

## Terms and Conditions

### Background

The Client wishes to use Certus Risk Management Limited Risk Surveying and other Services as may be offered and agreed between the parties from time to time. Certus will supply the Services (as defined below) subject to these terms and conditions ('Terms and Conditions').

Please read these Terms and Conditions carefully, as they set out our and your legal rights and obligations in relation to the Services between you and us, **Certus Risk Management Limited ('Certus')** a company incorporated and registered in England and Wales with company number 9167713 whose registered office is at 36 Tyndall Court, Commerce Road, Lynchwood, Peterborough PE2 6LR

A copy of this Agreement is available with the option to print on the Certus website as is in force from time to time.

### 1. Definitions

- 1.1 In this Agreement the following words and expressions shall have the following meanings:
- '**Agreement**' the Agreement between Certus and the Client incorporating these Terms and Conditions, The Schedules and the Order Confirmation;
  - '**Claims**' shall mean all demands, Claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise);
  - '**Client**' the person or organisation named at the foot of this Agreement; or the person or organisation stated within the order, whether instructed directly or indirectly by their agent, duly appointed to act on their behalf.
  - '**Commencement Date**' the date hereof or the date of the first Contract if earlier;
  - '**Confirmation**' written acceptance of a request for services;
  - '**Contract**' an Order when accepted by Certus in accordance with Clause 4;
  - '**Fee**' the fee for the Services as defined within Schedule 2 or confirmed in the Order Confirmation;
  - '**Losses**' shall mean all Losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever;
  - '**Order**' the Client's written request to buy Services based on the attached schedules or the Quote on these Terms and Conditions;
  - '**Policyholder**' the insurance policyholder or prospective policyholder of the Client;
  - '**Property**' the property that is the subject of a report the particulars of which are set out in the Order;
  - '**Quote**' the Services and Fees as previously agreed within the attached schedules, or as agreed based upon information provided by the client with the Request;
  - '**Report Delivery Date**' the date the Report is to be delivered as set out in the Order Confirmation, where known;
  - '**Reports**' means all Reports, documentation, presentations, software or drawing in whatever format that Certus shall or may create or deliver to the Client as part of the Services provided by Certus;
  - '**Request**' means a request from the client requiring Certus to provide a Report; and
  - '**Services**' the services required are to be confirmed within the 'Request for Services' and are to be provided by under these Terms and Conditions as set out in the Quote and Order.

- 1.2 Words importing any gender include every gender and words importing the singular number include the plural number and vice versa;
- 1.3 Words importing person include firms, companies and corporations and vice versa;
- 1.4 References to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 1.5 Reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 1.6 Any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 1.7 The headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;
- 1.8 Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 1.9 Where the word 'including' is used in this Agreement it shall be understood as meaning 'including without limitation'; and
- 1.10 In the event of a conflict between the body of this Agreement, the Schedules, and the Order Confirmation the order in which the documents shall prevail is first the body of this Agreement shall prevail, over the Schedules, which shall prevail over the Order Confirmation.

## **2. Application of Terms and Conditions**

- 2.1 These Terms and Conditions shall apply to and be incorporated into any Contract.

## **3. Contract Formation**

- 3.1 After the Client submits a request, Certus will acknowledge that it has been received. A contract will only exist between the Client and Certus once Certus has sent a Confirmation to the Client or, if earlier, performed the Services.
- 3.2 Certus may decline to accept any Request until such time as all the relevant information is included in the request in a reasonably clear and concise manner.
- 3.3 On receipt of a Request, Certus 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.

## **4. Performance of the Services**

- 4.1 Subject to the availability of Certus' staff and agents, and in default of agreement the Services will be performed in a reasonable time period.
- 4.2 Certus shall use all reasonable endeavours to complete the Services by the Report Delivery Date or meet such other dates as agreed by the parties.
- 4.3 The Services shall be carried out by suitably competent personnel.

- 4.4 Certus 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.
- 4.5 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.
- 4.6 The Client shall, at its own expense, provide to Certus all necessary Materials which Certus may reasonably require in order to provide the Services. The Client shall retain duplicates of all such information and materials and Certus shall have no liability for loss of, or damage to, the same.

## **5. Fee and Payment**

- 5.1 In consideration of the Services to be provided by Certus to the Client, the Client shall pay or procure the payment of the Fees as set out in the schedules or Confirmation to Certus within thirty (30) days of receipt of the relevant invoice.
- 5.2 The Fees are unless stated otherwise exclusive of VAT and / or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date of invoice.
- 5.3 The fees will automatically be increased on their anniversary by the RPI (Retail Prices Index) (all items), averaged over the preceding 12 months, unless otherwise agreed by both parties in writing.
- 5.4 If payment of the Fee is not received by any due date, Certus shall be entitled (without prejudice to any other right or remedy):
  - 5.4.1 To charge interest on the outstanding amount at the rate of 2% per annum above the base lending rate of Santander UK plc, accruing daily; and / or
  - 5.4.2 To require that the Client make a payment in advance of any Services or part of the Services not yet supplied; and / or
  - 5.4.3 Not to provide any Reports due on completion of the Services until such payment is made, or if Reports have been issued, to deny the use of such Reports.
- 5.5 All payments shall quote Certus' invoice number and other reference numbers (including where applicable) the Order Confirmation reference number.

