

Terms and Conditions for Providing Services [SHORT FORM] by Jeremy Benn Associates Limited (t/a JBA Consulting)



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1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement:

- "Agreement" means these Terms and Conditions for Providing Services by Jeremy Benn Associates Limited (t/a JBA Consulting) comprising the Letter of Appointment and its Annexes.
- "Defect" is a part of the Services which is not in accordance with the standards set out in this Agreement or the applicable law.
- "Deliverables" shall have the meaning given in the Letter of Appointment.
- "Force Majeure Event" an event beyond the control of either Party and which, by exercise of reasonable diligence, that Party is unable to prevent, mitigate, or remove; including but not limited to: acts of God, pandemics and lockdowns, floods, acts of war or a public enemy, acts of terrorism, riots, rebellion, sabotage or strikes, lockouts and other forms of industrial action (including where that industrial action is by the work force of that Party).
- "Price" means the sums to be paid for the Services, as set out in the Letter of Appointment or otherwise agreed in accordance with this Agreement.
- "Intellectual Property Rights" includes but is not limited to all patents, inventions, know how, trade secrets and other confidential information, registered designs, copyrights, database rights, design rights, rights affording equivalent protection to copyright, semiconductor topography rights, trademarks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, and rights to sue for passing off; 'Intellectual Property' shall be construed accordingly.
- "Services" shall have the meaning given in the Letter of Appointment and shall include the Deliverables.
- "Site" means any land or premises provided by the Client on or through which the service is to be provided.

- "Pre-Existing IPR" means any Intellectual Property Rights (IPR) vested in or licensed to the either Party prior to or independently of the performance by the Client or JBA of their obligations under this Agreement.
- "Project" means the commission to which the Services contribute.
- "Purpose" means the purpose set out in the Letter of Appointment.
- "Offer" means the Letter of Appointment outlining JBA's offer.
- "Working Day" means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971.

1.2 In this Agreement (unless the context otherwise requires):

1.2.1 The words "including", "include" and similar words shall not limit the general effect of the words preceding them.

1.2.2 Reference to any agreement, contract or document shall be construed as a reference to it as varied or novated.

1.2.3 References to the singular include the plural and vice versa; and references to one gender include the other gender.

1.2.4 Reference to any legislative provision shall be to United Kingdom legislation and shall be deemed to include any subsequent re-enactment or amending provision.

1.3 Each Party acknowledges that in entering into this Agreement, it has not relied upon any representations, warranties, statements, or undertakings other than those expressly set out in this Agreement and that it shall have no remedies in respect of any representation, warranty, statement, or undertaking that is not expressly set out in this Agreement.

2 Payment

2.1 The Price is set out in the Offer. Any Offer is valid for ninety (90) days from the date of issue, unless stated otherwise within the Offer.

2.2 The Price may be fixed or calculable at a rate according to the number of days or hours, as indicated in the Offer. Where it is so calculable then:

- any indication by JBA as to the number of days or hours required by JBA to undertake the whole or any part of the Services shall be taken as an estimate only and shall not be binding on JBA;

- the daily or hourly charges shall be substantiated by timesheet summaries if requested by the Client.

- 2.3 The Price does not include the cost of value added tax (VAT) and like taxes which shall be payable in addition by the Client.
- 2.4 JBA shall be entitled to increase the Price on account of any interruptions or delays in the provision of the Services caused by the Client and any overtime or unusual hours or any additional services provided by JBA as a result of any act or omission on the part of the Client.
- 2.5 All travel, accommodation and subsistence expenses are charged in addition to the Price at cost unless the Offer states otherwise.
- 2.6 Payment of the Price will be at monthly intervals, unless stated in the Offer. Payment of invoices is due within twenty-eight (28) days of the date of issue.
- 2.7 JBA reserves the right to require an initial upfront payment from new Clients prior to commencement of the Services as set out in JBA's written Offer.
- 2.8 If the Client fails to pay any monies on the due date then, without prejudice to any other right or remedy available to JBA, JBA shall be entitled to:
- suspend the supply of any or all Services; and/or
 - charge the Client interest calculated on a daily basis (after as well as before any judgement) on the outstanding monies at a rate provided for in the Late Payment of Debts (Interest) Act 1998.
- 2.9 The Client may not claim to be entitled to exercise any set-off, counterclaim or lien over or against the monies due to JBA under this Agreement.

