

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES – NOVEMBER 2017

Parties

1 **Fellows International Limited** registered in England and Wales under company number 02905072 and having its registered office at 130 High Street, Marlborough, Wiltshire SN8 1LZ (**Fellows**); and

2 The **Customer**, being the company named as the client on the attached Proposal.

Agreement

The Customer has requested and Fellows has agreed to supply the Services subject to these terms and conditions.

1. Interpretation

1.1 Definitions:

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Contract: the contract between Fellows and the Customer for the supply of Services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Proposal: the proposal and quotation for UXO survey and risk management procedures produced by Fellows for the Customer and attached hereto.

Services: the services to be supplied by Fellows to the Customer as set out in the Proposal.

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 any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- [b] Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- [c] A reference to **writing** or **written** includes email.

2. **Basis of contract**

- 2.1 The Contract shall commence on the date the Customer accepts the Proposal by notification to Fellows in writing.
- 2.2 The provisions of the Contract apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or that are implied by trade, custom, practice or course of dealing.

3. **Supply of Services**

- 3.1 Fellows shall supply the Services to the Customer in accordance with the Proposal in all material respects.
- 3.2 Fellows shall have the right to make any changes to the Services that are necessary to comply with any applicable law or safety requirement, or that do not materially affect the nature or quality of the Services, and Fellows shall notify the Customer in any such event.
- 3.3 Fellows warrants to the Customer that the Services will be provided using reasonable care and skill.

4. **Customer's obligations**

- 4.1 The Customer shall:
 - [a] co-operate with Fellows in all matters relating to the Services;
 - [b] provide Fellows with such information and access as Fellows may reasonably require in order to supply the Services; and

- (c) obtain and maintain all necessary licences, permissions and consents that may be required before the date on which the Services are to start.

5. **Charges and payment**

- 5.1 The Charges for the Services shall be as set out in the Proposal.
- 5.2 Fellows shall invoice the Customer on completion of the Services or at such other times as may be specified in the Proposal.
- 5.3 The Customer shall pay each invoice submitted by Fellows:
 - (a) within 30 [thirty] days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Fellows, and
 - (c) time for payment shall be of the essence of the Contract.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being [**VAT**]. Where any taxable supply for VAT purposes is made under the Contract by Fellows to the Customer, the Customer shall, on receipt of a valid VAT invoice from Fellows, pay to Fellows 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.
- 5.5 If the Customer fails to make any payment due to Fellows under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Lloyds Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Fellows may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Fellows to the Customer.
- 5.7 If the Customer wishes to cancel the provision of the Services prior to the scheduled start date of such Services, it shall be liable to pay:

- (a) 100% of the Charges if the cancellation is made less than 24 hours prior to the scheduled start date;
- (b) 50% of the Charges if the cancellation is made between 72 hours and 24 hours prior to the scheduled start date; and
- (c) any pre-booked accommodation costs incurred by Fellows.

6. **Intellectual property rights**

- 6.1 Fellows and its licensors shall retain ownership of all Intellectual Property Rights in or arising out of or in connection with the Services and any deliverables to be provided by Fellows to the Customer pursuant to the Proposal.
- 6.2 Fellows grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify any such deliverables for the purpose of receiving and using the Services and the deliverables in its business.
- 6.3 The Customer may sub-license the rights granted in clause 6.2.

7. **Limitation of liability:**

- 7.1 Nothing in the Contract shall limit or exclude party's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (d) any other liability that cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, Fellows shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;

- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill; or
- (g) any indirect or consequential loss.

7.3 Subject to clause 7.1, Fellows' total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to an amount equal to the total Charges paid under the Contract.

7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

7.5 This clause 7 shall survive termination of the Contract.

8. **Termination**

8.1 This Contract shall expire on completion of the Services and payment therefor.

8.2 Without limiting its other rights or remedies, 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 14 (fourteen) 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; or
- (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.

8.3 Without limiting its other rights or remedies, Fellows may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

- 8.4 Without limiting its other rights or remedies, Fellows may suspend provision of the Services under the Contract or any other contract between the Customer and Fellows if the Customer becomes subject to any of the events listed in clause 8.2(b) or to clause 8.2(c) or Fellows reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9. **Consequences of termination**

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Fellows all of Fellows' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Fellows shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. **General**

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

10.2 **Assignment and other dealings.**

- (a) Fellows may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of Fellows, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

10.3 **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 10.3(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 10.3; 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.
- (d) For the purposes of this clause 10.3, "confidential information" shall mean information that one party discloses to the other party under this Contract and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was lawfully given to the recipient by a third party.

10.4 **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 agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

10.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 10.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
 - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 10.7 **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.
- 10.8 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first-class post or other next working day delivery service, commercial courier or email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.8(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
 - (c) Fellows' email address for the purposes of this clause 10.8 is info@fellowsint.com
 - (d) The Customer's shall notify Fellows of its email address for the purposes of this clause 10.8.
- 10.9 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 10.10 **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.

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- 10.11 **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)