KDN SURVEYORS
Solutions to your Party Wall issues
FPWS

SUPPLEMENTAL TERMS & CONDITIONS

These Supplemental Terms and Conditions shall bind clients/appointing owners formally appointing KDN Surveyors, headed by Mr. Farshid Nosrati to represent their interests and/or participate in disputes as defined under Section 10 of the Party Wall etc. Act, 1996.

The Supplemental Terms and Conditions intend to define the role of the Party Wall Surveyor and the Appointing Owner in this context, including but not limited to fees, disbursements, liabilities and other aspects of the relationship. These terms and conditions are set out as under:

APPOINTMENTS

1. Introduction

1.1. These Supplemental Terms & Conditions relate to 'KDN Surveyors' and are to be read in conjunction with the General Terms & Conditions stated in the Letter of Appointment provided at the inception of the process.

1.2. The Letter of Appointment and the fee proposal letter will set out, in more specific terms, fee basis together with any information required of the Client/Appointing Owner.

1.3. The purpose of these Supplemental Terms & Conditions is to identify the scope of services offered by KDN Surveyors, and the personally appointed Surveyor in connection with the service of notices or fulfillment of an appointment under Section 10 of the Party Wall etc. Act 1996 (the "Act").

1.4. By instructing KDN Surveyors, the Client/Appointing Owner agrees to be bound by these Supplemental Terms & Conditions as well as the General Terms & Conditions set out in the Letter of Appointment.

2. Interpretation

2.1. *'I/ We / Us':* KDN Surveyors, or a Surveyor acting for the KDN Surveyors engaged on any matter up to formal appointment under Section 10 of the Act.

2.2. '*You':* The Client or Appointing Owner.

2.3. *'Party Wall Surveyor':* The personally appointed Surveyor from KDN Surveyors who will fulfill an appointment in accordance with Section 10 of the Act. This may be in the role of either an Agreed Surveyor or a Party-Appointed Surveyor.

2.4. *'Appointing Owner':* An appointing party following the formal appointment of a Party Wall Surveyor under Section 10 of the Act.

2.5. *'Schedule'*: A Schedule of Condition appended to an Award.

2.6. *'Letter of Appointment'*: The signed authorisation giving the Surveyor authority to sign, issue, send, receive and respond to any notices under the Act and fulfill duties under Section 10 of the Act as a Party Wall Surveyor.

2.7. *'The Property'*: The premises to which the appointment relates.

2.8. *'Building Owner':* The party initiating notifiable works under the Act.

2.9. *'Adjoining Owner':* The party owning or occupying a property within the prescribed distance of the Building Owner's property, as prescribed by the Act, who must be notified in accordance with the Act.

2.10. *'Award'*: A Party Wall Award signed and served by the Party Wall Surveyor(s).

3. Scope of Appointment

3.1. The Party Wall Surveyor may be appointed to either provide general pre-dispute advice outside of an appointment under Section 10 of the Act, or in accordance with Section 10 of the Act where a dispute has arisen. This may be in the capacity of Building Owner's Surveyor, Adjoining Owner's Surveyor or Agreed Surveyor, where agreed between the parties.

3.2. The Client may be either a Building Owner or an Adjoining Owner seeking initial advice prior to the formal appointment of a Party Wall Surveyor under Section 10 of the Act. This may be an organisation or an individual. Where the Client appoints the Surveyor in accordance with Section 10 of the Act they shall then be referred to as an 'Appointing Owner'.

3.3. Once appointed in accordance with Section 10 of the Act, the Party Wall Surveyor and the Appointing Owner do not assume a traditional Client-Surveyor relationship; this is supplanted by the statutory nature of the appointment, thus the Client shall be known as the 'Appointing Owner'. Where the Surveyor is instructed to advise on any Party Wall issues prior to a formal appointment in accordance with the Act, then the traditional Client-Surveyor relationship may exist, but will be supplanted as soon as any appointment in accordance with Section 10 of the Act is made.

3.4. The role of the Party Wall Surveyor (either as Building Owner's Surveyor, Adjoining Owner's Surveyor or Agreed Surveyor) is for the purposes of serving and receiving associated notices and preparing the Award and Schedule of Condition as far as the works detailed therein fall under the Act and following the requisite appointment of the Party Wall Surveyor in accordance with the Act.

