



## TERMS OF BUSINESS FOR PROFESSIONAL SERVICES

### CLIENT NAME:

### ADDRESS:

#### 1. OUR RESPONSIBILITIES

Our role and responsibilities as agent and/or consultant are set out in the relevant Letter of Engagement or the corresponding email.

We undertake to comply with the terms of the Estate Agents Act 1979, Money Laundering Regulations 2017, General Data Protection Regulations and other legislation where relevant to our appointment as agent and/or consultant.

#### 2. DEFINITIONS

In these Terms:

**"Contract"** means when the Client receives a copy of, and agrees to, these Terms, or gives instructions to Adkin, whichever shall be the latter and will be subject to the terms in this document. The contract is between Adkin and the Client.

**"Client"** means the person, firm, company, partnership or other body to whom Adkin is to provide services in accordance with these Terms and includes **"you"**, **"your"** and **"yours"**.

**"Adkin"** means Orpwood Limited trading as Adkin whose registered office is at Orpwood House, School Road, Ardington, Wantage, Oxfordshire OX12 8PQ and include **"us"**, **"our"** and **"ours"**.

**"Property"** means the property which is the subject of the Client's instructions to Adkin.

**"Terms"** means the terms and conditions set out in this document and (unless the context otherwise requires) includes any other terms and conditions set out in any letter/email accompanying these terms or varying these terms.

#### 3. GENERAL

- (i) Adkin undertakes all services on the basis of these Terms only, which shall apply to the exclusion of any other terms and conditions which the Client may seek or impose.
- (ii) No variation of these Terms shall be binding unless previously agreed in writing by Adkin.
- (iii) In the event of any ambiguity or conflict between the letter/email accompanying these Terms the former will take precedence.

#### 4. SERVICES

Adkin will seek to provide a service such as would be expected of a firm of Chartered Surveyors (RICS) and Agricultural Valuers (CAAV) in a proper professional manner and will perform its services with all reasonable care and skill and will act in good faith at all times. These services are, however, provided on the basis that:

- (i) The extent of the appointment and the services to be provided will be agreed in writing prior to the commencement of any works.
- (ii) Estimates of times for performance of the service have been made upon the basis of information available to us at the time but are not legally binding on Adkin.
- (iii) We may, if we consider appropriate, secure performance of any or all services by instructing one or more other persons, firms or companies (whether as sub-contractor or in any other capacity) upon such terms as we consider appropriate. In these circumstances no additional fee shall be payable by the Client in the absence of prior agreement to such additional fee but the Client shall be liable to pay all fees and other sums payable to Adkin as if all services had been performed personally by Adkin.

#### 5. FEES

The fees (or the basis for the fees) to be charged will be agreed in writing before the commencement of any works. Where it is not practical to predetermine the full scope of the works until the contract is in progress, the scope of the work and the fees may be varied during the contract and will be confirmed in writing by Adkin.

- (i) Adkin will calculate its fees on a time-spent basis (including time spent travelling) as set out in our Letter of Engagement or corresponding email, or in the case of agency instructions, on a percentage commission basis. Additional fees will be chargeable, on a time spent basis, for any abortive work which arises as a result of a change in the brief or a variation in the scope of the work once this has been agreed. Where possible, such additional fees will be drawn to the Client's attention before such work is undertaken.

- (ii) Unless otherwise agreed in writing, any/all costs associated with the work in respect of travel, accommodation, subsistence, Ordnance Survey and other mapping charges, copyright royalties and other reasonable expenses will be additional to the fee.

- (iii) Any fee or charge payable to a local authority or other statutory body in respect of planning applications, building regulations, or other such consents/approvals which may be necessary to enable a scheme to be considered or to be progressed, is excluded from the fee agreement and is payable directly by the Client.

- (iv) If it is agreed with the Client in connection with the instructions, that the resolution of a dispute with a third party (for example in connection with a rent review) be referred to an arbitrator, expert or court, all costs in connection with such referral (other than fees for Adkin's services) will be re-charged to the Client as a disbursement.

- (v) Adkin reserve the right to retain the benefit of any discounts and commissions which they have negotiated for advertising and other expenses.

