

HARGREAVES ENVIRONMENTAL SERVICES TERMS AND CONDITIONS OF ENGAGEMENT FOR PROVISION OF SERVICES

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| 1 | General Provisions | | 1.2 This Agreement is between the Client and the Company. |
| 1.1 | The following “Standard Terms and Conditions of Engagement” shall apply to “the Services” carried out by “the Company” on behalf of “the Client”. It constitutes the sole legal agreement between the Company and the Client unless, until such time and/or insofar as they are replaced by a written, agreed, signed and subsequent “Contract of Engagement”; | 1.3 | The Client confirms that it is entering into this Agreement wholly on its own behalf and not on behalf of or for the benefit of any other party. |
| | (a) “The Proposal” means the offer of “the Services” by the Company at the request of the Client in the form of a document, email or otherwise in accordance with the terms of this Agreement; | 1.4 | The Client engages the Company to provide the Services to the Client and the Company agrees to provide the Services upon the terms and conditions set out in this Agreement. |
| | (b) “The Services” means the scope of services, duties and activities provided by the Company to the Client as defined in the attached Proposal (which for the avoidance of doubt, form part of this Agreement); | 1.5 | The Company shall in the performance of the Services (as defined in the Proposal), exercise and continue to exercise reasonable skill, care and diligence. |
| | (c) “Commencement Date” means within 21 days of “The Proposal” being accepted by the Client, or within an alternative timescale agreed by the Company and the Client; | 1.6 | The Company shall provide the Services for the sole benefit and use of the Client. |
| | (d) “Applicable Law” means any law which is applicable and in force and binding from time to time (including any common law, judgment, court order, statute, statutory instrument, regulation, directive, European Union decision (insofar as legally binding), by-law, treaty, government circular, code of practice and guidance notes, or instruction or decision by a government authority) relating to either of the parties or the Services supplied under this Agreement; | 1.7 | No person other than the Client may rely on any report or other communication made in writing or otherwise by the Company in relation to the Services save where the Company agrees to extend reliance on the Services or assign the benefit of this Agreement to such person in accordance with the terms of this Agreement. |
| | (e) “The Company” means Hargreaves (UK) Services Ltd t/a Hargreaves Environmental Services (as such name may be changed from time to time), a company incorporated and registered in England and Wales with company number 03735251 whose registered office is at West Terrace, Esh Winning, Durham, County Durham, DH7 9PT; | 1.8 | Any variation to these conditions and any representations about the Services provided shall have no effect unless expressly agreed in writing and signed by a Director of the Company (from time to time). The Client acknowledges and agrees that it has not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) made or given by or on behalf of the Company which is not set out in this Agreement. Nothing in this condition shall exclude or limit the Company’s liability for fraudulent misrepresentation. |
| | (f) The Client” is the person, company, authority, organisation or other body who instructs the Company to carry out the work and shall mean the addressee detailed in the attached Proposal; | 1.9 | No order placed by the Client shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company. In addition, no order shall be acted upon until such time as a written instruction has been received from the Client specifying its agreement to the Proposal and these Standard Terms and Conditions of Engagement |
| | (g) The “Agreement” means these Standard Terms and Conditions of Engagement; | 1.10 | A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. |
| | (h) “Waste Material” means any substance material or object regulated as waste under Applicable Law, including but not limited to Directive 2008/ 98/EC, the Environmental Protection Act 1990, the Hazardous Waste (England and Wales) Regulations 2005 and the List of Wastes (England) Regulations 2005; | 1.11 | Words in the singular include the plural and vice versa and a reference to one gender includes a reference to the other gender. |
| | | 2 | Fees and Payments |
| | | 2.1 | In consideration of the performance of the Services, the Client shall pay to the Company the fees stated in the Proposal. If the Company is required by the Client to provide additional services outside the scope and nature of the Services set out in the Proposal, the Client shall make such additional payments to the Company as may be required in consideration thereof and which shall be notified to the Client by the Company as soon as reasonably practicable. Such payment shall, where appropriate, be calculated by reference to the rates and sums set out in the Proposal. |
| | | 2.2 | Where the Services involve managing any Waste Materials, the price shall (unless expressly stated to the contrary in this Agreement or otherwise in writing by the Company) be inclusive of all costs or charges in relation to carriage, servicing, |

