

**EXTERNAL WALL SYSTEM (EWS1) ASSESSMENTS
REQUEST FOR THE SUPPLY OF SERVICE
(FOR BUSINESSES)**

This is a Request for the provision of an external wall system assessment service.

We, the Assessor, agree to supply the service described in this Request to you, the Client, subject to the terms of engagement (**Terms of Engagement**) attached to this Request. The Request and the Terms of Engagement form the **Agreement**.

Client: <i>[Explanatory note: the Client entity must be the person who commissions the EWS1 assessment and EWS1 form including commissioning such assessment and form as part of the Scottish Single Building Assessment. This person can be either (i) the Scottish Ministers or (ii) the owners of one or more flats within the Building.]</i>			
Name			
Contact			
Address			
Telephone		Email	

Assessor: <i>[Explanatory note: the assessor that actually carries out the assessment (on behalf of the firm) must be either: a. a Chartered or Incorporated Engineer with full membership of the Institution of Fire Engineers (IFE); or b. a fully qualified member of the Royal Institution of Chartered Surveyors (RICS) or a relevant professional body who has successfully completed the Royal Institution of Chartered Surveyors External Wall System Assessment Training Programme (only relevant to EWS1 assessments and EWS1 forms for buildings under 18 meters and for EWS1 forms that are certified as Option A and Option B in buildings with low or medium risk only), and before carrying out any work relating to the Service, the assessor must have in place: (i) a professional indemnity insurance policy, the scope of which specifically covers the performance of EWS1 assessments; or (ii) a professional indemnity insurance policy which otherwise includes the performance of EWS1 assessments within its scope of cover.]</i>			
Firm Name			
Contact			
RICS, IFE or other designation and membership number			
RICS EWS1 assessment course certificate number			
Address			
Telephone		Email	

Building: <i>[Explanatory note: Insert full details of the property including postcode and Unique Property Reference Number (UPRN). Note that EWS1 assessments are carried out for the entire building, not individual properties.]</i>	
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Services	<ol style="list-style-type: none"> 1. A written record of the due diligence and assessment undertaken by the Assessor to determine whether the Building that is located in Scotland meets the required criteria for the production of EWS1 form (being a requirement that the top storey is more than 11 meters above ground level (as calculated in accordance with Diagram D6 of Approved Document B, 2019 edition incorporating 2020 amendments, as produced under the Building Regulations 2010 (Building Regulations)).¹ 2. The production of an EWS1 form by the Assessor, including an EWS1 form that is commissioned as a discrete part of the Scottish Single Building Assessment, signed by the Assessor, with a rating determined by the Assessor following an external wall system assessment carried out by the Assessor in respect of the Building (including attachments, such as balconies) in accordance with the BSI PAS 9980 "Fire risk appraisal and assessment of external wall construction and cladding of existing blocks
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¹ Note to Assessor: If the Assessor has determined that the Building does not meet the required criteria for an EWS1 form the Assessor should not produce an EWS1 form under this Request for the Supply of Service. If an assessment is required in respect of a Building that does not meet the required criteria then this should be commissioned through a separate Request and Terms of Engagement, which would not be covered by the Assessor's EWS1 professional indemnity insurance policy.

