



ORB ROPE ACCESS LIMITED SERVICES AGREEMENT

GENERAL TERMS

1. Definitions and interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement (unless the context requires otherwise):

Agreement	the agreement formed between the Parties in accordance with clause 2 comprising the Term Sheet (if applicable), these General Terms and each Project Agreement;
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
Charges	the charges payable by the Customer for the supply of the Services in accordance with clause 5;
Customer Default	has the meaning given in clause 4.2;
General Terms	these terms and conditions as amended from time to time in accordance with clause 12.4;
Orb Materials	materials, equipment, documents, site files and other property of Orb;
Project Agreement	has the meaning set out in clause 2.4;
Representatives	in relation to a Party, that Party's employees, officers, contractors, subcontractors, representatives and advisors;
Services	the services supplied by Orb to the Customer as set out in the relevant Project Agreement;
Site	the location where the Services are to be performed by Orb, as set out in the relevant Project Agreement;
Term Sheet	the statement attached to (or referring to) these General Terms identifying the Parties, and signed by their authorised representatives (where such statement is attached to these General Terms).

1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.

1.3 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, or re-enactment and includes any subordinate legislation for the time being in force made under it.

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



2. Basis of Agreement

- 2.1 The Agreement shall commence on the date when the Term Sheet has been signed by all the Parties, or, if sooner, on the date when Orb commences the Services and shall continue, unless terminated earlier in accordance with clause 10, until terminated by either Party on not less than 30 days' notice (the **Term**).
- 2.2 These General Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.3 During the Term, the Customer may request the provision of rope access services from Orb. Any quotation given by Orb in respect of such a request shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.4 Where Orb and the Customer agree the terms of an engagement for the provision of specified services, and agree matters including:
- 2.4.1 the type of services to be provided;
 - 2.4.2 the location;
 - 2.4.3 the date on which, or the time period over which such services will be provided;
 - 2.4.4 the Charges;

(each a **Project Agreement**), such details being as set out in the quote issued by Orb in accordance with clause 2.3, the services so agreed shall constitute **Services** to be provided by Orb subject to and in accordance with the terms of this Agreement.

3. Supply of Services

- 3.1 Orb shall supply the Services to the Customer in accordance with the Project Agreement in all material respects.
- 3.2 Orb warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.3 Orb shall use reasonable endeavours to meet any performance dates specified in the Project Agreement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. Orb will use reasonable endeavours to schedule work with the objective of minimising the risk of weather delays impacting the timescales for delivery, and the Customer acknowledges that weather delays may affect start dates and the duration of projects.
- 3.4 Orb reserves the right to amend the Agreement if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Orb shall notify the Customer in any such event.

4. Customer's obligations

- 4.1 The Customer shall:
- 4.1.1 ensure that any information provided in connection with the Agreement, including in connection with preparation of any quote or related Project Agreement, is complete and accurate;



- 4.1.2 co-operate with Orb in all matters relating to the Services;
 - 4.1.3 provide Orb with such information and, where specified in the Project Agreement. Such materials as Orb may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 4.1.4 provide Orb and its Representatives with access to the Site as reasonably required by Orb;
 - 4.1.5 prepare the Site for the supply of the Services, including in accordance with any requirements specified in the Project Agreement;
 - 4.1.6 obtain and maintain all necessary licences, permissions and consents, including any roof permits and similar access permits, which may be required for the Services before the date on which the Services are to start;
 - 4.1.7 keep all Orb Materials at the Site in safe custody at its own risk, maintain Orb Materials in good condition until returned to Orb, and not dispose of or use Orb Materials other than in accordance with Orb's written instructions or authorisation; and
 - 4.1.8 comply with any additional obligations as set out in the Project Agreement, including, where specified the supply of materials.
- 4.2 If Orb's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation, including by failing to allow access to any relevant Site or otherwise preventing performance of the Services at the time agreed between the Parties (**Customer Default**), then:
- 4.2.1 without limiting or affecting any other right or remedy available to it, Orb shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Orb's performance of any of its obligations;
 - 4.2.2 Orb shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Orb's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - 4.2.3 the Customer shall reimburse Orb on written demand for any costs or losses sustained or incurred by Orb arising directly or indirectly from the Customer Default.
- 5. Cancellation**
- 5.1 If the Customer wishes to cancel a Project Agreement, it shall notify Orb of this as soon as possible.
 - 5.2 Where the Customer notifies Orb of its intention to cancel a Project Agreement, the Customer's payment obligations shall be affected as follows:
 - 5.2.1 where the Customer provides at least 4 weeks' notice of its intention to cancel, no Charges shall be due to Orb under the relevant Project Agreement and such Project Agreement shall be deemed terminated;
 - 5.2.2 where the Customer provides at least 10 Business Days' notice of its intention to cancel (but less than 4 weeks' notice), Orb shall be entitled to charge a cancellation fee of up to 50% of the total Charges agreed for the services to be provided under the relevant



