment

- 1.5.1 The due date for payment of an instalment of the Fee, together with expenses and disbursements if they are to be paid in addition, shall be the date of submission of MCL's valid invoice for each instalment. The final date for payment of that invoice is 28 days after the due date for payment. The fee is exclusive of VAT, which shall be paid in addition if applicable.
- 1.5.2 Any sum due under this Contract which is not paid by the final date for payment shall carry interest at 5% above the Bank of England official dealing rate applicable from the final date for payment until the date on which payment is made.

### 1.6 Changes to the Project and Additional Work

- 1.6.1 MCL shall notify the Client in writing as soon as it becomes aware that any Additional Work will be required, because of
  - 1.6.1.1 Changes in the design, size, scope or complexity of the Project
  - 1.6.1.2 Changes in the timing or programming of the Project
  - 1.6.1.3 A failure by the Client to comply with its obligations under this contract
  - 1.6.1.4 Additional meetings and / or visits and / or other work is required
- 1.6.2 The Client shall pay MCL for the Additional Work on a time charge basis at the rates set out in the Acknowledgement of Appointment Particulars – MCL may include the charge in the next payment instalment after the Additional Work (or part of it) has been performed.

### 1.7 Insurance

- 1.7.1 MCL shall maintain professional indemnity insurance and public liability insurance in compliance with the guidelines issued by the Department for Communities and Local Government (or any successor Department responsible for the Building Act 1984). On the Client's written request, MCL shall provide evidence that these insurances are being properly maintained.

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## 1.8 Assignment & Sub-Contracting

- 1.8.1 Either party may assign its rights and benefits under this contract. MCL may sub-contract any part of the Services and any Additional Work, with prior approval of the Client, and permission for this shall not be unreasonably withheld or delayed.

## 1.9 Termination

- 1.9.1 The Client may terminate this contract forthwith if:

1.9.1.1 MCL is in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from the Client; or

1.9.1.2 MCL becomes insolvent

- 1.9.2 MCL may terminate this contract forthwith if:

1.9.2.1 The Client is in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from MCL;

1.9.2.2 MCL reasonably believes that it will not be in a position to issue a final certificate on completion; or

1.9.2.3 The Client becomes insolvent.

1.9.3 Following termination by MCL or the Client, MCL is entitled to write to the Local Authority (with a copy to the Client) cancelling the initial notice under the Building Regulations, in which case the approved inspector functions will revert to the Local Authority and MCL will be discharged from all requirements to complete the Services or any Additional Work.

1.9.4 The right of either party to terminate for material breach of this contract shall lapse if it has not been exercised within 35 days after giving notice of the breach to the other party.

## 1.10 Consequences of Termination

1.10.1 If this contract has been terminated, the Client shall pay MCL any instalments of the Fee due up to the date of termination together with a fair and reasonable proportion of the next instalment of the Fee commensurate with the Services and any Additional work performed by MCL prior to the notice of termination,

1.10.2 Termination of this contract shall not affect any rights or remedies of the Client or MCL which exist at the date of termination.

## 1.11 Limitations of Liability

1.11.1 Nothing in clause 1.11 shall limit MCL's liability for negligence resulting in death or personal injury. Subject to that:

1.11.2 Notwithstanding any other provisions in this contract (apart from clause 1.11.1), MCL's total liability to the Client for any claims arising under or in connection with this contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) shall be limited to £1,000,000.

1.11.3 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of MCL for any loss or damage under this contract shall be limited to that proportion as it would be just and equitable for MCL to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions that:

1.11.3.1 All other consultants, contractors, sub-contractors, and advisers engaged in connection with the Project have provided contractual undertakings on terms no less onerous than those in clause 1.1 to the Client in respect of the carrying out of their obligations in connection with the Project,

1.11.3.2 There are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the loss or damage is liable to the Client for the loss or damage, and

1.11.3.3 All the parties referred to in this clause have paid to the Client such proportions of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage

1.11.4 The Client shall look only to MCL (and not to individuals engaged by MCL or any individual directors or members of MCL) for redress if the client considers that there has been a material breach of this contract. The Client agrees not to pursue and claims in contract, in tort (including negligence), for breach of statutory duty or otherwise against and such individuals as a result of carrying out its obligations under or in connection with this contract at any time. The Client acknowledges that such individuals are entitled to enforce this term of the contract pursuant to the Contract (Rights of Third Parties) Act 1999.