3 Variation

- 3.1 Where JBA undertakes any variation or modification to the Services upon the written instruction from the Client or arising as a consequence of a change in the Law of the contract then JBA shall be entitled to increase the Price and vary the Completion Date accordingly.
- 3.2 No variation of this Agreement shall be effective unless in writing and duly executed by each Party. A written and signed variation shall be effective even where transmitted by electronic means as long as that transmitted document reflects and evidences the signing of the original paper document, even if the original document

is not delivered. Where JBA undertakes any variation or modification at the Client's request then such variation or modification may be undertaken by JBA and shall be paid for by the Client as provided for in clause 3.1 even where not agreed in writing.

4 Supply of information/Information Management

- 4.1 The Client shall promptly provide JBA with all information and assistance (including without limitation where JBA attends at the Client's Site provision of electricity, telephones and other consumables and access to storage, workspace, and car parking) that JBA may reasonably require.
- 4.2 JBA and the Client will agree suitable methods of information transfer.
- 4.3 All Deliverables will be provided in electronic format only unless alternative formats are expressly specified by the Client in writing in advance of commencement of the Agreement.

5 Confidentiality

- 5.1 Each Party agrees that it will not publish or disclose but shall maintain as confidential the proprietary information of the other Party to any third party and shall not use that proprietary information other than as expressly permitted in writing by the other Party.
- 5.2 In this context, proprietary information includes (without limitation) all technical data and specifications supplied by JBA and in respect of software includes (without limitation) the source code, structure and algorithms of the software.
- 5.3 The above obligations shall not apply to a part of the proprietary information that is already or becomes commonly known to the public (except through a breach of the obligations imposed under this Agreement).
- 5.4 This obligation of confidentiality shall survive any termination of this Agreement.

6 Data Privacy

- 6.1 For the purposes of this clause: "Data Privacy Laws" means all laws, regulations, and binding guidelines relating to data protection, privacy, and the processing of Personal Data applicable to the provision of Services, including but not limited to the Data Protection Act 2018, the UK General Data Protection Regulation ("UK GDPR"), and the General Data Protection Regulation ((EU) 2016/679) ("GDPR"), and the

terms "Data Controller", "Personal Data", "Data Processor", "Process", "Processing", and "Data Subject", shall have the meanings prescribed under the GDPR.

- 6.2 For the purposes of this Agreement, JBA shall act in the capacity of Data Processor in relation to any Personal Data that is provided by the Client or processed by JBA on behalf of or for the Client ("Client Data"), and the Client shall act in the capacity of Data Controller.
- 6.3 Prior to providing any Client Data to JBA, the Client shall identify in writing the nature of the Client Data and the categories of Data Subject to which it relates. The Client represents that it is authorised to provide all Client Data to JBA for the purpose of this Agreement.
- 6.4 JBA shall process the Client Data only in accordance with the Client's documented instructions and in compliance with the requirements of the Data Privacy Laws.
- 6.5 JBA shall ensure that all of its personnel who are authorised to process Client Data are subject to binding written contractual obligations with JBA to keep the Client Data confidential which are no less onerous than clause 5 Confidentiality (except where disclosure is required in accordance with applicable law).
- 6.6 JBA shall take steps as is reasonably necessary to secure the Client Data taking into account the nature of the Processing.
- 6.7 JBA shall not engage any other Data Processor to carry out Processing activities in respect of the Client Data ("Sub-Processor") without the Client's authorisation (such authorisation not to be unreasonably withheld) provided that the Client authorises the appointment, as Sub-Processor, of any other JBA Group company, and third-party data storage and processing facilities. JBA shall appoint such Sub-Processors under a written agreement that includes terms which are substantially the same as the terms set out in this clause.
- 6.8 JBA will, on request and at the Client's cost, make available to the Client or the Client's auditor such information as is reasonably necessary to demonstrate JBA's compliance with the obligations of Data Processors under Data Privacy Laws.
- 6.9 JBA will assist in audits, including inspections, conducted by or on behalf of the Client, provided that all information obtained from such requests, audits and inspections will be kept confidential and shall be used by the Client (and its auditor) only for the purpose of reviewing JBA's compliance with Data Privacy Laws.
- 6.10 JBA shall inform the Client if it believes that an instruction infringes the Data Privacy Laws.
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- 6.11 If instructed by the Client, JBA will assist the Client to meet its obligations under the Data Privacy Laws.
- 6.12 The provisions of this clause shall survive termination or expiry of this Agreement.

