

TERMS OF SUPPLY OF CERTUS RISK MANAGEMENT LIMITED

- 1 Definitions**
- 1.1 In these Terms:
'Acknowledgement' the Supplier's written acknowledgement of a Request;
'Charges' the charges for the provision of the Services agreed between the Parties in writing prior to the commencement of the Contract as specified in the Acknowledgement;
'Client' means the Party to whom the Services are supplied;
'Confidential Information' includes, without limitation, business information and all documents, computer records, specifications, technical descriptions, records, drawings, designs and data relating to a Report and/or the provision of the Services;
'Contract' means each contract entered into between the Parties for the provision of a Report;
'Group Company' means a company which is either a holding company or a subsidiary of a Party, or a subsidiary of that Party's holding company (as those terms are defined in section 736 Companies Act 1985);
'Intellectual Property Rights' means copyrights, trademarks, domain names, rights in computer software and databases, know-how and any similar rights whether arising in the United Kingdom or elsewhere in the world;
'Materials' means documents, drawings, working papers or similar materials and any data or other information;
'Parties' means the parties to a Contract being, together, the Client and the Supplier and their respective successors in title; and 'Party' means either of them;
'Policyholder' means an insurance policyholder or prospective policyholder of the Client;
'Property' means the property the subject of a Report;
'Report' means the survey report carried out by the Supplier or on its behalf;
'Request' means a request from the Client requiring the Supplier to provide a Report which shall be on a Template;
'Services' means the risk survey services to be provided by the Supplier for the Client as detailed in the Schedule attached to these Terms which services may be amended from time to time by agreement in writing between the Parties;
'Supplemental Charges' any supplemental charges of the type referred to in clause 3.2;
'Supplier' means Certus Risk Management Limited;
'Surveyor' means an employee or contractor appointed by the Supplier to produce a Report;
'Template' means a template for the production of a Report agreed by the Parties in advance of a Request;
'Terms' means these terms and conditions which apply to each Contract.
- 1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 2 Supply of Services**
- 2.1 On receipt of a request for services the supplier will provide a written response and quotation if applicable for the services that will be valid for a period of no less than 30 days.
- 2.2 On receipt of a written order or instruction from the client, the Supplier shall provide the Services for the Client subject to these Terms which shall govern the Contract to the exclusion of any other terms and conditions, express or implied.
- 2.3 No variation of these Terms shall be binding upon either Party unless made in writing and signed by a director or other duly authorised representative of that Party.
- 2.4 The Client shall, at its own expense, provide to the Supplier all necessary Materials which the Supplier may reasonably require in order to provide the Services. The Client shall retain duplicates of all such information and materials and the Supplier shall have no liability for loss of, or damage to, the same.
- 2.5 The Supplier may decline to accept any Request until such time as all the relevant information is included in the Template in a reasonably clear and concise manner.
- 2.6 On receipt of a Request, the Supplier is deemed authorised by the Client to contact the Policyholder, directly or via the Policyholder's broker, to carry out the Services on behalf of the Client.
- 3 Payment**
- 3.1 Unless expressly stated to the contrary, the Charges and any Supplemental Charges shall be paid without any set-off or other deduction and are exclusive of any applicable value added tax, for which the Client shall be additionally liable at the applicable rate from time to time.
- 3.2 The Supplier reserves the right to make Supplemental Charges in the following circumstances: -
- 3.2.1 if, for any reason beyond the control of the Supplier, the time required to complete the survey of a Property is beyond the normal allocation for a survey of the type requested; or
- 3.2.2 if the Client's requirements change after instructions have been accepted by the Supplier; or
- 3.2.3 if any survey request is cancelled at any time after instructions have been accepted, by way of an administration charge.
- 3.3 The Charges and any Supplemental Charges shall be paid by the Client (together with any applicable value added tax and without any set-off or other deduction) within 30 days of the Supplier's invoice.
- 3.4 If payment is not made on the due date, the Supplier shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4% above the base rate from time to time of Santander Bank from the due date until the outstanding amount is paid in full.