	<p>of flats – Code of practice” (BSI PAS 9980), together with a suitable report produced in accordance with BSI PAS 9980 and signed by the Assessor to accompany the EWS1 form (the Report), the scope of which shall be specified in more detail below.</p> <p>3. The submission by the Assessor of the completed EWS1 form and Report as well as the signed version of this Agreement to the Department for Levelling Up, Housing and Communities (DLUHC) via any prescribed platform within 14 days of their completion for auditing purposes by DLUHC or any relevant industry body.</p> <p><i>[Explanatory note: The Assessor must provide a detailed scope below and detail in the Report the reasoning for the scope and any assumptions, limitations and caveats (e.g. in respect of sampling).</i></p> <p><i>Include details of the following items:</i></p> <ul style="list-style-type: none"> • <i>the details of any special instructions and/or additional service</i> • <i>the estimated date the Report will be provided</i> • <i>exactly what is intended to be inspected and why</i> • <i>the delivery format and style of the report</i> • <i>any restrictions.</i> <p><i>The scope and stages shall be detailed below and in accordance with the BSI PAS 9980 – in particular clauses (and commentary) – 9, 10 and 15.</i></p> <p><i>Stage 1: E.g. Visual inspection (that amount of the exterior (and interior) of the Building as is safely accessible within the boundaries of the site of the Building and adjacent public / communal area and when standing at the various floor levels which the Assessor considers reasonably necessary and desktop assessment</i></p> <p><i>Stage 2: E.g. Opening up (by whom) and making good</i></p> <p><i>Stage 3: E.g. Inspection of external wall construction</i></p> <p><i>Stage 4: E.g. Material testing (if necessary)</i></p> <p><i>Stage 5: E.g. Reports (e.g. any preliminary verbal findings report and description of any further report formats – including separately an EWS1 Form etc.)</i></p> <p><i>(Set out clearly in narrative the who, what, where, why and how as necessary for each stage)</i></p>
<p>Excluded Services</p>	<p>For the avoidance of doubt the Services shall not include the following (the Excluded Services)²:</p> <ul style="list-style-type: none"> • A fire risk assessment for the purposes of a fire risk assessment for the Fire (Scotland) Act 2005 or the Fire Safety (Scotland) Regulations 2006 or for any purposes in respect of building insurance • Assessing the Building in respect of compliance with Building Regulations (either at the time of the Report or at the time of construction) or for any purpose connected with building regulations approval • Producing an assessment of, specification for or fee proposal for any works to remedy any aspect of the external wall system or other fire safety matters • Building surveys for any other purpose • General fire safety advice • All those aspects of the assessments and reports required under the Scottish Single Building Assessment which do not comprise the EWS1 form and Report.
<p>Purpose</p>	<p><i>The purpose of the Assessor providing the Services is to provide an external wall system assessment of the Building to complete an EWS1 form and Report to be used by the Client solely to provide the owners of flats within the Building with an EWS1 form and Report to send solely to valuers and/or lenders for the purpose of determining whether a flat within the block covered by the relevant EWS1 form and Report is suitable for taking security over.</i></p>
<p>Excluded Purposes</p>	<p><i>The use of the EWS1 form and Report for any purpose other than the Purpose.³</i></p> <p><i>The use of the EWS1 form and Report for any purpose connected to the Excluded Services.</i></p>

² Note to the Assessor: If the Assessor is to carry out Excluded Services then this should be commissioned through a separate Request and Terms of Engagement, which would not be covered by the Assessor’s EWS1 professional indemnity insurance policy.

³ Note to the Assessor: If the Assessor is to carry out the Services for an Excluded Purpose then this should be commissioned through a separate Request for the Supply of Service, which would not be covered by the Assessor’s EWS1 professional indemnity insurance policy.

Cancellation Period	
Fees excluding VAT	<p>[Explanatory note: Include information on:</p> <ul style="list-style-type: none"> • the agreed fee and the fees for any additional work • any fees, costs or expenses in addition to the agreed fee and fees for any additional work (which might for example include a fire engineer's or other specialists fees if required by a surveyor) • costs not included (e.g., contractor opening up costs and making good, access equipment etc.) • fee / disbursement breakdowns to make clear what is intended to happen at each stage • details of any referral fees, inducements and potential conflicts of interest • the payment arrangements and payment period.]
Payment of Fees	<p>As set out in clause 5.3 of the Terms of Engagement, sums due under the Agreement shall be paid as follows:</p> <ul style="list-style-type: none"> • 40% of the Fees shall be paid in advance of the Service being performed; and • the remaining Fees shall be paid within 30 days of the date of receipt of a valid invoice following the completion of the Service.

<p>Referral fees</p> <p>[Explanatory note: Delete as applicable.]</p>	<p>[No referral fee is payable by the Assessor or any employee of the Assessor to any third party and no such fee has been received by the Assessor or any employee of the Assessor in respect of the Service.]</p> <p>OR</p> <p>[The Client acknowledges and agrees that the Assessor or an employee of the Assessor may pay to a third party or receive from a third party a referral fee in respect of the Service.]</p>
<p>Client complaints</p> <p>[Explanatory note: Delete and fill in as applicable.]</p>	<p>[If the Client is dissatisfied with any aspect of the Service or with any invoice or other statement of monies due it shall contact the Assessor's complaints handling partner [insert name of partner].]</p> <p>OR</p> <p>[The Assessor's complaints procedure is as follows: [insert details of complaint procedure].]</p> <p>OR</p> <p>[A copy of the Assessor's complaints procedure is attached hereto.]</p>

