

|

DATED

(1) TRECO LIMITED

(2) [NAME]

PROJECT AGREEMENT

CONTENTS

No.	Topic	Page
1.	Interpretation	3
2.	Commencement and duration	4
3.	Project Plan	4
4.	Grant or Loan Funding	5
5.	Supplier's obligations	5
6.	Customer's obligations	5
7.	CDM Regulations	6
8.	Change in Services	6
9.	The Goods	7
10.	Delivery	7
11.	Non-delivery	7
12.	Risk/title	8
13.	Charges and payment	8
14.	Quality of Services	9
15.	Warranty for Goods	10
16.	Confidentiality and the Supplier's property	12
17.	Limitation of liability - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS	
	CLAUSE	12
18.	Data protection	13
19.	Termination	13
20.	Force majeure	14
21.	Variation	15
22.	Waiver	15
23.	Severance	15
24.	Entire agreement	15
25.	Assignment	15
26.	No partnership or agency	16
27.	Rights of third parties	16
28.	Notices	16
29.	Dispute Resolution	16
30.	Governing law and jurisdiction	16

THIS AGREEMENT is dated _____ 2016

BETWEEN

- (1) **TRECO LIMITED** incorporated and registered in England and Wales with company number 05751303 whose registered office is at Pyramid House, 1 Tiverton Way, Tiverton, EX16 6TG (the '**Supplier**')
- (2) **(NAME)** incorporated and registered in England and Wales with company number **(NUMBER)** whose registered office is at **(ADDRESS)** (the '**Customer**').

BACKGROUND:-

Refer to project description attached

AGREED TERMS:-

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

Assessment	Means the initial assessment / estimate for the provision of the Services including the supply of the Goods.
CDM Regulations	Construction (Design and Management) Regulations 2015 (SI 2015/51).
Customer's Equipment	Any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.
Customer's Manager	(NAME) shall be the Customer's manager for the Project appointed in accordance with clause 6.1.
Delivery Point	The place where delivery of the Goods is to take place under clause 10.
Document	Includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
Goods	Any goods to be supplied to the Supplier by the Customer (including any part or parts of them) pursuant to this agreement as detailed in the Project Plan.
Pre-existing Materials	All Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement.
Project	The project as described in the Project Plan.
Project Plan	The detailed plan describing the Project and setting out the estimated timetable (including Project Timelines) and responsibilities for the provision of the Services agreed in accordance with clause 3.
Project Timeline	A date by which a part of the Project is estimated to be completed, as set out in the Project Plan.
Services	The services to be provided by the Supplier under this agreement as set out in the Project Plan [together with any other services which the Supplier provides or agrees to provide to the Customer].

Supplier's Equipment Any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

Supplier's Manager **[NAME]** shall be the Supplier's manager for the Project appointed under clause 5.3.

VAT Value added tax chargeable under English law for the time being and any similar additional tax.

- 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) and that person's legal and personal representatives, successors and permitted assigns.
- 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. Words in the singular shall include the plural and vice versa.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7. A reference to **writing** or **written** includes faxes.
- 1.8. Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9. References to clauses and schedules are to the clauses and schedules of this agreement.

2. Commencement and duration

- 2.1. The Supplier shall provide the Services to the Customer on the terms and conditions of this agreement.
- 2.2. The Supplier shall provide the Services to the Customer from the date specified in the Project Plan.
- 2.3. The Services supplied under this agreement shall continue to be supplied until the Project is completed in accordance with the Project Plan or, if earlier, the date this agreement terminates under clause 19.

3. Project Plan

- 3.1. The Project Plan shall be agreed in the following manner:
 - 3.1.1. the Supplier will meet with the Customer to assess the requirement for providing the Services and the Goods;
 - 3.1.2. the Customer shall provide with such information and data as may be required by the Supplier in order for the Supplier to carry out the Assessment;
 - 3.1.3. the Customer acknowledges that the Assessment will be produced in reliance on the information and data which the Customer provides under condition 3.1.1. The Supplier will in no event be liable for any errors or inaccuracies in the Assessment arising from or in connection with the information and data provided by the Customer under condition 3.1.1;
 - 3.1.4. the Customer acknowledges that the Assessment is provided solely to enable the Customer to assess whether it would like to place an order for the Goods from the Supplier. The Assessment provided by the Supplier can only be used with the Goods and must not be used with any other third party products;
 - 3.1.5. upon receipt of the Assessment and the Customer confirming that it would like to proceed with the Services and Project, the Customer and Supplier shall agree a

