

Existing Conditions Surveys, Inc.

Terms and Conditions 2008

1. SCOPE OF WORK

a. Existing Conditions Surveys ("ECS") shall undertake work for the client under the following terms and conditions. Where ECS has issued a proposal regarding the performance of such services, the services shall be provided in accordance with the last ECS proposal submitted by ECS.

b. ECS agrees to prepare documents for client using generally accepted standards and practices prevailing in the industry. It is also understood that ECS shall not be obligated to obtain field data where site conditions may prevent ECS from obtaining data that is not visible or accessible or safe at time of survey.

c. It is expressly understood by client that ECS is not an architectural, land surveyor, or engineering entity. None of the documents prepared by ECS for client shall have any stamping or certification of such trade professionals.

d. As part of our service, the client, upon delivery, shall field verify our work, and get back to us within 30 days for any needed updates. ECS will review the comments, if the updates are within our scope of work, we will make revisions, and redeliver. Field verification of drawings by client must be done prior to any design or construction or any other use.

2. COMPENSATION AND PAYMENT

a. Deposits. ECS may require a deposit and this is more likely in cases to cover mobilization, travel, housing other field work and related expenses as needed. The deposit will be credited against the total fee proposal and will be paid before mobilization. If deposit is required it shall be so stated in the ESC proposal provided to client.

b. If a Proposal has been issued by ECS, then the compensation to be paid for services rendered shall be as set out in the Proposal provided to client. All billing will be sent to the client that hires and retains ECS whether or not the client is the owner of the buildings and land where services shall be performed by ECS. ECS will be paid for its services by client whether or not Client is the owner of the land and buildings. ECS and client expressly agree that there shall be no condition for payment that client must first be paid by owner (in instances where client is not owner).

c. Invoices. For projects taking less than thirty (30) days for completion, ECS will invoice the total amount of fee and expenses due for completed services on or before final document delivery. In instances where ECS work shall exceed any thirty (30) day period, interim billing shall be sent by ECS to client.

d. Payment. Payment is due thirty (30) days from the date of any invoice whether such invoice shall be interim or final billing. No retainage shall be held by client on any invoices of ECS.

3. ADDITIONAL SERVICES

a. If changes or additional services are required during the course of the project, such modifications and additional services will be subject to additional fees and which shall be stated by ECS in writing in an Additional Services Order. The additional services order will advise the client of any additional fees, expenses and time required to execute the changed or additional services and is subject to all the terms and conditions set forth herein. The additional services order must be signed and returned with seven (7) days of receipt of such document by client.

b. The parties agree that before any additional services are performed by ECS, the parties shall execute a written Additional Services Order.

4. PROFESSIONAL LICENSE

a. ECS does not manage construction, or provide architectural, land surveying, engineering or other services for which a professional license is required, and makes no warranty or guarantee of any kind for any of our drawings or deliverables. If ECS suggests to client that there is a need for providers of licensed services, the client will contract with such entities and such entities shall not be subcontractors of ECS. Billings from any such professionals shall be billed directly to the client.

b. It is agreed that any such licensed services or other services are the sole responsibility of the client and ECS does not accept any responsibility or liability for the acts or omissions of such providers. Any warranties or representations of such professionals shall run directly to the client from such professional. Client agrees that it will not rely on ECS for the accuracy of any representation or warranty of those providing licensed services.

5. INSURANCE

a. ECS and the client agree that each shall maintain commercial general liability insurance and premises liability insurance in the amount of \$2,000,000 for each occurrence and such insurance shall be written with an insurance company licensed in the state where the property is located. Client or owner (of building or land) shall name ECS as an additional named insured on its CGL insurance. It is agreed that the insurance of the client (or owner) shall be deemed to be primary and the insurance of ECS shall be deemed to be excess or secondary. Before commencement of work client (or owner) shall provide ECS a certificate of insurance indicating that ECS has been named on such insurance as an additional named insured.

6. LIMITATION OF LIABILITY

a. ECS and the client agree that total liability for any and all personal injuries, wrongful death, property damage, claims, losses, expenses, damages or claim expenses arising out of the services provided by ECS shall not exceed the total amount of the fee paid by client to ECS. This provision shall inure to the benefit of and also protect all employees and officers of ECS. Such causes include, but are not limited to, negligence, errors, omissions, breach of contract and/or breach of warranty. In no event will ECS, its, officers and employees or successors-in-interest be liable to the client for any indirect, incidental, punitive, or exemplary damages, loss of profits, opportunities or business revenue or other damages.