Project Agreement, and such Project Agreement shall be deemed terminated subject to payment of such cancellation fee by the Customer;

5.2.3 where the Customer provides at least 5 Business Days' notice of its intention to cancel (but less than 10 Business Days' notice), Orb shall be entitled to charge a cancellation fee of up to 70% of the total Charges agreed for the services to be provided under the relevant Project Agreement, and such Project Agreement shall be deemed terminated subject to payment of such cancellation fee by the Customer; and

5.2.4 where the Customer provides less than 5 Business Days' notice of its intention to cancel, the Customer shall remain liable to pay the Charges in full as agreed under the relevant Project Agreement.

6. Charges and payment

6.1 The Charges for the Services shall be calculated as set out below, on a time and materials basis:

6.1.1 the Charges for the Services specified in any Project Agreement shall be as set out in the relevant Project Agreement, and any additional Charges for additional work outside the scope of the Services specified in the Project Agreement shall be as agreed between the Parties; and

6.1.2 where such arrangement has been specifically agreed in advance between the Parties, the Customer shall reimburse all reasonable expenses properly and necessarily incurred by Orb in the performance of the Services, at the rates agreed between the Parties.

6.2 Orb shall invoice the Customer on completion of the Services.

6.3 The Customer shall pay each invoice submitted by Orb:

6.3.1 within 28 days of the date of the invoice; and

6.3.2 in full and in cleared funds to a bank account nominated in writing by Orb, and

time for payment shall be of the essence of the Agreement.

6.4 All amounts payable by the Customer under the Agreement are stated exclusive of any amounts due in respect of value added tax chargeable from time to time (**VAT**). Where any supply is made under the Agreement by Orb to the Customer in respect of which VAT is payable by the Customer, the Customer shall, on receipt of a valid VAT invoice from Orb, pay to Orb such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services. Where the Customer is CIS registered, the reverse VAT process will apply, and the invoice will exclude VAT.

6.5 If the Customer fails to make a payment due to Orb under the Agreement by the due date, then, without limiting Orb's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.6 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).



7. Intellectual property rights

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Orb, and all Orb Materials shall remain the property of Orb.
- 7.2 The Customer grants Orb a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Orb for the term of the Agreement for the purpose of providing the Services to the Customer.
- 7.3 Orb grants the Customer a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use any reports or other documentation provided by Orb to the Customer in the performance of the Services for the purposes for which they are provided, and subject to any other conditions on usage or disclaimers stated in the report or documentation. The Customer acknowledges that:
- 7.3.1 any reports provided by Orb in respect of structures at any Site are based on external observations of such structures by Orb's representatives only, and recommendations in such reports relate to general maintenance of the structures, and matters relevant to the services which Orb provides;
 - 7.3.2 Orb's representatives are not structural engineers, and any reports provided by Orb are not based on investigating the structural integrity of the structures, assessing the suitability of construction materials used in the structures, or other similar matters in respect of which the services of a structural engineer would be required; and
 - 7.3.3 the Customer is responsible for any decisions made on the basis of the recommendations set out in any report provided by Orb, and the implementation of such decision.