- 4 Delivery**
- 4.1 Delivery of the Report by the Supplier shall be by email. If, for any reason, the Supplier is unable to deliver a Report by email, or if the Client requests delivery of a specified Report by post, that Report shall be delivered by first class post.
- 4.2 The Supplier shall not be liable for the loss, misdirection or destruction of the Report after it has been either sent to the email address provided by the Client for the purpose or placed in the Royal Mail posting system to the postal address provided by the Client for the purpose (or if none is provided, to the Client's last known email or business address, as appropriate).
- 5 Risk and Title**
- 5.1 Responsibility for the Report shall pass to the Client on delivery. Ownership of the Report shall remain with the Supplier until the Client has paid in full all undisputed Charges and Supplemental Charges owed by the Client to the Supplier in respect of that Report.
- 5.2 The Intellectual Property Rights in the Services and in the Report shall at all times remain with the Supplier. The Intellectual Property Rights in any Materials provided to the Supplier by the Client to enable it to perform the Services shall at all times remain with the Client.
- 6 Confidentiality**
- 6.1 Neither the Report, nor any part or extract from it, may be included in any published document, circular or statement or otherwise without the prior written approval of the Supplier of the form and context in which it may appear.
- 6.2 Each Party shall keep confidential all Confidential Information and not use it except for the purpose of exercising or performing its rights and obligations under this Agreement. Each Party may disclose Confidential Information to a Group Company and to its or their respective employees, officers, professional representatives or advisers, sub-contractors and agents, provided that such persons: -
- 6.2.1 need to know it in connection with the exercise or performance of that Party's rights and obligations under these Terms;
- 6.2.2 have been informed of the confidential nature of the Confidential Information divulged; and
- 6.2.3 agree to act in compliance with the confidentiality requirements in these Terms.
- 6.3 Neither Party will disclose Confidential Information to any third party or use it except as otherwise permitted in these Terms.
- 6.4 Notwithstanding any other provision of these Terms, it shall not be a breach of these Terms for either Party to disclose any Confidential Information pursuant to a court order or a binding request from a regulatory (or other analogous) authority with jurisdiction or from any other third party with power to require the disclosure of such information, provided that (to the extent it is permitted to do so) the affected Party gives all reasonable notice of such disclosure to the other Party.
- 6.5 Subject to the other Terms, the provisions of this clause 6 shall continue to apply notwithstanding termination of the Contract.
- 7 Data Protection**
- 7.1 The Supplier warrants that: -
- 7.1.1 it is notified as a Data Controller under the Data Protection Act 1998 ("the Act"), it being acknowledged that the Supplier is only processing any personal data pursuant to a Contract on behalf of the Client;
- 7.1.2 in its capacity as a Data Processor for the Client, it will comply with the provisions of the Act and with any relevant guidelines and guidance notes from time to time issued by the Office of the Information Commissioner of which it should reasonably be aware in relation to the performance of the Services;
- 7.1.3 without prejudice to the generality of the foregoing, the Supplier shall not use any personal data passed to it by the Client in connection with a Contract to make any direct or indirect written or verbal approach to or contact with a Policyholder or any third party for the purpose of sales and marketing of products otherwise than for the purposes of that Contract.
- 7.2 The Client warrants that: -
- 7.2.1 it is notified as a Data Controller under the Act;
- 7.2.2 it will comply with the provisions of the Act and with any relevant guidelines and guidance notes from time to time issued by the Office of the Information Commissioner of which it should reasonably be aware in relation to the performance of its obligations under these Terms; and
- 7.2.3 in accordance with the requirements of the Act, it has adequate authority or shall obtain any necessary consent from each Policyholder and any other relevant party to provide, process or store data concerning the Policyholder or that party to the Supplier to enable the Supplier to perform the Services.
- 8 Warranties and Liability**
- 8.1 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.