- b. To the fullest extent permitted by law, client agrees to defend and indemnify ECS for any claims brought by third parties for losses, injuries, wrongful death, property damage or any other claim for damages for any alleged acts or omissions of ECS.
- c. ECS shall not be liable for any delays, interruptions or any damages caused by events beyond its control including delays by clients, suppliers or third parties, fire, flood, war, act of terrorism, industrial disturbances, acts of god, civil commotion, government action or unusually severe weather.
- d. ECS does not provide structural analysis, MEP analysis, or due diligence drawings or documents. Visible and accessible elements are modeled for location and size. Further structural or MEP analysis could be necessary by others.
- e. **STANDARD OF PRACTICE.** Services performed by ECS under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.
- f. **CURE:** ECS, Inc. shall have the right to cure any default, nonconforming service, drawing or material w/in 30 days receipt of written notice specifying the default or nonconformity.

7. CONFIDENTIALITY AND OWNERSHIP OF WORK

- a. Unless otherwise agreed information assembled and determined by ECS during the performance of the services shall be deemed Client's confidential information and ECS agrees to keep confidential and not to disclose, without prior consent of client, such information. It is agreed that ECS may use client's name and name of the project and a general description of ECS services with respect to the project in ECS promotional literature and advertising including any web site of ECS.
- b. ECS will retain ownership of the survey and documentation process including field notes, progress drawings and models and other materials, methods, tools, equipment, technology, software and other proprietary parts of the process used to generate the final product/deliverable as defined in the scope of services. All of the documents generated by ECS used to prepare the final product for client shall remain the property of ECS and shall not be disclosed as stated herein. The final product finished 2D CAD drawings, 3D models 3D scan data, and the drawing files associated with the final product will become the property of the client upon payment in full for all invoices.

8. TERMINATION

- a. ECS or the client may terminate this agreement for failure of the other to fulfill any material conditions under this agreement. In the event of any such breach the other party agrees to give written notice and allow three business days for cure of any such breach.
- b. ECS or the client may terminate this agreement for on 30 days prior written notice.

c. Regardless of the reason for termination, ECS will be entitled to compensation for services rendered and work completed up to the date of written notice of termination. All terms hereof which survive termination (articles 5, 6, 7, 10, and 11) shall remain in full force and effect.

9. ASSIGNMENT

a. Client may not assign rights under this agreement without written consent and such consent shall not be unreasonably withheld. Any assignment without written consent shall be void.

10. DISPUTES

a. The parties shall use their best efforts and good faith to resolve any and all disputes that may arise during the performance of this agreement or thereafter.

b. If the parties are not able to resolve any such dispute, they agree to proceed to nonbinding mediation through the American Arbitration Association (AAA) in Boston. Either party may demand mediation after thirty (30) days of the start of any such dispute.

c. If the parties are unable to settle their dispute at mediation then ECS and client agree to resolve any such dispute by binding arbitration through AAA in Boston. The parties agree to follow the rules of AAA for construction disputes. Either party may file an action to enforce any decision by AAA with a filing in the Suffolk Superior Court in Boston, MA.

d. For any collection matter brought by ECS for the payment of fees for services under this agreement (including any claims for expenses), ECS shall be entitled to the award of reasonable attorney's fees in the event that it is successful in such dispute.

11. AGREEMENT

a. This agreement and terms and conditions are entered into solely between ECS and the client and will not be deemed to create any rights in third parties or to create any obligation of the parties to any third party. This agreement will be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts without giving effect to any choice-of-law rules.

b. No amendment, modification or addendum will be effective unless provided in writing and signed by duly authorized officers of both parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by an authorized officer of the party claimed to have waived or consented. this agreement constitutes the entire agreement between the parties hereto concerning the matters covered herein and supersedes all prior agreements and or understandings between the parties, whether written or oral concerning the matters addressed herein.

c. It shall be the responsibility of the client to assure ECS that the site for the performing of services shall be safe for the employees of ECS. Client shall inform ECS in writing of any known hazards of the premises where services shall be performed.