3.5. The Party Wall Surveyor does not assume any designer responsibilities for the awarded works under the CDM Regulations (2007) or otherwise. The Party Wall Surveyor is not a Contract Administrator or Project Manager of the Works and is not engaged to oversee the works in terms of materials & workmanship or statutory compliance.

3.6. The Party Wall Surveyor cannot and will not be held liable or responsible for the actions of their Client/Appointing Owner, or for failure of their Client/Appointing Owner to comply with their duties under the Act. The Party Wall Surveyor cannot and will not be held liable or responsible for the actions of any other appointed Surveyor under the Award. The Party Wall Surveyor's agreement and signing of an Award shall not be construed as confirmation the works detailed therein comply with any associated statutory regulations. The Award may stipulate that it is conditional on compliance with any associated statutory regulations in undertaking the works so awarded.

3.7. All appointments shall be made in writing and authorised by all owners of the property occupied by the appointing party.

3.8. The nature of the appointment may include, but is not limited to:

i. Advising on the notifiability of proposed works under the Act.
ii. Preparation and service of notices in respect of the Building Owner's proposed works.
iii. Receiving, reviewing, verifying and responding to notices on behalf of the Adjoining Owner.
iv. Preparation and service of an Award.
v. Receiving, reviewing, verifying, agreeing, signing and serving an Award prepared by another Party Wall Surveyor.
vi. Preparation of a Schedule of Condition to be included within an Award.
vii. Checking the validity and accuracy of a Schedule of Condition prepared by another Party Wall Surveyor. This may include, but is not limited to:
    a. Amending or revising a Schedule of Condition prepared by another Party Wall Surveyor.
    b. Agreeing a Schedule of Condition prepared by another Party Wall Surveyor.
    c. Publishing a revised version of a Schedule of Condition prepared by another Party Wall Surveyor.
    d. Issuing any associated correspondence, following service of an Award, as deemed necessary under the Act.
    e. Checking any awarded works during and on completion.
    f. Assessing the nature and cost of any damage caused as a result of the awarded works.

3.9. The Party Wall Surveyor will undertake the appointment within the timescales specified by the Client/Appointing Owner whilst observing the associated notification timescales set out within the Act. In the first instance the Party Wall Surveyor will ascertain any key dates crucial to the appointment.

3.10. The Party Wall Surveyor will, prior to inspecting the property, review all information and documentation necessary to fulfill the appointment, and where

requested, the Client/Appointing Owner will provide the Party Wall Surveyor with all information and documentation necessary to fulfill the appointment.

3.11. The Party Wall Surveyor will conduct all work involved in the preparation of a Party Wall Award in accordance with and under the conditions of The Party Wall etc Act 1996. The Act defines the rights and duties of owners and the duties of their Surveyors in the event of a dispute arising.

3.12. If, following appointment in accordance with Section 10 of the Act, the Party Wall Surveyor acting for the Building Owner adduces that further notices are required to be served upon the Adjoining Owner (in respect of additional or modified notifiable works to be undertaken by the Building Owner), he shall serve such additional notices on behalf of the Building Owner and shall continue to be appointed as the Building Owner's Surveyor in the event of the Adjoining Owner's dissent (or deemed dissent) to such notices.

3.13. If, following appointment in accordance with Section 10 of the Act, the Party Wall Surveyor acting for the Adjoining Owner receives, on behalf of the Adjoining Owner, further notices pursuant to additional or modified notifiable works proposed by the Building Owner, and in the event the Adjoining Owner elects to dissent or fails to respond to such notices, he shall continue to be appointed as the Adjoining Owner's Surveyor in respect of any matters of dispute arising from such notices reasonably requiring his involvement.

FEES & DISBURSEMENTS

4. Appointment Fees

4.1. Appointment fees will be agreed directly with the Client/Appointing Owner on each and every instruction and will be quoted. In the absence of a specific agreed fee, the following fee basis will apply if appointed in the role of Party Wall Surveyor.

i. *Time Charge:* The Surveyor will specify an hourly rate along with the Letter of Appointment to the Building Owner, as appropriate, for inclusion in the Award.

4.2. Fixed Fees: Fixed fee quotes provided to a Building Owner at the commencement of the process will be an all inclusive fee payable upon the publication of the Award. This fee charge may not include fees applicable to reference made to a Third Surveyor or Further Awards.

4.3. The Client/Appointing Owner will settle any fee account due on completion of the appointment task, or at an agreed interim stage. In general, fees for the preparation and service of an Award will become payable immediately upon service of the Award.

