

27 May 2022

Tony Hillier,  
Middlefields Ltd.,  
Thames House,  
Roman Square,  
Sittingbourne,  
Kent,  
ME10 4BJ.

Our Ref:

Dear Tony,

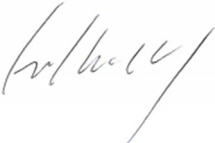
***RE: LAND OFF SHEPPEY WAY, IWADE, KENT:  
FEE PROPOSAL FOR ARCHAEOLOGICAL MITIGATION (STRIP, MAP AND SAMPLE)***

Further to our recent correspondence, I have pleasure in providing a methodology and costs for the archaeological mitigation work required for the proposed development at Land off Sheppey Way, Iwade.

I trust that this fee proposal meets your expectations, but should you require any further information then please do not hesitate to get in touch.

Yours sincerely,

**Chris Morley**  
Technical Director

A handwritten signature in black ink, appearing to read 'Chris Morley', written in a cursive style.

**SLR Consulting Limited**

## 1. SCOPE

Following our negotiations with the Archaeological Officer, on your behalf, a programme of archaeological mitigation in the form of a targeted Strip, Map and Sample (SMS) investigation has been agreed as a proportionate response to Condition 18 attached to grant of consent for application reference **19/505215/FUL**.

It has been agreed that the following areas will be subject to SMS:

- a rectangular area within the north-west of the site, covering 498 m<sup>2</sup> (**Area A**); and
- an L-shaped area within the centre and south-east of the Site, covering 1005 m<sup>2</sup> (**Area B**).

A contingency will be included to allow for the extension of those areas in proportionate increments should significant archaeological remains be found to extend beyond their bounds. Any such requirement would be discussed with the client in advance. The remainder of the Site would otherwise be subject to no further archaeological works.

## 2. METHODOLOGY

Areas A and B would be machine-excavated until either the natural substrate or the upper horizon of any archaeological remains was identified. Should any archaeological remains be identified, these would then be sample excavated, consistent with the provisions of the WSI, and sufficient to determine their significance.

Differential GPS (DGPS) equipment will be used for all survey on site, including the setting out of area locations (per the agreed area plan), and the spatial recording of baselines, datums, spot heights and archaeological contexts.

One or more visits to the Site may be required to monitor the progress of the works and to meet with consultees/project managers. We would ensure that your best interests are represented throughout the process, and that the works are undertaken in a timely manner and to the required standard.

## 3. OUR TEAM

SLR resources field projects through a variety of mechanisms, including the use of in-house personnel and/or subcontracted services; the latter are drawn from professionally accredited approved suppliers with whom we have a strong working relationship and a track record of successful collaboration. The decision as to the most appropriate resourcing strategy for any given project is made bespoke, based upon a variety of factors. However, the overriding concerns are always to provide optimum value for our clients and to ensure adherence to project timescales.

## 4. COMMERCIAL

**Table 1** below sets out the fees for the required archaeological inputs. Contingency fees are provided in **Table 2**.

Item	Description	Fees
1	<b>Strip, Map and Sample Fieldwork</b> <i>Including project set up, staff, travel, and associated costs</i>	£9,950 + VAT
2	<b>Plant and Welfare Hire</b> <i>Including 20T digger, 9T dumper and groundhog unit</i>	£4,500 + VAT
3	<b>Post-excavation Reporting</b> <i>Including finds and sample processing and report production</i>	£3,500 + VAT
4	<b>Fieldwork Management</b> <i>Including project oversight and monitoring, consultee negotiations, attendance at one site meeting, quality assurance and review of reporting</i>	£2,950 + VAT
<b>Total</b>		<b>£20,900 + VAT</b>

**Table 1: Schedule of Fees for Required Archaeological Input**

Any further required meeting attendance would be charged at SLRs standard hourly rates + travel and reasonable expenses, all of which would be agreed in advance with the client as required.

Invoicing would be monthly in arrears for payment within 28 days. VAT and any other relevant taxes would be added at the prevailing rate.

Item	Description	Description	Estimated Fees
5	<b>Water pump</b> (1 x week's hire)	<i>Hire and operation. Does not include the cost of any required licenses.</i>	£250
6	<b>Environmental Specialist Analysis</b>	<i>Daily rate for specialist analysis of environmental material, e.g. plant macros, small animal bone (if required)</i>	£255
7	<b>Pollen and Mollusc Sample Analysis</b>	<i>Per sample costing for specialist analysis of materials (if required)</i>	£90-170
8	<b>Burial excavation</b> (per individual)	<i>Includes excavation, recording, reporting and archiving. Not anticipated to be required.</i>	£1,500
9	<b>C14 dating</b>	<i>Per sample costing for specialist dating of materials (if required)</i>	£450
10	<b>Archiving</b>	<i>Per additional box (if required)</i>	£150

**Table 2: Schedule of contingency fees**

## 5. ASSUMPTIONS

The costs summarised above are contingent upon the following assumptions:

- the client would provide CAD versions of the proposed site layout and topographic survey;

