

Service Agreement dated

2019

Between

Volarex Commercial Consultants Limited ('Supplier')

&

[Name of Customer] ('Customer')

In relation to

[Project]

Services agreement

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This agreement is dated [DATE].

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 13 (LIMITATION OF LIABILITY), CLAUSE 17 (ASSIGNMENT AND OTHER DEALINGS), SCHEDULE 1 (SERVICE DETAILS) AND SCHEDULE 2 (CHARGES, COSTS AND PAYMENT).

PARTIES

(1)[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)

(2)[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

BACKGROUND

(A) The Supplier is in the business of providing construction related consultancy services including but not limited to Quantity Surveying services.

(B) The Customer wishes to obtain and the Supplier wishes to provide the services on the terms set out in this agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions.

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 8.00 am to 5.00 pm on any Business Day.

Change Order: has the meaning given in *Clause 7.1*.

Charges: the sums payable for the Services, as set out in *Schedule 2*.

control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in *Schedule 1*.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to *Clause 5.1(d)*.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: any output of the Services to be provided by the Supplier to the Customer as specified in *Schedule 1* and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Mandatory Policies: the Customer's business policies in *Schedule 3*, as amended by notification to the Supplier from time to time.

Milestones: a date by which a part of the Services is to be completed, as set out in *Schedule 1*.

Services: the services as set out in *Schedule 1*, including services which are incidental or ancillary to such services.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services including any such items specified in *Schedule 1* but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.9 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.10 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

1.11 A reference to **writing** or **written** includes email but not fax.

1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.13 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

2.1 This agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with *Clause 14* (Termination), until the Supplier, acting reasonably confirms to the Customer that the services as specified in Schedule 1 are complete.

2.2 The Supplier shall provide the Services to the Customer in accordance with this agreement from the date it has been signed by all the parties.

3. NOT USED

4. SUPPLIER'S RESPONSIBILITIES

4.1 The Supplier shall use reasonable endeavours to supply the Services , and deliver the Deliverables to the Customer, in accordance with this agreement in all material respects.

4.2 The Supplier shall use reasonable endeavours to meet the Milestones specified in *Schedule 1* but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.

4.3 The Supplier shall appoint a manager for the Services, such person as identified in *Schedule 1*. That person shall have authority to contractually bind the Supplier on all matters relating to the Services (including by signing Change Orders). The Supplier may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

4.4 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises and that have been communicated to it under *Clause 5.1(e)*, 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.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

(a) co-operate with the Supplier in all matters relating to the Services;

(b) appoint a manager for the Services, such person as identified in *Schedule 1*. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);

(c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier including any such access as is specified in *Schedule 1*;

(d) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) required under *Schedule 1* or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete in all material respects;

(e) inform the Supplier of all health and safety and security requirements that apply at the Customer's premises, such requirements are as set out in *Schedule 3*. If the Customer wishes to make a change to those requirements which will materially affect provision of the Services, it can only do so via the change control procedure set out in *Clause 7* (Change control);

(f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards, codes or requirements including industry leading good practice. The Supplier shall have the right (without prejudice to any other remedies it may have) to disconnect or remove any non-compliant equipment and replace it at the Customers expense.

(g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the

Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;

(h) keep, maintain and insure the Supplier's Equipment in good condition and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;

5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

6. NON-SOLICITATION

6.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 24 months after the termination or expiry of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

6.2 Any consent given by the Supplier in accordance with *Clause 6.1* shall be subject to the Customer paying to the Supplier a sum equivalent to 30% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 30% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

7. CHANGE CONTROL

7.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the Supplier's existing charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this agreement.

7.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

7.3 If the Customer wishes to make a change to the Services:

- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
- (b) the Supplier shall, as soon as reasonably practicable after receiving the information at *Clause 7.3(a)*, provide a draft Change Order to the Customer.

