

## Cerberus Security and Monitoring Services Limited (Trading as Clearway Technology): Standard Terms of Business

### THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 15 BELOW.

#### 1 INTERPRETATION

1.1 In these Terms (as defined below) the following words have the following meanings:

**"Applicable Data Protection Laws"**: the GDPR and any other Applicable Law which relates to the protection of personal data;

**"Applicable Law"**: all laws, regulations, directives, statutes, subordinate legislation and common law that apply to subject matter of the Contract;

**"CCTV System"**: has the meaning given to in clause 6.7.1a);

**"Charges"**: has the meaning given to it in clause 10.1;

**"Company"**: Cerberus Security and Monitoring Services Limited (trading as Clearway Technology) registered under the laws of England and Wales (company number 03924713) whose registered office is at Pennine Place, 2a Charing Cross Road, London, England, WC2H 0HF or as otherwise indicated in the Proposal;

**"Confidential Information"**: has the meaning given to it in clause 13.1;

**"controller", "processor", "data subject", "personal data", "personal data breach" and "processing"**: shall have the meaning given to them in the GDPR;

**"Contract"**: collectively the Proposal and these Terms;

**"Customer"**: the person(s), firm or company who has entered into these Terms and named as such in the Proposal;

**"Customer Personal Data"**: any personal data which the Company processes in connection with these Terms, in the capacity of a processor on behalf of the Customer;

**"Customer Property"**: any fixtures, fittings, assets, items, equipment, documents, materials or other physical possessions at the Site, but excluding the Deliverables;

**"Defective Services"**: has the meaning given to it in clause 4.2;

**"Deliverables"**: the Purchased Deliverables and/or the Non-Purchased Deliverables (as the context requires);

**"disclosing party"**: has the meaning given to it in clause 13.1;

**"Duration"**: has the meaning given to it in clause 16.1;

**"Employment Regulations"**: has the meaning given to it in clause 17.1;

**"GDPR"**: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

**"Hired Equipment"**: any equipment that is hired or leased by or on behalf of the Company to the Customer as set out in the Proposal, which may include security doors, screens, CCTV, alarms and other security equipment;

**"Indebtedness"**: any obligation to pay or repay money (whether present or future, actual or contingent, joint or sole);

**"Intellectual Property Rights"**: any and all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**"Maintained Equipment"**: has the meaning given to it in clause 6.2.1;

**"Minimum Period"**: has the meaning given to it in clause 16.1;

**"Non-Purchased Deliverables"**: all equipment, hardware, products and/or materials that are supplied by or on behalf of the Company as part of the Services but for which title remains with Company (or its suppliers) pursuant to clause 5 (including any Hired Equipment), including as set out in the Proposal;

**"party"**: the Company and/or the Customer (as the context requires) and **"parties"** be construed accordingly;

**"Proposal"**: the proposal, quotation or instruction form (or equivalent document) entered into by the Company and the Customer pursuant to, and incorporating, these Terms to supply the Deliverables and/or the Services and that has been accepted pursuant to clause 2.4

**"Purchased Deliverables"**: all equipment, hardware, products and/or materials that are supplied by or on behalf of the Company as part of the Services and which title transfers to the Customer pursuant to clause 5, including as set out in the Proposal;

**"receiving party"**: has the meaning given to it in clause 13.1;

**"Related Persons"**: has the meaning given to it in clause 13.1;

**"Services"**: any services agreed in the Proposal to be supplied by or on behalf of the Company to the Customer;

**"Site"**: has the meaning given to it in clause 3.1;

**"Specification"**: the specification for the Deliverables and/or Services that is supplied by or on behalf of the Company to the Customer from time to time or agreed in writing by the Company, including as set out in the Proposal;

**"Terms"**: the standard terms of business as set out in this document and as amended from time to time in accordance with clause 2.1;

**"VAT"**: has the meaning given to it in clause 10.3;

**"Warranty Claim"**: has the meaning given to it in clause 4.2; and

**"Working Day"**: a day (other than a Saturday, a Sunday or a public holiday in England) on which banks in London are open for business.

1.2 In these Terms (except where the context otherwise requires):

1.2.1 words in the singular include the plural and vice versa and reference to any gender includes the others;

1.2.2 reference to "a person" includes a natural person, company or unincorporated body (whether or not having separate legal personality);

1.2.3 a reference to "company" includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.4 references to legislation are to that legislation as amended, extended or re-enacted from time to time;

1.2.5 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

1.2.6 any words following the terms "including", "include", "in particular" or any similar terms shall be construed as illustrative only and shall not limit the sense of the words preceding those terms; and

1.2.7 a reference to "writing" or "written" does not include fax or email, unless expressly stated to the contrary in the Contract.

1.3 Headings are for convenience only and shall not affect the interpretation of these Terms.

1.4 The Contract shall be binding upon, and enure to the benefit of, the parties and their respective personal representatives, successors and permitted assignees, and references to any party shall include that party's personal representatives, successors and permitted assignees.

#### 2 APPLICATION OF THESE TERMS

2.1 These Terms apply to all the Customer's purchases from the Company and any variation to these Terms shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of both parties.

2.2 Upon any request for the supply of Deliverables and/or Services made by the Customer, each party shall use its reasonable endeavours to agree the Proposal.

2.3 The request by the Customer for the supply of Deliverables and/or Services shall be deemed to be an offer by the Customer subject to these Terms. The Company shall not be obliged to accept any such request.

2.4 The Proposal shall not be deemed accepted, and neither party shall have any rights or obligations in respect of the Proposal or the Contract, including the receipt of, or the supply of, the Deliverables and/or Services under it, unless and until each party has executed the Proposal or (if earlier) the Company begins providing the Deliverables and/or Services.

2.5 It is the responsibility of the Customer to ensure that the terms of the Proposal and any applicable Specification are complete and accurate.