- the client would provide up-to-date information regarding on-site services and any other site constraints, including ecology and Tree Preservation Orders;
- no specific procedures or mitigation measures relating to protected species (notably newts, reptiles, badgers, bats, nesting birds etc.) would be required;
- the site is in a suitable condition for the undertaking of the archaeological fieldwork, and uninhibited and continuous access would be possible for both plant and archaeological personnel;
- no specialist health and safety equipment would be required due to site contamination;
- the nature of the archaeological and geoarchaeological remains is consistent with that discussed;
- the areas would be excavated to a standard average depth of c.0.5m, with no baulk exceeding a safe working depth of c.1.0m, contingent upon ground conditions;
- fencing would not be required to be erected around the open areas, and the area edges would not require shoring or stepping back;
- SLR would not be held liable for any crop damage resulting from the investigation, or responsible for any compensation payments associated with crop damage/loss;
- SLR would not be held liable for reinstatement of land drains / repair of services accidentally damaged during the works;
- full excavation of complex structures, significant industrial deposits/structures, or detailed excavation/sampling of waterlogged organic or palaeo-environmental remains would not be required, only proportionate sample excavation sufficient to satisfy the evaluation objectives;
- no funerary remains, e.g. burials, cremations, deposited human remains etc., are present;
- no 'treasure' is present, i.e. such as would be subject to the Treasure Act;
- no specialist conservation or analysis of finds, samples or other materials generated as part of the site archive would be required;
- no significant delays or costs are incurred in respect of exceptional weather events e.g. flooding, snow cover etc., such that it becomes unworkable;
- any licenses required in relation to the pumping of water from the areas (if required) would be provided by the client;
- no fees or charges would be made by the local planning authority, or its archaeological advisor, e.g. for consultation advice, review of reports, monitoring visits etc; and
- the CDM Regulations do not apply.

## Terms and Conditions

This proposal is based on the assumption that the work described would be carried out in accordance with SLR's Standard Conditions of Engagement for Professional Services (V12), a copy of which is attached. Your attention is drawn in particular to Section 11 of the Conditions, which sets out SLR's limit of liability. With the exception of liability for death or personal injury caused by SLR's negligence or for fraudulent misrepresentation, which shall be unlimited, the limit of liability would be ten times the total amount of SLR's fees (excluding expenses) associated with an instruction in relation to this fee proposal.

## Insurances

SLR carries employers, public liability and professional indemnity insurance (PI) and confirms that the cover in its PI insurance policy would be adequate to meet liabilities associated with the proposed scope of work set out in this proposal. A copy of the insurance certificate can be provided on request.

## Copyright Indemnity

This proposal is based on the assumption that copyright in any designs, drawings or other material provided to SLR by the Client, or any person acting on behalf of or under instruction from the Client, which SLR is required to use, amend or incorporate into its own material is either owned by or licensed to the Client and is licensed or sublicensed to SLR. SLR accepts no liability for infringement of any third party's intellectual property rights from the use of such documents in the undertaking of any tasks arising from this proposal unless it has been expressly notified that the Client does not own or licence the relevant copyright.

## 6. TIMESCALES

At present, assuming prompt commission, we would have capacity to commence work in July 2022.

The fieldwork would be anticipated to require circa ten working days on site, though this would be subject to change pending the emerging results and the site conditions.

An interim report would be anticipated to be available within one week of the completion of the fieldwork, with a full report within six weeks (subject to scientific dating/analysis timescales).

## 7. FEEDBACK

To continue to deliver the highest quality service and maintain strong client relationships, SLR looks to promote and encourage open channels of communication with all its clients. Feedback on the team's performance, deliverables and service are a valuable part of this and SLR would welcome feedback via <https://slrconsulting.com/contact/feedback>.

**SLR CONSULTING LTD**

**CONDITIONS OF ENGAGEMENT  
FOR PROFESSIONAL SERVICES**

SLR Ref: EUCoE  
Version No: 12  
Mar 2021



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## 1 DEFINITIONS

### 1.1 The following definitions shall apply throughout this Agreement:

<b>Agreement</b>	this Agreement comprises SLR's Proposal, the Form of Agreement (if a Form of Agreement is signed by SLR and the Client) or other written agreement between the Parties, these Conditions of Engagement and any agreed revisions thereto;
<b>Client</b>	as described in the Proposal or Form of Agreement or a party on whose behalf SLR is instructed to carry out the Services;
<b>Client Project Manager</b>	the person designated by the Client pursuant to Condition 5.1 to manage the contract as the Client's representative;
<b>Condition, Conditions</b>	Individual conditions within or the whole of these Conditions of Engagement;
<b>Confidential Information</b>	<p>all confidential information (however recorded, preserved or disclosed) disclosed by a Party to the other Party after the date of this Agreement including but not limited to:</p> <ul style="list-style-type: none"><li>(a) The terms of this Agreement</li><li>(b) Any information that would be regarded as confidential by a reasonable business person relating to:<ul style="list-style-type: none"><li>(i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of either the Client or SLR</li><li>(ii) operations, processes, product information, know-how, designs, trade secrets or software of either the Client or SLR</li><li>(iii) any information or analysis derived from Confidential Information;</li></ul></li></ul>



- (c) Any information which the disclosing Party defines as confidential.