- 8.2 The Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising as a result of:-
- 8.2.1 any Materials supplied by the Client; or
- 8.2.2 any instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, in the wrong form or late;
- 8.2.3 any information supplied by a Policyholder or any authorised representative of a Policyholder; or
- 8.2.4 any other fault of the Client or any person acting on its behalf.
- 8.3 Each Report is supplied subject to the following provisos: -
- 8.3.1 the quality of the visual inspection by a Surveyor shall depend upon the circumstances prevailing at the Property at the time of the Report and may be affected by (by way of example only and not of limitation) limited access, working conditions, information provided which cannot reasonably be verified and health and safety considerations;
- 8.3.2 save as mentioned in clause 8.3.4, no testing of any plant, equipment or services at the Property will be undertaken and no representations are or will be given as to the proper or safe operation of any such plant, equipment or services;

- 8.3.3 the conditions and circumstances described in the Report will be those prevailing at the time at which the survey is carried out and not otherwise;
- 8.3.4 if a sprinkler is installed at a Property, the Surveyor shall endeavour to assess the effectiveness of that system but shall not be obliged to test it save as agreed in advance between the Parties and upon payment of Supplemental Charges;
- 8.3.5 a Surveyor shall not be obliged to report to the Client on any items which might be deemed to be "moral hazards"; and
- 8.3.6 all statements and opinions expressed in a Report are made to the best of the knowledge and belief of the Surveyor only having regard to best practice and industry guidelines.
- 8.4 The Supplier shall not be liable to the Client or be deemed to be in breach of these Terms by reason of any delay in performing, or any failure to provide, the Services if the delay or failure was due to any reason beyond its reasonable control.
- 8.5 Nothing in this Agreement shall limit either Party's liability in respect of any claims:
- 8.5.1 for death or personal injury caused by the negligence, of that Party and/or the employees, agents and/or sub-contractors of such Party;
- 8.5.2 resulting from any fraud including fraudulent misrepresentation made by such Party; and
- 8.5.3 for which liability may not otherwise lawfully be limited or excluded.
- 8.6 Subject to clause 8.5, in no event shall either Party be liable to the other Party under contract, tort including negligence, breach of statutory duty or otherwise for any indirect or consequential damages including:
- 8.6.1 loss of profits;
- 8.6.2 business interruption;
- 8.6.3 loss of sales;
- 8.6.4 loss of turnover; and
- 8.6.5 loss of opportunity,
- even if the loss was reasonably foreseeable or either Party has been advised of the possibility of such damages.
- 8.7 Subject to clauses 8.5 and 8.6 the aggregate liability of each Party hereunder (howsoever caused) (including but not limited to any liability for the acts and omissions of that Party's employees, consultants, agents or sub-contractors) in respect of any breach of its obligations to the other Party (whether implied or express) arising under or in connection with this Agreement whether in contract, tort (including but not limited to negligence), breach of statutory duty, restitution or otherwise will be limited to one million pounds (£1,000,000).
- 8.8 The Supplier undertakes to maintain in place throughout the Term the following insurance cover with a reputable insurer: -
- 8.8.1 in respect of its public liability arising pursuant to the performance of its obligations and/or liabilities under this Agreement with a limit of one million pounds (£1,000,000) per claim;
- 8.8.2 in respect of employer's liability arising pursuant to the performance of its obligations and/or liabilities under this Agreement with a limit of at least ten million pounds (£10,000,000) for claims arising from a single event or series of related events in a single calendar year; and
- 8.8.3 in respect of professional indemnity liability arising pursuant to the performance of its obligations and/or liabilities under this Agreement with a limit of one million pounds (£1,000,000) per claim.
- 9 Termination**
- 9.1 Either Party may (without limiting any other remedy) at any time terminate the Contract forthwith by giving written notice to the other Party if the other Party commits a material breach of these Terms.
- 10 Audit Rights**
- 10.1 The Supplier shall keep true and accurate records of the supply of the Services ("the Records"). The Supplier will permit (a) an independent auditor or an authorised officer of the Client; or (b) the FCA; or (c) a representative of HM Customs & Excise or any other relevant taxation or regulatory body to inspect the Records (but no other records of the Supplier), on giving (subject to clause 10.5) at least 2 week's written notice, as may be necessary to determine the correctness thereof and the proper payment of any Charges payable to the Client for the Services.