2.6 Any quotation given by the Company shall not constitute an offer and is given on the basis that no contract will come into existence until the Proposal has been accepted pursuant to clause 2.4. Unless otherwise specified by the Company, a quotation is valid for a period of thirty (30) days only from its date.

2.7 The Proposal that has been accepted pursuant to clause 2.4 shall, together with these Terms, form the Contract, which shall be a separate contract between the Company and the Customer that has entered into it and shall constitute the entire agreement and understanding between those parties.

2.8 These Terms are the only terms and conditions upon which the Company is prepared to deal with the Customer and they shall govern the Proposal to the entire exclusion of all other terms and conditions.

2.9 No terms or conditions (other than these Terms) endorsed upon, delivered with or contained in the Customer's purchase order, acknowledgement or acceptance of

order, specification or other document which is not referred to in the Proposal, or which are implied by trade, custom, practice or course of dealing, will form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.

- 2.10 All terms and conditions (other than these Terms), warranties and other statements whatsoever that would otherwise be implied or imposed by statute, common law, trade custom or practice, a course of dealing or otherwise howsoever are excluded from the Contract to the fullest extent permitted by Applicable Law.
- 2.11 The Customer acknowledges that it has not relied on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding made or given by or on behalf of the Company (whether innocently or negligently) which is not expressly set out in the Contract. The Customer shall not have any claim for innocent or negligent misrepresentation based upon any statement, representation, assurance or warranty in the Contract.

### 3 PERFORMANCE

- 3.1 The Company shall supply the Deliverables and/or the Services in respect of the premise(s) stated in the Proposal and/or as otherwise agreed in writing between the parties from time to time ("Site").
- 3.2 The Customer warrants and represents that it is the owner, or the authorised agent of the owner, of the Site. The Customer further warrants and represents that the Site will not be occupied at any time at which the Company has been instructed to provide the Deliverables and/or Services or that if the Site is occupied at that time that the occupier(s) has/have no objection to the provision by the Company of the Deliverables and/or Services at the Site.
- 3.3 The Customer shall ensure that the Site (including access to the Site and any unloading area required by the Company) is at all times suitably prepared and readily accessible by the Company in accordance with the Contract and the reasonable instructions given by or on behalf of the Company from time to time in order to allow the Company to supply the Deliverables (including to deliver, install, maintain and uninstall the Deliverables, as appropriate) and the Services in accordance with the Contract.
- 3.4 The Customer shall at all times have and maintain all licences, permissions, authorisations, consents and permits that it needs to receive the Deliverables and Services (including access to any Site).
- 3.5 The Customer is solely responsible for ensuring that the Site is safe in all respects (including compliant with all Applicable Law relating to health and safety) for the Company to supply the Deliverables and the Services.
- 3.6 The Customer shall provide adequate electricity, lighting, Internet connection, telecommunications, heating, storage space (including lockable storage), water (hot and cold) and other utilities as specified in the Proposal or are reasonably required by the Company from time to time to enable the Company to supply the Deliverables and/or Services.
- 3.7 In the absence of safe and secure working environment the Company reserves the right to terminate the Contract by reason of material breach incapable of remedy pursuant to clause 16.3.1.
- 3.8 Any dates specified by the Company for providing the Deliverables and/or Services are intended to be estimates only and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.
- 3.9 If a date is agreed between the parties for the supply of Deliverables and/or Services and the Customer subsequently wishes to postpone or cancel that date or otherwise through the Customer's acts or omission it prevents the Company from completing the supply of the Deliverables and/or Services on that date, the Company reserves the right to charge the Customer for the full amount of the Charges that would have otherwise been payable had it not been so affected and further charges may be applied by the Company for any rearranged date.
- 3.10 The Customer must inform the Company in writing of any shortages of Deliverables in terms of quantity delivered and/or installed within ninety six (96) hours of the Deliverables being (or should have been) delivered.

### 4 WARRANTY

- 4.1 The Company warrants that upon delivery, and for a period of three (3) months from the date of delivery, the Services will:
- 4.1.1 be performed with reasonable care and skill; and
- 4.1.2 conform in all material respects with their description in any applicable Specification.
- 4.2 Where there is a breach of warranty under clause 4.1 ("Defective Services") the Customer must give written notice of the Defective Services to the Company (a "Warranty Claim"):

- 4.2.1 in the case of Defective Services that are reasonably apparent on normal visual inspection, within five (5) Working Days of delivery of the Services to which the Defect relates; and
- 4.2.2 in the case of Defective Services that are not apparent on normal visual inspection, within five (5) Working Days after such Defective Services become reasonably apparent.
- 4.3 The Customer shall provide the Company with a reasonable opportunity to assess the Warranty Claim and the associated Defective Services. If the Company approves the Warranty Claim (such approval not to be unreasonably withheld or delayed), the Company shall at its option either correct or reperform the Defective Services or refund the relevant part of the Charges in respect of the Defective Services.
- 4.4 If the Company complies with clause 4.3 it shall have no further liability in respect of the Defective Services.
- 4.5 The Company shall not be liable for Defective Services if:
- 4.5.1 the Customer does not submit a Warranty Claim in accordance with clause 4.2;
- 4.5.2 the Defective Services arise from the Company following any specification or other technical instruction provided by the Customer; and/or
- 4.5.3 the Defective Services arise through the Customer's act or omission (including its breach of the Contract or negligence) or that of a third party not under the control of the Company.
- 4.6 Any works by the Company in respect of a Warranty Claim will be undertaken on a Working Day between 09.00AM and 17:00PM (UK time).
- 4.7 This clause 4 shall apply in respect of any corrected or reperformed Defective Services for any unexpired part of the three (3) month period referred to in clause 4.1.
- 4.8 To the maximum extent permitted by Applicable Law, the Company does not provide, and hereby excludes, all warranties, guarantees and alike in respect of any Deliverables, except that the Company will endeavour to pass on to the Customer the benefit of any manufacturer warranty or guarantee given in respect of those Deliverables to the Customer which shall be the full extent of the Company's responsibility and liability in that regard.

