



**VIRIDIAN CONSULTING ENGINEERS LIMITED**

**TERMS AND CONDITIONS OF ENGAGEMENT**

## 1. DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "The Agreement" means the terms and conditions set out in this document together with any special terms and conditions agreed in writing by the supplier or described in a detailed Scope of Works.
- 1.2 "Customer" means any individual, partnership, limited company, charity or organisation that is ultimately responsible for paying the invoice for the services provided by the Supplier.
- 1.3 "Supplier" means Viridian Consulting Engineers Limited, whose registered office is c/o Mitchell Charlesworth Llp at Centurion House, 129 Deansgate, Manchester, United Kingdom, M3 3WR.
- 1.4 "Introducer" means any individual, partnership, limited company, charity or organisation that requests for works to be carried out on behalf of a Customer.
- 1.5 "Scope of Works/Service" means a statement of work, quotation, e-mail or other similar document describing the services which are to be provided by the Supplier.
- 1.6 "Services" means the work to be carried out by the Supplier in accordance with the Scope of Works/Services under this Agreement.

## 2. GENERAL

- 2.1 This Agreement shall apply to all contracts for the supply of services by the Supplier to the Customer and shall prevail over any other documentation or communication received from the Customer. Any variation to this Agreement shall be ineffective unless agreed in writing by the Supplier.
- 2.2 Upon receipt of a request for Services the Supplier shall submit to the Customer a scope of the proposed works in the form of a quotation. This shall set out full details of the Services which are to be carried out and the fee chargeable against each element. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of this quotation. All quotations shall be subject to this Agreement.
- 2.3 Any additional works which are requested by the Customer or identified during the performance of the Services, will be re-estimated as necessary and attached as an addendum/variation to the project documentation.
- 2.4 As part of the Scope of Works it may become necessary for the Supplier to request services and/or information from statutory or external authorities, such as incoming services provider gas, water, electricity, media, or certification providers. Any additional costs incurred by these authorities, may be required to be recouped by the Supplier and will be in addition to our invoicing as necessary.
- 2.5 Nothing in this Agreement shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Supplier may be entitled in relation to the Services, by virtue of any statute, law or regulation.
- 2.6 Nothing in this Agreement shall affect the customer's statutory rights as a consumer.

## 3. ACCEPTANCE OF THE SERVICE

- 3.1 Any proposal/fee quotation letter issued in conjunction with this Agreement shall remain valid for a period of 90 days. After this time it may become necessary to re-quote or negotiate the fee due to changes in costs and market forces. All variations and changes shall be re-issued in writing and these same terms shall apply.
- 3.2 The Customer shall formally accept the fee proposal either by e-mail or by signing a fee acceptance slip included in the fee letter correspondence. Whenever possible, a purchase order number should be provided. In the absence of said order, instruction must be documented, dated and contain reference to the Viridian Quote number. Acceptance should then be returned to the Supplier via post to its business offices or scanned and emailed back.
- 3.3 The Supplier will not commence work until the Customer has formally accepted the terms of this Agreement as well as the instructions including, but not limited to, a proposed timeline and an estimate of fees which will be set out in an accompanying proposal.
- 3.4 Upon commencement of the Services, the Customer shall provide all details relevant to the project at the earliest opportunity. This shall comprise:
  - All Customer/Introducer business credentials i.e. full name and address for all project correspondence, along with Company VAT registration number and all associated contacts;
  - All known site information including full address and security/access information; and
  - Full details of billing arrangements, including an e-mail address for the person responsible for the payment of invoices.
- 3.5 The service proposal will be the best estimation of time required to meet the Customer's needs. If further time is required, the Customer will be consulted before any further activity takes place.

- 3.6 Should the customer at any point during engagement request any variance in respect of scope or significant technical revision which, in turn shall impact on the suppliers schedule and/or service delivery, then additional costs may be incurred. Such variances shall be requoted and accepted as set out in clauses 3.1. and 3.2 3.6. The Supplier may, at its discretion, commence work prior to receiving a written, signed proposal as defined in 3.1. In these circumstances the Customer agrees that this Agreement shall wholly and solely apply.
- 3.7 The Supplier shall not be liable for failure to complete the work within the proposed timeline.

#### **4. TERMINATION OF AGREEMENT**

- 4.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party 3 months' written notice.
- 4.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- 4.2.1 the Customer commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
  - 4.2.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - 4.2.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - 4.2.4 the Customer fails to pay any amount due under the Agreement on the due date for payment; or
  - 4.2.5 there is a change of control of the Customer.
- 4.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Agreement or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Agreement on the due date for payment, the Customer becomes subject to any of the events listed in clause 4.2.2 to clause 4.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 4.4 On termination of the Agreement, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 4.5 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 4.6 Termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 4.7 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and 5.

#### **5. VIRIDIAN CONSULTING ENGINEERS OUR OBLIGATION TO THE CLIENT**

##### **5.1 *Quality Assurance***

- 5.1.1 The Supplier shall perform the Services with reasonable skill and care and to a reasonable standard in accordance with our accredited quality management system and associated codes of practice.
- 5.1.2 The Supplier accepts all responsibility to fulfil the Services that are within its control, within the agreed timescales and to a satisfactory standard.

##### **5.2 *Documentation and Control***

- 5.2.1 All intellectual property in or arising out of or in connection with the Services, including but not limited to the copyright of documentation produced by Viridian Consulting Engineers Limited, all drawings, reports, specifications and calculations shall remain vested in and owned by the Supplier.
- 5.2.2 Copies of ALL documentation and other correspondence relevant to the progress of the project shall be held on our files and will be retrievable at any time, in order to either support our recommendations, or to assist in the resolution of any disputes or misunderstandings.