8. Data protection

- 8.1 The Parties shall each comply with, and take all steps necessary to enable the other to comply with, all applicable data protection and privacy legislation in force from time to time in the UK relevant to the performance of this Agreement, and to the processing of any personal data that the Parties share in connection with this Agreement (**Data Protection Legislation**).
- 8.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller, and Orb is the processor in respect of personal data relating to any third party which Orb accesses or otherwise process in the course of providing the Services or otherwise in connection with this Agreement (**Customer Personal Data**). The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Customer Personal Data to Orb for the duration and purposes of this Agreement.
- 8.3 Orb shall, and shall procure that any sub-processor shall, in relation to any Customer Personal Data it processes:
- 8.3.1 process that Customer Personal Data only on the written instructions of the Customer;
 - 8.3.2 keep the Customer Personal Data confidential;
 - 8.3.3 comply with the Customer's reasonable instructions with respect to processing personal data and with the Customer's data protection policies as notified to Orb from time to time;
 - 8.3.4 not transfer any Customer Personal Data outside of the UK unless, in accordance with the Data Protection Legislation, Orb complies with the Customer's instructions notified to Orb from time to time in order for the Customer to ensure that (i) the transfer is to a country approved as providing an adequate level of protection for personal data; or (ii)



there are appropriate safeguards in place for the transfer of personal data; or (iii) binding corporate rules are in place; or (iv) one of the derogations for specific situations applies to the transfer;

8.3.5 assist the Customer at the Customer's cost in responding to any data subject access request and to ensure compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;

8.3.6 notify the Customer without undue delay on becoming aware of a personal data breach or communication which relates to either Party's compliance with the Data Protection Legislation; and

8.3.7 at the Customer's written request, delete or return Customer Personal Data (and any copies of the same) to the Customer on termination of this Agreement unless required by the Data Protection Legislation to store the Customer Personal Data.

8.4 Orb shall take all steps, and comply with all requirements notified by the Customer from time to time to allow the Customer to maintain appropriate technical or organisational measures from time to time, to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.

8.5 The Parties have agreed the following description of the data processing activities that Orb will undertake in respect of Customer Personal Data in connection with this Agreement,

Subject matter and duration of the Processing	<p>Personal data which is provided to, accessed by or created by Orb in connection with the provision of the Services by Orb.</p> <p>Orb will only process such personal data for as long as is required to comply with the Agreement and/or to provide the Services or where it is required to store such personal data in order to comply with laws or for regulatory purposes.</p>
Nature and purpose of the processing	<p>Processing of personal data in order to perform Orb's obligations and in particular to provide the Services.</p>
Type of personal data	<p>Personal data may include, names, addresses, email addresses and special categories of data relating to data subjects whose information is controlled or processed by the Customer.</p>
Categories of data subjects	<p>The Customer's employees, agents, contractors, suppliers and customers.</p>

9. Liability

9.1 Except as expressly stated in clause 9.2:



9.1.1 Orb shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (a) special damage, even though Orb was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity; and
- (e) loss of or goodwill;

provided that this clause 9.1.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 9.1.3 or any other claims for direct financial loss that are not excluded by any of categories (a) to (f) inclusive of this clause 9.1.1;

9.1.2 the Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Orb shall not in any circumstances have any liability otherwise than in accordance with the express terms of this Agreement; and

9.1.3 the total liability of Orb, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed, with respect to matters arising out of or in connection with each Project Agreement, a sum equal to the Charges paid or payable by the Customer under that Project Agreement in the Contract Year in which the liability arises.

9.2 The exclusions in clause 9.1 shall apply to the fullest extent permissible at law but Orb does not exclude liability for:

- 9.2.1 death or personal injury caused by the negligence of Orb or its Representatives;
- 9.2.2 fraud or fraudulent misrepresentation; or
- 9.2.3 any other liability which cannot be excluded by law.

9.3 The Customer acknowledges that:

- 9.3.1 it is exclusively responsible for any decisions which it makes on the basis of advice provided by Orb in providing the Services;
- 9.3.2 the level of the Charges reflects the allocation of risk between the parties set out in this Agreement; and
- 9.3.3 it is in a better position than Orb to assess and manage its risk in relation to use of the Services.



- 9.4 All dates supplied by Orb for the provision of Services shall be treated as approximate only. Orb shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 9.5 All references to Orb in this clause 9 shall, for the purposes of this clause only, be treated as including all Representatives of Orb, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 12.6.
- 9.6 This clause 9 shall survive termination of the Agreement.