**Contractor** a person or firm appointed by the Client to execute work required in respect of the Project;

**Deliverables** Reports, drawings, designs, calculations, documents, graphical representations or other material, whether in electronic or hard copy format provided by SLR to the Client as part of the Services;

**Insolvency** a condition which occurs when a Party:

- (a) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (b) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that Party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
- (c) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
- (d) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
- (e) takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts; or
- (f) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security; or
- (g) has any distress, execution or sequestration or other such process levied or enforced on any of its assets [which is not discharged within 14 days of it being levied]; or

(h) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this definition;

<b>Mediator</b>	an independent person appointed under Condition 13.2 to conduct a non-binding procedure towards resolving a dispute or difference;
<b>Form of Agreement</b>	A document, signed by both Parties, which summarises all contractual matters and references all relevant contractual documentation; and any agreed amendments thereto;
<b>Notice</b>	a notice given in accordance with Condition 12;
<b>Other Consultants</b>	consultants and specialist advisers, other than SLR, appointed or to be appointed by the Client to perform professional services in respect of the Project;
<b>Party or Parties</b>	Either of the Client or SLR Consulting Ltd - together the Parties;
<b>Project</b>	the project specified in the Proposal or Form of Agreement in respect of which SLR is providing the Services;
<b>Project Manager</b>	the person designated by SLR under Condition 4.3; or their replacement appointed in accordance with that Condition;
<b>Proposal</b>	SLR's proposal(s) to the Client incorporating a description of the Services to be provided, the cost of those services and the fee rates where appropriate; and any agreed amendments thereto;
<b>Services</b>	the totality of advice and services to be provided by SLR under the Agreement;
<b>Site(s)</b>	any location(s) outside SLR's premises where SLR personnel are engaged in undertaking their professional activities as part of

providing the Services including, for the avoidance of doubt, the Client's offices;

**SLR**

SLR Consulting Limited and Associated Companies (defined in accordance with the definition of 'associated companies' given in Section 449 of the UK Corporation Tax Act 2010);

**Sub-Consultant**

a third party contracted to SLR to provide support in the delivery of the Services.

## 1.2 Headings and Interpretation

- a) Headings are explanatory and do not form part of the Conditions.
- b) All capitalised terms used in these Conditions shall have the same meaning throughout the Agreement.

## 2 TERM OF APPOINTMENT

### 2.1 Commencement of Appointment

The effective date of the appointment of SLR shall be the date of the Client's written instruction to proceed with the Services, the date upon which any Proposal or Form of Agreement was signed by the Parties or the date when SLR shall have first commenced performance of the Services, following written instructions or instructions issued by e-mail whichever is the earlier.

### 2.2 Completion of Appointment

Unless suspended or terminated in accordance with this Agreement, the appointment of SLR shall expire when SLR has completed the performance of the Services and received payment of all fees and disbursements properly due under this Agreement.

### 2.3 Termination by the Client

The Client may terminate the appointment of SLR at any time by not less than two (2) weeks' Notice in respect of all or any part of the Services subject to Condition 6.4.

## 2.4 Suspension by the Client

- a) The Client may at any time by not less than two (2) weeks' Notice require SLR to suspend the performance of all or any part of the Services for a specified or unspecified period.
- b) On notice of suspension of all or any part of the Services SLR shall cease such suspended Services in an orderly and economical manner compatible with a possible order to restart.
- c) If the postponement of the performance of all or any part of the Services exceeds the specified period, or in the absence of such specification three months in aggregate, SLR may by Notice treat the Services or that part of the Services as having been terminated by the Client and the appointment of SLR in respect of all or any part of the Services affected shall be automatically terminated and treated as if the Client had terminated the Agreement in accordance with Condition 2.3.
- d) In the event of such suspension, the Client shall pay SLR in accordance with Condition 6.4
- e) If the Client requests SLR by Notice to recommence the suspended Services prior to any Notice served under (c) above, SLR shall comply with such Notice as soon as reasonably practicable. The Client shall pay SLR's reasonable costs for so doing.

## 2.5 Termination by the Client following breach of this Agreement by SLR

In the event of a material breach of this Agreement by SLR, the Client may give two weeks' Notice of its intention to terminate the appointment of SLR setting out the acts or omissions of SLR relied upon as evidence of such breach. If SLR does not take expeditious steps to repair the breach (to the reasonable satisfaction of the Client) during the notice period, the Client may forthwith on the expiry of the notice period immediately terminate the appointment of SLR by a final written notice.

## 2.6 Termination by SLR following breach of this Agreement by the Client

In the event of a material breach of this Agreement by the Client (including but not limited to any failure by the Client to pay any invoices when due in accordance with Condition 6) SLR may give two (2) weeks' Notice of its intention to terminate this Agreement setting out the acts or omissions of the Client relied upon as evidence of such breach. If the Client does not, to the reasonable satisfaction of SLR, take expeditious steps to repair the breach during the notice period SLR may forthwith on the expiry of the notice period immediately terminate this Agreement by giving a final written Notice.

## 2.7 Suspension by SLR

Upon the occurrence of any circumstance beyond the control of SLR (including but not limited to any failure by the Client to pay any invoices when due in accordance with Condition 6) which is such as to prevent or significantly impede the performance by SLR of the Services under this Agreement, SLR may without prejudice to any other remedy and upon not less than two weeks' Notice, suspend for a period of up to three months the performance of the Services or withhold issue of Deliverables under this Agreement. If, after the expiry of this period, SLR is still prevented from performing such Services for reasons beyond SLR's control, SLR may terminate the appointment forthwith by a further Notice in respect of all or any part of the Services affected.

## 2.8 Insolvency

Either Party may, by giving written notice, immediately terminate this Agreement in the event of Insolvency of the other Party.

## 2.9 Accrued Rights

Termination of SLR's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either Party to this Agreement.

## 2.10 No Effect

Termination of this Agreement shall not affect those provisions which expressly or impliedly survive termination.