THE CLIENT HAS READ AND AGREED TO THE TERMS OF ENGAGEMENT

<p>SIGNED for and on behalf of the Assessor by:</p> <p>..... (signature)</p> <p>..... (print name)</p> <p>..... (position)</p> <p>.....(qualifications)</p> <p>..... (date)</p>	<p>SIGNED for and on behalf of the Client by:</p> <p>..... (signature)</p> <p>..... (print name)</p> <p>..... (position)</p> <p>..... (date)</p>
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TERMS OF ENGAGEMENT

1. INTERPRETATION

1.1 In this Agreement, the following words and phrases shall have the following meanings:

Building: the building specified in the Request;

Client Materials: any documents, data, text, building plans, sections, elevations, information, specifications, drawings and any other materials provided by the Client to the Assessor;

Data Protection Legislation: the UK Data Protection Laws and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the "UK GDPR", which means the EU GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of Section 3 of the European Union (Withdrawal) Act 2018 and any regulations thereunder; and laws pertaining to the privacy of electronic communications);

Data Subject: shall have the meaning ascribed to it under the UK GDPR;

Deliverables: all documents, products and materials developed by the Assessor or, where applicable, its agents, subcontractors, consultants and employees (acting, in each case, under the appropriate supervision of the Assessor) in relation to the Service in any form, including the Report, other reports, computer programs, data, and specifications (including drafts) to be delivered by the Assessor as part of the Service;

DLUHC: Department for Levelling Up, Housing and Communities;

Excluded Purpose: the excluded purposes as set out in the Request;

Excluded Services: the excluded services as set out in the Request;

Fees: the fees set out in the Request;

Force Majeure: any event, act, omission or accident beyond the reasonable control of the Party claiming the force majeure event including acts of God, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; war, threat of or preparation for war, riot, civil commotion, terrorist activities; fire, explosion, collapse of building structure; or any prohibition or restriction by any governments or other legal authority which materially affects a Party's ability to perform its obligations under this Agreement and which is not in force at the date of this Agreement;

UK GDPR: as defined under the definition of UK Data Protection Laws;

Inspection Date: the date advised by the Assessor to the Client pursuant to clause 2.2, or such other date as is agreed between the Parties;

Intellectual Property Rights: any intellectual property right, including all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Maximum Liability Limit: means:

- a. in respect of a Building at least 11 meters in height and up to 18 meters in height, £2 million arising from any single loss or in aggregate;
- b. in respect of a Building over 18 meters in height and up to 30 meters in height, £5 million arising from any single loss or in aggregate; and
- c. in respect of a Building over 30 meters in height, £10 million arising from any single loss or in aggregate;

Parties: the Client and the Assessor, and "Party" shall be construed accordingly;

Personal Data: personal data shall have the meaning ascribed to it under the UK GDPR;

Policy: has the meaning given to it in clause 2.2;

Purpose: the purpose for which the Report is prepared by the Assessor as set out in the Request;

Report: a report produced in accordance with the BSI PAS 9980 "Fire risk appraisal and assessment of external wall construction and cladding of existing blocks of flats – Code of practice" which has been signed by the Assessor inspecting the Building for the Purpose;

Request: the Client's request for the supply of the Service incorporating these Terms;

RICS: Royal Institution of Chartered Surveyors;

Service: the Service, (including, but without limitation to, any Deliverables, to be provided by the Assessor under the Agreement) as set out in the Request, excluding the Excluded Services;

Shared Personal Data: Personal Data shared by (or on behalf of) the Client with the Assessor in connection with this Agreement;

Specialist: means if:

- a. the Assessor is a Chartered or Incorporated Engineer with full membership of the Institution of Fire Engineers, a fully qualified member of the Royal Institution of Chartered Surveyors or a relevant professional body who has successfully completed the Royal Institution of Chartered Surveyors External Wall System Assessment Training Programme; or
- b. the Assessor is a fully qualified member of the Royal Institution of Chartered Surveyors or a relevant professional body who has successfully completed the Royal Institution of Chartered Surveyors External Wall System Assessment Training Programme, a Chartered or Incorporated Engineer with full membership of the Institution of Fire Engineers;

Term: the term of the Agreement as stated in clause 2.1; and

UK Data Protection Laws: all applicable data protection and privacy legislation in force from time to time in the UK, including the General Data Protection Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 ("UK GDPR"), the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), and any other similar national privacy law in force from time to time.

