

**Terms and Conditions****DYNASAFE BACTEC LIMITED****TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES**

1. **DEFINITIONS:** "The CLIENT" shall mean the individuals, partnerships, associations, government agencies or other entities (whether acting alone or collectively as a group) for whom the Services to be performed under this Agreement are being provided. Where two or more parties constitute the CLIENT those parties shall be jointly and severally liable for all the obligations of the CLIENT under this Agreement.

"BACTEC" shall mean DYNASAFE BACTEC LIMITED whose registered address is 9 Waterside Court, Galleon Boulevard, Crossways Business Park, Dartford, Kent, England, DA2 6NX.

"The Proposal" shall mean the letter, facsimile or e-mail from DYNASAFE BACTEC accompanying these Terms and Conditions setting out inter alia the Works the Services and the fee.

"The Services" shall mean the services to be carried out by DYNASAFE BACTEC under this Agreement and described in the Proposal.

"The Site" shall mean the land owned or occupied by the CLIENT on which the Works are to be carried out and which may be more particularly defined in the Proposal or by the CLIENT.

"The Works" shall mean the works as briefly described in the Proposal.

"Data and Information" shall include but not be limited to all drawings, documents, plans, communications (whether verbal or in writing), marking out/location services.

2. **STANDARD OF CARE:** DYNASAFE BACTEC shall exercise all reasonable skill care and diligence ("the Standard of Care") in the discharge of the Services to be performed by it. Insofar as DYNASAFE BACTEC specifies any materials DYNASAFE BACTEC shall exercise reasonable skill and care to see that no materials generally known to the engineering profession at the time of specification to be deleterious to health and safety will be specified by it for use in the Works.

3. **SUBSURFACE RISKS:** Risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. The CLIENT accepts that nothing can be done to eliminate the risks altogether and acknowledges that:

(a) The geological, geotechnical, geochemical or hydrological conditions on site may differ from those foreseen from pre-existing information and if adverse may result in delays or changes to scope of the projected works.

(b) CLIENT accepts that he has responsibility to locate underground services, to ensure that the positions to be surveyed by DYNASAFE BACTEC are clear of such services and to issue/sign a written permit to dig or permit to carry out intrusive works. In some circumstances DYNASAFE BACTEC may use equipment to check for the presence of services but will not warrant that such equipment will necessarily detect underground services. Any such actions on DYNASAFE BACTEC's part do not release CLIENT from his responsibility in respect of such services.

(c) In view of clause 3 (b) any and all damages resulting from DYNASAFE BACTEC's works striking, interrupting or damaging underground services is the responsibility of the client, unless caused by DYNASAFE BACTEC's gross negligence.

4. **SEEPAGE, POLLUTION, CONTAMINATION:**

Where DYNASAFE BACTEC carries out any subsurface investigation as part of the Services the CLIENT shall indemnify, defend and hold DYNASAFE BACTEC harmless from and against all claims demands proceedings damages costs charges and expenses arising out of any seepage, contamination or pollution caused by any subsurface investigation and sampling

5. **DATA AND INFORMATION:** The CLIENT shall supply in writing to DYNASAFE BACTEC without charge and in such reasonable time so as not to delay or disrupt the performance by DYNASAFE BACTEC of the Services all necessary and relevant data and information in the possession of the CLIENT or its servants agents or sub-contractors. In particular but without prejudice to the generality of the foregoing such information shall include:

(a) All data, drawings, plans or information (in hard copy and/or electronic medium) relating to the planned intrusive works on Site relevant to the services to be provided by DYNASAFE BACTEC and on which DYNASAFE BACTEC will rely in order to properly conduct such services

(b) All data or information including other reports studies plans and specifications concerning any subsurface risks including the location of utilities and underground structures and any above surface or subsurface site conditions at or beyond the Site;

(c) All data or information relating to the identity, location, quantity, nature or characteristics of any hazardous materials or suspected hazardous materials currently on or under the Site or previously on or under the Site.

The Data and Information provided to DYNASAFE BACTEC by the CLIENT may be relied upon by DYNASAFE BACTEC in the provision of its services and therefore all liability associated with the accuracy of the Data and Information is the responsibility of the CLIENT

Where DYNASAFE BACTEC is aware that any relevant data or information is needed from third parties DYNASAFE BACTEC shall so inform the CLIENT and the CLIENT shall use reasonable endeavours to obtain such data or information unless the Services include an obligation that DYNASAFE BACTEC shall request such data or information.