- processing and Landfill Tax (where relevant), but exclusive of any valued added tax (at the prevailing rate).
- 2.3 In the event that the Client requests the Services to be aborted, the Client shall pay to the Company the fees commensurate with the amount of work carried out by the Company. For the avoidance of doubt these fees could include sums relating to the removal and management of all Waste Materials and the preparation of reports or other deliverable items carried out up to the point the services were aborted. All payments payable to the Company under this Agreement shall become due immediately on its termination despite any other provision.
- 2.4 The Client shall make all payments due under this Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.
- 2.5 All monies due to the Company shall be paid in UK £ sterling unless specifically detailed otherwise.
- 2.6 All amounts payable under this Agreement are exclusive of amounts in respect of value added tax (VAT). Unless the Client is exempt, VAT will be applied at the prevailing standard rate on all invoices rendered.
- 2.7 Payment is due on the date of each invoice rendered and accounts must be settled in full within thirty days of the first day of the month following the date of the invoice. Time is of the essence for payment.
- 2.8 No payment shall be deemed to have been received, nor shall any amounts owing be deemed to be discharged, until the Company has received cleared funds.
- 2.9 Where payment is delayed, the Company reserves the right to charge interest on overdue invoices to be calculated at an annual rate of 4% above the prevailing Bank of England base rate for each day they are overdue. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 3 Liability Limitations**
- 3.1 Subject to such insurance being available at commercially reasonable rates and terms, the amount of Professional Indemnity Insurance to be carried by the Company for each claim or series of claims arising from the same original cause shall be £5 million unless otherwise stated in the Proposal.
- 3.2 The Company's total liability for any claim whether in contract or in tort in negligence or for breach of statutory duty or otherwise relating to the provision of all of the Services under this Agreement shall not exceed the lower of £1 million or the amount payable for the Services under this Agreement.
- 3.3 The Company shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any economic (including without limitation losses calculated by reference to profit, contract, goodwill, business, income, production or accruals), special or other indirect or consequential loss arising under or in connection with this Agreement.
- 3.4 The Company's liability for any claims shall be further limited to such sum as it would be just and equitable for the Company to pay having regard to the extent of the Company's responsibility for the loss or damage suffered as a result of each claim or series of claims in question ("the loss and damage") and on the assumption that:
- (a) all other consultants and all contractors shall have provided contractual undertakings on terms no less onerous than those applying to the Company in respect of the carrying out of their obligations;
- (b) there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage; and
- (c) all other consultants and all contractors have paid, or agreed to pay, to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.
- 3.5 No action or proceedings under or in respect of this Agreement shall be commenced against the Company after the expiry of a period of six years from the date of completion of the Services or such earlier date as may be prescribed by law.
- 3.6 The Client shall indemnify and keep indemnified the Company against any losses, claims or damages, demands, proceedings, costs, expenses or charges of any kind that the Company may suffer or incur directly or indirectly arising from or in connection with the provision of the Services as a result of the Client's non-compliance with Applicable Law. The limitations which shall apply in relation to the Services are as set out in the Proposal Letter or are otherwise available on request.
- 3.7 Subject to insurance being available at commercially reasonable rates, the amount of Public Liability Insurance to be carried by the Company is not less than £10 million unless otherwise stated in the Proposal.
- 4 The Services**
- 4.1 The Company shall supply the Services to the Client in accordance with the Proposal in all material respects.
- 4.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Client in any such event.
- 4.4 The Company warrants to the Client that the Services will be provided using reasonable care and skill. Notwithstanding any obligations which the Client may otherwise have under any law or contract, nothing in this Agreement or the Proposal is to be interpreted as a warranty or representation by the Company other than to exercise reasonable skill, care and diligence.
- 5 Client's Obligations**
- 5.1 The Client shall:
- (a) ensure that any information it provides to the Company in contemplation of, and in connection with performance of, the Services is complete and accurate;
- (b) comply with all Applicable Law and co-operate with the Company in all matters relating to the Services;
- (c) provide the Company, its employees, agents, consultants and subcontractors, with access to the