## **6. The Client's Obligations**

- 6.1 The Client undertakes that it or its duly appointed agents will purchase the Services as set out in Schedule 1 and as specifically stated in the Order, in respect of properties owned or managed by the Client.
- 6.2 The Client acknowledges and agrees that for Certus to be able to provide the Services the Client shall:
  - 6.2.1 Co-operate with Certus as Certus reasonably requires;
  - 6.2.2 Provide to Certus such information and documentation as Certus reasonably requires
  - 6.2.3 Instruct the Client's staff and agents to co-operate and assist Certus.
- 6.3 Certus may charge the Client for any additional reasonable costs and expenses incurred by Certus caused by the Client's instructions, failure to provide instructions, or failure to comply with Clause 7.2
- 6.4 The Client shall keep confidential all information relating to Certus, its processes and its technology.

## **7. Reporting Requirements**

- 7.1 Certus shall deliver the Reports by the Report Delivery Date or at such later date as is reasonable in the circumstances.
- 7.2 Certus will provide an electronic copy of each Report which will be delivered by the Certus Risk Management Platform or sent to the Client's email address detailed in the Order Form (or such other address agreed in writing).
- 7.3 Certus grants to the Client a non-exclusive licence (without the right to sub-licence- to use the Reports. Certus shall own all copyright, database and other intellectual property rights in the Reports.
- 7.4 The Report is intended for the use of the Client and Certus does not accept any liability for any reliance placed on the contents of the Report by a third party. The Client shall inform any third party whomsoever to whom it discloses a Report of the nature and scope of the Report and shall indemnify and hold harmless Certus in respect of any third party Claims howsoever arising and whether or not arising out of negligence on the part of the Certus or its agents) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Report.
- 7.5 In the event that the Client wishes Reports delivered into Certus' Risk Management Reporting Software it shall enter into with Certus an agreed form of the Certus End-User Licence Agreement.

## **8. Additional Services**

- 8.1 Certus will provide, for an additional fee, such additional Services as are agreed between Certus and the Client and confirmed by Certus in writing.

## **9. Miscellaneous**

- 9.1 The Client may only rely upon Certus' advice and Report for purposes described in Schedule 1 and if the Client wishes to rely upon such advice and Report for any other purpose, he or she may only do so with the written consent of Certus.

## **10. Warranties, liability and indemnities**

- 10.1 Certus warrants that it will use reasonable care and skill in performing the Services and to a standard which conforms to generally accepted industry standards and practices.
- 10.2 If any part of the Services is performed negligently or in breach of the provisions of this Agreement then, at the request of the Client (if the request is given within 6 months of the Report Delivery Date), Certus will re-perform the relevant part of the Services, always subject to Clause 11.5 and 11.6.
- 10.3 Certus expressly does not warrant that any result or objective whether stated in this Agreement or not shall be achieved, be achievable or be attained at all or by a given Report Delivery Date or any other date.
- 10.4 Except in the case of death or personal injury caused by Certus' negligence, Certus' liability under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or

otherwise howsoever, shall not exceed £1 million any claim or any difference amount that might equate to the amount of Professional Liability cover maintained by Certus from time to time. The provisions of this Clause 11.4 shall not apply to Clause 11.6.

- 10.5 Neither party shall be liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any Loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature, including without limitation any economic Loss or other Loss of turnover, profits, business or goodwill. The provisions of this Clause 11.5 shall not apply to Clause 11.6.
- 10.6 The Client shall indemnify and hold harmless Certus from and against all Claims and Losses arising from loss, damage, liability, injury to Certus employees and third parties, infringement of third party intellectual property, or third party Losses by reason of or arising out of any information supplied to the Client by Certus, its employees or its contractors, or supplied to Certus, its employees or its contractors, or supplied to Certus by the Client within or without the scope of this Agreement.
- 10.7 Each of the parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.
- 10.8 Nothing in this Agreement will adversely affect the Client's statutory rights where the Client is contracting as a consumer.

## **11. Termination**

- 11.1 This Agreement shall commence on the Commencement Date or on the date of the first Order if earlier.
- 11.2 Certus may choose not to complete any Order by giving notice to the Client if it is unable to carry out the Services (including without limitation if Certus is unable to gain access or entry to the Property).
- 11.3 Without prejudice to other remedies or rights, either party may terminate this Agreement at any time by written notice to the other party:
- 11.3.1 If the other party is in material breach of its obligations under this Agreement and, where a breach is capable of remedy within twenty-eight (28) days by the party receiving notice which specifies the breach and requiring the breach to be remedied; or
- 11.3.2 If the other party becomes insolvent or if an Order is made or a resolution is passed for the winding up of the other party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other party's assets or business or if the other party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

## **12. General**

- 12.1 Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either party may terminate this Agreement by written notice to the other party.