### 5.3 Confidentiality and Data Protection

- 5.3.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 5, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or UK Law; and **Domestic UK Law** means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.
- 5.3.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and the Supplier is the processor.
- 5.3.3 Without prejudice to the generality of clause 5.3.1, the Client 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 the Contract.
- 5.3.4 Without prejudice to the generality of clause 5.3.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 5.3.4.1 process that personal data only on the documented written instructions of the Client unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on 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 Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;
  - 5.3.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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);
  - 5.3.4.3 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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);
  - 5.3.4.4 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - 5.3.4.5 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
    - 5.3.4.5.1 the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
    - 5.3.4.5.2 the data subject has enforceable rights and effective legal remedies;
    - 5.3.4.5.3 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
    - 5.3.4.5.4 the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
  - 5.3.4.6 assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 5.3.4.7 notify the Client without undue delay on becoming aware of a personal data breach;
  - 5.3.4.8 at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data; and

- 5.3.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 5.3.5 The Client consents to the Supplier appointing third party processors of Personal Data for the purposes of providing the Services.
- 5.3.6 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 5.3.7 Information pertaining to individual sites/projects will be kept confidential and shared only with relevant design team in order to provide the Services.

#### **5.4 Invoicing and Accounts Procedures**

- 5.4.1 Either in accordance with a pre-determined invoice drawdown schedule and/or upon part or final completion of an element of the Services, an invoice will be issued.
- 5.4.2 Value Added Tax – The Supplier is VAT registered and all invoices will be subject to VAT in accordance with the then current rate.
- 5.4.3 Unless agreed to the contrary with one of the Supplier's directors, the payment terms will be strictly 30 days from the date of the invoice. Any non-settlement within this timescale will result in the Supplier implementing its late payment procedures.
- 5.4.4 The Supplier reserves the right to charge interest for any overdue payments and failure to comply at this stage may ultimately result in legal proceedings.

#### **5.5 Limitation Of Liability**

- 5.5.1 The Supplier has obtained public liability insurance not exceeding £5 million for any one claim. In respect of professional indemnity insurance, the Supplier has obtained cover in respect of its legal liability for individual claims not exceeding £10 million. 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.
- 5.5.2 The Supplier will maintain employer's liability insurance at an appropriate level.
- 5.5.3 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
  - 5.5.3.1 death or personal injury caused by negligence; and
  - 5.5.3.2 fraud or fraudulent misrepresentation.
- 5.5.4 Subject to clause 5.5.3, the Supplier's total liability to the Customer shall not exceed the Purchase Price. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement.
- 5.5.5 This following specific heads of excluded loss are wholly excluded:
  - 5.5.5.1 Loss of profits;
  - 5.5.5.2 Loss of sales or business;
  - 5.5.5.3 Loss of agreements or contracts;
  - 5.5.5.4 Loss of use or corruption of software or data;
  - 5.5.5.5 Loss of or damage to goodwill; and
  - 5.5.5.6 Indirect or consequential loss.
- 5.5.6 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 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 5.5.7 This clause shall survive termination of the Agreement.

### **6. OBLIGATION OF THE CUSTOMER/INTRODUCER TO THE SUPPLIER**

#### **6.1 Co-operation and Information**

- 6.1.1 The Customer or Introducer shall be required to provide all relevant information and assistance to enable the Supplier's consultants to carry out their obligations as defined above and not delay or disrupt the performance by the Supplier of the Services. In the event of a disruption or delay impacting on resources and the delivery of service to others then the company reserves the right to exercise their variance procedures as set out in clause 3.6.

6.1.2 The Supplier cannot be accountable for any information which, for whatever reason, is not forthcoming and prevents the Supplier from being able to provide an adequate or accurate service.

## **6.2 Payment of Fees**

6.2.1 Upon completion of each stage of work as defined in 5.4, an invoice shall be issued and payment shall become due. The receipt of all invoices from the Supplier should be acknowledged at the earliest convenience.

6.2.2 Any disputes in the applications made, or an inability to pay within the required timescales, should be advised to the Supplier at the earliest opportunity.

6.2.3 Whenever possible, payment to the Supplier should be made electronically, in accordance with the bank details provided on the invoice. Alternatively, cheques can be made payable to "Viridian Consulting Engineers Limited" and quoting the relevant 'Invoice No'/Job reference on the reverse of the cheque. Cheques should be posted to: Accounts Payable, Viridian Consulting Engineers Limited, Lloyds House, 18 Lloyd Street, Manchester M2 5WA.

## **7. FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

## **8. FEEDBACK AND COMPLAINTS PROCEDURE**

In conjunction with its quality management system, the Supplier is committed to taking any necessary corrective and preventative actions required to correct any necessary business practices and procedures.

### **8.1 Negative Feedback**

In the event of a complaint being received then the Supplier shall aim to address the matter arising as swiftly and smoothly as possible.

8.1.1 A written record documenting the nature of the complaint shall be produced and every possible step will be taken to bring the matter to a satisfactory conclusion.

8.1.2 If it is identified that a situation could have been averted by our actions, then any relevant procedural changes will be implemented.

### **8.2 Positive Feedback**

Following the final completion of a project, the Customer may be contacted by a member of the Supplier's team who would be grateful to receive any testimonials, case studies, photographs that may be used for marketing purposes.

## **9. SEVERANCE**

If any term or provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **10. GOVERNING LAW AND JURISDICTION**

Any disputes or claims arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the law of England and Wales and any disputes shall be brought exclusively in the English courts.

## **11. THIRD PARTY RIGHTS**

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

## **12. WAIVER**

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. 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.