DYNASAFE BACTEC shall review the data and information provided by the CLIENT or third parties generally to examine its accuracy or completeness but shall not be responsible for such accuracy or completeness.

The CLIENT shall give its decision approval or comments on all matters referred to it for this purpose by DYNASAFE BACTEC in such reasonable time so as not to delay or disrupt the performance by DYNASAFE BACTEC of the Services under this Agreement.

**6. PUBLIC RESPONSIBILITY:** The CLIENT shall take whatever measures are necessary to protect the health and safety of any persons (including any member of the public who may come on to the Site during the course of the Services).

If during the course of carrying out the Services DYNASAFE BACTEC becomes aware of any dangers to the health and safety of any such persons it shall notify the CLIENT forthwith.

**7. RIGHT OF ENTRY:** The CLIENT shall provide a right of entry to the Site for DYNASAFE BACTEC, its agents or any sub-contractors or sub-consultants and for all necessary equipment to carry out the Services under this Agreement and in such reasonable time so as not to delay or disrupt the performance by DYNASAFE BACTEC of the Services. The CLIENT shall provide adequate site security to protect DYNASAFE BACTEC's personnel plant equipment and stores/materials.

**8. COPYRIGHT:** The copyright in all reports drawing logs field data field notes data calculations specifications and other documents provided by DYNASAFE BACTEC in connection with the Works shall remain vested in DYNASAFE BACTEC but save as set out in the next paragraph the CLIENT shall have a licence to copy and use such reports and other documents only for the Works and only for the purpose for which the same were prepared and provided by DYNASAFE BACTEC. The CLIENT shall not be entitled to grant any sub-licences nor to transfer this licence to third parties without the prior written agreement of DYNASAFE BACTEC.

Insofar as DYNASAFE BACTEC provide any information for the Health and Safety File the CLIENT shall have a licence to copy and use such information for the purposes of keeping it available for inspection by any person who may need information in the File for the purpose of complying with the requirements and prohibitions imposed on him by or under the relevant statutory provisions and shall be entitled to transfer this licence to a person who acquires the CLIENT's interest in the property.

In the event of any termination of this Agreement under Condition 13 because of breach by the CLIENT the licence given by this Condition shall terminate.

DYNASAFE BACTEC shall retain such reports and other documents for a period of five years following completion of the Services during which period they will be made available to the CLIENT at all reasonable times. Copies of such reports and documents shall during this period be provided to the CLIENT upon written request and subject to DYNASAFE BACTEC's reasonable charges.

**9. CONFIDENTIALITY:** If the CLIENT so requests in writing before the commencement of the Services DYNASAFE BACTEC agrees that both during and after termination of this Agreement (however it shall end) it shall not and it shall procure that its employees shall not disclose to any third party or exploit in any way any confidential matter concerning this Agreement, the project or the business of the CLIENT which may come to its knowledge as a result of the Services. The obligation contained in this Condition shall endure even after termination of this Agreement without limit in time except and until any confidential information enters the public domain otherwise than through the default of DYNASAFE BACTEC.

If the CLIENT does not wish DYNASAFE BACTEC to contact any third party or visit the premises of any third party during the course of the Services the CLIENT shall so inform DYNASAFE BACTEC in writing before the commencement of the Services.

**10. LIMITATION OF LIABILITY AND INSURANCE:** Notwithstanding anything to the contrary contained elsewhere in this Agreement:

a) the total limit to the liability of DYNASAFE BACTEC arising from or in any way whatsoever arising out of the work conducted by DYNASAFE BACTEC and which is the subject of this agreement shall be limited to the cost of re doing said work, or any amount recoverable from insurance coverage available to DYNASAFE BACTEC.

b) Bactec shall maintain in force Third Party Liability Insurance to indemnity limits of not less than £10,000,000 any one occurrence and Professional Indemnity Insurance to an indemnity Limit of not less than £2,000,000 in all.

As and when it is reasonably requested to do so by the CLIENT DYNASAFE BACTEC shall produce for inspection documentary evidence that such insurance is being maintained.

**11. PAYMENT TERMS:** All sums due from the CLIENT to DYNASAFE BACTEC in accordance with the terms of this Agreement shall be paid within 30 days from the date of DYNASAFE BACTEC's invoice and any sums remaining unpaid at the expiry of such period of 30 days shall bear interest thereafter, such interest to be compounded monthly at the rate of 2% per annum above the current base rate of the Bank of England.