1.2 Clause and Paragraph headings shall not affect the interpretation of this Agreement.

1.3 The words **include**, **includes**, **including** and **in particular** shall be construed as if they were followed by the words "without limitation". Words in the singular shall include the plural and vice versa and references to one gender include the other gender. Any reference to persons includes natural persons, firms, partnerships, limited liability partnerships, companies, corporations, unincorporated associations, local authorities, governments, states, foundations and trusts (in each case whether or not having separate legal personality) and any agency of any of the above.

1.4 A reference to a statute or statutory provision is a reference to it as in force for the time being, including any amendment, extension, or re-enactment and includes any subordinate legislation and all other Applicable Law in the UK from time to time.

1.5 In the event of any conflict or inconsistency between the Terms and the Request, the Terms shall prevail.

1.6 These Terms shall apply to the subject matter of this Agreement to the exclusion of any other terms and conditions and any terms and conditions of any purchase order, invoice or other instrument whatsoever issued by the Client in connection with the Service shall not be binding on the Assessor and shall not apply to this Agreement.

2. SERVICE

2.1 This Agreement shall take effect on the date of signature by the Assessor and shall continue, unless terminated earlier in accordance with clause 14, until the Service has been performed and all amounts owing by the Client have been paid in full when it shall automatically terminate without notice.

