

Terms and Conditions

1. R G Commercial Limited (RGC), registered in England & Wales under number 10849546, whose registered office is at Courtyard 2, Coleshill Manor, Coleshill, Birmingham, B46 1DL, hereinafter referred to as the Company) is a professional consultancy providing services for the individual, organisation or public body (hereinafter referred to as the Client).
2. Invoices for services rendered will either be submitted for payment monthly, or at the completion of such services, as agreed or at such other times as the Company may decide. The due date for payment is the date of the invoice. The final date for payment is 28 days from the date of the invoice unless otherwise stated on the invoice.
3. In the event of failure to pay any monies in accordance with this Appointment, the Company will, without prejudice to any other rights or remedies available to the Company, charge interest on any monies owed to it by the Client, such interest to be at a rate of 8% above the base rate of a clearing bank from time to time calculated daily from the final date for payment to the date of actual payment on a compound basis.
4. Any monies due to the Company from the Client under this and/or any other appointment may be set against any monies received from the Client by way of fee advance and/or on behalf of the Client from third parties.
5. The remuneration payable to the Company under this Appointment shall continue to be payable by the Client notwithstanding the suspension or withdrawals of services under clause 7 below or the termination of this Appointment. The Client may not withhold or reduce any sum payable to the Company under the appointment by reason of claims or alleged claims against the Company. If the Client disputes the amount included for payment in an invoice a written notice must be served on the Company by the Client before the final date for payment. If no notice is given the amount payable shall be the amount stated in the invoice. If any item or any part of an item of any invoice is disputed or subject to question by the Client, the payment by the Client of the undisputed remainder shall not be withheld on those grounds.
6. Subject to clause 8, the Company reserves the right to suspend or withdraw its services or terminate this Appointment in such circumstances as it alone thinks fit. Without prejudice to the generality of the foregoing, such instances may include failure to pay any invoice in full in accordance with this Appointment, failure to pay any fee advance notified by the Company and failure, despite requests, to receive adequate instructions from the Client.
7. The Company will give 7 days' written notice prior to the suspension or withdrawal of its services. Such notice shall be served by email followed by hard copy by special delivery post or courier. Where services are suspended or withdrawn, the Company and the Client agree that the Company may retain all or any of the Client's relevant documents and electronically held information ('reference information') until payment in full is received of all invoices rendered. The Company and the Client agree that the Company may retain reference information during the notice period.
8. If payment is not made by the Client within 30 days of the final date for payment under clause 3 the Company reserves the right to withhold any and all deliverables and/or work products prepared or being prepared by the Company under this Appointment and the Client shall indemnify and hold harmless the Company in respect of any losses, liabilities, costs, claims, actions or demands which the Company may suffer or incur to the Client or any third party arising out of such withholding.
9. During the term of this Appointment and for a period of one year after the expiration, cancellation or termination (other than for termination for the Company's own convenience under clause 7), the Client and its affiliates and agents shall not without the prior written consent of the Company, directly or indirectly solicit or employ or engage as an agent, representative, consultant or independent contractor, any person who was an employee, agent, representative, consultant or independent contractor to the Company during the term of this Appointment and contributed to the rendering of the services the subject of this Appointment. Further, the Client shall employ all reasonable endeavours to ensure that any third parties appointed by the Client in relation to the services rendered adhere to this same covenant.
10. The Company is and shall be an independent contractor in the performance of services under this Appointment maintaining complete control of its employees and operations. Neither the Company nor anyone employed by it shall be the agent, representative, employee or servant of the Client in the performance of services under this Appointment.
11. The Client shall promptly provide to the Company all documents and information reasonably requested by the Company or which would assist the Company in performing the services required of it under this Appointment. The Company shall not disclose to any third party any of the documents or information received from the Client except as may be required by law; provided however that the Company shall be entitled to describe the general nature of its services under this Appointment for sales, marketing and public relations purposes.

12. The Company shall have exclusive ownership of all:
 - (a) documentation, computer programmes, source code, software products, spreadsheets, computer macros, reports or other work product reduced to written, magnetic or other form which are developed, conceived or introduced by the Company in the course of providing services to the Client ('Work Product'); and
 - (b) ideas, techniques, methodologies, procedures, skills, innovations and know-how developed or introduced by the Company in the course of providing services to the Client ("Innovations"); and
 - (c) any and all of its working papers.

The Company hereby grants the Client a non-exclusive, non-transferable (except in connection with a sale of all or substantially all of the Client's business), limited and royalty-free licence to use the Work Product and Innovations in relation to the subject matter of the services. The Client shall not sublicense the Work Product or Innovations to any third party.