7.4 If the parties:

(a) agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or

(b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in *Clause 28* (Multi-tiered dispute resolution procedure).

7.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to *Clause 7.3* on a time and materials basis at the Supplier's daily rates specified in *Schedule 2*.

8. CHARGES AND PAYMENT

8.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.

8.2 Where the Charges are calculated on a time and materials basis:

(a) the Supplier's daily fee rates for each individual person as set out in *Schedule 2* are calculated on the basis of an eight-hour day, worked during Business Hours;

(b) the Supplier shall be entitled to charge an overtime rate of 25% of the daily fee rate set out in *Schedule 2* on a pro rata basis for any time worked by individuals whom it engages on the Services outside Business Hours; and

(c) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.

8.3 The Charges exclude the following which shall be payable by the Customer in advance, following submission of an appropriate invoice:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and

(b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are approved by the Customer in advance from time to time in writing.

8.4 The Supplier may increase the Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

8.5 The Supplier shall invoice the Customer for the Charges at the intervals specified, or on the achievement of the Milestones indicated, in *Schedule 2*. If no intervals are so specified the Supplier shall invoice the Customer at the end of each week for Services performed during that week.

8.6 The Customer shall pay each invoice submitted to it by the Supplier within 7 days of receipt to a bank account nominated in writing by the Supplier from time to time.

8.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:

(a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this *Clause 8.7(a)* will accrue each day at 8% a year above

the Bank of Turkey's base rate from time to time, but at 8% a year for any period when that base rate is below 0%;

(b) the Supplier may suspend all or part of the Services until payment has been made in full.

8.8 All sums payable to the Supplier under this agreement:

(a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

(b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. INTELLECTUAL PROPERTY RIGHTS

9.1 In relation to the Deliverables:

(a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;

(b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and

(c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in *Clause 9.1(b)*.

(i) to its Affiliates and customers; and

(ii) , subject to their entering into appropriate confidentiality undertakings, to third parties for the purpose of the Customer's receipt of services similar to the Services.

9.2 In relation to the Customer Materials, the Customer:

(a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and

(b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.

9.3 The Supplier:

(a) warrants that the receipt, use of the Services and the Deliverables by the Customer shall not infringe any rights of third parties to the extent that infringement results from blatant copying;

(b) shall, subject to *Clause 13* (Limitation of liability), indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from blatant copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

(c) shall not be in breach of the warranty at *Clause 9.3(a)*, and the Customer shall have no claim under the indemnity at *Clause 9.3(b)*, to the extent the infringement arises from:

(i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;

(ii) any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and

(iii) compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.

9.4 The Customer:

(a) warrants that the receipt and use of the Customer Materials in the performance of this agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

(b) shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

9.5 If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this *Clause 9*, the Indemnified Party shall:

(a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at *Clause 9.3(b)* or *Clause 9.4(b)* (as applicable) (**IPRs Claim**);

(b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

(c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Supplier of the Indemnified Party's costs so incurred; and

(d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10. COMPLIANCE WITH LAWS AND POLICIES

10.1 In performing its obligations under this agreement, the Supplier shall comply with:

(a) the Applicable Laws; and

(b) the Mandatory Policies, provided that the Customer shall give the Supplier not less than 3 months' notice of any change to such policies.

10.2 Changes to the Services required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed via the change control procedure set out in *Clause 7* (Change control).

11. DATA PROTECTION

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This *Clause 11* is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor. *Schedule 5* sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

11.3 Without prejudice to the generality of *Clause 11.1*, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.

11.4 Without prejudice to the generality of *Clause 11.1*, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

(a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

(d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

11.5 The Customer consents to the Supplier appointing any reasonably qualified person or company as a

third party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement [substantially on that third party's standard terms of business.

11.6 Not Used.

12. CONFIDENTIALITY

12.1 Each party undertakes that it shall not at any time, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs], except as permitted by *Clause 12.2*.

