

**APOGEE PROPERTY & UTILITY CONSULTANTS STANDARD TERMS AND CONDITIONS**

**A - Apogee**

**APOGEE PROPERTY & UTILITY CONSULTANTS LIMITED** a company incorporated in England and Wales under company number 11208090 and whose registered office is at Suite 2, Sigma House, Hadley Park East, Telford, TF1 6QJ (Apogee).

Apogee will undertake the Services (as defined overleaf), subject to the terms and conditions set out below and overleaf.

**B - The Client**

as detailed in the Fee Proposal or as entered into the Website

**C - Client's address**

as detailed in the Fee Proposal or as entered into the Website

**D - Fees**

The Client shall pay to Apogee a fixed price of as set out in the Fee Proposal.

**(Fees)**

**1 Definitions**

In this Agreement, the following words shall have the following meanings:

**Apogee, Client, and Fees** have the meanings given above;

**Background Information**

means all Documents which are not Foreground Information;

**Client**

means the person or organisation who is to receive the Services, and who will pay for those Services and whose name is set out at clause B above;

**Confidential Information**

means any information that is marked as confidential by Apogee or the Client either in the document or information supplied or the email or correspondence supplying it

**Documents**

written documents, computer programs, data, reports, drawings, maps, plans, diagrams, designs, pictures or other images, tapes, disks or other devices which record embodying information in any form

**Website**

[www.apogeeproperty.co.uk](http://www.apogeeproperty.co.uk) or such other website as advised by Apogee

**Fee Proposal**

the cost of the Services as detailed in the Fee Proposal or as agreed by the Client on the Website;

**Foreground Information**

means all Documents, products services and materials which are created, conceived, developed, written, first reduced to practice or writing, or developed in whole or in substantial part in the course of providing the Services;

**Parties**

means Apogee and the Client, and **Party** shall mean either one of them; and

**Pre-existing Materials**

all Documents, information and materials provided by Apogee relating to the Services which existed prior to the commencement of this Agreement including computer programs, data, reports and specifications

**Project**

the provision of the Services, based on and incorporating the Fee Proposal and the relevant Scope of Service

**Report**

means the provision of information or Services on the Scope of Services requested by the Client

**Scope of Service**

means the scope selected by the Client as detailed on the Fee Proposal or as accepted on the Website

**Services**

means the provision of a Report or set of tasks or work as detailed in the Scope of Service

**Site**

means the location as set out in the Fee Proposal

**2. The Project**

2.1. The Project has been agreed in the following manner:

2.1.1. the Client has provided Apogee with a request for a Fee Proposal and Scope of Service setting out the requirements and specifications of the Services which it is requesting from Apogee, including a description of what work that is to be done, dates by which it is requested to be started and finished, Background Information and any further information specified under the relevant Scope of Service and such other information as Apogee has requested

2.1.2. Apogee and the Client have now agreed the Fee Proposal and it is subject to the terms set out in this Agreement.

2.2. No amendment shall be made to the Fee Proposal or the Scope of Service except in accordance with clause 13.

**3. Duration and termination**

3.1. Apogee shall provide the Services to the Client in consideration for the Client paying the Fee to Apogee, subject to the provisions of this Agreement.

3.2. This provision of the Services shall commence on the Commencement Date and shall be completed by the Completion Date.

3.3. Apogee shall use reasonable endeavours to complete the Services by the Completion Date but any such dates shall be estimates only and time shall not be of the essence in this Agreement.

3.4. Subject to clause 3.5, this Agreement shall terminate automatically on completion of the Project.

3.5. Without prejudice to the other remedies or rights a party may have, either party may terminate this Agreement, at any time, on written notice to the other party ("the Other Party"). The notice will take effect as specified in the notice:

3.5.1. On either party giving not less than the notice periods set out in clause 11 below (**Cancellation of Orders**)

- 3.5.2. if the Other Party is in material breach of its obligations under this Agreement. If the breach is capable of remedy within 30 days, the breach is not remedied within a reasonable time by the Other Party receiving notice which specifies the breach and requiring the breach to be remedied; or
- 3.5.3. if the Other Party (if an individual) becomes bankrupt (if a company) 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.
- 3.5.4. The Other Party ceases, or threatens to cease, to trade.
- 3.6. On termination of this Agreement, the Client shall pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by Apogee for the performance of the Services prior to the date of termination in accordance with Clause 11 below.
- 3.7. The accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