13. Rates for all fees, other than where expressly agreed to the contrary, are subject to upwards only revision in December each year to account for inflation and any general fluctuation in costs and/or market rates, such revised rates to apply to work carried out from the beginning of January. In the absence of agreement between the Company and the Client regarding the extent of revision, rates will be increased by 5%.
14. All retainers between the Company and the Client for the supply of any services by the Company shall be in accordance with these conditions. The acceptance by the Company of any instructions from the Client shall be deemed to incorporate all these conditions. This Appointment together with any documents referred or attached constitutes the entire agreement between the parties with respect to the subject matter hereof. All previous agreements or understandings with respect to the subject matter hereof, whether written or oral, are superseded and voided hereby. No amendment or modification of this Appointment shall be valid unless in writing and signed by both parties.
15. If any provision of this Appointment is held to be unenforceable by a court of competent jurisdiction, this Appointment shall be construed as if such provision did not exist and the unenforceability of such provision(s) shall not render any other provision of this Appointment unenforceable.
16. The Client shall indemnify, defend and hold harmless the Company and its employees, officers and agents from and against all liability, claims, suits, losses, damages, costs and demands on account of bodily injury (including without limitation death) or property damage sustained by any person or entity not a party to this Appointment to the extent that such injury or damage is caused by the failure of the Client to comply with its obligations under this Appointment or by its own act or omission. The Client waives any and all claims, losses, damages, liability, causes of action, and suits of every kind and nature whatsoever against the Company relating to this Appointment except arising out of fraud, illegal or unlawful acts. Client shall indemnify, defend and hold harmless Company, officers, directors, employees and agents from any and all claims, losses, damages, liability, causes of action, and suits of every kind and nature whatsoever against the Company relating to this Appointment except arising out of fraud, illegal or unlawful acts.
17. The Company shall effect and maintain, at all times and at its own expense, liability insurance adapted to the Company's operations and the nature of the Services with a level of PI consistent with that typically obtained by providers of consulting services (limit of indemnity £2,000,000.00).
18. In no circumstances (other than in the case of fraud, illegal or unlawful acts) shall the total liability of the Company arising out of the performance of the services under this Appointment exceed (i) an amount equal to the fees paid or payable under this Appointment or (ii) if such liability is covered by proceeds of any insurance provided pursuant to clause 18, an amount equal to such proceeds. Save for and subject to the Company's entitlement pursuant to clause 20 hereof, to the fullest extent permitted by applicable law, neither party shall be liable to the other party for incidental or consequential losses, nor for loss of profit, loss of revenue, loss of goodwill or loss of opportunity. The Company will have no liability whatsoever for any and all claims made more than one year from occurrence of the event giving rise to any liability.
19. Where there is no agreement as to the amount of fees to be paid by the Client to the Company, payment to the Company will be based upon its reasonable costs plus profit.
20. In the event that the Client wishes to terminate the engagement of the Company for any reason, then the Company will be given 2 weeks' written notice of the Client's intentions for services provided within the United Kingdom and 4 weeks services provided outside the United Kingdom. In the absence of such notice all time set aside during such periods, which cannot be gainfully employed in any other matter, will be chargeable on the basis of an 8hr day for each person allocated to the commission at the date of termination.
21. The Company shall not assign or transfer its interest in this Appointment without the prior written consent of the Client; provided however that nothing contained in this clause shall prevent the Company from employing such consultants, associates or subcontractors as the Company may deem appropriate. The

covenants and agreements contained herein shall apply to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

22. In the event that this appointment relates to the provision of expert witness services by the Company: (a) this Appointment will also (save for the dispute resolution procedures therein) incorporate the Model Terms of Engagement for the Employment Of Experts On Behalf of a Party Involved in a Dispute Before a Court (or if appropriate as a Single Joint Expert in a Dispute Before a Court) published by the Academy of Experts (as amended from time to time). Where services relate to the provision of expert services provided by RICS members, then Appointment will further incorporate the Surveyors Acting as Expert Witnesses: Practice Statement and Guidance Note published by the RICS (as amended from time to time). In the event of any inconsistency between the document and any other, the terms of this document take priority; (b) neither the Company nor the relevant expert, nor any employee, agent, representative, consultant or independent contractor of the Company shall be liable for anything done or omitted in the discharge or purported discharge of the function of expert, unless the act or omission is shown to have been in bad faith; (c) The Client shall indemnify, defend and hold harmless the Company and any of its employees, agents, representatives, consultants independent contractors of the Company from and against all liability, claims, suits, losses, damages, costs and demands whatsoever, for anything done or omitted in the discharge or purported discharge of the function of expert, unless the act or omission is shown to have been in bad faith.
23. Nothing in this Appointment confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
24. The Company has a Complaints Handling Procedure, a copy of which will be provided to the Client on request.
25. Save that the parties shall have the right to have small claims determined by the County Court Small Claims track procedure (with VAT, costs and interest in addition); any dispute arising out of or relating to this Appointment shall be and hereby is referred to arbitration pursuant to the Arbitration Act 1996 and the CIMAR rules then current at the time of giving of a Notice of Arbitration. Arbitration shall commence on the giving of Notice and on the application by either of the parties to the Chartered Institute of Arbitrators or the Royal Institution of Chartered Surveyors for the appointment of an arbitrator.
26. This Appointment and all non-contractual rights arising out of or in connection with it is governed by and shall be construed in accordance with the laws of England and Wales except where the services are provided in Scotland in which case it is subject to laws of Scotland.