12.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this *Clause 12*; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

13. LIMITATION OF LIABILITY

13.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £10,000.00 per claim. The Supplier has been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

13.2 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.3 Not Used

13.4 Subject to *Clause 13.2*, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.

13.5 In *Clause 13.4*:

(a) cap. The cap is the greater of £100.00 and ten per cent (10%) of the total charges in the contract year in which the breaches occurred;

(b) contract year. A contract year means a 12-month period commencing with the date of this agreement or any anniversary of it;

(c) total charges. The total charges means all sums paid by the Customer and all sums payable under this agreement in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer; and

(d) total liability. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement.]

13.6 The amounts awarded or agreed to be paid as result of legal proceedings, alternative dispute resolution, liquidated damages or refunds shall count towards the cap on the Supplier's liability under *Clause 13.4*.

13.7 This *Clause 13.7* sets out specific heads of excluded loss and exceptions from them:

(a) Subject to *Clause 13.2*, the types of loss listed in *Clause 13.7(c)* are wholly excluded by the parties, but the types of loss and specific losses listed in *Clause 13.7(d)* are not excluded.

(b) If any loss falls into one or more of the categories in *Clause 13.7(c)* and also falls into a category, or is specified, in *Clause 13.7(d)*, then it is not excluded.

(c) The following types of loss are wholly excluded:

(i) Loss of profits

(ii) Loss of sales or business.

(iii) Loss of agreements or contracts.

(iv) Loss of anticipated savings.

(v) Loss of use or corruption of software, data or information.

(vi) Loss of or damage to goodwill.

(vii) Indirect or consequential loss.

(d) The following types of loss and specific loss are not excluded:

(i) Sums paid by the Customer to the Supplier pursuant to this agreement, in respect of any Services not provided in accordance with this agreement.

(ii) Wasted expenditure

(iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with this agreement. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.

(iv) Losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.

13.8 The Supplier has given commitments as to compliance of the Services with relevant specifications in *Clause 4*. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and

Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

13.9 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 2 months from that date, must identify the event and the grounds for the claim in reasonable detail.

14. TERMINATION

14.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing (as expressly stated in clause 14.1) to do so;

(b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);

(f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

(i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in *Clause 14.1(c)* to *Clause 14.1(i)* (inclusive); or

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.2 For the purposes of *Clause 14.1(a)* **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would

otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clauses 8 and 9.4.

over any 3-month period during the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

14.3 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified to make such payment; or
- (b) there is a change of control of the Customer.

15. CONSEQUENCES OF TERMINATION

15.1 On termination or expiry of this agreement:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

(b) the Customer shall, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;

(c) the Supplier shall on request return any of the Customer Materials not used up in the provision of the Services; and

(d) the following clauses shall continue in force: *Clause 1* (Interpretation), *Clause 6* (Non-solicitation), *Clause 9* (Intellectual property rights), *Clause 12* (Confidentiality), *Clause 13* (Limitation of liability), *Clause 15* (Consequences of termination), *Clause 19* (Waiver), *Clause 21* (Severance), *Clause 23* (Conflict), *Clause 28* (Multi-tiered dispute resolution procedure), *Clause 29* (Governing law) and *Clause 30* (Jurisdiction).

15.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

16. FORCE MAJEURE

16.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;

(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

(f) collapse of buildings, fire, explosion or accident; and

(g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);

(h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and

(i) interruption or failure of utility service.

16.2 Provided it has complied with *Clause 16.4*, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

16.4 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 3 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

(b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party.

17. ASSIGNMENT AND OTHER DEALINGS

17.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

17.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

17.3 Notwithstanding clause 13 in its entirety and without prejudice to any other clause within this agreement, all liability and/or risk for without limitation; any guidance, advice, design, calculations, measurements, schedules or products arising out of any Services provided by the Supplier under this agreement (or any other agreement), which in the opinion of a suitable expert do not reasonably and ordinarily fall within the scope of work of that normally provided by an experienced Quantity Surveyor is held by the Customer. For the avoidance of doubt, no Services provided by the Supplier should be considered legal advice.