#### 6. PAYMENT

##### Date of Payment

Adkin's fees will become due for payment, free from any discount, deduction, set off or counter claim whatsoever as follows:

- (i) *Valuations* - upon completion of a signed Valuation Certificate or Report but prior to delivery thereof to the Client.
- (ii) *Rent Reviews and Lease Renewals* - when the Review is agreed or determined or awarded by an Arbitrator or Arbitrator or by an Expert or by the Court or otherwise.
- (iii) *Other Professional Services* - at completion of the service or at any other time as provided for in the Letter/email of Engagement.
- (iv) *Disbursements* - at the time when such expenditure is incurred.

##### Payment

- (i) Payment in full is due within 30 days of the date of the invoice.
- (ii) Adkin reserves the right to charge the Client interest (both before and after any judgement) on any unpaid invoice at the rate of 3% per annum above the base lending rate of Barclays Bank, calculated on a daily basis from thirty days after the date of its invoice until the date of settlement in full.
- (iii) If any sum due to Adkin from the Client remains unpaid for more than 30 days after the date of the invoice Adkin shall be entitled to suspend all further work for the Client until the outstanding sum is paid to Adkin. In these circumstances Adkin shall not be liable for any delays, losses or expenses resulting from such suspension.

#### 7. INFORMATION PROVIDED BY CLIENT

- (i) The Client undertakes to Adkin that all information provided by the Client and/or its professional advisors regarding the property is accurate and acknowledge that Adkin will rely upon this information.
- (ii) The Client shall indemnify and keep indemnified, Adkin from and against all and any liability, losses, damages, penalties, fines costs and expenses (including legal costs and expenses) suffered or incurred by Adkin arising out of or by virtue of the Client's instructions to Adkin other than any losses, damages, costs and expenses arising by virtue of the negligence or wilful default of Adkin.

#### 8. CONFIDENTIALITY

Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, Clients or suppliers of the other party except when permitted, either by the party concerned or when required by law or by regulatory bodies.

Adkin reserve the right, for the purpose of promotional activity, training or for similar business purpose, to mention it's Clients. As stated above, Adkin will not disclose any confidential information.

## 9. CONFLICTS OF INTEREST

Adkin will inform the Client promptly if a conflict of interest is discovered. Safeguards can be implemented to protect the interests of different Clients if a conflict arises. However, should any conflicts not be able to be managed in a way that protects Clients' interests then Adkin regret that services would be unable to be continued.

If such a situation arises, Adkin will advise promptly. Adkin reserve the right to act for other Clients whose interests are not the same as or are adverse to yours, subject of course to the obligations of confidentiality referred to above, and the overriding obligation to avoid conflict of interest.

## 10. COPYRIGHT

- (i) Copyright over any information, documents or other material provided by the Client to Adkin remains the property of the Client.
- (ii) The copyright of all reports, forecasts, drawings, accounts and other documents originated by Adkin in relation to its instructions, remains the property of Adkin.

## 11. LIABILITY LIMITATION

### General

Whilst Adkin will make every effort to fulfil the Client's instructions in accordance with these Terms, Adkin shall not be liable in any manner whatsoever:

- (i) To any third party who, without Adkin's prior written consent, seeks to rely on Adkin's performance of the Agreement or any advice or information resulting from our instructions.
- (ii) Unless the Client has paid in full all sums due to Adkin.
- (iii) Unless Adkin had previously agreed in writing to the particular use being made of Adkin's services/advice giving rise to the alleged loss.
- (iv) In respect of any services outside the scope of the services agreed in writing to be performed.

### Limitation of Liability

- (i) Neither party will be liable for any loss of profit (other than in respect of our fees, costs or charges), loss of business or goodwill, or for any special, indirect or consequential loss or damage suffered by the other (including as a result of an action brought by a third party), save that nothing in these Terms will exclude or restrict any liability which either party may have for (a) death or personal injury arising out of negligence, (b) fraudulent, misrepresentation or (c) any other liability which cannot be restricted or excluded by law.
- (ii) We will not be liable for any loss as a result of your receipt of any information, data or communications supplied or sent by us electronically, where through no fault of our own the relevant information, data or communication has been corrupted or otherwise modified as a result of it being supplied or sent electronically. You will be responsible for ensuring that all materials you provide or send us by any electronic medium and/or by computer disk are, and remain, virus free.
- (iii) Subject to clauses (i) and (ii) above our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Appointment or otherwise under these Terms, unless otherwise agreed in writing, shall be limited to £10,000,000 (ten million pounds). Where we agree in writing to accept liability to more than one party, the limit on our liability in this clause will be shared between such parties (including you), and it is up to you and such parties to decide how our liability is to be apportioned.