Project Plan;

- 3.1.6. the Project Plan will set out the requirements and specifications of the Services which the Customer is requesting from the Supplier, including a description of what work is to be done, dates by which each stage of the work is requested to be started and finished and such other information as the Supplier may request to allow the Supplier to prepare a draft Project Plan;
 - 3.1.7. the Project Plan can require the Customer to meet certain obligations, as set out in the Project Plan;
 - 3.1.8. the Supplier shall, as soon as reasonably practicable, provide the Customer with a draft Project Plan; and
 - 3.1.9. the Supplier and the Customer shall discuss and agree the draft Project Plan and when it has been agreed, they shall both sign a copy of it and it shall become subject to this agreement.
- 3.2. Once the Project Plan has been agreed and signed in accordance with clause 3.1.9, no amendment shall be made to it except in accordance with clause 7 and clause 21.

4. Grant or Loan Funding

- 4.1. The Supplier may agree to provide assistance to the Customer in relation to obtaining grant or loan funding which may be used by the Customer to pay towards the charges for the Goods and/or Services supplied under this agreement.
- 4.2. The Supplier shall charge for the assisting with the grant or loan funding applications in accordance with clause 13.
- 4.3. The Supplier shall not be liable to the Customer in the event that the grant or loan funding application is not successful.

5. Supplier's obligations

- 5.1. The Supplier shall use reasonable endeavours to manage and complete and provide the Services in accordance with the Project Plan in all material respects.
- 5.2. The Supplier shall use reasonable endeavours to meet the Project Timelines specified in the Project Plan, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 5.3. The Supplier shall appoint the Supplier's Manager who shall have authority contractually to bind the Supplier on all matters relating to the Project. The Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier's Manager throughout the term of the Project, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.
- 5.4. The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under clause 6.1.7, 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.

6. Customer's obligations

- 6.1. The Customer shall:
 - 6.1.1. **REQUIREMENTS SPECIFIC TO THE PROJECT** – Refer to project plan.
 - 6.1.2. co-operate with the Supplier in all matters relating to the Services;
 - 6.1.3. appoint the Customer's Manager in relation to the Project, who shall have the authority contractually to bind the Customer on matters relating to that Project;
 - 6.1.4. 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 or any of them;
 - 6.1.5. provide, in a timely manner, such other information as the Supplier may require, and ensure that it is accurate in all material respects;

- 6.1.6. be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from [any of] its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this clause 6.1.6];
 - 6.1.7. inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
 - 6.1.8. obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment and the use of the Customer's Equipment in relation to the Supplier'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;
 - 6.1.9. keep and maintain the Supplier's Equipment in accordance with the Supplier's instructions as notified and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and
- 6.2. 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, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 6.3. The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

7. CDM Regulations

- 7.1. Each party undertakes to the other that in relation to the Services, it is aware of its duties and responsibilities under the CDM Regulations and:
- 7.1.1. in the event that the Customer appoints the Supplier as the Principal Contractor, the Supplier warrants, upon the acceptance of that appointment, that it has the skills, knowledge and experience to fulfil its obligations as the Principal Contractor for the Services in compliance with the CDM Regulations;
 - 7.1.2. in the event that the Customer appoints the Supplier as the Principal Designer, the Supplier warrants, upon the acceptance of that appointment, that it has the skills, knowledge and experience to fulfil its obligations as the Principal Designer for the Services in compliance with the CDM Regulations;
 - 7.1.3. if the Customer appoints any other person as Principal Designer or Principal Contractor in relation to the Services, the Customer shall immediately upon that appointment notify the Supplier in writing with details of the appointee(s); and
 - 7.1.4. where the Supplier is not the Principal Designer, the Customer shall ensure that the Principal Designer carries out all its duties under the CDM Regulations, and where the Supplier is not the Principal Contractor, the Customer shall ensure that the Principal Contractor carries out all his duties under the CDM Regulations.

8. Change in Services

If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

- 8.1. If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 8.1.1. the likely time required to implement the change;

- 8.1.2. any necessary variations to the Supplier's charges arising from the change;
 - 8.1.3. the likely effect of the change on the Project Plan; and
 - 8.1.4. any other impact of the change on this agreement.
- 8.2. If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Project Plan and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 21.
- 8.3. Notwithstanding clause 8.2, the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 8.4. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.
- 8.5. The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis, in accordance with clause 13.