- 2.2 Before performing any part of the Service, or otherwise delegating the performance of any part of the Service to any of its agents, sub-contractors, consultants and/or employees in accordance with clause 2.4.2, the Assessor shall have in place:
- 2.2.1 a professional indemnity insurance policy, the scope of which specifically covers the performance of EWS1 assessments; or
- 2.2.2 a professional indemnity insurance policy which otherwise includes the performance of EWS1 assessments within its scope of cover, (the "**Policy**").
- 2.3 The Assessor shall advise the Client of the dates on which it requires access to the Building to carry out the Service.
- 2.4 In providing the Service, the Assessor shall:
- 2.4.1 perform the Service with reasonable care and skill;
- 2.4.2 only delegate the performance of any part of the Service to any of its agents, sub-contractors, consultants and/or employees where it is appropriate to do so and the person to whom that delegation is made is appropriately qualified and experienced to perform that part of the Service;
- 2.4.3 where, subject to clause 2.4.2, the Assessor delegates any part of the Service to an agent, sub-contractor, consultant or employee, appropriately supervise and review the work of such agent, sub-contractor, consultant or employee;
- 2.4.4 perform the Service in accordance with all applicable laws, regulations, professional guidance notes and industry codes of conduct including, but not limited to: the BSI PAS 9980 "Fire risk appraisal and assessment of external wall construction and cladding of existing blocks of flats – Code of practice", as amended, supplemented or replaced from time to time but for the avoidance of doubt the criteria for determining whether an EWS1 assessment and EWS1 form are required shall be that set out in this Agreement and not the specific criteria detailed in paragraph 3.1 of the RICS guidance 'Valuation of properties in multi-storey, multi occupancy residential buildings with cladding - RICS guidance note March 2021';
- 2.4.5 use reasonable endeavours to perform the Service in accordance with the Service description set out in the Request;
- 2.4.6 observe all reasonable health and safety rules and regulations and security requirements that apply to the Building and have been communicated to the Assessor, provided that, notwithstanding anything to the contrary, in doing so the Assessor shall not be in breach of this Agreement; and
- 2.4.7 take reasonable care of all Client Materials in its possession and make them available for collection by the Client on reasonable notice and request, always provided that, subject to clause 7.1, the Assessor may destroy the Client Materials within a reasonable period after termination of the Agreement.
- 2.5 For the avoidance of doubt it is acknowledged and agreed by the Client that there is no obligation on the Assessor to carry out a building survey, to inspect those parts of the Building that are covered, unexposed or inaccessible, to move any object or to arrange for the testing of any services unless such obligation is specifically stated in the Request.
- 2.6 The Parties acknowledge and agree that the Assessor shall take such time as is reasonably necessary to perform the Services in accordance with the standards described in clause 2.3.
- 2.7 Unless otherwise specified in the Request Form the Client shall be responsible for obtaining any parking permits and making any local authority applications in respect of the Service.
- 3. ENGAGING A SPECIALIST**
- 3.1 If, as part of the Service, it is appropriate for the Assessor to engage a Specialist (which may be the case in respect of a building that is taller than 18 metres, is considered high risk and/or complex or as otherwise advised by the Assessor to the Client), the Client shall authorise the Assessor:
- 3.1.1 to engage such a Specialist on its behalf as the Client's agent;
- 3.1.2 to agree the terms of the Specialist's engagement; and
- 3.1.3 to manage the Specialist's input in respect of the Service on its behalf, provided that the Specialist must be added as an additional insured to the Policy of the Assessor before the Specialist performs any part of the Service.
- 3.2 Unless the Assessor states that the Fees include the Specialist's charges, the Specialist's charges shall be payable by the Client in addition to the Fees. The Assessor shall either request that the Specialist invoices the Client directly in respect of its charges or include the Specialist's charges in its own invoice to the Client.
- 4. CLIENT'S OBLIGATIONS**
- 4.1 The Customer shall:
- 4.1.1 co-operate with the Assessor in all matters relating to the Service;
- 4.1.2 provide, for the Assessor, its agents, subcontractors, consultants and employees, on the Inspection Date access to the Building for the purposes of providing the Service;
- 4.1.3 provide, in a timely manner, such instructions, information (including but not limited to additional information) as the Assessor may reasonably require and ensure that it is accurate and complete in all material respects; and
- 4.1.4 inform the Assessor of all health and safety and security requirements that apply to the Building.
- 4.2 The Client acknowledges and agrees that the Services and the Report are provided solely for the Purpose and shall not be provided for any of the Excluded Purposes.
- 4.3 If the Assessor's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, or the Client's agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Assessor shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.
- 5. FEES AND PAYMENT**
- 5.1 The Client shall pay the Fees as set out in the Request, the charges of any Specialist and any other fees agreed in writing between the Parties.
- 5.2 The Fees are exclusive of VAT.
- 5.3 The sums due under this Agreement shall be paid as follows:
- 5.3.1 40% of the Fees shall be paid in advance of the Service being performed (the "Advance Fee"); and
- 5.3.2 the remaining Fees shall be paid within 30 days of the date of receipt of a valid invoice following the completion of the Service.
- 5.4 Any Fees paid by the Client in advance of the Service being performed do not constitute client money for the purposes of RICS Client Money Protection Scheme and such fees are not subject to the rules of such scheme. The RICS Client Money Protection Scheme is available at [Client Money Protection Scheme](#).
- 5.5 If a Party fails to make any payment (other than the Advance Fee) due to the other under this Agreement by the due date for payment (**Due Date**), the defaulting Party shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment

of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount.

5.6 All amounts due under the Agreement from the Client to the Assessor shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.7 If a cancellation period is specified in a Request form then the Client may cancel the Service during that period and if it does so the Assessor shall refund to the Client the Advance Fee less any amounts in respect of the Service that the Assessor has already performed (as to be determined by the Assessor acting reasonably).

6. **INTELLECTUAL PROPERTY RIGHTS**

6.1 Each Party and/or its third party licensors shall retain ownership of any Intellectual Property Rights owned by it and/or its third party licensors prior to the Commencement Date.

6.2 The Assessor and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables excluding the Client Materials.

6.3 For the avoidance of doubt the Client shall not make any variation to a Deliverable without the prior written consent of the Assessor. No variation to any Deliverable shall be valid unless it is in writing and signed by or on behalf of the Client and the Assessor.

6.4 The Client retains all Intellectual Property Rights, whether owned or licensed, in the Client Material. The Client hereby grants to the Assessor an irrevocable, royalty-free, non-exclusive, non-transferable and non-sub-licensable licence to use the Client Materials: (i) to enable the Assessor to provide the Service contemplated by this Agreement; and (ii) for the purposes of any audit required by a competent authority.

6.5 The Assessor may with the prior written consent of the Client use the Deliverables for agreed purposes after termination of this Agreement provided that the Deliverables are redacted to protect the identity of the Client and any commercially sensitive information is deleted.