- Client's premises, office accommodation and other facilities as reasonably required by the Company;
- (d) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate;
- (e) where relevant to the Services, the Client shall give the Company adequate notice of any danger or hazard (or potential danger or hazard of which they are aware) which might cause death or injury to their employees and of which the Client ought reasonably to be aware;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to commence.
- 5.2 Where the Services involve managing, carrying or otherwise handling any Waste Material, the Client warrants and agrees that:
- (a) at the time of collection or delivery the Waste Material shall correspond to the specification and quantities within the Proposal. If, in the opinion of the Company's authorised representative, they do not do so, then the Company shall have the right to refuse the material;
- (b) all Waste Materials are properly and accurately described and labelled by the Client unless the Proposal provides that the Company shall undertake this responsibility and the Client shall provide to the Company any information and documentation as may be required to enable the Company to comply with Applicable Law including where applicable transfer notes and consignment notes to accompany Waste Material;
- (c) the container and/or packaging of the materials shall be suitable for their transport and storage in accordance with Applicable Law and the Client accepts sole responsibility for this. If, in the opinion of the Company's authorised representative, they are not suitable then the Company reserves the right to refuse to remove the material;
- (d) notwithstanding the provision of the Services by the Company, the Client shall continue to take all such steps as are necessary to comply with its obligations under all Applicable Law relating to Waste Materials which are the subject of this Agreement, including but not limited to Section 34 of the Environmental Protection Act 1990 and the Hazardous Waste (England and Wales) Regulations 2005, and acting reasonably the Client shall notify the Company's authorised representative in writing of any information it requires in order to comply with such obligations. The Company accepts no liability whatsoever for any failure by the Client to request such information or to otherwise fail to comply with its obligations under Applicable Law.
- (e) The Client acknowledges that it remains responsible for the proper management, in accordance with all Applicable Law, of any Waste Material on any site under the Client's control.
- (f) Where any Waste Material which is being disposed of or recovered is rejected by the recovery or disposal point, or is disposed of or recovered in error, by reason that the material does not correspond fully, or in part, with the description, analysis, or declaration provided by the Client, then the Client will bear any additional or abortive costs, including specifically, but not limited to, haulage, alternative disposal or recovery, and landfill tax reasonably incurred by the Company in such erroneous disposal or recovery, returning the material to its origin point and/or sourcing alternative disposal or recovery.
- 5.3 Where the Company provides Services of a consultancy or advisory nature under this Agreement, for the avoidance of doubt, the Company shall not assume title in, or ownership or control of, any Waste Materials investigated, assessed, or otherwise handled by or on behalf of the Company for the purposes of providing such services. The Client shall be responsible for any disposal of such materials and for all associated costs.
- 5.4 Where relevant to the Services:
- (a) The Client acknowledges that the Company is providing a contractual service to the Client and further acknowledges the risk that exploration, investigative or remedial methods on any site involve an inherent risk of contamination of previously uncontaminated soils and waters including the potential migration of contaminants present on or beneath the surface or in the vicinity of the relevant site and that any seal to any boring well, monitoring point or similar may be imperfect despite reasonable precautions to ensure that it is secure. The Company shall not be liable for any contamination arising from any exploration, investigation or remediation associated with the Services where such contamination occurs due to the nature of the ground of the site or materials in or on the ground at the site.
- (b) In the event that the Company's personnel visit any site owned occupied or controlled by the Client in connection with the Proposal or the Services, the Company's personnel shall be regarded at the Client's visitors and the Company shall not be deemed to have assumed the role of occupier or have otherwise assumed control or responsibility for the site, or for any persons on it.
- (c) Without prejudice to the generality of Clause 5(a), the Client shall be responsible for providing relevant information about its site or sites as may be required in connection with the Services including in relation to underground services and structures, and also including any restrictions or limitations on access of which the Client should be reasonably aware. Any costs associated with damage to underground services and structures not previously notified to the Company by the Client in writing shall be the Client's sole responsibility.
- (d) Save to the extent provided in the Proposal, the Company is not responsible under this Agreement or otherwise for advising on matters relating to asbestos, pollution or contamination, or any fungus, mould or spore.
- 5.5 If the Company's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):
- (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Company's performance of any of its obligations;

- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this [clause 5\(c\)](#); and
- (c) the Client shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Client Default.

6 Collateral Warranty and Assignment

- 6.1 If requested by the Client, the Company will consider (but shall not be required to enter into) the provision of warranty agreements to third parties in a form to be agreed by the Company. The provision of such agreements will normally be limited to a funder, a first purchaser and a first tenant, and will be assignable no more than twice. A fee may be payable.
- 6.2 The Company may assign this Agreement or any part of it to any person, firm or company as may be required to assist in the delivery of the agreed Services.
- 6.3 Nothing within this Agreement shall be regarded as a commitment by the Company to accept, adopt or participate in the novation or transfer of this Agreement to any third party. This Agreement shall not be capable of being assigned, novated or transferred by the Client without the prior written approval of the Company being obtained.