7 Intellectual Property Rights

- 7.1 Save as granted elsewhere under this Agreement, neither Party shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 7.2 Nothing in this Agreement shall vest in the Client any right, title or interest in JBA's Intellectual Property Rights, except as expressly provided for in this Agreement.
- 7.3 Upon payment of the total Price due under the terms of this Agreement, JBA grants the Client a non-exclusive, royalty- free licence to use the Intellectual Property Rights in any goods, software or data (including flood map data) supplied by JBA but only in so far as the Client may require in order to use the goods, software or data supplied for the Purpose for which that supply was envisaged by JBA. Without limitation the Client shall not, save as may be permitted by law, copy or reproduce the goods, software or data or the process as used by JBA to the extent that the same is protected by JBA's intellectual property rights.
- 7.4 The copyright in the specifications, drawings, descriptions and documentation submitted by JBA pursuant to this Agreement shall remain the property of JBA and the Client shall not, save as may be permitted by law, copy or reproduce the same.
- 7.5 The Client shall indemnify JBA against actions, claims, demands, costs, charges and expenses arising from any infringement or alleged infringement of any letters patent, registered design, trademark, copyright or other like right protected by law resulting from the provision of the Service or any information provided by the Client to JBA for the provision of the Service.

8 Access to the Site

- 8.1 The Client shall provide access to the Site and other Client systems necessary for the purpose of providing the Service.

9 Warranty and Limitations of Liability

- 9.1 JBA agrees to perform its services with a reasonable standard of care, skill, and diligence.
- 9.2 JBA's Price to the Client is determined on the basis of the limitations and exclusions of liability stated below. The Client expressly agrees that these limitations are reasonable because, among other considerations, it is possible that any damages awardable to the Client for a breach by JBA of this Agreement may otherwise be disproportionately greater than the price.
- 9.3 The following provisions set out JBA's entire liability to the Client (including any liability for the acts and omissions of its employees, agents or sub-contractors) in respect of:
- any breach of contractual obligations;
 - any tortious act or omission;
 - any action arising out of misrepresentation; arising out of or in connection with this Agreement.
- 9.4 To the maximum extent permissible in law all conditions and warranties which are to be implied by statute or common law or otherwise into this Agreement or relating to any reports or software supplied by JBA pursuant to the Services and the Services are hereby excluded.
- 9.5 No actions or proceedings under or in respect of this Agreement whether in contract or in tort in negligence or for breach of statutory duty or otherwise shall be commenced against JBA after the expiry of six (6) years following completion of the Services or such earlier date that may be prescribed by law.
- 9.6 JBA shall not be liable in contract or tort or otherwise to the extent that such liability arises as a result of any of the following:
- inaccuracies or omissions in any data, drawings, calculations, specifications, information (including any misleading items therein) supplied to JBA by the Client or by a third party (other than a third party which is a subcontractor of JBA) for the purposes of enabling it to perform the Services;
 - any errors or omissions in instructions given by the Client, its agents, consultants, or sub-contractors in connection with the Services; or
 - any action related to fire safety, pollution, asbestos or contamination, unless expressly included in the Services in the Offer.

9.7 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs the liability of JBA for any claim or claims under this Agreement shall be further limited to such sum as it would be just and equitable for JBA to pay having regard to the extent of JBA's responsibility for the loss or damage giving rise to such claim or claims ("the loss and damage") and all other consultants, contractors, sub-contractors, project managers or advisers engaged in connection with the Project have provided contractual undertakings on terms no less onerous than those set out in this Agreement to the Client in respect of the carrying out of their obligations.

9.8 JBA's total liability for all claims arising out of this Agreement in total shall not, subject to the limitations set out in clause 9.10, exceed **four times the total of net Price** paid or the amount stated in the Letter of Appointment, whichever sum is the higher.

Where a Defect appears in the Services:

- within a period of **six months** after the provision of the Services; and
- the Defect arises solely through the fault of JBA; and
- the Client promptly brings such Defect to the attention of JBA;

then JBA shall re-perform the Services so affected, provided always that (upon request from JBA) relevant documentation is returned to JBA at the cost of the Client if so required. JBA shall not be obliged to attend at the Client's Site for the purposes of any such re-performance.

9.9 Neither Party shall bear any liability to the other for loss of production, loss of profits, loss of business, or any like form of consequential loss.

9.10 Nothing in this Agreement shall limit either Party's liability for death or personal injury caused by their own negligence, or that of its employees, agents or sub-Suppliers; for fraud or fraudulent misrepresentation; or for any loss which by law cannot be excluded or limited.

10 Indemnity

10.1 Where the Client uses the results of the Services outside of the Purpose, then the Client shall indemnify and hold harmless JBA from and against all claims against JBA in respect of such use and all loss, damages, costs and expenses awarded against or incurred by JBA in respect of such use by the Client.

