

## COMPANY A

Saltash Town Council  
The Guildhall  
12 Lower Fore Street  
Saltash  
PL12 6JX

**(sent by email)**

**29<sup>th</sup> October 2021**

Dear

**Refurbishment Works - Saltash Library - Callington Road, Saltash, PL12 6DX**

Further to your enquiry we are pleased to submit a fee proposal for dealing with Contract Administration of the below project including the preparation and submission of Statutory consent applications (if required), inspection and preparation of tender documents, inviting tenders, preparation of the contracts and Administration of the works to completion. We propose a JCT Minor Works Building Contract 2016.

Our fee to undertake works from stage 1-6 of the RIBA plan of works would be calculated on a percentage basis for the overall project value. Our fee proposal will be as follows:

	<b>Project Name</b>	<b>Description</b>	<b>Budget</b>	<b>Fee £</b>
<b>1.1</b>	<b>General Refurbishment</b>	General refurbishment works to a Grade II Listed library building.	£TBC	10% of the contract value up to £250k. 8% for anything over this.  We would invoice for 5% of the winning tender after work stage 4 below.  Fee does not include out of hours work, height access, asbestos survey and conservation fees which will be an extra over.  Fee includes usual disbursements such as fuel and travel.  All figures will be subject to VAT.

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On the basis we would be commissioned to carry out the above works, we would also offer to undertake the role of Principal Designer within the proposed fees. This would usually be charged at £1,250.00 plus VAT but happy to include if instructed.

Based on the above project, interim draw down payments would be, we propose, in accordance with the following schedule:

1. Work Stages 1. Outline proposals

- Prepare outline proposals and develop a scheme design.
- Prepare a cost estimate.
- Give an indication of possible start and completion dates for the building contract
- These works would be subject to 30% of the overall fee.

2. Work Stage 2 & 3. Concept Design & Design Developed.

- Develop the scheme design and carry out cost checks as necessary
- Make application for approvals under the building acts, regulations, or other statutory requirements
- These works would be subject to 10% of the overall fee.
- An additional amount may be payable as a disbursement for any associated statutory application fees. This we would advise before any such costs are incurred.

3. Work Stage 4. Production information & Tender.

- Preparation of production information including drawings, schedules and specification of materials and workmanship in sufficient detail to enable a contractor to prepare a tender.
- These works would be subject to 10% of the overall fee.
- Invite tenders from approved contractors
- Advise on tenders submitted or arrange for a price to be negotiated with a contractor.

4. Work Stages 5 and 6. Construction & Handover and Close Out

- Advise upon the appointment of the contractor.
- Prepare the building contract and arrange for it to be signed by the client and the contractor
- Administer the terms of the building contract.
- Visit the site as appropriate to inspect generally the progress and quality of the work. We would anticipate that site visits would be undertaken at pre commencement stage and at four times during the contract period including attendance at Practical Completion of the works on site and assist through the defects liability period of 12 months to release of retention.
- Make periodic financial reports to the client
- Administer the terms of the building contract relating to the completion of the works
- These works would be subject to 50% of the fee.

We would propose to invoice our fees following the completion of each stage of work.

In addition to the above we would require an Asbestos Refurbishment Survey to be carried out and any removal works which may be required. We can advise further should you require.

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We hope the above offer is clear and acceptable to you. However, if you have any questions or require clarification on any matter, please do not hesitate to contact myself.

If you wish to proceed with our appointment, I would be grateful if you could confirm in writing as soon as possible and we will then begin to make the necessary arrangements to visit site. I have also included a copy of our Terms of Business for your records.

I trust the above is a fair interpretation of your requirements. Should you wish to discuss or query anything please do not hesitate to contact me.

Yours sincerely

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### Terms of Business – Building Consultancy Instructions

Terms of Business are set out below. The accompanying Confirmation of Instruction Letter may vary these Terms and will explain how our fee is calculated and detail any other costs or charges. To instruct us to act the Client must sign and return a copy of that letter to signify agreement to these Terms and confirming authority to proceed. If this is not received within seven days of the date of that letter and you continue to instruct us, these Terms will be deemed to be accepted. **Your attention is drawn particularly to the limits on our liability set out in clause 9 below.**