### 5 DELIVERABLES

- 5.1 Unless expressly stated to the contrary in the Proposal:
- 5.1.1 all title to the Non-Purchased Deliverables shall remain with the Company (or its manufacturer or supplier, as the case may be) and no ownership of the Non-Purchased Deliverables shall pass to the Customer under any circumstance; and
- 5.1.2 ownership of the Purchased Deliverables shall pass to the Customer upon the Company's receipt (in cleared funds) of all funds due in respect of those Purchased Deliverables.
- 5.2 All Deliverables shall be at the risk of the Customer from completion of delivery.
- 5.3 Unless otherwise expressly provided in the Proposal, the Customer acknowledges and agrees that all Purchased Equipment is provided on an "as is basis".
- 5.4 The Customer shall from the completion of delivery until: (1) in the case of a Non-Purchased Deliverable, the Non-Purchased Deliverable has been returned to the Company; or (2) in the case of a Purchased Deliverable, ownership to the Purchased Deliverable has passed to the Customer pursuant to clause 5.1.2:
- 5.4.1 hold the Deliverables as the Company's bailee on a fiduciary basis;
- 5.4.2 keep the Deliverables separate from all other equipment, hardware, assets and other goods of or in the possession of the Customer (including the Customer Property) in such a way that they remain readily identifiable as the property of the Company;
- 5.4.3 not destroy, deface, remove, obscure or in any way alter any identifying mark or packaging on or relating to the Deliverables;
- 5.4.4 not damage or destroy any Deliverables;
- 5.4.5 not alter, modify, repair, maintain or replace any Deliverables without obtaining the prior written consent of the Company;
- 5.4.6 not resell, transfer, encumber, charge or create any security or other interest in respect of the Deliverables, including a lien;
- 5.4.7 if any of Deliverable is stolen or vandalised, firstly immediately inform the police of the incident, providing all details requested. The Customer shall then immediately inform the Company, providing all details of the incident reasonably required by the Company, including the information provided by the police authority and, where relevant, the crime reference number;
- 5.4.8 keep the Deliverables insured on the Company's behalf for their full replacement cost against all risks to the reasonable satisfaction of the Company and on request produce to the Company the policy of insurance and details of any insurance claim;
- 5.4.9 hold the proceeds of the insurance referred to in clause 5.4.8 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;
- 5.4.10 inform the Company immediately if there occurs, or if the Customer knows there is about to occur, any of the events referred to in clauses 16.3.3 to 16.3.12 (inclusive); and

- 5.4.11 give the Company such information relating to the Deliverables as the Company may from time to time reasonably require.
- 5.5 If:
- 5.5.1 any of the termination rights for the Company arise pursuant to clauses 16.3 or 16.4 (whether or not the Company has exercised such rights of termination);
- 5.5.2 the Company reasonably believes that any of the any of the termination rights for the Company pursuant to clauses 16.3 or 16.4 are about to arise; or
- 5.5.3 the Customer breaches any of the provisions of clause 5.4 or 6.1, the Company may, and without limiting any other rights or remedies it may have, exercise its rights under clause 16.5.1 to return all Deliverables as if the Contract had been terminated.
- 5.6 The Customer grants the Company, its agents, consultants, sub-contractors and/or employees an irrevocable licence at any time to enter any premises where the Deliverables are or may be stored (including the Site) in order to inspect them, or in the event clause 5.5 is exercised or on expiry or termination of the Contract (or the relevant hire or lease period for the Deliverable, if earlier), to recover them.
- 5.7 If the Customer wishes to sell, transfer, assign, let, encumber, charge or otherwise dispose of its interest in the Site (or the relevant part thereof) where a Deliverable is installed and title to that Deliverable does not belong to the Customer pursuant to clause 5.1, the Customer shall first obtain the prior written consent of the Company and, as a condition of that consent, the Customer shall obtain a written undertaking from the person to whom the Site is being sold, transferred, assigned, leased, encumbered, charged or otherwise acquired to be bound by these Terms as if it were the Customer. Until such time as those undertakings are procured by the Customer to the reasonable satisfaction of the Company, the Company shall remain fully liable for those Deliverables under the Contract (including ensuring such person complies with these Terms as if it were the Customer) and shall indemnify, keep indemnified and hold harmless the Company (on a full indemnity basis) from and against all losses, damages, costs, expenses (including reasonable legal fees) and other liabilities incurred by the Company arising out of or in connection with a breach of this clause and/or retrieving or writing off such Deliverables.

## 6 SERVICE SPECIFIC TERMS

### 6.1 Hired Equipment

- 6.1.1 Where the Company has agreed to provide Hired Equipment under the Proposal, the following provisions shall apply:
- the hire of Hired Equipment shall start on the date specified in the Proposal or, if no date is specified, at the commencement of installation of the Hired Equipment by the Company;
  - the Customer shall not move, remove, take down, dismantle, adjust or refit the Hired Equipment. All such actions must be performed by the Company (or the Company's contractors) upon written request by the Customer and are subject to additional Charges by the Company;
  - the Hired Equipment shall only be maintained and/or repaired by or on behalf of Company. The Customer will not undertake (or appoint a third party to undertake) any maintenance or repair work to the Hired Equipment without the Company's prior written consent;
  - the Customer shall not sublet, sub-hire or otherwise transfer the Hired Equipment to a third party without the Company's prior written consent or as otherwise expressly provided in the Proposal;
  - if the Hired Equipment is damaged or lost, other than by the default or negligence of the Company: i) the Customer shall pay for the relevant repair or replacement costs for that Hired Equipment as required by the Company (which may include as specified in the Company's damaged or lost equipment price list available to view on request to the Company); and ii) the Charges for the hire of that Hired Equipment shall remain payable by the Customer up to and including the date such damage or loss is reported to or discovered by the Company, except where the Hired Equipment is damaged or lost due to the act or omission of the Customer, in which case, the Charges for the hire of that Hired Equipment shall remain fully payable by the Customer;
  - the Customer shall indemnify, keep indemnified and hold harmless (on a full indemnity basis) the Company and any personnel supplied by the Company in respect of any and all losses, damages, costs, expenses (including legal fees) and any other liabilities incurred or suffered by the Company (or such personnel) in connection with any claim by any person whatsoever for injury to person or damage to property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Hired Equipment during the period of hire, and in connection therewith, whether arising under statute or common law;