11 Assignment and sub-contracting

- 11.1 The Client shall not assign this Agreement in whole or in part save with the prior written consent of JBA (such consent not to be unreasonably withheld). JBA shall be free as it sees fit from time to time to assign the whole of this Agreement, or to sub-contract the undertaking of the whole or any part of the Services.

12 Offers of Employment

- 12.1 During the period of this Agreement and thereafter for a period of six (6) months the Client agrees not to engage or employ any director, manager, consultant, or employee (an "Employee") of JBA engaged in the performance or supervision of this Agreement by any direct or indirect means.

13 Prevention/Force Majeure

- 13.1 Neither Party shall be liable for any delay or non-performance if a Party (the "Affected Party") is prevented from or delayed in performing any of its obligations due to a Force Majeure Event. In such circumstances, the Affected Party shall be entitled to a reasonable extension of time for performing its obligations. If the delay continues for three (3) months, the other Party may terminate this Agreement on not less than twenty (20) Working Days' written notice to the Affected Party. This shall not excuse the Client from any payment obligations under this Agreement.
- 13.2 JBA accepts no liability for costs or damages, howsoever incurred as a result of acts of terrorism.

14 Termination

- 14.1 Either Party may terminate this Agreement at any time by written notice to the other where the other has committed or caused a material breach of this Agreement and where this default or failure is
- capable of remedy, has failed to remedy the default or failure within thirty (30) days of receiving a notice specifying the default or failure and requiring its remedy; or
 - incapable of remedy.
- 14.2 Either Party may terminate this Agreement at any time by written notice to the other where the other ceases or threatens to cease trading or is in a position whereby it cannot pay its debts and/or an Insolvency Situation arises in respect of it. An 'Insolvency Situation' means a Party enters liquidation, or that a receiver, liquidator,

administrator, trustee or an individual with a similar role is appointed over any of its assets, or that it proposes to make any arrangement with its creditors or that any similar step or proceeding is taken or made in any jurisdiction to which it is subject.

- 14.3 Material breach includes failure to pay sums due under this Agreement when due, and unauthorised use of JBA's Intellectual Property.
- 14.4 Upon termination of this Agreement for whatever reason:
- any right of action or remedy which shall have accrued, or shall afterwards accrue, to either Party shall not be affected.
 - all provisions which are, expressly or impliedly, to survive this Agreement shall remain in force and in effect.
 - any licence granted to use JBA's Intellectual Property shall immediately terminate.
 - the Client shall pay all outstanding payments due within ten (10) Working Days.
 - the Client shall promptly cease to use and destroy or delete as far as reasonably practicable all proprietary information (including Intellectual Property) belonging to JBA, and if requested by JBA shall certify such in writing.
- 14.5 Termination of this Agreement (or any licence granted) shall not, in itself, give rise to any liability on the part of either Party to pay any compensation to the other for loss of data, business, services, profits, anticipated saving, business opportunity, goodwill or other consequential, indirect, special or economic losses.

15 GENERAL

- 15.1 Any notice given by a Party to the other must be in writing and delivered by pre-paid post or personally. Notices shall be delivered to the address of the relevant Party set out at the head of this Agreement or to any other address notified in writing by that Party to the other. In the case of post, a correctly addressed notice shall be deemed given three (3) Working Days (or six (6) Working Days in the case of a Client whose address above is outside the UK) after the date of posting. Personal delivery shall be deemed effective at the time of delivery (as per the courier's records) or if outside a Working Day, at 09:00 hours on the next Working Day. Notice may not be served by email.
- 15.2 The invalidity or unenforceability of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder. If any provision is found to be invalid, illegal or unenforceable but would cease to be so if part of the provision were deleted or modified, the provision shall apply with such minimum modification necessary to make it valid and enforceable and still give effect to the commercial intention of the Parties.

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- 15.3 The rights and remedies in this Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law. They may be waived only in writing and specifically. Delay or non-exercise of any such right or remedy does not constitute a waiver of that right or remedy or of any other rights or remedies.
- 15.4 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes any previous agreement between them relating to such matter. In entering into this Agreement each Party does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. Notwithstanding this, if a court or other competent body determines that any statement, representation, warranty or understanding not expressly set out herein shall form part of the Agreement the Parties agree that the only remedy available to either Party in respect of the same shall be for breach of contract under this Agreement. The terms of this Agreement shall in any event prevail over any terms and conditions which the Client may provide at any time, or which the Client may seek to apply or rely upon, including in any purchase documentation
- 15.5 Any person who is not a Party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement. The rights of the Parties to terminate, rescind or make any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a Party to this Agreement.
- 15.6 This Agreement and any matter, dispute or claim arising from or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.