9. The Goods

- 9.1. The Customer shall purchase the Goods from the Supplier subject to the terms of this agreement.
- 9.2. Any quotation or estimate is valid for a period of 30 days only from its date, provided that the Supplier has not previously withdrawn it.
- 9.3. The quantity and description of the Goods shall be as set out in the Project Plan.
- 9.4. All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them.

10. Delivery

- 10.1. Unless otherwise agreed in writing by the Supplier, delivery of the Goods shall take place at the premises detailed in the Project Plan.
- 10.2. Any dates specified by the Supplier for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 10.3. Subject to the other provisions of this agreement the Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind this agreement.
- 10.4. If for any reason the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 10.4.1. risk in the Goods shall pass to the Customer (including for loss or damage caused by the Supplier's negligence);
 - 10.4.2. the Goods shall be deemed to have been delivered; and
 - 10.4.3. the Supplier may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 10.5. The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 10.6. Where the Supplier delivers the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of this agreement.

11. Non-delivery

- 11.1. The quantity of any consignment of Goods as recorded by the Supplier on despatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 11.2. The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Customer gives written notice to the Supplier of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 11.3. Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods at the Supplier's discretion.

12. Risk/title

- 12.1. The Goods are at the risk of the Customer from the time of delivery.
- 12.2. Ownership of the Goods shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 12.2.1. the Goods; and
 - 12.2.2. all other sums which are or which become due to the Supplier from the Customer on any account.
- 12.3. Until ownership of the Goods has passed to the Customer, the Customer shall:
 - 12.3.1. hold the Goods on a fiduciary basis as the Supplier's bailee;
 - 12.3.2. store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
 - 12.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 12.3.4. maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.
- 12.4. The Customer's right to possession of the Goods shall terminate immediately if:
 - 12.4.1. the Customer is subject to any of the matters listed in clauses 19.2.4 to 19.2.13 occurs; and/or
 - 12.4.2. the Customer encumbers or in any way charges any of the Goods.
- 12.5. The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.
- 12.6. The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 12.7. Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.
- 12.8. On termination of this agreement, howsoever caused, the Supplier's (but not the Customer's) rights contained in this clause 12 shall remain in effect.

13. Charges and payment

- 13.1. In consideration of the provision of the Services by the Supplier and the supply of the Goods, the Customer shall pay the charges as set out in the QUOTE.
- 13.2. The price for the Goods and Services shall be exclusive of any value added tax which the Buyer shall pay in addition when it is due to pay for the Goods and Services.
- 13.3. The charges are only valid for 30 days from the date on the quotation.

- 13.4. The Customer shall pay the total price to the Supplier (without deduction or set-off) in instalments, as set out in the QUOTE on the Supplier achieving the corresponding Project milestone.
- 13.5. The Supplier may increase its charges if the Customer:
- 13.5.1. changes his instructions; this also includes changing the date of delivery of the boiler – the charges may include all loss costs:- for example the wasted labour, materials, loss of profits, damages, charges and expenses as a result of the temporary cancellation/change of date;
 - 13.5.2. fails to give instructions when requested; and/or
 - 13.5.3. the necessity for extra work, parts or materials becomes apparent after the quotation has been given. If the increased costs exceeds 10 percent a further estimate or quotation will be submitted to the Customer and no further work shall be carried out or parts purchased without the Customer's consent.
- in which case the relevant Project Plan and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 21.
- 13.6. The parties agree that the Supplier may review and increase the charges set out in the QUOTE. The Supplier shall give the Customer written notice of any such increase 7 days before the proposed date of that increase.
- 13.7. The Customer shall pay each instalment due, in full and in cleared funds, to a bank account nominated in writing by the Supplier on the due date.
- 13.8. Where the Housing Grants, Construction and Regeneration Act 1996 (the "Act") applies to this Agreement, not later than five (5) days before the final date for payment of the amount due to the Supplier, the Customer may give written notice to the Supplier which shall specify any amount proposed to be withheld and/or deducted therefrom, the ground or grounds for such withholding and/or deduction and the amount of the withholding and/or deduction attributable to each ground.
- 13.9. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- 13.9.1. charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand; and
 - 13.9.2. suspend all Services until payment has been made in full;
 - 13.9.3. suspend any further deliveries of the Goods until payment is made.
- 13.10. Time for payment shall be of the essence of this agreement.
- 13.11. Handling equipment will need to be arranged by the Supplier to assist with the placement of the Goods.
- 13.12. Additional equipment such as scaffolding will be charged in addition to the Services.
- 13.13. The price for Goods shall include all costs relating to packaging, loading, unloading, carriage and insurance.
- 13.14. Any extra orders that are not stated in the Project Plan will need to be paid in full before delivery of the Goods.
- 13.15. All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 13.15 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 13.16. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer. The Customer will have no right of set off.