### 3 ASSIGNMENT

- a) The Client shall not assign, charge, subcontract or transfer any benefit or obligation under this Agreement without the prior written consent of SLR which shall not unreasonably be withheld or delayed.
- b) SLR may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities to an SLR affiliate or subsidiary under this Agreement at any time.
- c) SLR shall not assign, charge, subcontract or transfer any benefit or obligation under this Agreement outside of an SLR affiliate or subsidiary without the prior consent of the Client which shall not be unreasonably withheld or delayed.

### 4 OBLIGATIONS OF SLR

#### 4.1 Provision and Timing of Services

SLR agrees to provide the Services in accordance with this Agreement and at such times and locations as the Parties shall agree, subject to any schedule and meeting requirements. SLR will use reasonable endeavours to provide the Services in accordance with any timetable agreed between the Parties, but any such dates shall be estimates only.

#### 4.2 Skill and Care

SLR shall exercise the reasonable skill, care and diligence in the performance of the Services that would reasonably be expected from a consultant qualified in the provision of such services.

#### 4.3 Project Manager

SLR shall designate a Project Manager who shall have authority to make decisions on behalf of SLR under this Agreement.

SLR may, at its discretion, change its Project Manager to another individual with similar skills and experience without the approval of the Client but shall notify the Client within 7 days of such change.

#### 4.4 Sub-Consultants

SLR may sub-contract the performance of any part of the Services to a Sub-Consultant. SLR shall be responsible for the performance and the payment of any such Sub-Consultant.

## 4.5 Information

SLR shall make all requests to the Client for information, assistance or decisions in a timely fashion.

## 4.6 Authority

If the Client so instructs and gives SLR the authority to issue instructions to a Contractor, SLR shall not (save in the event of any emergency) issue instructions to any Contractor, the effect of which would be to incur additional costs to the Client beyond whatever limits may have been agreed for such costs between the Client and SLR, without the prior approval of the Client.

## 4.7 Pollution and Contamination

Except where the Description of Services specifically includes provision of such advice or consideration, the obligations of SLR under this Agreement do not include a duty to advise or undertake any investigation to determine the actual or possible presence of pollution, asbestos containing materials, infestation or contamination at the Site or as to the risks of such matters having occurred, being present or occurring in the future nor shall SLR have any duty to consider such matters as influencing any aspect of the Services to be performed by SLR under this Agreement.

## 4.8 Invasive and Protected Species

Except where the agreed scope of Services specifically includes provision of such advice or consideration, the obligations of SLR under this Agreement do not include a duty to advise or undertake any investigation to determine actual or possible presence of protected or invasive species at the Site or as to the risks of such species being present or occurring in the future nor shall SLR have any duty to consider such matters as influencing any aspect of the Services to be performed by SLR under this Agreement.

## 4.9 Professional Opinion

Where the agreed scope of the Services includes a site or environmental assessment, audit, review or investigation which includes the interpretation, interpolation or extrapolation of data from discrete sampling and/or observation locations and/or discrete times, the Client accepts and agrees that these data may not represent actual conditions at other locations or at other times and that SLR's conclusions and recommendations based on such data are statements of professional opinion and not statements of fact. Whilst SLR will carry out such Services and provide its conclusions and recommendations with reasonable skill, care and diligence, it accepts no liability if the actual conditions at other locations or at other times are different from those described in SLR's conclusions or recommendations.

## **5 OBLIGATIONS OF THE CLIENT**

### **5.1 Client Project Manager**

The Client shall designate a Client Project Manager who shall be deemed to have authority to make decisions on behalf of the Client under this Agreement. The Client shall notify SLR immediately if the Client Project Manager is replaced.

### **5.2 Information needed by SLR**

The Client shall supply to SLR, without charge and in such time so as not to delay or disrupt the performance by SLR of the Services, all necessary and relevant data and information (including details of the services to be performed by any Contractors or Other Consultants) and shall ensure such data is accurate and complete.

### **5.3 Decisions**

The Client shall ensure that its decisions, instructions, consents or approvals on or to all matters properly requiring such shall be given in such reasonable time so as not to delay or disrupt the performance of the Services by SLR.

### **5.4 Assistance**

The Client shall give, and shall procure that its agents, servants, Other Consultants and Contractors act reasonably and give such assistance and co-operation as shall reasonably be required by SLR in the performance of the Services.

### **5.5 Health and Safety**

The Client acknowledges that it has a duty of care with respect to the health and safety of SLR's employees whilst they are on the Client's premises or on sites controlled by the Client and confirms it will comply with all applicable health and safety legislation.

The Client acknowledges SLR's right to stop work under any circumstances where SLR or its employees consider commencing or continuing their activities would either be unsafe or pose an unacceptable risk to themselves or others. In such circumstances the Parties will engage as soon as is practicable to agree a resolution to allow work to resume.



## 5.6 Welfare Facilities

- a) The Client confirms that if the Site has welfare facilities installed, SLR personnel will be entitled to use these facilities without charge whilst attending the Site.
- b) Should the Site not possess what SLR considers to be adequate welfare facilities, SLR shall make provision for such facilities at the Client's expense.