1.11.5 MCL shall not be accountable for any works undertaken by the Client prior to the acceptance of the Initial Notice by the local authority.

## 1.12 Notices

1.12.1 The Client and MCL can give notice to each other in writing under this contract by personal delivery. They can also give notice by Recorded Delivery or Special Delivery, in which case delivery is effective two working days after posting. Notices must be sent to the address listed in the Appointment Particulars or any other address notified.

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## 1.13 Disputes & Complaints

1.13.1 If the Client is not satisfied with MCL's performance of the Services or any Additional Work, it may ask MCL to implement MCL's complaints handling procedure. MCL shall provide a copy of the procedure on request. The operation of MCL's complaints handling procedure does not affect the Client's right to refer a dispute to the courts.

## 1.14 Novation

1.14.1 MCL shall, within 14 days of the Client's request, execute and deliver to the Client a novation agreement in favour of the contractor in the form published by the CIC current at the date of the Client's request (with the deletion of clause 4 and amending the recitals as appropriate).

1.14.2 With effect from the date of execution of that novation agreement:

1.14.2.1 All references to the Client in this contract shall (unless the context otherwise requires) be construed as reference to the contractor;

1.14.2.2 Any variations to the Services and other obligations of the Client and MCL set out in Schedules 1 and 2 of the novation agreement shall apply; and

1.14.2.3 The rights and obligations of MCL in respect of the Project shall otherwise remain unchanged.

## 1.15 Rights of Third Parties

1.15.1 No-one has any rights to enforce any term of this contract under the Contracts (Rights of Third Parties) Act 1999, except as set out in 1.11.4. This does not affect the rights of the Client or MCL in relation to this contract.

## 1.16 Commencement

1.16.1 Whatever the date of this contract, it shall have effect as if it had been signed on the date when MCL commenced the Services.

## 1.17 Arbitration

1.17.1 Any dispute under this agreement, including those for more than £50000 and / or those where adjudication would not apply, may be referred at the instance of either of the parties to be determined by an arbitrator. The person who is to act as an arbitrator shall be agreed between the parties within 28 days of either party giving written notice of his or her wish to refer the decision to an arbitrator or, failing agreement at the end of the period, shall be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators at the instance of either party. The arbitration shall be conducted in accordance with the CIC Model Arbitration Rules current at the time of entering into this Agreement.

## 1.18 Governing Law

1.18.1 If the Works are in England or Wales, the proper law of this agreement shall be English Law. If the works are in Scotland, the agreement shall in all respects be construed and operated as a Scottish contract and shall be interpreted in accordance with Scottish law.

## 2.0 Definitions and Interpretation

- 2.1 “Additional Work” means the type of volume of services appropriate for an Approved Inspector to carry out in relation to the Project as a result of or in consequence of the matters described in clause 1.6 and which are not already covered by the Services set out in the Acknowledgment of Appointment Particulars, together with any other services instructed by the Client,
- 2.2 “Approved Inspector” means a licensed individual or organisation carrying out the duties given to an approved inspector by the Building Act 1984 and regulations made under it
- 2.3 “Agreement” means the terms, conditions, and services detailed in these Terms of Engagement, the Appointment Particulars and any accompanying Schedules and Annexes
- 2.4 “CIC” means the Construction Industry Council
- 2.5 “Client” means the organisation identified in the Appointment Particulars
- 2.6 “Fee” means the total amount to be paid to Meridian Consult Ltd for the Services and any Additional Work
- 2.7.1 “Services” means the services, duties, and obligations to be undertaken by MCL under this Agreement
- 2.8 “Days” means calendar days.