10. Termination

- 10.1 Without affecting any other right or remedy available to it, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if:
- 10.1.1 the other Party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 10.1.2 the other Party commits a material breach of any other term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 10.1.3 the other Party repeatedly breaches any of the terms of the 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 the Agreement;
 - 10.1.4 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 10.1.5 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 10.1.6 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the term of the Agreement is in jeopardy.
- 10.2 For the purposes of clause 10.1.2, a **material breach** means a breach that has a serious effect on the benefit the terminating Party would otherwise derive from this Agreement.
- 10.3 Without affecting any other right or remedy available to it, Orb may suspend the supply of Services under the Agreement or any other Agreement between the Customer and Orb if:
- 10.3.1 the Customer fails to pay any amount due under the Agreement on the due date for payment; or
 - 10.3.2 the Customer becomes, or in Orb's reasonable belief is about to become, subject to any of the events listed in clause 10.1.4 to 10.1.6 (inclusive) or Orb reasonably believes that the Customer is about to become subject to any of them.



11. Consequences of termination

11.1 On termination or expiry of the Agreement:

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

11.1.2 the Customer shall return all Orb Materials. If the Customer fails to do so, then Orb may enter the Site or the Customer's premises (as applicable) and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

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

11.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

12. General

12.1 Notices.

12.1.1 Any notice to be given by a Party under or in connection with this Agreement shall be in writing in English language and delivered by hand or sent by UK first class post or other next Business Day delivery service to the other Party at the address given in this Agreement or as otherwise notified to the other Party in writing from time to time or by email to such email address as the Parties choose and notify to the other Party from time to time.

12.1.2 Any such notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the address or given to the addressee; or
- (b) in the case of pre-paid first class UK post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- (c) in the case of pre-paid airmail, 9.00 am on the fifth Business Day after posting or at the time recorded by the delivery service;
- (d) if sent by email on a Business Day at the time of transmission provided that a non-delivery communication is not received by the sender.

12.1.3 A notice shall have effect from the earlier of its actual or deemed receipt by the addressee. For the purposes of calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur on any day other than a Business Day, deemed receipt is 9.00 am on the next Business Day.



- 12.1.4 This clause 12.1 does not apply to the service of any proceedings or other documents in any legal action.
- 12.2 Entire Agreement.
- 12.2.1 This Agreement contains the entire understanding between the Parties in relation to its subject matter and supersedes all (if any) subsisting agreements, arrangements, understandings, negotiations, discussions or correspondence (written or oral, express or implied) relating to the same.
- 12.2.2 The Customer acknowledges that in entering into this Agreement it has not relied on any warranty, representation or undertaking (whether made innocently or negligently) which is not contained in or specifically incorporated into this Agreement. The Customer agrees and acknowledges that its only remedy in respect of those representations, statements, assurances or warranties set out in this Agreement will be for breach of contract, in accordance with the terms of this Agreement, provided always that nothing in this clause 12.2 shall exclude or limit the liability of for any fraudulent misrepresentation or warranty fraudulently given and upon which the Customer can prove it has placed reliance.
- 12.3 **Further Assurance.** The Customer (where applicable) will at all times after the date of this Agreement do and execute or procure to be done and executed all other necessary acts, deeds, documents and things within their power to give effect to this Agreement.
- 12.4 **Variations.** No variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each Party.
- 12.5 **Costs and expenses.** Each Party shall pay the legal and other costs and expenses incurred by it in connection with the preparation, negotiation and completion of this Agreement and all ancillary documents.
- 12.6 **Third party rights.** Save as expressly provided in this Agreement, a person who is not a Party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.
- 12.7 **Waiver.** A failure, delay or neglect by either Party to exercise any right or remedy or enforce any of the provisions of this Agreement shall not be construed or deemed to be a waiver or continuing waiver of that Party's rights or remedies, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.8 **No Partnership.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.
- 12.9 Severance.
- 12.9.1 If any of the provisions of this Agreement shall be declared invalid or unenforceable in whole or in part by any competent court or other authority whose decisions shall have the force of law binding on the Parties, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions shall not be affected.
- 12.9.2 If the invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, that Parties shall negotiate in good faith to amend such



provision such that, as amended, it is legal, valid and enforceable, and to that greatest extent possible achieves the Parties original commercial intention.

12.10 Counterparts.

12.10.1 Each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of our intention to be bound by this Agreement as if signed by each Party's manuscript signature.

12.10.2 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, each of which when executed shall constitute the duplicate original of this Agreement but all the counterparts shall together constitute one and the same instrument.

12.10.3 No counterpart shall be effective until each Party has executed at least one counterpart.

13. Governing law and jurisdiction

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

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