## 5.7 Buried Services and Structures

Without affecting the generality of Condition 5.2, where excavating, boring, probing or the like below existing ground level is required as part of the Services, the Client shall provide, in a timely fashion, accurate and complete drawings or plans showing locations of all underground services, structures or artificial obstructions to SLR who, in performing such Services as set out in this Condition, shall take reasonable precautions to avoid damage or injury to such underground services, structures or artificial obstructions as shown in such drawings or plans. Without prejudice to Condition **Error! Reference source not found.** (Entire Agreement), SLR will not be responsible for any damage to underground services, structures or obstructions or for any damage, claims, expenses or loss arising as a result of such excavating, boring, probing or the like below existing ground level, unless the locations of the underground services, structures or artificial obstructions on Site are accurately shown on drawings or plans furnished to SLR in good time prior to commencement of such Services.

## 5.8 Unexploded Ordnance

Should the Client have any reason to believe there is a risk that unexploded ordnance may be present in any area where SLR staff may need to investigate or undertake activities, the Client shall advise SLR to enable SLR to carry out additional investigation and take appropriate measures to minimise the risk of any danger to personnel or property resulting from contact with such material.

## 5.9 Copyright

- a) The Client shall ensure that copyright in any designs, drawings or other material provided to SLR by the Client or any person acting on behalf of or under instruction from the Client is either owned by or licensed to the Client and is licensed or sublicensed to SLR for use to provide the Services. Such license or sublicense shall entitle SLR (without payment or other fee) to copy and make use of any materials provided and to reproduce any design or drawing therein incorporated in the execution of the Services.

- b) The Client shall indemnify SLR against any liabilities, demands and claims arising out of any alleged or actual breach of copyright arising from the use of any materials supplied by the Client on this basis.

## **6 PAYMENTS**

### **6.1 Payment for Services and Disbursements**

The Client shall pay fees and disbursements to SLR in accordance with Condition 6.7 for the performance of the Services monthly in arrears against submission of an SLR invoice unless otherwise stated in the Proposal or Form of Agreement. Disbursements and other expenses to be reimbursed, shall be those incurred reasonably by SLR in the provision of the Services and shall be subject to an administrative charge.

### **6.2 Variation or Disruption of SLR's Work**

If SLR suffers disruption in the performance of the Services because of any delay by the Client in fulfilling its obligations under Condition 5.4, 5.3 or 5.4 or in taking any other step necessary for the execution of the Services, or because SLR is delayed by Other Consultants or Contractors or other third parties (or by events which were not reasonably foreseeable), or for other reasons beyond the reasonable control of SLR, the Client shall make an additional payment to SLR in respect of the additional work carried out and additional resources employed (unless and to the extent that the additional work has been occasioned by the failure of SLR to exercise reasonable skill, care and diligence) and/or the disruption suffered, calculated (unless otherwise agreed) on the basis of time based fees as set out in SLR's Proposal or the Form of Agreement.

### **6.3 Payment for Variations**

Where the Client and SLR agree any variations to the Services in accordance with Condition 8, the payment mechanism for any additional services is to be agreed by the Parties prior to the additional work being commenced. In the absence of such agreement, invoicing and payment will be made in accordance with Conditions 6.1 and 6.7.

### **6.4 Effect of Termination or Suspension**

In the event of any termination by the Client in accordance with Condition 2.3; or any suspension by the Client in accordance with Condition 2.4; or any suspension by SLR in accordance with Condition 2.67; or any termination by SLR in accordance with Condition 2.6, the Client shall pay SLR all fees incurred to the date of termination, suspension or postponement and any outstanding disbursements, charges and expenses incurred or committed on behalf of the Client together with a sum for loss and costs of disruption

(calculated on the basis of the loss of revenue to SLR and costs to which SLR is committed in respect of planned future work on the Services).

## **6.5 Fees Payable on Termination following breach by SLR**

In the event of any termination by the Client in accordance with Condition 2.5 the Client shall pay SLR a fair and reasonable amount on account of the fees due under Condition 6.1 commensurate with the Services performed to the date of termination and any outstanding disbursements.

## **6.6 Contested Invoices**

If any part of any invoice submitted by SLR is contested, payment shall be made in full, of all that is not contested in accordance with the timescales set out in Conditions 6.1 and 6.7.

## **6.7 Time for Payment**

All amounts due to SLR in accordance with this Agreement shall be paid within 28 days of the date of SLR's invoice.

## **6.8 Payment of Interest**

SLR shall have the right to add interest to all sums remaining unpaid after the date for payment in accordance with Condition 6.7 from that date until the date the sums are paid calculated at the statutory rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

# **7 TAX LIABILITIES**

## **7.1 Responsibility**

SLR and the Client shall each be responsible for their own tax liabilities arising from this Agreement. If any fees, expense reimbursements and other sums payable to SLR under this Agreement are subject to the addition of any applicable value added taxes (VAT), stamp duty or similar tax, such taxes are to be paid in addition without any set-off, deduction or withholding save as required by law.

## **7.2 Deduction and Withholding**

If the Client is obliged to make any deduction or withholding on account of any tax of any nature, the fees payable under this Agreement shall be grossed up to the extent necessary to ensure that after such deduction or withholding the amount otherwise payable remains and the Client will be responsible for providing an appropriate certificate of tax deduction to SLR.