- the Company reserves the right to inspect the Hired Equipment periodically during the course of the hire period and make a charge for any damaged or lost Hired Equipment based on that inspection;
- any Hired Equipment is deemed to be provided without maintenance service, unless those services are specifically identified to be provided by the Company in the Proposal; and
- if any Sites where the Hired Equipment are situated in Scotland, the Customer shall ensure the Hired Equipment shall not form part of any landlord's hypothec.

### 6.2 Maintenance Services

- 6.2.1 Where the Company has agreed to provide maintenance services in respect of any Deliverables supplied by or on behalf the Company or the Customer's own equipment (such as fire equipment) under the Proposal ("**Maintained Equipment**"), the following provisions shall apply:
- the Company will maintain the Maintained Equipment to the standards specified by the relevant manufacturer or as otherwise stated in the Proposal;
  - only official parts (that is, those produced, recommended or permitted by the manufacturer of the Maintained Equipment) will be used for the maintenance services unless otherwise stated in the Proposal;
  - if the Customer reasonably believes that the Maintained Equipment requires repairing or replacing, the Customer shall promptly notify the Company in writing giving reasonable detail of such request and, if the Company approves such request (such approval not to be unreasonably withheld or delayed), the Company shall at its option repair or replace such Maintained Equipment. In order to fulfil its obligations under this clause, the Customer acknowledges and agrees that the Company may recall such Maintained Equipment or dispatch personnel to the relevant Site to undertake the repair or replacement or give the Customer permission to make the necessary repair or replacement itself. Subject to clause 6.2.1e), the cost of such repair or replacement (including associated labour charges) shall be borne by either the Company or the Customer, the responsibility being determined reasonably by the Company based on the reasons for the repair or replacement;
  - if any parts of the Maintained Equipment require replacement, the Company shall have the option of supplying such parts to the Customer or supplying a replacement or a suitable substitute (that is, capable of materially performing the same tasks as that which it replaces);
  - any replacement parts and/or substitutes provided under this clause shall be provided free of charge by the Company provided that such replacement is necessitated by nothing more than fair wear and tear;
  - all repaired, replaced or substituted Maintained Equipment (or part thereof) shall be governed by, and subject to, the Contract;
  - the obligations set out in clauses 6.2.1a) to 6.2.1e) (inclusive) shall only apply during the maintenance period agreed in the Proposal. On expiry of such period, the Company shall have no obligation to maintain such Maintained Equipment; and
  - except for the repair or replacement as set out in this clause 6.2 or otherwise set out in the Proposal, the Company shall have no further obligations, responsibilities or liability, and the Customer shall have no further rights or remedies, in respect of any damaged or lost Maintained Equipment.

### 6.3 Installation Services

- 6.3.1 Where the Company has agreed to provide installation services under the Proposal, the installation shall only be deemed completed once the Company has confirmed so in writing to Customer (which may include issuing a completion certificate or equivalent).

### 6.4 Alarm Monitoring Response Services

- 6.4.1 Where the Company has agreed to provide alarm monitoring response services under the Proposal, the following provisions shall apply:
- any stated response time shall be taken as an average estimate and for illustration purposes only. Whilst the Company will use reasonable efforts to meet these response times, the Company does not warrant or guarantee whatsoever that such response time will be achieved and accepts no liability whatsoever arising as a result of failing to achieve such response time; and
  - additional charges may be levied by the Company to the Customer in the event that it attends the Site after an alarm activation which has been caused by the default or negligence of the Customer or any change (whether temporary or permanent) to the working patterns or other changes to the required operating times of the service which have not been notified in writing to the Company reasonably in advance;

### 6.5 Keyholding Services

- 6.5.1 Where the Company has agreed to provide key holding services under the Proposal, the following provisions shall apply:

- a) the Company may provide the Customer with a written receipt of the keys provided by the Customer. Such receipt may detail the date and time of exchange of the keys and the person receiving the keys together with a description of the keys which shall be binding evidence on the parties; and
  - b) any keys of the Customer held by the Company will be made available for collection within a twenty eight (28) day period from the date of expiry or termination of the Contract, after which, any keys not collected by the Customer may be destroyed by the Company by any means the Company deems appropriate to ensure destruction of the keys.
- 6.6 Mobile Patrol and Man Guarding Services**
- 6.6.1** Where the Company has agreed to provide mobile patrol or man guarding services (including call handling and check call monitoring services) under the Proposal, the following provisions shall apply:
- a) the provisions of clause 6.5 shall apply to any keys that are provided to the Company's officers as part of the service;
  - b) the Customer acknowledges and agrees that such service may be provided to other customers of the Company simultaneously and, accordingly temporary interruptions or delays may arise if an incident occurs at the premises of another customer during the course of a patrol officer's tour of duty;
  - c) the Customer acknowledges and agrees that the Company's and its officers' powers are limited to those afforded to them by Applicable Law and do not provide them with any enhanced powers of enforcement such as those available to the police authority;
  - d) additional charges may be levied by the Company to the Customer in the event that it attends the Site after an alarm activation which has been caused by the default or negligence of the Customer or any change (whether temporary or permanent) to the working patterns or other changes to the required operating times of the service which have not been notified in writing to the Company reasonably in advance
- 6.7 CCTV Monitoring Services**
- 6.7.1** Where the Company has agreed to provide CCTV monitoring under the Proposal, the following provisions shall apply:
- a) save to the extent expressly stated in the Proposal, the Customer is responsible for the management, maintenance and operation of the CCTV system in operation at the Site ("**CCTV System**");
  - b) if the Company did not install the CCTV System and/or does not provide maintenance services in respect of the CCTV System, the Company shall not be responsible in any way for the quality or viability of the CCTV System or its coverage or any installation, maintenance or service issue with the CCTV System, nor is the Company's acceptance of providing the services an endorsement of such quality or viability;
  - c) without limiting clause 3.6, the Customer shall ensure that adequate broadband and telephone connection, power supply, lighting system and any other requirements specified in the Proposal or as otherwise reasonably required by the Company from time to time are at all times available at the Site for the purposes of operating the CCTV System at that Site;
  - d) the Customer shall ensure that appropriate signage that CCTV System is in operation is at the Site in compliance with Applicable Law;
  - e) the Customer acknowledges and agrees that the Company may only monitor the CCTV System for the sole purpose of monitoring the Site, including property (including Customer Property) and people on the Site, for non-permitted or unlawful intrusion or from theft or damage to property and for no other purpose;
  - f) in the event that a person (including the police authority) request images from the CCTV System, it is the Customer's responsibility to handle such requests using authorised personnel;
  - g) the Customer acknowledges and agrees that the Company is not permitted to review, download and/or issue copies of any images from the CCTV System unless authorised to do so in writing by the Customer. The Customer shall promptly provide such authorisation if required to do so by the Company for legitimate means and/or by Applicable Law;
  - h) notwithstanding clause 6.7.1g), the Customer acknowledges and agrees that the Company may be required (and the Customer hereby authorises the Company) to identify and record the geographical location of the Customer's staff, agents, consultants and contactors and its and their assets as applicable to provide these services and to pass on such information to third parties who have bona fide reason to have access to this information, including the event of an emergency security situation;
  - i) notwithstanding clause 14, the Customer shall comply at all times with all Applicable Law (including Applicable Data Protection Law) relating to data protection and privacy as data controller in respect of the operation of the CCTV System, including all guidance published by the Information Commissioner's Office relating to CCTV and surveillance cameras;
  - j) the Company provide no warranty or guarantee that the CCTV System or its monitoring will be uninterrupted or error free nor that it will prevent any loss, theft or damage to property or death or personal injury;
  - k) the Company reserves its rights to charge the Customer for any additional costs incurred associated with CCTV System not covered by the Proposal, including requests by Customer for monitoring, viewing, recording, responses, battery changes, maintenance of the CCTV System and providing footage to the police; and
  - l) additional charges may be levied by the Company to the Customer in the event that it attends the Site after an alarm activation which has been caused by the default or negligence of the Customer or any change (whether temporary or permanent) to the working patterns or other changes to the required operating times of the service which have not been notified in writing to the Company reasonably in advance.
- 6.8 Environmental Services**
- 6.8.1** Where the Company has agreed to provide environmental services under the Proposal (including waste removal services (including hazardous waste) and "Clear and Clean under Direction" services ("**CCD Services**")), the following provisions shall apply:
- a) the Customer acknowledges and agrees that the Company accepts no responsibility for any waste that is collected as part of that CCD Services once removed from the Site on the Customer's instructions; and
  - b) when carrying out CCD Services, the Customer shall ensure an appropriate representative is present at all times to provide direction to the Company in respect of those services. The Company takes no responsibility for items cleared or left on the Site where the Customer's representative is absent.
- 7 SPECIFICATION**
- 7.1** The Company may amend any Specification if required by Applicable Law, following which the applicable Specification shall be that as so amended.
- 7.2** All samples, drawings, descriptive matter, specifications and advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced solely to describe the Deliverables and/or Services approximately and do not form part of the Contract unless expressly set out in the Contract.
- 8 THE CUSTOMER'S PROPERTY**
- 8.1** The Company shall only use the Customer Property for the purposes of providing the Deliverables and/or Services and not for any other purpose unless agreed between the parties.
- 8.2** The Company acknowledges that the Customer Property is the exclusive property of the Customer.
- 9 COMPLIANCE**
- Each party shall comply with all Applicable Law in respect of the Contract.
- 10 CHARGES**
- 10.1** Subject to clause 10.4 the charges for the Deliverables and Services shall be the charges set out in the Proposal or, if no charges are set out in the Proposal, the charges set out in the Company's rate card supplied to the Customer from time to time ("**Charges**").
- 10.2** Unless otherwise specified in the Proposal:
- 10.2.1** where the Charges are on a per opening basis, an opening will be deemed to be less than three square meters (3sq.m.). Larger openings will be charged on a pro-rata basis. This will also apply where openings change direction;
  - 10.2.2** where the Charges are on a per Site basis, it is assumed that the Site comprises of a single dwelling. If the Company determines after inspection that there is more than one dwelling situated on that Site (or a building within that Site), additional charges may be levied by the Company for each individual dwelling therein at its then current prevailing rates; and
  - 10.2.3** where the Charges are for Hired Equipment, the Charges are based on full weeks and cannot be pro-rated for any part weeks.
- 10.3** The Charges are stated exclusive of value added tax ("**VAT**"), which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.
- 10.4** Without limiting clause 10.5, the Company may at any time increase the Charges to reflect any increase in the cost of the Deliverables and/or Services due to:
- 10.4.1** any request by the Customer to change the delivery date, quantity, Specification or type of Deliverables and/or Services ordered;

- 10.4.2 any delay or increase in time arising from the inaccuracy or inadequacy of, or failure to provide, requisite instructions or information reasonably required from the Customer by the Company or a failure by the Customer to perform its obligations under the Contract;
- 10.4.3 any change in Applicable Law; or
- 10.4.4 any increase in the costs of supplying the Deliverables and/or Services (including any related employment, subcontractor or other third party costs).
- 10.5 In the event that the provision of the Deliverables and/or Services by or on behalf of the Company in accordance with the Contract is prevented or hindered due to the act or omission of the Customer, including where access to the Site is denied or not achievable by the Company, the Company may, without prejudice to its other rights and remedies available to it, levy additional charges on the Customer for any resulting lost or wasted time of its staff (including an aborted visit) at its then current prevailing rates.

