

## **The terms of business of Asbri Planning Limited**

### **About Asbri Planning Limited:**

Is a company registered with company number 06233853. Its registered office is at 2 Oldfield Road, Bocam Park, Bridgend CF35 5LJ.

### **Proposal**

If there is any conflict or ambiguity between the terms of the Proposal (defined below) and these terms of business, then the terms of the Proposal prevail.

### **Your attention is drawn to Condition 8 in respect of liability**

#### **1. Interpretation**

##### **1.1 Definitions:**

<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England and Wales.
<b>Charges</b>	the charges payable by you for the supply of the Services by us, as set out in the Proposal.
<b>Conditions</b>	these terms and conditions.
<b>Contract</b>	the contract between you and us for the supply of the Services in accordance with these Conditions and the Proposal.
<b>Documents</b>	(a) documents and/or materials we create for you (including, without limitation, letters, e-mails, reports and advice); (b) amendments, changes and/or adaptations we make to any documents and/or materials provided by you to us; and (c) documents and/or materials which we otherwise make available to you.
<b>Intellectual Property Rights</b>	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.
<b>Proposal</b>	the proposal prepared by us and setting out the Services, Charges and relevant matters forming part of the Contract.

<b>RTPI Code of Conduct</b>	the Code of Professional Conduct from time to time of the Royal Town Planning Institute.
<b>Services</b>	the services, including without limitation any Documents, to be provided by us pursuant to the Contract, as described in the Proposal.
<b>Services Start Date</b>	the day on which we are to start provision of the Services, as set out in the Proposal or the date we actually start the Services.

1.2 In these Conditions, “**we**”, “**us**”, “**our**” and “**Ours**” refer to Asbri Planning Ltd and “**you**” and “**your**” refer to the client(s) to whom the Services are being provided.

1.3 Interpretation:

- (a) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (b) A reference to writing or written includes email.

## 2. Commencement

The Contract shall commence on the date when the Proposal is signed (or accepted by conduct or in some other way) by you or we start to provide the Services at your request.

## 3. Supply of services

3.1 We shall supply the Services to you from the Services Start Date in accordance with the Contract.

3.2 In supplying the Services, we shall:

- (a) perform the Services with reasonable care and skill;
- (b) use reasonable endeavours to perform the Services in accordance with the service description set out in the Proposal;
- (c) comply with the requirements of the RTPI Code of Conduct; and
- (d) comply with all applicable laws, statutes, regulations from time to time in force

provided that we shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of our obligations under the Contract.

## 4. Your obligations

4.1 You shall:

- (a) co-operate with us in all matters relating to the Services; and

- (b) provide, in a timely manner, such information as we may reasonably require, and ensure that it is accurate and complete in all material respects; and
- 4.2 If our performance of our obligations under the Contract is prevented or delayed by any act or omission of yours, your agents, subcontractors, consultants or employees, we shall:
  - (a) not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay;
  - (b) be entitled to payment of the Charges despite any such prevention or delay; and
  - (c) be entitled to recover any additional costs, charges or losses we sustain or incur that arise directly or indirectly from such prevention or delay.

## **5. Data protection**

- 5.1 We will be a data controller in relation to any personal data that we handle in the course of providing services to you.
- 5.2 We will use your personal data primarily to deal with your matter, but also for other related purposes. Our Privacy Notice at <https://www.asbriplanning.co.uk> sets out details of how we will use, store and share your personal data, as well as other privacy information which we are required to provide to you under data protection law.
- 5.3 We use third party service providers (including “cloud” service providers) to help us deliver efficient, cost effective Services. This may include document/information hosting, sharing, transfer, analysis, processing or storage. We ensure all third party service providers engaged by us operate under service agreements that are consistent with our legal and professional obligations, including in relation to confidentiality, privacy and data protection.

## **6. Intellectual property in Documents**

- 6.1 We shall retain ownership of all Intellectual Property Rights in the Documents.
- 6.2 We grant you a worldwide, non-exclusive, royalty-free, licence to use, copy and modify the documents only in connection with the matter for which they have been created or provided. You must not use them for anything else nor make them available to any third party without our prior written consent except as is necessary for your matter.
- 6.3 You grant us a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify your materials for the term of the Contract for the purpose of providing the Services to you in accordance with the Contract.