## 8 VARIATIONS

- a) SLR shall not, without the written approval of the Client, perform services other than the Services and shall advise the Client if it becomes aware that additional services may be required.
- b) The Client may by giving Notice order a variation to any part of the Services or require that SLR perform additional services at any time up to the completion of delivery of the Services. This instruction shall be deemed incorporated into the Agreement once SLR has signified its agreement to undertake such services.
- c) If the Client orders a variation to the Services or any additional services, the Client shall make an additional payment to SLR in relation to such work. The Client may require SLR to submit a quotation in advance for the amount to be paid and for any consequential delay and the financial consequences in regard to any variation ordered (or proposed to be ordered) and the Client may accept SLR's quotation, whether as submitted or with agreed modifications. SLR shall be paid in accordance with this Agreement or any alternative agreed in accordance with Condition 6.3 and entitled to an adjustment to any agreed programme in accordance with the Consultant's quotation, as submitted or modified, and shall have no further entitlement in regard to such variation.
- d) If the Client instructs SLR to carry out any additional services without any quotation or agreement on fees, SLR shall be entitled to charge for such additional work on a time and expenses basis in accordance with the fee rates specified in the Proposal or Form of Agreement, or if no such rates are specified at its normal fee rates for similar work.

## 9 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

### 9.1 Ownership

The copyright in all drawings, reports, specifications, pricing schedules, calculations and other documents and information (hereinafter termed 'Intellectual Property') prepared by or on behalf of SLR in connection with the Services for delivery to the Client shall remain the exclusive property of SLR and shall not be disposed of or used other than in accordance with SLR's written instructions or authorisation.

### 9.2 Licence to Use

Subject to SLR having received payment of all fees and disbursements properly due under this Agreement, the Client shall have a royalty-free, non-exclusive licence to copy and use such Intellectual Property. Such licence shall enable the Client to copy and use the Intellectual Property but solely for its own purposes and

solely in connection with the Project and such use shall not include any licence to reproduce any conceptual designs or professional opinions contained therein.

Save as above, the Client shall not make copies of such Intellectual Property nor shall it use the same in connection with any other works or for any other purpose nor pass them to any third party without the prior written approval of SLR and upon such terms as may be agreed by SLR.

SLR may, on giving not less than seven (7) days written notice, revoke this licence if the Client fails to pay in accordance with this Agreement any fees or other amounts due under this Agreement.

### 9.3 Liability for Use

- a) SLR shall not be liable for the use by any person of any drawings reports specifications or other documents or information for any purpose other than that for which the same were prepared by or on behalf of SLR.
- b) The Client shall indemnify and keep indemnified SLR against all costs, claims, losses, damages, fines and expenses (including legal expenses) in respect of claims by third parties (including Contractors or Other Consultants) arising out of, or in connection with, any unauthorised use of SLR's Intellectual Property.

## 10 CONFIDENTIAL INFORMATION

### 10.1 Scope and Duration

The Parties agree to treat as secret and confidential and not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of, any Confidential Information or any such information relating to a subsidiary, supplier, customer or client of the other Party where the information was received during the period of this Agreement. This restriction shall apply both from the date of this Agreement and for a period of three (3) years after the termination of this Agreement.

### 10.2 Exceptions

Condition 10.1 shall not apply to any information which:

- a) is or becomes generally available to the public other than as a result of its disclosure in breach of this Agreement or of any other undertaking of confidentiality addressed to the Party to whom the information relates; or

- b) was available to the recipient on a non-confidential basis prior to disclosure by the disclosing Party;  
or
- c) was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the recipient; or
- d) was lawfully in the possession of the recipient before the information was disclosed to it by the disclosing Party; or
- e) it is necessary to provide to its professional advisors on a confidential basis; or
- f) the Parties agree in writing is not confidential or may be disclosed; or
- g) is developed by or for the recipient independently of the information disclosed by the disclosing Party.

### 10.3 Required Disclosures

A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Condition 10.3, it takes into account the reasonable requests of the other Party in relation to the content of this disclosure.

### 10.4 Return of Documents

Upon termination of this Agreement for whatever reason, SLR shall on request deliver up to the Client all working papers (including calculations, drawings, reports and similar documents), in both electronic and hard copy format, which SLR has agreed to provide to the Client as part of the Services and all documents provided to SLR by the Client pursuant to this Agreement.

### 10.5 Retention of Documents

Condition 10.4 shall not apply to:

- a) Information that is required to be retained by SLR by law, or pursuant to SLR's quality management system, including by stock exchange regulations or by governmental order, decree, regulation or rule;

- b) Information which has been automatically backed-up on the computer systems of SLR. To the extent that such computer back-up procedures create copies of the information, SLR may retain such copies for the period that it normally archives backed-up computer records;
- c) Any secondary data, including corporate documents of SLR which contain data derived from the Confidential Information which is contained or reflected in material presented to its executive board (or the equivalent thereof).

## 11 LIABILITY

### 11.1 Entire Liability

This Condition 11 sets out the entire liability of SLR (including any liability for the acts or omissions of its Sub-Consultants) in respect of:

- a) Any breach of this Agreement; and
- b) Any representation, statement or tortuous act or omission including negligence arising under or in connection with the Agreement.

### 11.2 Statutory Exclusions

Nothing in this Agreement shall in any way exclude or limit SLR's liability for:

- a) death or personal injury caused by SLR's negligence, or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation; or
- c) any liability which cannot legally be excluded or limited.

### 11.3 Exclusions

SLR shall not be liable for any of the following losses or damage (whether or not such losses or damages were foreseen, direct, foreseeable, known or otherwise):

- a) loss of use of money, equipment or resources;
- b) loss of revenue;
- c) loss of anticipated savings;

- d) loss of business;
- e) loss of goodwill;
- f) loss of reputation;
- g) loss of damage to or corruption of data;
- h) any losses arising as a result of any third party bringing a claim in respect of any of the above types of loss.