14. Quality of Services

- 14.1. The Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards.
- 14.2. The Supplier will make good any defective workmanship for a period of 12 months after completion of the Project provided that notification of the defective workmanship is notified within the said 12 month period.
- 14.3. During the term of this agreement the Supplier will maintain, in force, with a reputable insurance company:
 - 14.3.1. professional indemnity insurance in the amount of not less than £2m
- 14.4. During the term of this installation the Supplier will maintain, in force, with a reputable insurance company:
 - 14.4.1. public liability insurance in the amount of not less than £5m
 - 14.4.2. product liability insurance in the amount of not less than £5m, and
 - 14.4.3. employers liability insurance in the amount of not less than £10m

15. **Warranty for Goods**

- 15.1. Subject to the Customer complying with the remainder of this agreement and the warranty terms of the manufacturers of the Goods, the warranty starts when the Goods have been delivered to the Customer and lasts for the period offered by the manufacturers. Labour warranty lasts for a period of one (1) year from the date of commissioning (the "**Warranty Period**").
- 15.2. The Supplier must receive the signed warranty card ("**Warranty Card**") which the Customer will receive on delivery of Goods within sixty (60) days of the date of the installation of the Goods (the "**Deadline**").
- 15.3. The Customer must return the signature portion of the Warranty Card to the Supplier at the following address: Pyramid House, 1 Tiverton Way, Tiverton, Devon, EX16 6TG.
- 15.4. It is the Customer's responsibility to ensure that the Supplier receives the Warranty Card by or before the Deadline. The Supplier will not acknowledge receipt of the Warranty Card. The Supplier accepts no liability under this warranty if the Customer does not return the Warranty Card by the Deadline.
- 15.5. The Customer must complete the pre-commissioning checklist which is supplied with the Goods.
- 15.6. The Customer must notify the Supplier immediately of any alleged defects as soon as it becomes apparent.
- 15.7. In the event of a claim under warranty occurring during the Warranty Period, the Customer must notify the Supplier by writing at: Pyramid House, 1 Tiverton Way, Tiverton, Devon, EX16 6TG or telephoning on 01884 250790 within the Warranty Period.
- 15.8. The Supplier will make arrangements with the Customer, at the Customer's cost, for one of the Supplier's team to come out and evaluate the defect.
- 15.9. The Customer must retain the Goods at its premises unless requested by the Supplier to return them to the Supplier.
- 15.10. If the evaluation reveals a defect in the Goods, the Supplier, will, at its discretion:
 - 15.10.1. repair the faulty portion of the Goods; or
 - 15.10.2. replace the faulty portion of the Goods.free of charge at the Customer's address or at the Supplier's address.
- 15.11. Should a part no longer be available, it will be replaced with a part that most closely matches it.
- 15.12. The Supplier will charge for technical assistance work not under guarantee which will include the fixed call-out charge, costs of labour and materials required for repair according to the current spares price list.
- 15.13. If the Supplier so requests, the Customer shall, at the Supplier's expense, return the Goods or the part of such Goods which is defective to the Supplier.
- 15.14. The Supplier shall **not** be liable for a breach of any of the warranties in clause 15.10 for:

- 15.14.1. damage caused by accident, abuse, misuse or misapplication; or
 - 15.14.2. incorrect fuel types being used with the Goods;
 - 15.14.3. accident or negligence in use or storage; or
 - 15.14.4. fair wear and tear, neglect or misuse of the Goods; or
 - 15.14.5. loss or damage due to fire, smoke, water, lightning, sunlight, weather, theft or explosion; or
 - 15.14.6. damage caused during the installation process where the Customer has installed the Goods; or
 - 15.14.7. damage caused because the Customer has not used, operated, maintained, inspected or repaired the Goods in accordance with:
 - 15.14.7.1. good and diligent operating and maintenance procedures,
 - 15.14.7.2. the Supplier's recommendations and all instructions provided in the most current manual;
 - 15.14.7.3. and/or any other recommendations the Supplier provides; or
 - 15.14.8. the Customer has not fully complied with the pre-commissioning checklist provided with the instructions and/or manual;
 - 15.14.9. the Customer has not fully complied with the manual when installing the Goods;
 - 15.14.10. the Customer has not used, operated, maintained, inspected or repaired the Goods in accordance with good and diligent operating and maintenance procedures, the Supplier's recommendations and all instructions provided in the most current product data sheet provided by the manufacturer and any other recommendations the Supplier provides; or
 - 15.14.11. loss or damage caused by a third party; or
 - 15.14.12. any other loss or damage which is not caused by a defect in materials; or
 - 15.14.13. the Customer altering or repairing the Goods without the written consent of the Supplier; or
 - 15.14.14. there is minor cosmetic damage during transport (scratches, dents, etc.); or
 - 15.14.15. defects caused by insufficiency or unsuitability of the flue, wiring, water, power or drainage systems, or damage arising from environmental conditions due to climate, etc; or
 - 15.14.16. damage caused by carelessness, negligence, tampering, misuse, or repairs made by unauthorised personnel; or
 - 15.14.17. parts made of ceramic, glass, brass, wood, handles, grips, gaskets, external pipes and any other fittings; or
 - 15.14.18. parts treated in galvanising bath, painted parts subject to wear and tear from fire; or
 - 15.14.19. deformities associated with the natural and physical features of the materials used (any tile discolouring); or
 - 15.14.20. installation and regulation of the equipment; or
 - 15.14.21. plant consultancy and convenience checks; or
 - 15.14.22. maintenance, such as cleaning of filters, nozzles, burners, heat exchangers and circulators; or
 - 15.14.23. anything that may be considered to be normal deterioration through use.
- 15.15. If the Supplier complies with clause 15.10 the Supplier shall have no further liability for a breach of any of the warranties in respect of such Goods.
- 15.16. Any Goods replaced shall belong to the Customer and any repaired or replacement Goods shall

be guaranteed on these terms for the unexpired portion of the 2 year period.

16. Confidentiality and the Supplier's property

- 16.1. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 16.2. The Customer may disclose such information:
 - 16.2.1. to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement; and
 - 16.2.2. as may be required by law, court order or any governmental or regulatory authority.
- 16.3. The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 16.
- 16.4. The Customer shall not use any such information for any purpose other than to perform its obligations under this agreement.
- 16.5. All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

17. Limitation of liability - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 17.1. This clause 17 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
 - 17.1.1. any breach of this agreement;
 - 17.1.2. any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - 17.1.3. any use made by the Customer of the Services or any part of them; and
 - 17.1.4. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 17.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this agreement.
- 17.3. Nothing in this agreement limits or excludes the liability of the Supplier:
 - 17.3.1. for death or personal injury resulting from negligence; or
 - 17.3.2. for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
 - 17.3.3. for any liability incurred by the Customer as a result of any breach by the Supplier of the clause as to title or the warranty as to quiet possession implied by Section 2 of the Supply of Goods and Services Act 1982.
- 17.4. Subject to clause 17.2 and clause 17.3:
 - 17.4.1. the Supplier shall not be liable for:
 - 17.4.1.1. loss of profits; or
 - 17.4.1.2. loss of business; or
 - 17.4.1.3. depletion of goodwill and/or similar losses; or

- 17.4.1.4. loss of anticipated savings; or
- 17.4.1.5. loss of goods; or
- 17.4.1.6. loss of contract; or
- 17.4.1.7. loss of use; or
- 17.4.1.8. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Services.