### Indemnity

- (i) Subject to the Limit of Liability above you will indemnify and keep us indemnified on an after tax basis against all losses, damages, costs and expenses suffered or incurred by us, arising out of or by virtue of your instructions to us or arising out of any act, omission or default by you, any joint agent or any other third party instructed by you, other than any losses, damages, costs and expenses arising by virtue of our default or negligence.
- (ii) During the term of the Appointment and for a period of 6 years thereafter, we will maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £10,000,000 (ten million pounds), and shall, on your request, produce confirmation from our insurance broker giving details of cover and that the current year's premium has been paid.
- (iii) The provisions of this clause 11 above shall survive termination of the Appointment, however arising.

## 12. TERMINATION OF INSTRUCTIONS

- (i) The instructions from the Client to Adkin may be terminated by the Client by notice in writing to Adkin within 14 days without giving any reason or incurring any liability during the cancellation period.
- (ii) If cancellation is after 14 days the instructions from the Client to Adkin may be terminated by the Client by notice in writing to Adkin whereupon Adkin shall be entitled to charge a fee on one of the following bases (at Adkin's option):
  - (a) a fair and reasonable proportion of the full fee which would have been payable if the work had been carried through to a conclusion and as if Adkin had become entitled to payment in accordance with 5 above, or
  - (b) on a quantum meruit basis for the work undertaken up to the date of termination.
- (iii) The instructions from the Client to Adkin may be terminated by Adkin on the following terms by notice in writing:
  - (a) If, as a result of circumstances outside the control of both parties, it becomes impossible to perform the instruction within a reasonable period. In these circumstances the Client will pay Adkin for all work which has been done on a quantum meruit basis.
  - (b) If the Client has made it impossible to complete the instruction within a reasonable period or has not made payment by the due date of any sum payable by the Client to Adkin. In these circumstances the Client will pay to Adkin the full fee which would have been charged if the work had been carried through to a conclusion.

## 13. COMPLAINTS

Adkin aim to perform on the instruction from a Client in an efficient and professional manner, however should you have any complaint regarding our service we have a formal Complaints Handling Procedure, a copy of which is available on request. All complaints should be addressed initially to Mr J Sayers FRICS at the address below. We are also members of the Property Ombudsman scheme and further details can be found at: <http://www.tpos.co.uk/>. Complaints must be made to the Property Ombudsman within 12 months and a copy of the Consumer Guide is at: <https://www.tpos.co.uk/images/documents/guidance/TPO-Consumer-Guide.pdf> and is also available on request.

## 14. LAW

These Terms and any Agreement of which they form a part shall be governed by and construed in all respects in accordance with English Law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts in relation to any dispute or proceedings arising out of or in connection with these Terms or any such Agreement but without prejudice to Adkin's right to take proceedings in any other jurisdiction in order to enforce payment of any sums owed to Adkin.

## 15. DATA PROTECTION AND COMPLIANCE

### Compliance

Adkin may ask you to provide personal details, including proof of your identity and details of your personal finances in order to meet our legal obligations including Anti-Fraud and Money Laundering Regulations.

### Data Protection

The General Data Protection Regulation (GDPR) sets out responsibilities that organisations such as Adkin are required to follow including; methods that personal information is collected, stored and processed. Adkin endeavour to comply with GDPR and takes data protection of all of our Clients very seriously. Further details can be found on the enclosed Letter of Engagement and also via our Privacy Policy which is available upon request.

## 16. ELECTRONIC COMMUNICATIONS

With the enclosed Letter of Engagement or corresponding email, we have asked for your permission to communicate via email. It is important that you are aware of the following:

- (i) There is a risk that communications may contain a computer virus, although Adkin will aim to avoid this by use of anti-virus software.
- (ii) Adkin will keep the affairs of their Clients confidential, however, email can be accessed by parties not involved in your matters therefore confidentiality can be compromised.
- (iii) If you do not wish Adkin to use email, please sign where indicated in the Letter of Engagement or note any limitations as to its intended use.