#### 11.4 Consequential Costs

SLR shall not be liable for any indirect, special or consequential loss or damage howsoever caused whether or not such loss is covered in Condition 11.3 above.

#### 11.5 Total Aggregate Liability

Subject to Conditions 11.1, 11.2, 11.3 and 11.4 and notwithstanding anything to the contrary contained elsewhere in this Agreement, the total aggregate liability of SLR shall be limited to the lesser of:

- a) the amount (if any) stated in the Proposal or Form of Agreement as the limit of SLR's total liability;

OR

- b) 10 x (ten times) the total amount of SLR's fees (excluding expenses and third-party costs) stated in the Proposal or Form of Agreement.

#### 11.6 Proportionality

If SLR is considered to be liable jointly with third parties to the Client, the proportion of compensation payable by SLR shall be limited solely to a just and equitable proportion of liability which is attributable to SLR's breach and on the basis that the relevant third parties have paid a just and equitable proportion having regard to the extent of their responsibility. The Consultant's liability shall be limited to and form a part of the total aggregate amount set out in Condition 11.5.

#### 11.7 Limitation on Claims

Subject to Condition 11.2, no action or proceedings under or in respect of this Agreement whether in contract or in tort, in negligence or for breach of statutory duty or otherwise, shall be commenced against SLR after the expiry of the period of liability stated in the Proposal or Form of Agreement or where no period of liability is stated in the Proposal or Form of Agreement a period of three years from the



completion of the Services performed under this Agreement or such earlier date as may be prescribed by law.

### 11.8 Personal Liability

- a) The relationship established under this Agreement is solely between the Client and SLR, and SLR has sole legal liability for the Services.
- b) The Client agrees that it will not bring any claim personally against any director or officer or employee or Sub-Consultant of SLR in respect of any loss or damage suffered by the Client arising out of this Agreement. No personal liability whatsoever whether in contract or tort or otherwise is accepted by individual directors, employees or Sub-Consultants of SLR in relation to acts, omissions or defaults arising out of this Agreement. Even if that individual signs in his or her own name any letter or other document in the course of carrying out that work, it does not mean he or she is assuming any personal legal liability for that letter or document.

### 11.9 Spurious Claims

In the event that the Client makes a claim against SLR at law or otherwise for any alleged error, omission or other act arising out of the Services and to the extent that the Client fails to prove such claim the Client shall indemnify SLR and keep it indemnified against all losses, costs and expenses incurred by SLR including without limitation such reasonable SLR staff costs and all legal and any other professional fees incurred by SLR in defending itself against the claim.

### 11.10 Warranties

Except as specifically set out in the Agreement, SLR expressly disclaims and excludes any and all other liabilities (whether in contract, tort or otherwise), representations and warranties, whether express or implied.

### 11.11 No Liability for Force Majeure

- a) SLR shall not be liable for any delays in performing or failure to perform the Services to the extent that such delays or failures result from causes beyond SLR's reasonable control including but not limited to any Act of God, terrorism or public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other similar event, infectious or contagious disease or epidemic necessitating preventative measures, disruption or outage of communications, power or other utility, national labour problems or strikes, which SLR could not have reasonably prevented, and any other cause, whether similar or dissimilar to any of

the foregoing, which could not have been prevented through the use of reasonable care or which was not reasonably foreseeable by SLR.

- b) In the event that the Force Majeure circumstances continue for three months, the Parties shall review the circumstances then obtaining and agree an appropriate course of action. However, SLR reserves the right to terminate this Agreement at that time by giving the Client two (2) weeks' Notice. In such event, the Client shall pay SLR all fees incurred to the date of termination in accordance with Condition 6.4.

## 12 NOTICES

### 12.1 Client Notices

- a) Any Notice to be given by the Client under this Agreement shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to SLR's Registered Office.
- b) Any Notice to be given by the Client under this Agreement may be sent by email: the email will be deemed delivered if no email failure or 'undeliverable' notification is received by the Client within 24 hours of dispatch.

### 12.2 SLR Notices

- a) Any Notice to be given by SLR under this Agreement shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the Client at its Registered Office. These Notices shall if sent by registered post be deemed to have been received 2 working days after being posted.
- b) Any Notice to be given by SLR under this Agreement may be sent by email: the email will be deemed delivered if no email failure or 'undeliverable' notification is received by SLR within 24 hours of dispatch.

## 13 DISPUTE RESOLUTION

### 13.1 Between Parties

If any dispute, difference or claim arises out of or in connection with this Agreement (including any question regarding its existence, validity or termination) a representative from SLR and a representative of the Client with authority to settle the dispute will, within seven days of a written request from one Party

to the other, meet in good faith to resolve the dispute or difference. If agreement in respect of the dispute or disagreement cannot be reached at such meeting or within such time period after the meeting agreed by the Parties, then such dispute or difference shall be resolved in accordance with Conditions 13.2 and 13.3.

## 13.2 Mediation

- a) If agreement in respect of a dispute or disagreement cannot be reached in accordance with Condition 13.1, the Parties shall seek the assistance of a Mediator agreed by the Parties or, in default of such agreement, appointed by the Centre for Effective Dispute Resolution (CEDR), 70 Fleet Street, London EC4Y 1EU and shall attempt to settle the dispute in accordance with the CEDR Model Mediation Procedure.
- b) If no settlement has been reached within six weeks of the first appointment of a Mediator or such other date as agreed between the Parties, the mediation shall be deemed to have been unsuccessful and the dispute shall be settled in accordance with Condition 13.3.