7 Confidentiality

- 7.1 A party (receiving party) 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 receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, advisors, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under this Agreement, and shall ensure that such employees, advisors, agents and subcontractors comply with the obligations set out in this clause as though they were a party to this Agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Clause 7 shall survive termination of this Agreement.

8 Termination

- 8.1 Without limiting its other rights or remedies, the Company may terminate this Agreement by giving the Client two months' written notice;
- 8.2 Without limiting its other rights or remedies, 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 and (if such a breach is remediable) fails to remedy that breach within ten business days of that party being notified in writing to do so;
 - (b) the Client fails to pay any amount due under this Agreement on the due date for payment and fails to pay all outstanding amounts within five business days after being notified in writing to do so;

- (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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (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 its creditors;

- (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) 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;

- (f) the other party (being an individual) is the subject of a bankruptcy petition or order;

- (g) 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;

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

- (i) 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;

- (j) 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;

- (k) 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 8.2(b) to clause 9.2(j) (inclusive);

- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

- (m) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 8.3 For the purposes of clause 8.2(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

<p>(b) any of the obligations set out in clause 5,</p> <p>over 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.</p>	<p>11.2</p>	<p>All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company. The Company grants (or if such grant cannot legally take place until a later date, agrees to grant) to the Client with immediate effect an irrevocable non-exclusive licence to copy and make full use of any material prepared by or on behalf of the Company for any purpose relating to the Services provided under this Agreement.</p>
<p>9 Force Majeure</p> <p>9.1 For the purposes of this Agreement, "Force Majeure Event" means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.</p> <p>9.2 The Company shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.</p> <p>9.3 The Company reserves the right to defer the Commencement Date or the performance of the Services where it is unable to perform its obligations under this Agreement as a result of a Force Majeure Event.</p> <p>9.4 If the Force Majeure Event prevents the Company from providing any of the Services for more than 6 months, the Client shall have the right to terminate this Agreement by giving 30 days written notice to the Company.</p>	<p>11.3</p> <p>12 Cost Estimates</p> <p>12.1</p> <p>13 Additional Provisions</p> <p>13.1</p> <p>13.2</p> <p>13.3</p> <p>14 Rights under this Agreement</p> <p>14.1</p> <p>14.2</p> <p>14.3</p>	<p>All materials, equipment, documents and other properties are the exclusive property of the Company.</p> <p>Unless specifically stated to the contrary, any budgetary opinion offered by the Company in the Proposal is to be regarded by the Client as broad guidance only and shall not constitute a binding obligation or commitment on the Company.</p> <p>Additional Provisions</p> <p>Failure or delay by the Company in enforcing or partially enforcing any provision of this Agreement shall not be construed as a waiver of any of its rights under this Agreement.</p> <p>Any waiver by the Company of any breach of, or any default under, any provision of this Agreement by the Client shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.</p> <p>A person who is not a party to this Agreement has no right to enforce any term of this Agreement.</p> <p>Rights under this Agreement</p> <p>By receipt and in the absence of a written declaration to the contrary, these initial "Standard Terms and Conditions of Engagement", all as scheduled above, are accepted by the Client and deemed to constitute a contract between the Client and the Company for the delivery of the Services.</p> <p>Each right or remedy of the Company under this Agreement is without prejudice to any other right or remedy of the Company whether under this Agreement or not.</p> <p>If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise enforceable by law, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby.</p>
<p>10 Dispute Resolution</p> <p>10.1 In the event of a dispute, which proves unresolvable by discussion and negotiation between duly authorised representatives of each party, the Company and the Client hereby jointly agree to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing ("ADR notice") to the other party requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will commence not later than 10 days after the date of the ADR notice.</p> <p>10.2 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings, adjudication or arbitration. All costs, other than legal costs associated with the process shall be borne in equal share by the Company and the Client unless otherwise determined by an adjudicator, expert, mediator or court of competent jurisdiction.</p>	<p>15 Jurisdiction</p> <p>15.1</p>	<p>Jurisdiction</p> <p>The provision of the Services shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction with regard to all matters arising therefrom.</p>
<p>11 Intellectual Property</p> <p>11.1 For the purposes of this Agreement, Intellectual Property Rights means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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. For the avoidance of doubt, Intellectual Property does not include any drawings, reports, specifications, bills of quantities, calculations, software, algorithms, work processes and graphic images and any other documents and information provided by or on behalf of the Client to the Company.</p>		