## 11 PAYMENT

- 11.1 The Company may invoice the Customer for the Charges as set out in the Proposal or, if nothing is stated in the Proposal, prior to providing the Deliverables and/or Services (or in the case of Hired Equipment, weekly in advance or arrears, as elected by the Company).
- 11.2 The Customer shall pay the Company's invoice in full within thirty (30) days of the date of invoice.
- 11.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 11.4 All amounts payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 11.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless required by law.
- 11.6 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Customer to the Company or any of its affiliates against any amount payable by the Company or any of its affiliates to the Customer.
- 11.7 Any dispute or query relating to the Charges or the Company's invoice must be raised with the Company by the Customer in writing within the thirty (30) day payment terms referred to in clause 11.2. Any disputes or queries raised after such period will not be considered and such Charges and invoices will be deemed due in full for payment.
- 11.8 The Company shall be entitled to claim interest on the late payment of any amount properly due to the Company under the Contract accruing on a daily basis from the due date for payment until payment is made in full, both before and after any judgment, at a rate equal to the rate of statutory interest prescribed for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time together with all costs and expenses (including legal costs) incurred in the collection of the overdue amount.
- 11.9 In the event that any Charges (which are not in bona fide dispute pursuant to clause 11.7) become overdue, any and all other invoices submitted (whether existing or in the future) by the Company to the Customer shall immediately become due and payable.
- 11.10 Payment shall be made by bank transfer to the Company's nominated bank account and not by any other means (including cash or cheque) unless expressly agreed in writing by the Company. Payment by means other than bank transfer may be subject to an administration fee which shall be payable by the Customer to the Company (and a further administration fee may be payable by the Customer to the Company if, in the case of a cheque, the cheque is returned to the Company by the Customer's bank for non-sufficient fund, without prejudice to the Company's other rights and remedies available to it).

## 12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 All rights, title and interest in and to any Intellectual Property Rights in any Deliverables and Services or otherwise arising in relation to the Contract shall belong to the Company (or its licensor). No rights are granted by the Company to the Customer to any such Intellectual Property Rights.
- 12.2 The Customer shall promptly at the Company's request do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such further documents as the Company may from time to time require for the purpose of vesting the rights, title and interest in and to the Intellectual Property Rights in the Company pursuant to clause 12.1.

## 13 CONFIDENTIALITY

- 13.1 Each party (the "receiving party") shall keep in strict confidence, and use only for the purpose of performing its obligations, or exercising its rights, under the Contract, information of a confidential or proprietary nature, including all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature, including the Contract ("Confidential Information") and have been disclosed (whether before or after the commencement of this Contract) to the receiving party by the other party (the "disclosing party") or its employees, officers, representatives, agents, contractors or advisers ("Related Persons") and any other confidential information concerning the disclosing party's business or its products which the receiving party may obtain (whether before or after the commencement of this Contract) and the receiving party shall restrict disclosure of such confidential information to such of its Related Persons as need to know the same for the purposes of the Contract and shall ensure that such Related Persons are subject to like obligations of confidentiality and restrictions of use as bind the receiving party. The receiving party shall remain responsible and liable any non-compliance of this clause 13 by its Related Persons.
- 13.2 Confidential Information does not include information which:
  - 13.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Related Persons in breach of this clause);
  - 13.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - 13.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - 13.2.4 the parties agree in writing is not confidential or may be disclosed; or
  - 13.2.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 13.3 A receiving party may disclose Confidential Information to the extent it is required by:
  - 13.3.1 Applicable Law; or
  - 13.3.2 regulations of any recognised investment, stock or securities exchange on which that receiving party's securities are traded or other regulatory organisation, provided that, to the extent legally permitted, it gives the disclosing party as much notice of such disclosure as reasonably possible including the full circumstances and the information required to be disclosed and consults with the other as to possible steps to avoid or limit disclosure, the form, nature and purpose of the disclosure and takes such of those steps as the other may reasonably require.
- 13.4 A receiving party may disclose the Contract to the extent it is reasonably required by a third party or its advisors in the course of bona fide discussions for the transfer or sale of the stock or assets (in whole or in part) of receiving party to that third party, provided that such third party and its advisors are subject to confidentiality obligations no less stringent than this clause. The receiving party shall remain responsible and liable any non-compliance of this clause 13 by that third party, the Related Persons, or its advisors.

## 14 DATA PROTECTION

- 14.1 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. The Customer shall comply with all guidance and codes of practice issued by the Information Commissioner's Office or any other supervisory or regulatory authority from time to time (in each case, whether jointly with another body or alone).
- 14.2 The parties have determined that for the purposes of Applicable Data Protection Laws, the Company shall process the personal data as set out in paragraph 2 of the Appendix to the Proposal as processor on behalf of the Customer.
- 14.3 Should the determination in clause 14.2 change (in so far as the Company acts as controller), the parties shall use all reasonable endeavours make any changes that are necessary to this clause 14 and the Appendix to the Proposal.
- 14.4 Without prejudice to clause 14.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Customer Personal Data to the Company and lawful collection of the same by the Company (where appropriate) for the duration and purposes of these Terms.
- 14.5 In relation to the Customer Personal Data, the Appendix to the Proposal sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data and categories of data subject relevant to the selected Services.
- 14.6 Without prejudice to clause 14.1, the Company shall, in relation to Customer Personal data:
  - 14.6.1 process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set

out in paragraph 2 of the Appendix to the Proposal unless the Company is required by Applicable Law (including Applicable Data Protection Laws) to otherwise process that Customer Personal Data (“Purpose”). Where the Company is relying on Applicable Law as the basis for processing Customer Personal Data, the Company shall notify the Customer of this before performing the processing required by the Applicable Law unless those Applicable Laws prohibit the Company from so notifying the Customer on important grounds of public interest. The Company shall inform the Customer if, in the opinion of the Company, the instructions of the Customer infringe Applicable Data Protection Laws;