18. Data protection

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

19. Termination

- 19.1. Subject to clause 19.3 and clause 19.4, this agreement shall terminate automatically on completion of the Project in accordance with the Project Plan.
- 19.2. Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other immediately on giving notice to the other if:
 - 19.2.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or
 - 19.2.2. the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 19.2.3. 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; or
 - 19.2.4. the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or [(being a company) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
 - 19.2.5. 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, its creditors other than 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; or
 - 19.2.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
 - 19.2.7. an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
 - 19.2.8. a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - 19.2.9. a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
 - 19.2.10. 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 its assets and such attachment or process is not discharged within [14] days; or

- 19.2.11. 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 19.2.4 to clause 19.2.10 (inclusive); or
 - 19.2.12. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - 19.2.13. there is a change of control of the other party (as defined in Section 574 of the Capital Allowances Act 2001).
- 19.3. On termination of this agreement for any reason:
- 19.3.1. 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 may submit an invoice, which shall be payable immediately on receipt;
 - 19.3.2. the Customer shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing Materials. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
 - 19.3.3. the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 19.4. On termination of this agreement (however arising) the following clauses shall survive and continue in full force and effect:
- 19.4.1. clause 13;
 - 19.4.2. clause 16;
 - 19.4.3. clause 17;
 - 19.4.4. clause 19; and
 - 19.4.5. clause 30.

20. Force majeure

- 20.1. A party, provided that it has complied with the provisions of clause 20.2, shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement (and, subject to clause 20.3, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event), including but not limited to any of the following:
- 20.1.1. acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - 20.1.2. war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - 20.1.3. terrorist attack, civil war, civil commotion or riots;
 - 20.1.4. nuclear, chemical or biological contamination or sonic boom;
 - 20.1.5. voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
 - 20.1.6. fire, explosion or accidental damage;
 - 20.1.7. loss at sea;
 - 20.1.8. extreme adverse weather conditions;
 - 20.1.9. collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - 20.1.10. any labour dispute, including but not limited to strikes, industrial action or lockouts;
 - 20.1.11. non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and

- 20.1.12. interruption or failure of utility service, including but not limited to electric power, gas or water.
- 20.2. Any party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:
 - 20.2.1. it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - 20.2.2. it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 20.3. If the Force Majeure Event prevails for a continuous period of more than 3 months, either party may terminate this agreement by giving 20 days' written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

21. Variation

Subject to clause 3 and clause 7, no variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

22. Waiver

- 22.1. Failure to exercise, or any delay in exercising, 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 preclude or restrict any further exercise of that (or any other) right or remedy.
- 22.2. No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.
- 22.3. A waiver (which may be given subject to conditions) of any right or remedy provided under this agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.
- 22.4. Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

23. Severance

- 23.1. If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 23.2. If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

24. Entire agreement

- 24.1. This agreement and any documents annexed to it and initialled by the parties constitutes the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 24.2. Each party acknowledges that, in entering into this agreement and the documents annexed to it, it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this agreement or not) other than as expressly set out in this agreement or those documents. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in this agreement.
- 24.3. Nothing in this clause shall limit or exclude any liability for fraud.

25. Assignment

- 25.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 25.2. The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 25.3. Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

26. No partnership or agency

Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. Rights of third parties

A person who is not a party to this agreement shall not have any rights under or in connection with it.

28. Notices

- 28.1. Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or by email, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice to the addresses set out for each party at the top of page 1 or as otherwise specified by the relevant party by notice in writing to each other party.
- 28.2. Any notice shall be deemed to have been duly received:
 - 28.2.1. if delivered personally, when left at the address and for the contact referred to in this clause; or
 - 28.2.2. if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - 28.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - 28.2.4. if delivered by email, on the date and at the time that the email is sent.
- 28.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

29. Dispute Resolution

- 29.1. In the event of a dispute or difference arising between the parties in connection with this Contract, the parties acknowledge that they shall try and resolve the dispute or difference in the first instance by negotiation in good faith.
- 29.2. In the event that the parties are unable to settle the dispute between them by negotiation, the parties may refer the matter to mediation.
- 29.3. If the parties are unable to reach a settlement of the dispute or difference by means of mediation, the parties may refer the matter to be resolved by an independent third party adjudicator in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998.
- 29.4. Clauses 29.1 and 29.2 shall not prejudice either party's right to seek interim injunctive relief or to commence summary judgment proceedings.

30. Governing law and jurisdiction

- 30.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 30.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

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



Signed by Dale Roberts
For and on behalf of
Tresco Limited

)

Signed by

)

Print name

)

For and on behalf of

)

Date

)

PLEASE READ THE ATTACHED TERMS AND CONDITIONS WHICH GOVERN THE RELATIONSHIP BETWEEN TRECOS LIMITED AND YOU, THE CUSTOMER. BY SIGNING AND RETURNING THE LETTER OF AGREEMENT YOU CONFIRM THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND CONDITIONS.