7. **RETENTION OF DOCUMENTS**

7.1 The Client acknowledges and agrees that the Assessor will retain all files and documents (including but not limited to the Client Materials) relating to the provision of the Service for a reasonable period after the termination of this Agreement which in any event will be not more than 15 years. The Client agrees that the Assessor may destroy all files and documents relating to the Service at the end of that period.

7.2 The Assessor shall securely store any files and documents referred to in clause 7.1 during the storage period. If during the storage period, the Client wishes the Assessor to retrieve or make copies of any documents then the Assessor may make a reasonable charge for its time and expense in doing so.

8. **DATA PROTECTION**

8.1 Each Party shall be responsible for its compliance with all applicable obligations imposed by applicable Data Protection Legislation in relation to the Shared Personal Data.

8.2 To the fullest extent permitted by Data Protection Legislation the Assessor and the Client shall each be independent controllers and not joint controllers of the Shared Personal Data and as such independently determine the purposes and the means of the processing of that Shared Personal Data. In particular, each Party shall be individually responsible for ensuring that its processing of the Shared Personal Data is lawful, fair and transparent in accordance with Data Protection Legislation.

8.3 The Client shall also provide to any Data Subjects whose Personal Data is processed under this Agreement by or on behalf of DLUHC and Assessor, a copy of DLUHC's and the Assessor's Privacy Notice. DLUHC's privacy notice is available here: <https://ews1gateway.co.uk/wp-content/uploads/2022/08/DLUHC-PII-Scheme-Privacy-Notice.pdf>.

8.4 In the event that either Party receives in respect of the Shared Personal Data: (i) any request from a Data Subject to exercise any of its rights under Data Protection Legislation (including its rights of access, correction, objection, erasure, restriction or data portability, as applicable), or (ii) any other correspondence, enquiry or complaint from a Data Subject, Supervisory Authority or other third party in connection with the processing of the Shared Personal Data (collectively, "**Correspondence**"), then where such Correspondence relates to processing conducted by the other Party, it shall promptly inform the other Party and the Parties shall cooperate in good faith as necessary to respond to such Correspondence and fulfil their respective obligations under Data Protection Legislation.

9. **WARRANTIES**

9.1 Each Party represents, warrants and undertakes that it has capacity to enter into this Agreement and to grant the rights and licences it purports to grant under this Agreement.

9.2 Save in this Agreement where it is stated to be the responsibility of the Client, the Assessor warrants to the Client that it shall at all times have and maintain all necessary licences and consents and comply with all relevant laws in relation to the provision of the Service.

10. **THIRD PARTY CLAIMS INDEMNITY**

10.1 The Client shall on demand indemnify, hold harmless and keep indemnified the Assessor against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Assessor arising out of or in connection with any claim made against the Assessor for actual or alleged infringement of a third party's Intellectual Property Rights or other rights arising out of, or in connection with the use of the Client Materials or any materials provided by a third party acting on behalf of the Client.

11. **CONFIDENTIALITY**

11.1 The Assessor undertakes that it shall not at any time during this Agreement or after termination disclose to any person any confidential information disclosed to it by the Client concerning the business or affairs of the Client, including information relating to the Client's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and Clients (**Confidential Information**), except as permitted by clause 11.2.

11.2 The Assessor may disclose the Client's Confidential Information:

11.2.1 to its employees, officers, agents, consultants or subcontractors or insurers or reinsurers (Representatives) who need to know such information for the purposes of this Agreement or providing insurance for the Services provided hereunder, provided that the Assessor takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 11 as though they were a Party to this Agreement;

11.2.2 as may be required by RICS in accordance with RICS Rules of Conduct for Members and/or RICS Rules of Conduct for Firms;

11.2.3 as may be required for audits or quality assurance of the Assessor as conducted by external quality assurance or industry bodies from time to time;

11.2.4 as may be required by law, court order or any governmental or regulatory authority; and