17.4 Notwithstanding clauses 17.3, the Supplier shall use its best endeavours to provide its services in an honest and accurate manner to the reasonable skill of an experienced Quantity Surveyor (where such reasonable skill is determined by a suitable expert, as may be required).

18. VARIATION

Subject to *Clause 7* (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. WAIVER

19.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

19.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

20. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21. SEVERANCE

21.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

21.2 If any provision or part-provision of this agreement is deemed deleted under *Clause 21.1* the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. ENTIRE AGREEMENT

22.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

23. CONFLICT

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

24. NO PARTNERSHIP OR AGENCY

24.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

24.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

25. THIRD PARTY RIGHTS

25.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

25.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

26. NOTICES

26.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

(a) delivered by pre-paid next working day delivery service at its registered office (if a company) or the address stated at the head of this agreement.

26.2 Any notice shall be deemed to have been received:

(a) at 9.00 am on the second Business Day after posting or at the time and date recorded by the delivery service.

26.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26.4 A notice given under this agreement is not valid if sent by email.

27. COUNTERPARTS

27.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

27.2 Transmission the executed signature page of a counterpart of this agreement by email (in PDF format) shall take effect as delivery of an executed counterpart of this agreement. If this method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

28. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

28.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Commercial Manager of the Customer and Managing Director of the Supplier shall attempt in good faith to resolve the Dispute;

(b) if the Commercial Manager of the Customer and Managing Director of the Supplier are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to

the Managing Director of the Customer and Managing Director of the Supplier who shall attempt in good faith to resolve it; and

(c) if the Managing Director of the Customer and Managing Director of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 7 days after the date of the ADR notice.

28.2 No party may commence any court proceedings under *Clause 30* (Jurisdiction) (in relation to the whole or part of the Dispute until 14 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

28.3 If the Dispute is not resolved within 14 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 14 days, or the mediation terminates before the expiration of the said period of 14 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with *Clause 30* (Jurisdiction).

29. GOVERNING LAW

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

30. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

**SCHEDULE 1
SERVICES DETAILS**

1. Services [LIST SERVICES PROVIDED UNDER THIS AGREEMENT]
2. [Service Levels:]
3. Customer Materials: [SPECIFY]
4. Customer's Equipment: [SPECIFY]
5. Customer resources to be made available: [SPECIFY]
6. Supplier's Equipment: [SPECIFY]
7. Milestones: [SPECIFY]
8. Timetable: [SET OUT TIMETABLE]
9. Deliverables: [SPECIFY]
10. [Acceptance criteria: [SPECIFY]]
11. Customer's manager: [NAME AND TITLE]
12. Supplier's manager: [NAME AND TITLE]

**SCHEDULE 2
CHARGES, COSTS AND PAYMENT**

Charges

DETAILS OF CHARGES.

~~• **Fixed price:**~~

~~• The total charges for the Services are: £[AMOUNT].~~

~~• The fixed price is calculated as follows: [INCLUDE CALCULATION METHOD, IF APPROPRIATE].~~

• **Time and materials:**

- The daily rate for the Supplier: £60.00 GBP per hour.
- The weekend/overtime rate for the Supplier: £90.00 GBP per hour.

Payment terms

As stated in clause 8.5 & 8.6.

Costs: third party materials and services charged in addition

All costs incurred by the Supplier under clause 8.3 shall be invoiced to the Customer at Cost + 7.50%.

**SCHEDULE 3
MANDATORY POLICIES**

Not Applicable.

SCHEDULE 4

NOT USED.

SCHEDULE 5

Not Applicable.

Signed by Adam Whitehouse for
and on behalf of Volarex
Commercial Consultants Limited

.....

Director

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
CUSTOMER]

.....

Director

END OF DOCUMENT