4.4. Where appointed by the Adjoining Owner, I/ we undertake not to hold Adjoining Owners liable for our fees EXCEPT :-

a. Where notice is served for maintenance works to a Party Wall or shared structure and, the Client/Appointing Owner will be advised of any liability in advance and written agreement obtained before proceeding.
b. If a Building Owner refuses to pay the fees that are due and the Adjoining Owner does not assign the right of claim against the Building Owner to the Party Wall Surveyor. (This may be necessary for us to pursue the debt in the Courts).

c. If an Adjoining Owner first dissents and appoints the Party Wall Surveyor, then consents to proposed works before an Award has been served and time has been expended time in respect of the appointment.

d. If the Adjoining Owner withdraws from the process, either by virtue of consenting at a later stage or for other circumstances, the Adjoining Owner contractually bound by the Letter of Appointment would be liable to cover costs and/or disbursements on account of the work already done/time expended during the process.

e. If an Adjoining Owner demands an inspection where such inspection may not be necessary, or fails to provide access for a pre-arranged necessary inspection.

f. The fee account of the Party Wall Surveyor may be invoiced to the Appointing Owner directly in the event the Building Owner is insolvent or in any way unable to settle the account of the Adjoining Owner's Surveyor within a reasonable time frame.

4.5. Time Charge fees shall be charged in 6 minute intervals and rounded up to the nearest quarter hour for invoicing. Accountable Time shall be deemed to include: site visits, travel time, letters, emails, phone calls, conference calls, meetings, reviewing documentation, reviewing and taking instructions and arranging access.

5. Abortive Fees

5.1. Abortive fees where the Party Wall Surveyor is acting outside of an appointment under Section 10 of the Act shall be chargeable upon the Client's termination of the Surveyor's services. This will generally be based upon a reasonable account of the work completed up to the point of termination, but subject to a minimum charge.

5.2. Where any Sub-Consultant has been appointed by KDN Surveyors on behalf of the Client/Appointing Owner, then any fees due to the Sub-Consultant at the point of termination shall also become chargeable to the Client/Appointing Owner on the basis set out in section 5.1.

5.3. Where appointed in accordance with Section 10 of the Act by the Adjoining Owner, a parallel contractual obligation arises whereby the Party Wall Surveyor may seek redress directly from the Adjoining Owner for payment of fees in the event the Building Owner defaults having been awarded sole or partial liability for such fees. Accordingly, the Appointing Owner may, by default, be contractually obligated to service any such debt due to the Party Wall Surveyor

even if they were not ordered to pay the Party Wall Surveyor fees pursuant to the Act.

5.4. Where appointed by the Adjoining Owner either in the capacity of 'Adjoining Owner's Surveyor' under Section 10(1)(b) of the Act, or as 'Agreed Surveyor' under Section 10(1)(a) of the Act in circumstances where the Building Owner is ordinarily liable for all Party Wall professional fees, the Adjoining Owner may still become liable for the fees of the Party Wall Surveyor where the Adjoining Owner has invoked the involvement of the Party Wall Surveyor in such a way that such fees cannot reasonably be awarded against the Building Owner.

5.5. Where the parties to a dispute under the Act mutually agree to contract outside the Act in order to settle their dispute, or dispense with their dispute such that the Act no longer applies, any fees due to the Party Wall Surveyor so appointed shall be contractually payable in accordance with section 5.1.

6. Disbursements

6.1. Unless stated otherwise, all disbursements shall be in addition to the stated fee. This extends to travel costs, stationery, postage and general out of pocket expenses. These may also include reliance on reports or advice from other experts after specific consent is obtained from the appointing owner.

DUTIES & RESPONSIBILITIES

7. Client's/Appointing Owner's Duties

7.1. The Client/Appointing Owner shall provide the Party Wall Surveyor, at the point of instruction, with a copy of any available asbestos register, report, record or other such associated information to inform the Surveyor as to the existence and location of any known asbestos within the property.

7.2. The Client/Appointing Owner shall ensure that funds are readily available to settle the Party Wall Surveyor's fee account within 14 days of receiving an invoice in respect of work undertaken in accordance with the Client's/Appointing Owner's instructions, or in the case of service of an Award, the Appointing Owner will settle the Party Wall Surveyor's account immediately upon service of the Award.

7.3. The Client/Appointing Owner shall ensure the Party Wall Surveyor is granted full and unhindered access to the premises in order to undertake the inspection, or provide such necessary information as to access arrangements.