- 12.2 This Agreement may only be amended in writing signed by duly authorised representatives of the parties.
- 12.3 The schedules will be reviewed on an annual basis, a minimum of 4 weeks before the anniversary date. Any amendments to the schedules will be in accordance with 14.2.
- 12.4 Subject to the following sentence, neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other party. A party may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this Agreement.
- 12.5 This Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.
- 12.6 No failure or delay by either party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 12.7 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.
- 12.8 For the purposes of the Contracts (Rights of Third parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not a party to is any right to enforce any of its provisions.

### **13. Notices**

- 13.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent to the other party. Correctly addressed notices sent by airmail shall be deemed to have been delivered seven (7) days after posting and first class mail shall be deemed to have been delivered seventy-two (72) hours after posting.

### **14. Law and Jurisdiction**

- 14.1 This Agreement and any Contracts and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or Claims) will be governed by the laws of England and Wales. Any dispute or claim arising out of or in connection with this Agreement or such Contracts of their formation (including non-contractual disputes or Claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## **15. Data Protection**

- 15.1 In this clause 15:  
‘Data Controller’, ‘Data Processor’, ‘Data Subject’,  
‘Personal Data’,  
‘Processing’ and ‘Process’ have the meanings set out in the Data Protection Legislation.
- 15.2 Each Party shall comply with its obligations under the Data Protection Legislation.
- 15.3 The Parties envisage that under the terms of this Agreement, the Supplier is acting as a Data Processor where it is processing Personal Data on behalf of Client. Without prejudice to its obligations to comply with the Data Protection Legislation under clause 15.2, the Supplier warrants that: -
- 15.3.1 It will Process the Personal Data only in accordance with the Client’s instructions from time to time and shall not Process the Personal Data for any purposes other than those expressly authorised by the Client which shall be only those activities required to be undertaken in order to deliver the Services. The Supplier shall, unless prohibited by applicable law, notify the Client if it becomes subject to a legal requirement to Process the Personal Data other than in accordance with the Client’s instructions and, in any event, prior to such Processing;
- 15.3.2 It will take appropriate technical and organisational measures against the unauthorised or unlawful Processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected and take reasonable steps to ensure compliance with those measures;
- 15.3.3 It will provide written notice without undue delay, and in any event within 48 hours of becoming aware of a breach or suspected breach of the Data Protection Legislation or any data breach or incident (or suspected data breach or incident) which may affect individuals to whom the Personal Data relates and, if any such data is lost or destroyed or becomes damaged, corrupted or unusable;
- 15.3.4 It will implement any and all measures to restore the security and integrity of any compromised Personal Data and provide all such assistance and information as the Client may reasonably require in connection with any required notifications to relevant regulators or affected individuals or in connection with any investigation by a regulator;
- 15.3.5 It will not transfer any personal data outside the UK or the European Economic Area without the Client’s prior written consent and ensuring compliance with Client’s obligations under the Data Protection Legislation;
- 15.3.6 Without prejudice to the generality of the foregoing:
- (a) it shall not use any Personal Data passed to it by the Client under this Agreement 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; and
- (b) it shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data and shall ensure that such employees have undergone training in the Data Protection Legislation and in the care and handling of Personal Data and are bound by an enforceable duty of confidentiality.
- 15.4 The Supplier may authorise a third party (sub-processor) to Process the Personal Data provided that the sub-contractor's contract is on terms which are substantially the same as those set out in this Agreement and terminates automatically on termination of this Agreement for any reason. The Supplier shall remain fully liable to Client for the performance of that sub-processor’s obligations and shall provide details of all such sub-processors to Client upon written request.

- 15.5 Each Party shall notify the other promptly, having regard to timescales required under the Data Protection Legislation, following receipt of any complaint, notice or communication which relates directly or indirectly to the Processing of Personal Data or to either Party's compliance with the Data Protection Legislation in relation to the Processing of Personal Data in relation to Agreement, including a data subject access request, and it shall provide full co-operation and assistance in relation to any such complaint, notice or communication.
- 15.6 The Supplier shall, and ensure that any sub-processors shall, keep full, accurate and proper Records relating to the processing of Personal Data under this Agreement and demonstrating the Supplier's compliance with its obligations under this Agreement and the Data Protection Legislation.

**THIS AGREEMENT** has been entered into on the date stated below.

Date: .....

Signed by.....

for and on behalf of

[Insert Client Name]

Signed by.....

for and on behalf of

**Certus Risk Management Limited**