- 14.6.2 implement technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, having regard to the state of technological development and the cost of implementing any measures;
- 14.6.3 ensure that any personnel engaged and authorised by the Company to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- 14.6.4 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Company), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.6.5 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- 14.6.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless the Company is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause, Customer Personal Data shall be considered deleted where it is put beyond further use by the Company; and
- 14.6.7 maintain records to demonstrate its compliance with this 14.
- 14.7 The Customer provides its prior, general authorisation for the Company to:
  - 14.7.1 appoint processors to process the Customer Personal Data, provided that the Company:
    - a) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Company in this 14.7; and
    - b) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Company;
  - 14.7.2 transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Company shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Company, including any request to enter into standard data protection clauses adopted by the Information Commissioner's Office from time to time.

## 15 EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 15.1 The following provisions of this clause 15 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, consultants, agents, suppliers and/or sub-contractors) to the Customer under or in respect of the Contract for any claim or claims, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation or otherwise howsoever.
- 15.2 Nothing in these Terms shall limit or exclude the liability or remedy of either party:
  - 15.2.1 for death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
  - 15.2.2 for fraud or fraudulent misrepresentation;
  - 15.2.3 for breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979; or
  - 15.2.4 for any act, omission or matter, liability for which may not be legally excluded or limited.
- 15.3 Subject to clause 15.2:
  - 15.3.1 the Company's total liability to the Customer under or in respect of the Contract for any claim or claims, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever (including any damage to or loss or theft of the Site or Customer Property) shall in no circumstances exceed in each twelve (12) month period during the Duration (the first of which shall commence on the commencement of the Duration) the lower of: (a) an amount equal to one hundred percent (100%) of the Charges paid under the Contract during that twelve (12) month period; and (b) five thousand pounds sterling (£5,000); and

- 15.3.2 the Company shall not have any liability to the Customer, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever, for: (a) any direct or indirect loss of profit, loss of revenue, loss of contract, loss of opportunity, loss of savings, loss of business, loss of use of any Deliverables or any other asset or facility, loss of production or productivity, loss, damage or corruption of data, damage or depletion of goodwill; or (b) any other special, indirect or consequential loss, whatsoever arising out of or in connection with the Contract.
- 15.4 Subject to clause 15.2, the Customer acknowledges and agrees the Company cannot and does not guarantee that the Deliverables and/or Services will achieve or prevent any particular event, purpose, result or outcome and, accordingly, the Company does not accept any liability directly or indirectly incurred arising from any failure to do so and it remains the Customer's sole responsibility to insure to the fullest extent against these liabilities on an “all risks” basis. These include the actions or inactions of squatters, intruders, and travellers; prevention of loss, theft or damage to property (including the Site or Customer Property) or personal injury or death; fires; leaks; trespassing; and recovery of any property or sums.
- 15.5 Subject to clause 15.2, unless the Company has specifically agreed to provide key holding services in the Proposal, any keys of the Customer provided to the Company (including keys to the Site) as part of these services are entirely at the risk of the Customer and the Company accepts no liability arising in connection with any damage or loss to, or wrongful use of, such keys or any replacement locks, keys or other security devices rendered necessary as a result of such loss, including any loss or damage to property (including the Site and Customer Property).
- 15.6 Subject to clause 15.2, the Company shall not be liable for any failure to perform the Contract (including any defect, delay or non-performance) to the extent that such failure has been caused or contributed by the act or omission of the Customer (including a breach of the Contract) or any other party not under the control of the Company or any failure by the Customer to provide complete and/or accurate information.
- 15.7 Subject to clause 15.2, the Company shall not be liable for any damage to or loss or theft of property (including the Site and/or Customer Property) or death or personal injury caused by Deliverables and/or Services or the failure thereof (including any defective material, faulty workmanship or otherwise howsoever arising) except to the extent caused by the negligence or breach of the Contract by the Company. The Customer acknowledges and agrees the Charges are calculated on the assumption that such liability remains with the Customer and is to be covered by the Customer's own policy(ies) of insurance on an “all risks” basis. Notwithstanding the foregoing, if the Company is found to be liable for any such liability, such liability shall in no event exceed the amounts referred to in clause 15.3.
- 15.8 The Customer shall not be entitled to make a claim under or in relation to the Contract against the Company unless such a claim is made in writing within three (3) months of the event giving rise to such claim and containing sufficient information to enable the Company to carry out an investigation.

## 16 TERM AND TERMINATION

- 16.1 The Contract shall commence on the date stated in the Proposal (or, if no such date is stated in the Proposal, on commencement of the provision of the Deliverables and/or Services by the Company as determined by the Company) and shall, subject to early termination in accordance with this clause, continue for the period set out in the Proposal (or, if no such date is stated in the Proposal, until completion of the supply of the Deliverables and/or Services as determined by the Company) (“Duration”).
- 16.2 Where a minimum period is stated in the Proposal (such as a minimum hire period) (“Minimum Period”), the Contract may not be terminated (except in accordance with clauses 16.3 or 16.4) until the expiry of that Minimum Period. After expiry of the Minimum Period, a party may terminate the Contract by serving a written termination notice on the other party of the required period of notice stated in the Proposal (or, if no such period of notice is stated in the Proposal, the period of notice shall be at least thirty (30) days, not to expire sooner than the end of the last day of the Minimum Period).
- 16.3 A party shall, without prejudice to any other rights or remedies it may have, have the right at any time by giving notice in writing to the other party to immediately terminate the Contract, without liability to the that party, if:
  - 16.3.1 the other party commits a material breach of the Contract which is incapable of remedy;
  - 16.3.2 the other party commits a material breach of the Contract which is capable of remedy but which is not remedied within thirty (30) days of receipt of a written notice to do so by the terminating party;
  - 16.3.3 the other party is (in the reasonable belief of the terminating party), or is deemed to be, insolvent or unable or (being an individual) is deemed to have no reasonable