#### 4. Fees and payment of Fees and Cancellation

- 4.1. The payment of the Fees shall be the fee referred to in clause D.
- 4.2. Apogee will invoice the Client on the Completion Date and the Client shall pay the invoice without any deduction or set-off within 30 days of receipt (unless the Client has paid upfront on Apogee's website).
- 4.3. All amounts stated are exclusive of VAT and any other applicable taxes which will be charged in addition at the rate in force at the time the Client is required to make payment. Payments shall be made in Sterling by the Client in accordance with the instructions set out in Apogee's invoice.
- 4.4. Without prejudice to any other right or remedy that it may have, if the Client fails to pay Apogee on the due date, Apogee may:
- 4.4.1. charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of National Westminster Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- 4.4.2. suspend all or any services requested by the Client until payment has been made in full.
- 4.5. When making a payment the Client shall quote relevant reference numbers and the invoice number.

## 5. Client's obligations

- 5.1. During the performance of the Services the Client will:
- 5.2. co-operate with Apogee as Apogee reasonably requires;
- 5.3. provide in a timely manner all Background Information and any other information that Apogee reasonably requires and ensure that it is accurate in all material respects;
- 5.4. provide Apogee, its agents, sub-contractors and employees, in a timely manner, access to the Site Address or where relevant, the Client's premises, office accommodation data and other facilities as requested by Apogee;
- 5.5. inform Apogee of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site or the Client's premises;
- 5.6. to abide by the terms and conditions of any licence as laid out by any data provider used by Apogee in the provision of the Services. Specifically, OS Mastermap data is licenced for a period of 12 months from date of purchase, after which, the Client may contact the data provider and extend the licence for an additional cost;
- 5.7. comply with any general or special terms specified by Apogee in the Scope of Service;
- 5.8. make available to Apogee such facilities as Apogee reasonably requires; and
- 5.9. ensure that the Client's staff and agents co-operate with and assist Apogee.

## 6. Confidentiality

- 6.1. Each Party (**Receiving Party**) shall keep the Confidential Information of the other Party (**Supplying Party**) confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the Confidential Information of the Supplying Party for the Scope of Service and for performing the Receiving Party's obligations under this Agreement. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause, and ensure that the Receiving Party's officers, employees and agents meet the obligations.
- 6.2. The Client shall permit Apogee for its own marketing and promotional purposes to refer to the existence of this Agreement and the fact that the Client is a Client of Apogee.
- 6.3. The obligations of clause 6.1 shall not apply to any information which:
  - 6.3.1. was known or in the possession of the Receiving Party before the Supplying Party provided it to the Receiving Party;
  - 6.3.2. is, or becomes, publicly available through no fault of the Receiving Party;
  - 6.3.3. is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
  - 6.3.4. was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the Confidential Information supplied by the Supplying Party; or
  - 6.3.5. is required to be disclosed by order of a court of competent jurisdiction.

6.4. This clause shall survive termination of this Agreement for a period of 5 years.

## 7. Use Of Our Website

7.1. The conditions contained in this clause govern the use by the Client of Apogee's Website. These conditions cover (i) the supply of Services and the Report for a Project ordered through the Website and (ii) use of the Website.

7.2. By accessing or using the Website or otherwise indicating consent, the Client agrees to be bound by these Terms and the documents referred to in them and warrants that the Client has the right, authority and capacity to enter into and be bound by the terms of this clause.

7.3. If the Client does not agree with or accept any of these Terms, the Client should stop using the Website immediately.

7.4. The Website is for the Client's use only and must not use, nor allow any person under the Client's control to use the Website for any unlawful purpose.

7.5. The Client agrees that they are solely responsible for:

7.5.1. all costs and expenses incurred in relation to their use of the Website; and

7.5.2. keeping passwords and other account details confidential and notifying Apogee immediately of any unauthorised use of the Client's password or account or any other breach of security by giving Apogee written notification of the same (and for the avoidance of doubt for the purposes of this clause, communication by email is acceptable).

7.5.3. Providing true, accurate, current and complete personal information as prompted by the Website.

7.5.4. To maintain and promptly update personal information (by updating it on the Website or sending information directly to Apogee) to keep it true, accurate, current and complete.