- 11.2.5 in connection with the submission of the completed EWS1 form and Report and the signed version of this Agreement to DLUHC via any prescribed platform (it being acknowledged and agreed by the Assessor and the Client that the EWS1 form and Report and the signed version of this Agreement may be shared by DLUHC, at its discretion, in such a format as DLUHC, in its reasonable opinion, considers necessary with third parties following submission to the relevant platform, including, for the avoidance of doubt, making public such EWS1 form and Report).
- 11.3 No rights or obligations in respect of the Client's Confidential Information other than those expressly stated in this Agreement are granted to the Assessor or to be implied from this Agreement.
- 11.4 In the event of any inconsistency between this clause 11 and clause 8 in respect of Personal Data, the relevant provisions of clause 8 shall prevail.
- 12. DISCLAIMER**
- 12.1 The Assessor shall not be liable to the Client for any errors, inaccuracies and/or omissions in the Report:
- 12.1.1 resulting from the Assessor's inability to inspect any area of the Building;
- 12.1.2 resulting from any reliance placed by the Assessor on (i) any information or material provided by a third party who is acting on behalf of the Client; or (ii) on any information provided by the Client or any Client Materials; or
- 12.1.3 arising out of any work carried out by any other person who is instructed or engaged by or on behalf of the Client to assist with the Service.
- 12.2 The Report is confidential to the Client for the Purpose for which it is provided. The Assessor shall not be liable to any third party for any information or advice set out in the Report or any part of its contents.
- 12.3 The Assessor shall not be liable to the Client as a result of or arising in respect of the Client relying on, or using, the Report for anything other than the Purpose.
- 12.4 If the Assessor subcontracts any of its obligations to an expert at the specific request of the Client the Assessor shall have no liability for any acts or omissions of such expert.
- 12.5 It is agreed and acknowledged that a Specialist is neither a sub-contractor nor a member of staff of the Assessor and any contract entered into by the Assessor on behalf of the Client with a Specialist shall be between the Client and the Specialist. As a result, the Specialist shall be responsible directly to the Client for performing its service under that contract and the Specialist's obligations under that contract shall be owed directly to the Client. The Assessor shall not be responsible for any act, omission, default or negligence on the part of the Specialist arising out of such contract.
- 12.6 Without prejudice to the generality of clauses 12.1.2 and 12.1.3, the Assessor shall not be liable to the Client for any errors, inaccuracies and/or omissions in the Services and/or Report, or for any breach of this Agreement, that: (i) relates to any report, content or advice that is provided by any Specialist (whether such report, content or advice is included in the Report or is separate from the Report); and/or (ii) arises as a result of any reliance placed by the Assessor on any report, content or advice provided by the Specialist.
- 13. LIABILITY**
- 13.1 Nothing in this Agreement shall operate so as to exclude or limit the liability of either Party to the other:
- 13.1.1 for death or personal injury caused as a result of its negligence;
- 13.1.2 arising out of fraud or fraudulent misrepresentation; or
- 13.1.3 for any liability which cannot be excluded or limited by law.
- 13.2 Subject to clause 13.1 the Assessor shall not be liable to the Client under this Agreement:
- 13.2.1 in contract, delict (including negligence and breach of statutory duty) or otherwise for any loss of profits (whether direct or indirect) or any indirect, special or consequential loss, including loss of profits or business opportunity (whether or not reasonably foreseeable and even if it had been advised of the other incurring the same);
- 13.2.2 in respect of any use of the Services, EWS1 form and/or Report for an Excluded Purpose; and/or
- 13.2.3 in respect of any claim, actions or proceedings commenced against the Assessor after the date which is the earlier of: (i) five (5) years after the delivery to the Client of a completed EWS1 form and Report; and (ii) the completion of a subsequent EWS1 form in respect of the Building.
- 13.3 Subject to clauses 13.1 and 13.2, the total aggregate liability of the Assessor to the Client under or in relation to this Agreement, including (but not limited to) liability for breach of contract, misrepresentation (whether delictual or statutory), delict (including but not limited to negligence) and breach of statutory duty shall not exceed the Maximum Liability Limit, provided that amounts recovered in respect of such liability under any insurance policy shall not be limited by, but shall count towards, such Maximum Liability Limit and amounts which would have been recoverable under any insurance policy but for the default of the Client shall count towards such Maximum Liability Limit.
- 13.4 Notwithstanding any other term of this Agreement, the Assessor's liability for any loss or damage arising as a result of any breach of this Agreement is reduced proportionately to the extent any act or omission (deliberate or negligent) of the Client or a third party contributed to the loss or damage incurred by the Client.
- 13.5 The Client acknowledges and agrees that it may make a claim or bring any proceedings only against the Assessor and it may not bring a claim personally against the Assessor's staff. The Client agrees that none of the Assessor's staff shall have any liability to the Client in respect of the provision of the Service.
- 13.6 During the Term the Assessor shall maintain suitable insurance with a reputable provider, sufficient to cover any liabilities of the Assessor under or in connection with this Agreement.
- 14. TERM AND TERMINATION**
- 14.1 Either Party may terminate this Agreement immediately on written notice to the other if:
- 14.1.1 the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or
- 14.1.2 enters into and/or applies for, and/or calls meetings of members and/or creditors with a view to one or more of a moratorium, administration, liquidation (of any kind, including provisional), or composition and/or arrangement (whether under deed or otherwise) with creditors, and/or has any of its property subjected to one or more of appointment of a receiver (of any kind), enforcement of security, distress, or execution of a judgment (in each case to include similar events under the laws of other countries) or ceases or threatens to cease to carry on business.
- 14.2 Termination of this Agreement shall not prejudice any of the Parties' rights and remedies which have accrued as at termination of the Agreement.
- 14.3 On termination of this Agreement, if there are any Services that have been supplied but for which no invoice has been issued the Assessor may submit an invoice, which shall be payable in accordance with clause 5.3.
- 14.4 Notwithstanding any termination of the Agreement, the provisions which by their nature are intended to survive such termination will remain in full force and effect including, but without limitation to, the obligations of confidentiality.