- 10.2 The Supplier shall promptly allow the representatives of the persons specified in clause 10.1 ("the Representatives") access to any of its offices at any time during business hours for the purposes of inspection pursuant to this clause 10 ("an Audit"). The Supplier shall co-operate fully with the Audit and supply the Records and information in relation to its obligations hereunder as may be reasonably requested by the Representative, who shall be entitled to make copies or take extracts of the same.
- 10.3 During the course of an Audit, the Supplier shall make available one or more of its managers or senior officials with the appropriate level of expertise and authority to answer any enquiries of the Representative.
- 10.4 The Supplier shall comply promptly with any reasonable request by the Representative for information (which without limitation shall include documents whether stored electronically or otherwise) relating to the performance of the Services.
- 10.5 Where a Representative, other than a representative of the Client, is exercising statutory rights of audit, the notice provisions set out in clause 10.1 shall not apply.
- 10.6 The Client shall discuss with the Supplier's appointed representative the outcome of any Audit and any action which may be deemed necessary as a result thereof.
- 11 Third Parties**
- 11.1 In carrying out its obligations hereunder the Parties acknowledge that the Supplier is acting only for the Client and the following shall apply: -
- 11.1.1 the Supplier is not authorised to make any recommendations to, or any requirements of, a Policyholder; and
- 11.1.2 the Supplier shall not be required to take instructions in relation to a Report from anyone other than the Client or its authorised representatives or underwriters; and
- 11.1.3 each Report is produced exclusively for the Client, and no-one other than the Client or a Group Company of the Client shall be entitled to rely upon the content of any such Report.
- 11.2 If at any time the Client discloses or provides a copy of any Report or part thereof to any third party whomsoever (including for the avoidance of doubt co-insurers and any other insurance companies, brokers or re-insurers) then the Client shall prior to or at the time of such disclosure notify the relevant third party in writing that the third party is not entitled to rely on the Report and that the Supplier shall not be liable to the third party (whether in Tort, by Statute or howsoever arising and whether or not arising out of negligence on the part of the Supplier) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Report.
- 12 General**
- 12.1 These Terms, together with the Acknowledgement, constitute the entire agreement between the Parties, supersede any previous agreement or understanding and may not be varied except in writing between the Parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 12.2 Any notice required or permitted to be given by either Party to the other in accordance with these Terms shall be in writing addressed to the other Party at its registered office or principal place of business or at such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice and shall be delivered by hand or sent by special delivery post.
- 12.3 No failure or delay by either Party in exercising any of its rights under these Terms shall be deemed to be a waiver of that right and no waiver by either Party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4 If any of the Terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other Terms shall not be affected.
- 12.5 In the event of any dispute arising under or in connection with these Terms or the provision of the Services: -
- 12.5.1 the Parties shall attempt to resolve the same by negotiation; and
- 12.5.2 if such dispute is not resolved within 30 days, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation a Party must give notice in writing ("ADR Notice") to the other Party requesting mediation. A copy of the request shall be sent to CEDR Solve. The mediation shall start not later than 10 days after the date of the ADR Notice.
- 12.6 Subject to clause 12.5, no Party may commence any court proceedings in relation to any dispute arising under or in connection with this Agreement or the provision of the Services until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by the delay.
- 12.7 English law shall apply to this Agreement and the Parties agree to submit to the exclusive jurisdiction of the English courts.
- 12.8 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties.
- 12.9 The Contract is personal to the Parties and may not be transferred or assigned in whole or in part save that either Party may assign to any Group Company provided that such assignee shall be bound by the terms hereof as if it were a Party.
- 12.10 Unless otherwise provided herein, the Parties intend that none of the Terms may be enforced by a third party pursuant to the Contracts (Rights of Third Parties) Act 1999.