7.6. The Website is intended for use only by those who can access it from within the UK. If you choose to access the Website from locations outside the UK, you are responsible for compliance with local laws where they are applicable.

7.7. The Client will not impersonate any entity or use a false name that the Client is not authorised to use.

7.8. Apogee may prevent or suspend access to the Website if the Client does not comply with any part of these Terms, any terms or policies to which they refer or any applicable law.

7.9. Any personal information that the Client provides to Apogee will be dealt with in line with our privacy policy, which explains what personal information is collected from the Client, how and Apogee collect, store, use and share such information, the Client's rights in relation to personal information and how to contact Apogee and supervisory authorities in the event the Client has a query or complaint about the use of personal information. Apogee's privacy policy is available at [www.apogeeproperty.co.uk](http://www.apogeeproperty.co.uk).

- 7.10. The Client agrees that Apogee may use their personal information in order to conduct appropriate anti-fraud checks and Apogee may also disclose personal information to a credit reference or fraud prevention agency, which may keep a record of that information.
- 7.11. The Website and all intellectual property rights in it including but not limited to any Content are owned by Apogee and all rights are reserved. Intellectual property rights means rights such as: copyright, trademarks, domain names, design rights, database rights, patents and all other intellectual property rights of any kind whether or not they are registered or unregistered (anywhere in the world). Apogee retains all of our rights in any intellectual property in connection with the Website. This means, for example, that Apogee remain owners of them and are free to use them as Apogee see fit.
- 7.12. Nothing in these Terms grants you any legal rights in the Website other than as necessary to enable you to access the Website. You agree not to adjust to try to circumvent or delete any notices contained on the Website (including any intellectual property notices) and in particular any digital rights or other security technology embedded or contained within the Site.
- 7.13. While Apogee try to ensure that the Website is secure, Apogee cannot guarantee the security of any information that you supply to Apogee and therefore Apogee cannot guarantee that it will be kept confidential. For that reason, you should not let disclose any patentable ideas or patent applications, advertising or marketing suggestions, prototypes, or any other information that you regard as confidential, commercially sensitive or valuable (“Unwanted Submissions”).
- 7.14. Apogee may use any Unwanted Submissions as Apogee see reasonably fit on a free-of-charge basis (bear in mind that Apogee have no way of knowing whether such information is confidential, commercially sensitive or valuable because Apogee do not monitor the Website to check for these matters). Therefore, Apogee will not be legally responsible for keeping any Unwanted Submissions confidential nor will Apogee be legally responsible to you or anybody else for any use of such Unwanted Submissions.
- 7.15. While Apogee try to make sure that the Website is accurate, up-to-date and free from bugs, Apogee cannot promise that it will be. Furthermore, Apogee cannot promise that the Website will be fit or suitable for any purpose. Any reliance that you may place on the information on this Website is at your own risk.
- 7.16. Apogee may suspend or terminate operation of the Website at any time as we see fit.
- 7.17. Content is provided for your general information purposes only and to inform you about Apogee and Apogee’s products and news, features, services and other websites that may be of interest. It does not constitute technical, financial or legal advice or any other type of advice and should not be relied on for any purposes.
- 7.18. While Apogee try to make sure that the Website is available for your use, Apogee do not promise that the Website is available at all times nor do Apogee promise the uninterrupted use by you of the Website and disclaim all warranties, express or implied, as to the accuracy of the information

contained in any of the materials on the Website and will accept no liability for any loss or damage arising as a result of problems with access.