1. **Introduction** - All survey work will be carried out in accordance with the codes of conduct and follow the recommendations and guidance notes issued by the Royal Institution of Chartered Surveyors.
  - 1.1 Unless expressly varied, |  
work responsibilities will be restricted to the work set out in the  
“Confirmation of Instruction” letter and the relevant sections of these Terms of Business.
2. **Copyright Exclusions** – Files and Copyright restrictions (as referred to in 6 below) will not apply to any Proofs of Evidence and other material submitted to a Public Inquiry. In addition, client requests for copying and distribution will not be unreasonably withheld.
3. **Provision of Information to** | shall be entitled to seek  
and received from the client any additional information, which | considers  
to be reasonably necessary to enable the instruction to be carried out.
  - 3.1 | shall unless otherwise expressly agreed rely upon information provided  
to them by the client or the client’s legal or other professional advisers relating to tenure,  
tenancies and other relevant matters.
4. **Conflict of Interest** - | has procedures to establish if a conflict of interest  
arises on receipt of an instruction and measures to be taken in the event of a conflict.  
Unless the Client is otherwise advised, it will be deemed that these procedures have not  
identified a conflict.
5. **Delay and Changes in Instructions** – Delay in receiving information from the client, or  
changes in the client’s instructions or any other matters outside | control,  
which give rise to extra work may result in an additional fee.
6. **Quality Assurance** - All proofs of evidence, valuations and reports are subject to standard  
quality control procedures which must be signed by the originator and a Director of
7. **Files & Copyright Restrictions** – Copyright of all computer data, documents, schedules,  
drawings or any other material prepared by | as a result of the instructions  
will be the property of | unless otherwise agreed.

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7.1 Any survey, valuation and associated information will remain the property and copyright of on their confidential files.

7.2 This and other information may be released at our discretion, where we believe it is of assistance in the pursuance of our client's interests unless the material has been notified to us as 'confidential' or is considered by us to be commercially sensitive.

**8. Complaints and Dispute Resolution** – accepts responsibility to the instruction client with whom has a contractual relationship, but no responsibility can be accepted to any third party.

8.1 All work and reports will be prepared with the skill, care and diligence reasonably to be expected from a firm of competent Chartered Surveyors.

8.2 If you have a complaint, then this clause sets out the procedure, which we will follow in dealing with that complaint.

- 1) A person has been appointed in each of our offices to deal with complaints, and you should not hesitate to contact the relevant person. Contact names and telephone numbers are set out below.
- 2) Where your complaint is initially made orally, you will be requested to send a written summary of your complaint to the person dealing with it.
- 3) Once we have received your written summary of complaint, we will contact you in writing within ten working days to inform you of our understanding of the circumstances leading to your complaint. You will be invited to make any comments that you may have in relation to this.
- 4) Within twenty working days of receipt of your written summary, the person dealing with your complaint will write to you, in order to inform you of the outcome of the investigation into your complaint and to let you know what actions have been or will be taken.
- 5) If you are dissatisfied with any aspect of our handling of your complaint, you should contact the Director of the operational centre/division responsible for the work, who will personally conduct a separate review of your complaint and contact you within fifteen working days to inform you of the conclusion of this review.
- 6) If you remain dissatisfied with any aspect of our handling of your complaints, then a senior Director of the client company will negotiate in good faith with the Real Estate Limited Director to settle the dispute.
- 7) If the complaint has still not been resolved to your satisfaction, we agree to the referral of your complaint.

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- Where the complaint is made by a consumer (a person acting outside the course of any business of his, or a person to whom a duty of care is owed) then the redress mechanism, which is free to the consumer, is through:-

Ombudsman Services: Property  
PO Box 1021  
Warrington WA4 9FE

Tel: 0330 440 1634

Fax: 0330 440 1635

Email: [enquiries@os-property.org](mailto:enquiries@os-property.org)

Web: [www.ombudsman-services.org](http://www.ombudsman-services.org)

- Where the complaint arises from a business to business dispute in land, property and construction, then the redress mechanism is through:-

RICS Dispute Resolution Service  
Surveyor Court  
Westwood Way  
Coventry CV4 8JE

Tel: 020 7334 3806

Fax: 020 7334 3802

Email: [DRS@rics.org](mailto:DRS@rics.org)

Web: [www.rics.org/drs](http://www.rics.org/drs)

8. Please note: if the complaint in any way involves an allegation of negligence or a set of circumstances which could give rise to a claim under any policy of insurance held by the firm then we are obliged to comply with policy terms and conditions and notify the matter to insurers who may take over conduct of the matter and deal with it in a manner and to timescales which they determine.
9. Contact names and telephone numbers:

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### 9. Limitation of Liability

- 9.1 Nothing in these Terms shall limit or exclude liability of either the Client or for:
- 9.1.1 death or personal injury where such liability attaches to one party as a consequence of that party's own negligence, or the negligence of its employees, agents or sub-contractors;
  - 9.1.2 fraud or fraudulent misrepresentation; or
  - 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2 Subject to clause 9.1:
- 9.2.1 \_\_\_\_\_ shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, incidental or consequential loss arising under or in connection with the provision of the Services or any other act or omission in connection with this agreement; and
  - 9.2.2 the total liability of \_\_\_\_\_ in respect of all other losses arising under or in connection with the Services and this agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed twenty times the fee agreed.
- 9.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 9.4 The duties and responsibilities owed to the Client are solely and exclusively those of \_\_\_\_\_ and no employee or officer of \_\_\_\_\_ shall be liable to you for any loss or damage howsoever arising as a consequence of the acts or omissions of such employee or officer (including negligent acts or omissions) and no claim in respect of this agreement shall be brought personally against any individuals involved in the performance of the Services under this agreement, whether actual or deemed parties, or of associated partnerships and companies and our and their respective directors, officers, employees, agents and professional advisers save and to the extent that such loss or damage is caused by the fraud, fraudulent misrepresentation, dishonesty, wilful misconduct or unauthorised conduct on the part of such member or employee.
- 9.5 The Client and \_\_\_\_\_ acknowledge that it is reasonable for the liability of \_\_\_\_\_ to be limited in the matter set out in this clause 11, having regard to the scope and extent of the Services, the fees to which \_\_\_\_\_ is entitled and the availability (and cost) of insurance.
- 9.6 This clause shall survive termination of this agreement, howsoever arising.

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### 10. Constraints on the Services

- 10.1 The Client recognises that in providing the Services, \_\_\_\_\_ will base recommendations and advice on their own experience and on the information supplied by the Client in relation to the business of the Client and the market in which the Client operates. However, statements of expectations or opinion, forecasts or recommendations are not in the nature of a guarantee by \_\_\_\_\_. Their achievement may depend, amongst other things, on their effective implementation by the Client and the Client's staff.
- 10.2 Any recommendation or advice given by \_\_\_\_\_ during the course of our instruction is given to address the specific circumstances at the time when it is given. \_\_\_\_\_ will not update or change any recommendation or advice after that time unless \_\_\_\_\_ expressly agree in writing to do so.

### 11. Third Party Indemnities and Claims

- 11.1 \_\_\_\_\_ shall not be liable for any use of the Services, advice, documents or the like for any purpose other than that for which they were prepared and provided by \_\_\_\_\_ or for any use by a third party.
- 11.2 No third party shall have the right to enforce this agreement and to the fullest extent permitted, any rights otherwise granted to third parties by the Contracts (Right of Third Parties) Act 1999, are excluded from this agreement, save that \_\_\_\_\_ is authorised to accept and enforce the rights and exclusions expressly benefitting any other Person under this agreement.
- 11.3 The Client shall indemnify Longden and Cook and hold \_\_\_\_\_ harmless and indemnify all \_\_\_\_\_ persons and our and their respective agents and professional advisers and hold them harmless from and against all other losses, claims, actions, proceedings, demands, damages, liabilities, costs and expenses arising out of or in connection with the Services.

### 12. Non-Solicitation by Client

- 12.1 The Client will not offer employment to any employee of \_\_\_\_\_ working on an Appointment for the Client or induce or solicit any such employee to take up employment with the Client.
- 12.2 In the event that the Client breaches Clause 12.1 \_\_\_\_\_ will be entitled to be paid compensation equal to 6 months 'salary of the employee concerned.

### 13. Professional Fees and Expenses

- 13.1 **Incentive Related Fees** – Where any judicial or quasi-judicial appearance is required (including an Inquiry, Valuation Tribunal or Lands Tribunal) or where a representative acts in the capacity of an Expert, irrespective of the decision or award, the contingency element of any fee basis will be replaced by a fixed fee or fee on an hourly rate

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basis. This will be calculated using a notional agreed value of 50% of the sum of the beset offers put forward by each party prior to the adoption of the fixed charge, as notified to the client.