15. FORCE MAJEURE

- 15.1 No Party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by a Force Majeure Event.
- 15.2 The Party claiming the Force Majeure Event shall promptly notify the other Party in writing of its reasons for the delay or stoppage and its likely duration.
- 15.3 The obligations of the Party that suffers the Force Majeure Event shall be suspended for the period that the Force Majeure Event continues and the Party will have a reasonable extension of time for performance of its obligations taking all circumstances into account. As regards the delay or stoppage arising from the Force Majeure Event any costs arising from such delay or stoppage shall be borne by the Party incurring those costs.
- 15.4 If the Force Majeure Event continues for at least one (1) month, the non-affected Party may terminate this Agreement on written notice.
- 15.5 This clause shall not apply in relation to the payment of any Fees.

16. NOTICES

All notices to be given under this Agreement shall be in writing and delivered to the other Party at the addresses set out in the Request (or such other address for this purpose as may be notified by one Party to the other in accordance with this clause).

17. GENERAL

- 17.1 This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements, arrangements, understandings or proposals (whether written or oral) of any nature between the Parties relating to the subject matter of this Agreement.
- 17.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each Party.
- 17.3 No failure or any delay by any Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 17.4 The Client shall not, without the prior written consent of the Assessor, assign, sub-contract, transfer or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.5 Except in compliance with clauses 2.4.2 and 2.4.3 or clause 3, the Assessor may not assign, transfer, sub-contract or deal in any manner with all or any of its rights or obligations under this Agreement.
- 17.6 Subject to clause 17.7, a person who is not a party to this Agreement has no rights under the Contracts (Third Party Rights)(Scotland) Act 2017 to enforce, or to enjoy the benefits of, any term of this Agreement.
- 17.7 The Assessor's staff shall enjoy the benefit of and may enforce clause 13.5 against the Client.
- 17.8 The Parties to this Agreement may amend or terminate this Agreement without requiring the consent of a third party even if that should result in the changes or removal of the rights of any third party.
- 17.9 Nothing in this Agreement is intended to, or shall be deemed to create or imply the existence of a partnership or joint venture between the Parties nor any arrangement which would impose liability on the Assessor for the acts or omissions of the Client and vice versa. In particular, but subject to clause 3, each Party acknowledges that it does not have the authority to, and agrees that it shall not, at any time without the other Party's prior written consent make or enter into any commitments on behalf of the other Party.
- 17.10 The Parties agree that, save as expressly set out herein, neither Party has relied on any statement or representation made by the other (whether innocently or negligently) in entering into this Agreement. Each Party irrevocably and unconditionally waives any right or remedy it may have to claim damages or to rescind this Agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.
- 17.11 If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected. In such an event, each of the Parties shall enter into good faith negotiations to amend such provision in such a way that, as amended, it is valid and legal and, to the maximum extent possible, carries out the original intent of the Parties as to the point or points in question.
- 17.12 This Agreement, and any dispute or claim arising out of 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 the law of Scotland.
- 17.13 The Parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).