- 7.19. The Client's correspondence or participation in promotions, or business dealings with advertisers or Apogee trade partners found on or through the Website, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between the Client and such advertisers or trade partners. The Client agrees that Apogee shall not be responsible or liable for any loss or damage of any sort incurred as a result of any such dealings, or as the result of the presence of such advertisers or trade partners on the Website.
- 7.20. Apogee may make software owned or operated by third-party companies available to the Client. The Client must only use this software in accordance with this clause and conditions imposed by the third-party provider.
- 7.21. The Website may contain hyperlinks or references to third party websites other than the Website. Any such hyperlinks or references are provided for your convenience only. Apogee have no control over third party websites and accept no legal responsibility for any content, material or information contained in them. The display of any hyperlink and reference to any third party website does not mean that we endorse that third party's website, products or services. Your use of a third party site may be governed by the terms and conditions of that third party site.
- 7.22. Apogee will not be liable for any claims, loss or damage of any nature whatsoever, including direct, consequential or economic losses of profit arising from the Client's failure to comply with the requirements of this clause.
- 7.23. Apogee reserve the right to alter the terms in this clause from time to time by giving reasonable notice to the Client. The Client's continued use of the Website (or any part thereof) following such notice will be deemed to be the Client's acceptance of such change. If the Client does not agree to any change to these terms, the Client must stop using the Website with immediate effect.
- 7.24. In the event that Apogee consider that the Client is making any illegal and/or unauthorised use of the Website and/or the Client's use of the Website is in breach of the terms in this clause, Apogee reserve the right to take any action that Apogee deem fit, including terminating the Client's use of the Website without notice and with immediate effect and, in the case of illegality, instigating criminal proceedings.
- 7.25. Apogee reserve the right to collect, transfer, process and sell information relating to the use of the Website and obtained directly or indirectly from information collected by Apogee, and by using the Site the Client consents to the collection, transfer, processing and sale of all such information by Apogee, in accordance with the Apogee Privacy Policy.
- 7.26. By submitting information to the website, you agree that, whilst Apogee may contact you in relation to the information you have provided, Apogee are not obliged to provide you with any particular service.



- 7.27. Orders received after 12pm will be deemed to be received on the next working day.
- 7.28. Apogee reserve the right to refuse an order. Non-acceptance of an order may be as a result of one of the following
- 7.28.1. Apogee's inability to obtain the authorisation of payment or failing security/credit checks (if paying by Invoice rather than credit or debit card) or
  - 7.28.2. the identification of an error within the information provided, including fees or any other costs whatsoever or
  - 7.28.3. any other reason that you do not meet any eligibility to order criteria as reasonably deemed by Apogee.

## 8. Intellectual property

- 8.1. All Background Information used in connection with the provision of the Services shall remain the property of the Client.
- 8.2. All Pre-Existing Materials shall be the property of Apogee.
- 8.3. Apogee shall disclose to the Client all Foreground Information it generates but all Foreground Information shall be owned by Apogee. Apogee licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Foreground Information and the Services. If Apogee terminates this Agreement under clause 3.5 this licence will automatically terminate.

## 9. Warranties, liability and indemnities

- 9.1. Apogee warrants that it will use reasonable care and skill in performing the Services to the standard generally accepted within the industry, sector or profession in which Apogee operates for the type of Services provided by Apogee. Apogee will take all reasonable steps to obtain the most robust information but shall accept no liability for the accuracy of such information or report and in addition to any limitation of liability under its standard terms and conditions, shall not be liable for any action taken in reliance on the information or any report.
- 9.2. Apogee will comply with The Consumer Agreements (Information, Cancellation and Additional Charges) Regulations 2013.
- 9.3. If Apogee's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees, Apogee shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 9.4. Where information is unavailable, the order relating to that Project will be cancelled either in full or in part and the Client will receive a refund in respect of the same and the Client will be deemed to accept that refund in final settlement of all and any claims the Client may have against Apogee for non-delivery.

- 9.5. Apogee shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Site or the Client's premises and that have been communicated to it under clause 5.5 provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
- 9.6. The Client shall be liable to pay to Apogee, on demand, all reasonable costs, charges or losses sustained or incurred by Apogee (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to Apogee confirming such costs, charges and losses to the Client in writing.
- 9.7. Except in the case of death or personal injury caused by Apogee's negligence, the liability of Apogee under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the Fee paid by the Client to Apogee under this Agreement.
- 9.8. The provision of utility record plans is based on information provided by the Client and information provided by the utility and service organisations about their plant and network. Apogee do not provide any warranty for the quality, content or accuracy of information supplied by any third parties or utilities for the purposes of delivering the Services. Therefore, any utility record plan and/or marked up drawings provided by each utility must only be used as a guide and the actual location of plant should be verified by CAT Scan or trial holes before construction works commence. HSG47 and the BSI PAS 128 must be followed at all times before breaking the ground.
- 9.9. Apogee shall not be liable for:
- 9.9.1. Failure of third parties to deliver information to Apogee within the timescales required by the Client for the purpose of delivering the Services
  - 9.9.2. loss of profits; or
  - 9.9.3. loss of business; or
  - 9.9.4. depletion of goodwill and/or similar losses; or
  - 9.9.5. loss of anticipated savings; or
  - 9.9.6. loss of contract; or
  - 9.9.7. loss of use; or
  - 9.9.8. loss or corruption of data or information; or
  - 9.9.9. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- 9.10. Nothing in this Agreement, the Fee Proposal or Scope of Service is intended or shall be deemed to have created any form of collateral warranty or is intended or shall be deemed to have created any form of provision of novation.
- 9.11 Nothing in this Agreement, the Fee Proposal or Scope of Service or performance of the Services is intended or shall be deemed to have created the role or be deemed to have delivered the role of the principal designer under the Construction (Design and Management) Regulations 2015.