If any item of part of an account rendered by DYNASAFE BACTEC is disputed or subject to question by the CLIENT the payment by the CLIENT of the remainder of that account shall not be withheld on those grounds and the provisions of the preceding paragraph shall apply to such remainder and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to DYNASAFE BACTEC.

All fees set out in this Agreement are exclusive of Value Added Tax the amount of which at the rate and in the manner prescribed by law shall be paid by the CLIENT to DYNASAFE BACTEC.

**12. POSTPONEMENT, SUSPENSION AND DELAY:** If for any reason the CLIENT postpones or suspends any of the Services or if DYNASAFE BACTEC is impeded or delayed in the performance of the Services by the occurrence of any circumstances beyond its control the CLIENT shall make forthwith to DYNASAFE BACTEC a fair and reasonable additional payment in respect of all the additional costs and expenses incurred by DYNASAFE BACTEC in respect of such postponement suspension or delay provided that DYNASAFE BACTEC informs the CLIENT within a reasonable time of any circumstances which could give rise to the right to such additional payment.

**13. TERMINATION:** In the event of a breach of this Agreement by either party the other party may give seven days' notice in writing of its intention to determine this Agreement setting out the acts or omissions relied upon as evidence of such breach. If the party in breach does not, to the reasonable satisfaction of the other party repair such breach during the notice period this Agreement shall determine on the expiry of the notice period.

If in the event of any termination of this Agreement DYNASAFE BACTEC in its reasonable opinion has to carry out any further services for the protection of the Works and/or the health and safety of any person and/or has to complete any works and records because of statutory requirements the CLIENT shall pay DYNASAFE BACTEC forthwith a fair and reasonable amount in respect of such services and/or completion of such reports.

**14. FORCE MAJEURE:** Neither Party shall be liable for any failure to perform properly under this contract if the reason for such failure is as a result of an Act of God, act of government authorities, elements or weather and other incidents which are beyond the reasonable control of the defaulting Party.

**15. ASSIGNMENT:** Neither the CLIENT nor DYNASAFE BACTEC shall assign, transfer or in any way make over or purport to assign, transfer or make over this Agreement or its respective rights or obligations hereunder without the consent in writing of the other party to this Agreement save that no consent shall be required from the CLIENT if the said assignment, transfer or making over of this Agreement or the respective rights or obligations hereunder is from DYNASAFE BACTEC to any of DYNASAFE BACTEC's Group Companies.

In this Agreement the expression "Group Companies" shall include a subsidiary and holding company of the CLIENT or DYNASAFE BACTEC as defined by Section 736 of the Companies Act 1985 as amended by Section 144 of the Companies Act 1989 or any associated companies of the CLIENT or DYNASAFE BACTEC as defined by Section 416 of the Income and Corporation Taxes Act 1988.

**16. THIRD PARTY RIGHTS:** Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term in this Agreement. This provision confirms the intention of both parties for the purposes of Section 1 (2) of the Contract (Rights of Third Parties) Act 1999.

**17. CLAIMS:** No action or proceedings under or in respect of this Agreement whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against DYNASAFE BACTEC after the expiry of the period of eight years from the completion of the Services or such earlier date as may be prescribed by law.

**18. WAIVER:** No failure or delay on the part of the CLIENT or DYNASAFE BACTEC in exercising any right hereunder shall operate as a waiver thereof.

**19. ENTIRE AGREEMENT:** This Agreement constitutes the whole agreement between the parties and supercedes any previous arrangements, undertakings or agreement between them relating to the subject matter of this Agreement. Each party acknowledges that, in entering into this Agreement, they do not rely on any statement, representation, assurance, warranty, act or omission (negligent or otherwise) of any person (whether a party to this Agreement or not) other than expressly set out in this Agreement. Nothing in this Agreement shall limit or exclude any liability for fraud or wilful dishonesty.

**20. APPLICABLE LAW:** This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the jurisdiction of the English Courts.

If any dispute or difference shall arise between the parties as to the meaning of this agreement or any matter of thing arising out of or in connection with it then the same shall be referred to the determination of an Arbitrator to be appointed in agreement between the parties or in default of agreement within 28 days of the service upon one party by the other of a written request to concur in such appointment then by the President for the Chartered Institute of Arbitrators.