- 13.2 **Time Charges** – Where no scale of charges is appropriate to the service provided, fees will be charged on a time basis, at the current hourly rates, unless otherwise agreed. All relevant factors including the complexity and character of the work and the qualifications, experience and responsibility of the individuals carrying out the work will be considered in assessing the fee.
- 13.3 **Travel and Out of Pocket Expenses** - Except where specifically stated in the “Confirmation of Instructions” letter, these are payable in addition to the stated fee. Out of Pocket Expenses will include such items as:
- 1) Printing and reproduction of all documents, drawings, maps and the preparation of models, photographs and other records.
  - 2) Hotel and travelling expenses including mileage allowances for cars at recognised rates and similar disbursements.
  - 3) Fees and other charges for specialist professional advice, including legal advice, which have been incurred by \_\_\_\_\_ with the specific authority of the client.
  - 4) Courier charges and other specialist communications charges.
- 13.4 **Calculation of Fees and Expenses** - All fees and recoverable charges will be calculated in Pounds Sterling net of VAT. With the exception of mileage and in-house reprographics costs, all disbursements are charged at a cost of 20%
- 13.5 **VAT** – All charges are exclusive of Value Added Tax which will be added to accounts at the appropriate rate.
- 13.6 **Payment of Accounts** - Fees are payable by the client prior to release of the report.
- 13.7 Where the work involved takes a comparatively short time to finalise, fees and expenses are usually charged on completion. Where the work is extended over a longer period, fees and expenses may be charges by instalments. The amount and timing of such payments will be by prior agreement.
- 13.8 All rights of set-off at common law or in equity which the Client would otherwise be entitled to exercise, are hereby expressly excluded.

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- 13.9 In the event of our instructions being terminated after inspection but prior to completion of the instruction, a fee will become payable on a time basis (at our prevailing rates) for work carried out up to the moment of termination, subject to a minimum of 50% of the agreed fee, plus all expenses incurred and VAT.
- 13.10 In the event of our incurring any expenditure on solicitors or other third parties in order to recover the fee due, this expenditure will be payable by the Client.
- 13.11 Reliance on the content of our report and advice only extends to the party(ies) referred to in the covering letter forming part of these Terms of Engagement. We may consider extending reliance on our report and advice to other parties. This will be solely at our discretion and always subject to a minimum fee of £1,850.
- 13.12 In extending the responsibility of our report to a named party or parties, we will also extend the indemnity backing, to the maximum already in place as defined within these Terms.
- 13.13 The above scale applies where we agree to readdress our report to another party or parties. Should additional work be involved, we reserve the right to make a further charge.
- 14. Governing Law and Jurisdiction** – the services are to be carried out under, and this agreement is governed by English law and (subject to any express terms to the contrary) shall be subject to the exclusive jurisdiction of the English courts, even where the Services are provided from or to a location in any other part of the United Kingdom or overseas.
- 15. Expert Witnesses** – When [redacted] are appointed to act on behalf of a client and the case/work proceeds to either an inquiry, court or through the third party procedures, the primary duty of the person acting as an Expert Witness is to the judicial or other body to whom his/her evidence is given. Any supporting evidence provided by that person must be independent, objective and unbiased.
- 15.1 A Chartered Surveyor in such cases must comply with the RICS ‘Surveyors Acting as Expert Witnesses’ practice statement and guidance notes.
- 16. Entire Agreement** – These terms replace all previous arrangements, agreements or understandings between [redacted] and the Client in relation to the Services. No variation or addition to the Terms, or alternative or inconsistent terms purported to be imposed before or after the Terms are received by the Client, shall be binding unless agreed in writing between [redacted] and the Client. The obligations expressly undertaken by Longden and Cook under the Confirmation of Instruction Letter and these Terms of Business are all the obligations which [redacted] agree to undertake or owe to the Client in respect of the Services and they replace and exclude, to the fullest extent permitted by law, any obligations imposed on [redacted] by, or implied under, common law or statute. The Terms are the only documents governing our relationship with Longden and Cook will have no liability for statements, representations or inferences arising from discussions or documents which pre-date the Confirmation of Instruction Letter. If any such

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statements, representations or inferences are of importance the Client must ensure that they are expressly set out in the Confirmation of Instruction Letter before signature.

16.1 All headings in this document are for ease of reference only and shall not affect the interpretation or construction of these Terms of Business.