## 10. Provision of Reports

- 10.1. Apogee shall provide a report providing information to the Client in accordance with the Fee Proposal.
- 10.2. Apogee will:
- 10.2.1. begin providing Services from the date of this Agreement (**Commencement Date**)
  - 10.2.2. complete providing the Services on the date that the Project is complete (**Completion Date**) provided that any outstanding utility responses will be provided in subsequent issues of the report until all are received.
- 10.3. CD copies and hard copies of Reports are available on request and attract an additional fee which Apogee will provide upon request.

## 11. Cancellation of Orders

- 11.1. Unless the Client can demonstrate that there has been an error on Apogee's part then the Client has no right to cancel the Client's order, save for in the exceptions mentioned in clauses 11.2 and 11.3
- 11.2. In the event that the Client has ordered a 10 (ten) working day Service then the Client has the right to cancel the Client's order within 5 working days of the order date in which case Apogee will levy a charge of 50% of the Fee as well as any disbursement charges made to third parties on the Client's behalf.
- 11.3. In the event that the Client has ordered a 20 (twenty) working day Service then the Client has the right to cancel the Client's order within ten working days in which case Apogee will levy a charge of 50% of the Fee as well as any disbursement charges made to third parties on the Client's behalf.
- 11.4. The Client must notify Apogee of the Client's intention to return any Foreground information or Report. They must be returned to the following address: Apogee Returns, 4 Pembroke Drive, College Lane, Wellington, Telford, TF1 3PT explaining any defect and why a refund or partial refund is required.

- 11.5. If the Client wishes to cancel the Client's order the Client must return at the discretion of Apogee any Foreground Information or Report at the Client's own cost. The Client is responsible for the items until they are received at the return address and thus Apogee will advise the Client to use a special delivery service when returning items and to retain their proof of postage until receipt is confirmed by email.
- 11.6. Where incorrect or damaged items are received Apogee will cover the cost of the return postage.
- 11.7. Apogee will confirm any cancellation by email, the Client should expect the Client's refund within 10 working days for UK orders and 20 working days for non UK orders from receipt of the Client's returned items.

## 12. Force majeure

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 6 months, either Party may terminate this Agreement by written notice to the other Party.

## 13. Amendments

- 13.1. Subject to clause 13.2, this Agreement, the Scope of Service and any Fee Proposal may only be amended in writing and signed by duly authorised representatives of the parties.
- 13.2. Apogee reserve the right to make minor modifications in the design and specification of the Scope of the Services without notice to the Client, but Apogee agree to notify the Client of any major or material modifications which the Client shall be deemed to have accepted unless Apogee receive notification to the contrary within 7 working days of delivery of said notification.
- 13.3. If applicable, Apogee will, within a reasonable time, provide a written estimate to the Client of
  - 13.3.1. any variations to Apogee's charges arising from the change;
  - 13.3.2. any other impact of the change on the terms of this Agreement.
- 13.4. Apogee may, from time to time and without notice, change the Scope of Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 13.5. If the Client wishes Apogee to proceed with the change, Apogee has no obligation to do so unless and until the parties have agreed in writing on the new charge for those Services.

## 14. Waiver

- 14.1. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

**15. Assignment**

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.

**16. Severance**

If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

**17. Entire agreement**

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.

**18. Notices**

Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail only to the addressed (as specified in clauses A, B, and C) or others as the Parties may agree from time to time in writing. Notices will be deemed to have been received 3 working days after posting.

**19. Law and jurisdiction**

The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**20. Third parties**

For the purposes of the Agreements (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.