7.4. The Client/Appointing Owner shall ensure the subject premises are fully and properly insured for the duration of any works being undertaken.

7.5. The Client/Appointing Owner shall ensure the Party Wall Surveyor is in receipt of all information to allow the proper and safe undertaking of the appointment without unknowingly being exposed to fraud, deceit, money laundering or being

complicit in any other such immoral action which may or may not be an intention of the Client/Appointing Owner.

7.6. Where the Client/Appointing Owner has self-served Notice(s), the Party Wall Surveyor reserves the right to verify the validity of the Notice(s) prior to accepting an appointment to act as Party Wall Surveyor, and if necessary, will revise and reissue Notice(s) to ensure validity; all associated costs shall be chargeable to the Client/Appointing Owner in accordance with the rates as set out in the fee quotation provided.

8. General Exclusions

8.1. KDN Surveyors will not be responsible for the direct payment of any fees incurred by the appointment of other Consultants or Sub-Consultants, whether or not connected to, or associated with, the Party Wall Surveyor's appointment. Any other Consultant, Sub-Consultant or Third Party appointments are to be made and paid for directly by the Client/Appointing Owner.

8.2. Where another Consultant's document or a Third Party document is to be appended to an Award prepared and issued by KDN Surveyors, no liability is accepted by KDN Surveyors for the content of any such reports, attachments or enclosures.

8.3. The KDN Surveyors accepts no liability for the actions of other Consultants, Sub-Consultants,Contractors or third parties directly appointed by the Client/Appointing Owner on the same project.

8.4. All advice given by KDN Surveyors, its Consultants or Sub-Consultants under this appointment is for the sole use of the Appointing Owner and is confidential to the Appointing Owner and their professional advisers, unless the subject of an Award. KDN Surveyors accepts responsibility to the Appointing Owner alone for any such advice and absolutely no responsibility or liability whatsoever is accepted or owed to any Third Party who relies on all or part of any such advice;

8.5. All advice will be given with the skill, care and diligence reasonably to be expected of a competent Surveyor. For the purposes of the Contracts (Rights of Third Parties) Act 1999, it is hereby agreed that any appointment accepted by KDN Surveyors or any of its Consultants or Sub-Consultants is on the basis that no benefit or right exists to a Third Party with regard to the use of any advice given by KDN Surveyors.

9. Confidentiality & Third Party Rights

9.1. All advice provided by KDN Surveyors, either orally or in any written media, is for the sole and exclusive use of the Client/Appointing Owner and is confidential to the Client/Appointing Owner and any associated professional advisers. KDN Surveyors accepts responsibility to the Client/Appointing Owner alone for the stated purposes of the advice.

TERMS OF PAYMENT

10. Terms of Payment

10.1. All accounts are to be settled in full within 14 days of the invoice date (the 'due date'). Invoices in respect of the preparation and service of Party Wall Awards are due for settlement immediately upon the service of the Award(s) on the respective parties allowing for the ordinary course of post. The due date shall therefore be the 2 working says following the date of service of the Award(s).

10.2. A service charge shall be applied every week or part thereof to outstanding balances not received by the due date in respect of fees determined in a Party Wall Award where we are appointed in the capacity of either the 'Building Owner's Surveyor' pursuant to Section 10(1)(b) of the Act, or the 'Agreed Surveyor' pursuant to Section 10(1)(a) of the Act.

10.3. We reserve the right to vary the service charge and rate of interest without further notice.

10.4. Any account which remains outstanding 60 days beyond the due date may be passed to Debt Collectors without further notice and such accounts would then be subject to an additional minimum surcharge to cover the administrative costs incurred.

10.5. Such accounts shall also be subject to any and all other costs incurred in obtaining settlement. Accounts outstanding after 30 days from the invoice date for the preparation and service of Party Wall Awards or in respect of any post-Award involvement pursuant to Section 10(1) of the Act shall be recovered through the Magistrates' Court pursuant to section 17 of the Act.

11. Complaints and Discrepancies

11.1. Any complaint by the Appointing Owner and/or discrepancy relating to this invoice must be notified by the Appointing Owner to KDN Surveyors in writing within 5 days of the date on the invoice.

12. Compensation on Debts

12.1. KDN Surveyors reserves the right to seek financial compensation for the inconvenience of chasing outstanding fee accounts under the Late Payment of Commercial Debts (Interest) Act 1998. This is to include interest at 8% above Bank of England base rate.