16.2 shall not be liable for any loss arising from the Client's receipt of any information, data or communications supplied or sent by electronically. The Client will be responsible for ensuring that any materials sent by an electronic medium and/or by computer disc are virus free.

17. **Contaminated Land** - Unless specifically instructed, on terms to be agreed, will not be responsible for the investigation of, or the provision of advice on the existence or otherwise of any pollution including potential land, air or water contamination in respect of the property or adjoining property, or advising on environmental legislation.

### 18. Definitions –

Under these Terms:

18.1 **"Client"** means the individual, individuals, company or companies referred to in the "Confirmation of Instruction Letter". All instructions received from the individuals employed by, or associated with, the Client and others advising the Client, shall be deemed to have been made with the full authority of the Client.

18.2 means Real Estate Limited which is a private limited company registered in England and Wales, registration number 4623528.

18.3 means any other entities or companies controlled by the members of ; through which they carry out their business and the respective directors and employees of and such companies or entities and the successor(s) in business of any such person.

18.4 **"Terms"** means the terms and conditions of engagement set out in this document and (unless the context otherwise requires) includes any other terms and conditions set out or referred to in the Confirmation of Instruction Letter accompanying these terms and conditions.

18.5 **"Confirmation of Instruction Letter"** means the letter of instruction, tender or proposal accompanying these Terms sent from to the Client.

18.6 **"Intellectual Property Rights"** means all copyright, know-how (including techniques, information, manuals, processes and methodology) rights in design and all other intellectual property rights whether registered or unregistered.

18.7 **"Services"** means the specific services set out in the Confirmation of Instruction Letter and any other services which Longden and Cook agree in writing to provide.

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- 18.8 **“Property”** means (if applicable) the land and buildings at the address stated in the Confirmation of Instruction Letter.
- 18.9 **“Borrower”** (if applicable) means the party stated in the Confirmation of Instruction Letter.
- 18.10 References to **‘this agreement’** or similar expressions mean the agreement formed between and the Client by the acceptance or deemed acceptance of the Terms.
- 19. Confidentiality and Freedom of Information** – where applicable under the Freedom of Information Act 2000, the contents of our original proposal and related work are strictly private and confidential and must not be disclosed to any third party without our prior written consent.
- 19.1 We recognise your obligations under the Freedom of Information Act 2000 and will work with you to respond to information requests relating to our bid and subsequent matters if appointed. We, therefore, request that you notify \_\_\_\_\_ immediately if you receive any related information requests. We, in turn, will endeavour to respond to you in time for any issues to be addressed within the 20 day time limit stipulated in the Act.
- 19.2 In any event, please note that we consider the following information to be exempt from disclosure under the Freedom of Information Act 2000 for the reasons and time periods set out below:

<b>Type of Information</b>	<b>Grounds for Exemption</b>	<b>Duration of Exemption</b>
Details of proposed team	S.40 - personal information	Forever
Pricing proposals	S.41 – information provided in confidence  <b>(a) S.43 (1) – trade secrets</b>  S.43(2) – commercial interests	Until notified otherwise by us.
Financial information about our firm	S.41 – information provided in confidence  S.43(1) – trade secrets  S.43(2) – commercial interests	Unless the information is already available in the public domain, the financial data in this application is to remain confidential until notified otherwise by us.
Our proposals relating to your project	S.41 – information provided in confidence  <b>(b) S.43 (1) – trade secrets</b>	Until contract awarded, or confirmed awarded.

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	S.43 (2) – commercial interests	
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### 20. Notice of the Right to Cancel

- 20.1 In circumstances where *The Cancellation of Contracts made in a Consumer's House or Place of Work etc, Regulations 2008* apply, the Client has a right to cancel the contract and this right can be exercised by delivering or sending (including by electronic mail) a cancellation notice to \_\_\_\_\_ at any time within the period of 7 days starting with the day of receipt of these Terms of Business. If the Client wishes to cancel the contract under these Regulations, \_\_\_\_\_ will accept the return of these Terms of Business endorsed to that effect as a cancellation notice. The notice of cancellation is deemed to be served as soon as it is posted or sent to \_\_\_\_\_ or in the case of an electronic communication from the day it is sent.
- 20.2 The Client may be required to pay for the goods or services applied if the performance of the contract has begun with his written agreement before the end of the cancellation period.