## **7. Charges and payment**

- 7.1 You shall pay us the Charges in accordance with this Condition 7.

- 7.2 All amounts payable by you exclude amounts in respect of value added tax (VAT), which you shall additionally be liable to pay to us at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 7.3 We shall submit invoices for the Charges plus VAT if applicable to you monthly in arrears or as otherwise set out in the Proposal.
- 7.4 You shall pay each invoice due and submitted to you by us, within 30 days of receipt, to a bank account nominated in writing by us.
- 7.5 If you fail to make any payment due to us under the Contract by the due date for payment, then, without limiting our remedies under Condition 9 (Termination):
- (a) you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will be charged at the prevailing rate under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended). Interest will accrue daily and be compounded quarterly.
  - (b) we may suspend the Services until payment has been made in full.
- 7.6 All amounts due under the Contract from you to us must be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.7 Any planning related application fees (including, but not limited to, pre-application fees, planning application fees, reserved matters application fees, discharge of condition application fees or advertisement consent fees) do not form part of the Charges. These will be charged as a disbursement together with an administration charge (and money on account may be required).
- 7.8 Charges do not include expenses and disbursements such as mileage, subsistence and copying costs. These will be included in any invoice where reasonably incurred.

## **8. Limitation of our liability**

- 8.1 The Contract is between you and us and not any director, employee or consultant of us. Any duty of care which would otherwise be owed to you by any director, employee or consultant of ours is hereby excluded. You agree that any claim you may wish to bring in respect of the Services provided to you will be brought only against us.
- 8.2 Our liability to you in respect of any one claim or action arising out of or in connection with the Services (whether such liability arises by reason of breach of contract, tort (including negligence), breach of statutory duty or otherwise) is limited to :
- (a) the amount (if any) specifically agreed with you in writing, for example in the Proposal; or
  - (b) if none is set out in writing or in the Proposal the sum of £1,000,000.

- 8.3 We will not have any liability to you for losses that were not foreseeable by both you and us.
- 8.4 Where you comprise two or more persons, the limit on our liability set out in Condition 8.2 defines our total liability to all of you together.
- 8.5 Without prejudice to Condition 8.4, if you suffer any loss for which we and any other person are jointly, severally, or jointly and severally liable to you, the loss recoverable by you from us will be limited so as to be in proportion to our contribution to the overall fault in respect of the loss in question, having regard to the relative contributions made to that fault by us, you and any other person.
- 8.6 In relation to Condition 8.5, if, as a result of any exclusion or limitation of liability agreed by you with any other person:
- (a) the amount we are able to claim as a contribution from such other person in connection with any claim you bring against us is limited; or
  - (b) our ability to make such a claim against such person is excluded
- our liability to you in respect of your claim shall be reduced by an amount equal to the amount of such reduction or exclusion (as applicable).
- 8.7 Nothing in Conditions 8.2 to 8.6 excludes or limits our liability for fraud or reckless disregard of our professional obligations or for any other matter in respect of which it would be unlawful for us to exclude or limit our liability (or which may render Condition 8 ineffective).
- 8.8 We accept no liability to anyone, other than you, in connection with the Services, unless we agree otherwise in writing.

## **9. Termination of the Contract**

- 9.1 You can ask us to stop working for you at any time. However, we can keep the Documents and all your papers and documents while any of our invoices are outstanding.
- 9.2 We have the right to stop working for you :
- (a) For good reason, provided we give you reasonable notice;
  - (b) With immediate effect if (i) you fail to pay any amount due to us within 30 days of the due date; (ii) you refuse or fail to pay within a reasonable time an amount requested on account of fees, disbursements or administration charges incurred or to be incurred; or (iii) you fail to sign and return the Proposal.
- 9.3 We are not responsible for reminding you about important dates and/or any deadlines after our appointment has been terminated.
- 9.4 If you are a consumer within the meaning of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, then you may have a right to cancel the Contract with us in accordance with Condition 10.