## 13.3 Arbitration

Any dispute or claim arising out of or in connection with the Agreement, not resolved in accordance with Condition 13.1 or 13.2, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (LCIA), which are deemed to be incorporated by reference into this Condition. Any arbitration commenced pursuant to this Condition shall be administered by the LCIA. The appointing authority shall be the LCIA. The standard LCIA Administrative Procedures and Schedule of Costs shall apply. The number of arbitrators shall be one. The arbitrator shall be an independent person to be agreed between the Parties or, failing agreement within one month of a Notice by either Party to the other requesting agreement to an arbitrator, to be appointed by the President or Vice President of the Chartered Institute of Arbitrators. The place of arbitration shall be London UK, or such other location as agreed by the Parties. The language to be used in the arbitral proceedings shall be English.

## 14 GENERAL

### 14.1 No Partnership

Neither Party may pledge the credit of the other Party nor represent itself as being the other Party nor an agent, partner, employee or representative of the other Party and neither Party may hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other. Nothing in this Agreement, and no action taken by the Parties pursuant to this Agreement,

creates or is deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties.

## 14.2 Precedence

In the event of any inconsistency between any of the documentation which makes up this Agreement, the Agreement shall be interpreted in the following descending order of priority:

- a) Revisions to the Form of Agreement or email instruction issued by the Client and agreed to by SLR
- b) Form of Agreement;
- c) Conditions of Engagement;
- d) Proposal;
- e) Client's terms of reference (where appropriate)

## 14.3 Non-Solicitation

In the event that any member of staff or associate to SLR is employed by the Client following any direct or indirect solicitation by the Client during the term of this Agreement or within 6 months of termination of this Agreement, the Client shall pay to SLR a fee equal to 50% of the first year's gross salary of the applicable member of staff.

## 14.4 Waiver

Any waiver by either Party of a breach of any provision of this Agreement shall not be considered as a waiver unless in writing and shall not constitute a waiver of any subsequent breach of the same or any other provision thereof.

## 14.5 Amendments

No amendments or variations to the terms of this Agreement will be valid or effective unless in writing and agreed by both Parties.

## 14.6 Unenforceability

If any term or condition of this Agreement or the application thereof shall be illegal, invalid or unenforceable it shall be deemed removed and, all other provisions shall continue in full force and effect as if the illegal, invalid or unenforceable provision were not a part of this Agreement.

## 14.7 Third Party Rights

- a) A person who is not a party to this Agreement has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of this Agreement.
- b) SLR shall only permit a third party to rely on the content of its Deliverables on the condition that SLR and the third party shall execute a reliance agreement in a form acceptable to SLR which shall accompany the Deliverables, and which shall include the following provisions:
- c) SLR's liability arising out of or in connection with the Deliverables shall be limited so that the aggregate of SLR's liability to the Client and any party signing a reliance agreement for all claims and losses of whatever nature in respect of any matter shall not be greater than SLR's liability in respect of the matter to the Client alone and shall be no greater in scope, duration or indemnity, than SLR owes to the Client under this Agreement.

## 14.8 Entire Agreement

- a) This Agreement and any documents referred to herein constitute the entire agreement between the Parties in relation to the Services and supersede and replace any previous agreement or understanding between the Parties in relation to such Services.
- b) The Parties acknowledge that these Conditions of Engagement form part of the Agreement to the exclusion of all other terms and conditions (including any terms and conditions which the Client purports to apply under any purchase order or other document).
- c) The Parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either Party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in this Agreement.
- d) Each Party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind this Agreement which it might otherwise have had in relation to them.
- f) All warranties, conditions, terms and representations not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law.
- g) Nothing in this Condition 14.8 will exclude any liability in respect of misrepresentations made fraudulently.

## 14.9 Governing Law

This Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales.

## 14.10 Jurisdiction

All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the Parties irrevocably submit.

## 14.11 Anti-Bribery

The Client agrees that it:

- a) shall comply with the Bribery Act 2010 and shall procure that no persons associated with the Client (including an employee, sub-contractor or agent or other third party working on behalf of the Client or any Group Company) (an "Associated Person") shall, commit any Bribery Offence (as defined in that act) or any act which would constitute a Bribery Offence; and
- b) has in place, and shall maintain until termination of this Agreement, adequate procedures designed to prevent any Associated Person from committing a Bribery Offence; and
- c) shall not do or permit anything to be done which would cause SLR or any of SLR's employees, sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act; and
- d) shall notify SLR immediately in writing if it becomes aware or has reason to believe that it has, or any of its Associated Persons have, breached or potentially breached any of the Client's obligations under this Clause 14.11. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Client's obligations.

## 14.12 Data Protection

- a) In this Condition 14.12, the terms "controller", "data subject", "personal data", "processing", "processor" and "special categories of data" shall be as defined in the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018 and further laws and statutory instruments relating to such regulations and to data protection from time to time (collectively the "Data Protection Laws"), and "Data" shall mean the personal data and special categories of data provided to SLR by the Client or otherwise processed by SLR pursuant to this Agreement.

- b) The Parties acknowledge that they are separate controllers of the Data. Each Party, in its capacity as a controller, will comply with its obligations under the Data Protection Laws.

## Africa

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