## 10. Consumer Right to cancel

- 10.1 If you are an individual not instructing us in the course of your trade, business or undertaking then, under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the “**Regulations**”), you will have a period in which to change your mind and cancel the contract. This period will begin on the day on which you enter into the contract with us and will expire at the end of 14 days after that day (the “**Cancellation Period**”). You do not need to have or give any reason for cancelling the engagement.
- 10.2 If you decide to cancel the contract, you must inform us of your decision. You can do this by providing us with any other clear statement setting out your decision to cancel (such as by telephoning us or sending us a letter by post, or email).
- 10.3 To meet the cancellation deadline, it is sufficient that you send us your communication concerning your exercise of your right to cancel before the Cancellation Period has expired.
- 10.4 If you exercise your right to cancel the Contract, then subject to the provisions that apply where you have requested that we “**start work early**” (see Condition 10.8), we will reimburse to you any payments on account we have received from you, including any amounts in respect of disbursements and/or administration fees. We will make any such reimbursement without undue delay and not later than the end of 14 days after the day on which we are informed of your decision to cancel the engagement.
- 10.5 Unless we expressly agree with you otherwise, we will make any reimbursement to you using the same means of payment as you use to make any payments on account to us. You will not incur any fees as a result of the reimbursement.
- 10.6 Please be aware that, under the Regulations, we must not start work on your matter:
- before the end of the Cancellation Period, unless you have made an express request that we do so (see below); and
  - until we have provided you with a copy or confirmation of the contract between us.
- 10.7 If you wish us to start work on your matter before the end of the Cancellation Period (“**start work early**”), please follow the instructions in Condition 10.8. Please note that we cannot accept an oral request to start work early. An email will suffice.
- 10.8 If you request that we start work early :
- (a) you will lose your right to cancel under the Regulations if, before the end of the Cancellation Period, we complete work on your matter;
  - (b) unless or until Condition 10.8 applies, you will still be entitled to exercise your right to cancel under the Regulations. However, if you do so, you must pay us for any services we provide up to the time we are informed of your decision to cancel and for any disbursements and/or

administration charges we incur on your behalf and with your consent up to that time. The amount we charge you in relation to any services provided by us during this period will be in proportion to the work undertaken by us in comparison with the full coverage of the engagement. We will notify you of the total amount payable by you and send you a bill for that amount; and

- (c) if you have made any payments on account to us in respect of our fees and/or any anticipated disbursements and/or administration charges, we will set-off the amount payable by you to us under paragraph (b) above against such payments on account. We will then reimburse any balance to you in accordance with the terms set out in the paragraph on "Effects of Cancellation" above.

## **11. General**

### 11.1 Assignment and other dealings.

- (a) You shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without our prior written consent.
- (b) We may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of our rights under the Contract.

### 11.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by Condition 11.2.
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Condition 11.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.
- (d) However, this Condition 11.2 does not prevent:
  - (i) us from disclosing confidential information relating to your affairs to: other professional advisers; companies or businesses to whom we outsource services; or other third parties, where

necessary for the proper performance of our services and/or as otherwise permitted under these Conditions;

- (ii) us from using techniques, ideas and other knowhow gained whilst working on your matter for other client work, provided this does not result in disclosure of confidential information about your affairs; or
  - (iii) any director, employee or agent of the firm, from doing anything which is necessary or desirable to comply with the RTPI Code of Conduct or any applicable law or regulation.
- (e) To comply with our legal and regulatory obligations and the terms of our professional indemnity insurance, we may disclose relevant documents and information relating to your matter to, for example, insurers, HMRC, regulator bodies and insurance advisers on a confidential basis. This could include details of any circumstances arising from our work for you that may give rise to a claim against us. You agree to such disclosure by us, even if the documents and information in question are confidential. Except where we are legally obliged to disclose information, we will require that these external organisations maintain confidentiality in relation to any information which is disclosed to them.

#### 11.3 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 acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

#### 11.4 Variation.

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

#### 11.5 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### 11.6 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address; or
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the third Business Day after posting.
- (c) This Condition 11.6 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### 11.7 Third party rights.

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

#### 11.8 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.

#### 11.9 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) arising out of or in connection with the Contract or its subject matter or formation.