- prospect of being able (or admits its inability) to pay its debts as they fall due or stops or suspends payment of any of its debts or (being a partnership) has any partner to whom any of the foregoing apply;
- 16.3.4 any of the other party's Indebtedness is not paid in full when due or becomes due (or could be declared due) before its stated maturity because of default;
- 16.3.5 any expropriation, attachment, sequestration, distress, execution, enforcement of security or other legal process is levied, enforced or sued on or against, or affects, any of the other party's assets and is not discharged or stayed within twenty one (21) days;
- 16.3.6 the other party begins negotiations, or enters into, or gives notice of any intention to enter into, any composition or arrangement, with one or more of its creditors in order to reschedule any of its indebtedness because of actual or anticipated financial difficulties including, but not limited to, giving notice of a meeting of creditors for the purpose of considering a proposal for a company voluntary arrangement or (being an individual) an individual voluntary arrangement;
- 16.3.7 a moratorium is declared, or in any event comes into existence, over any of the other party's Indebtedness;
- 16.3.8 any petition is presented, application made, resolution proposed, notice of meeting given or other action, proceedings, procedure or step taken together by the other party or any third party for, or which may lead to:
- the suspension of payments, winding up, dissolution, administration, receivership (whether administrative or otherwise) or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the other party;
  - the appointment of a liquidator (both provisional and following a winding up), receiver (including a fixed charge receiver), administrative receiver, administrator, nominee supervisor, compulsory manager or other similar officer in respect of the other party or any of its assets; or
  - (where the other party is an individual), bankruptcy, an individual voluntary arrangement or debt relief order;
- 16.3.9 any event similar to any of those set out in clauses 16.3.3 to 16.3.8 (inclusive) occurs in relation to the other party (including in any jurisdiction to which it is subject);
- 16.3.10 the other party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;
- 16.3.11 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- 16.3.12 the financial position of the other party deteriorates to such an extent that in the reasonable opinion of the terminating party the capability of the other party adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 16.4 The Company shall, without prejudice to any other rights or remedies it may have, have the right at any time by giving notice in writing to the Customer to terminate the Contract, without liability to the Customer, forthwith if any Charges or other amounts owed to it under the Contract (which are not in bona fide dispute pursuant to clause 11.7) are not fully paid within fourteen (14) days after their due date.
- 16.5 On expiry or termination of the Contract or any part of it for any reason:
- 16.5.1 the Customer shall immediately return all Deliverables for which title does not belong to the Customer pursuant to clause 5.1, failing which, the Company may enter any premises of the Customer or of any third party where such Deliverables are held for the purpose of recovering such Deliverables. If the Customer wishes the Company to collect such Deliverables from the relevant premises, the Customer shall make such request in writing to the Company. The Company shall be under no obligation to accept such request, but in the event the Company does accept such request, the Company will notify the Customer of the date of collection (which the Customer acknowledges and agrees will be (unless a shorter or longer time period is specified in writing by the Company) at least seven (7) days from the date of receipt by the Company of the request) and the Customer shall ensure the premises are accessible by the Company at all times on such date of collection. If (in the reasonable opinion of the Company) the circumstances justify the requirement for forced entry into the Customer's or third party's premise, the Company may use reasonable force to do so. The Company will not be liable for consequences of such forced entry, including any damage to the Site, Customer Property or any other property resulting from the forced entry. The Company shall remain liable for the full replacement costs of any Deliverables that are not returned or collected in accordance with this clause;
- 16.5.2 all Charges properly owed under the Proposal and all other amounts due to the Company under the Contract shall become immediately due and payable by the Customer; and
- 16.5.3 the receiving party shall, at the direction of the disclosing party, return or destroy all Confidential Information of the disclosing party; and
- 16.5.4 the provisions of clause 14.6.6 shall apply.
- 16.6 On termination of the Contract by the Company pursuant to clauses 16.3 or 16.4, the Company may invoice the Customer for all Charges that would have otherwise been payable during the Duration (or where there is a Minimum Period, up to the end of the Minimum Period), but for such termination.
- 16.7 The termination of the Contract for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the Company and the Customer existing at termination.
- 16.8 Such of these Terms which expressly or by implication are intended to come into or remain in force on or after the termination of the Contract shall remain in full force and effect.
- 17 STAFF TRANSFER**
- 17.1 The parties do not believe that the commencement of any Services shall constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or equivalent legislation (the "**Employment Regulations**") and, accordingly, that it will not operate so as to transfer the contracts of employment of any of the Customer's (or any of its affiliate's or contractor's) employees to the Company or any sub-contractor at any time on or following the commencement of the Contract.
- 17.2 The Customer shall indemnify, keep indemnified and hold harmless the Company against all damages, losses, demands, claims, expenses, costs or liabilities (including all reasonable legal expenses) (calculated on a full indemnity basis) arising which the Company may suffer arising from or in connection with:
- 17.2.1 the termination of the contract of employment of any employee of the Customer (or its affiliate or contractor); or
- 17.2.2 any claim made by any employee of the Customer (or its affiliate or contractor) by virtue of the Employment Regulations, on or following the commencement of the Contract as a result of or in connection with the commencement of the Contract.
- 18 NON-SOLICITATION**
- 18.1 Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the supply of the Deliverables and/or Services or (in the case of the Customer) in the receipt of the Deliverables and/or Services at any time during the Duration or for a further period of six (6) months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 18.2 If either party commits any breach of clause 18.1, the breaching party shall, on demand, pay to the claiming party a sum equal to one (1) year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.
- 19 ASSIGNMENT AND SUBCONTRACTING**
- 19.1 The Company may assign, or deal in any other manner with, the Contract or any part of it, including sub-contracting any of its obligations under the Contract to any third party or agent.
- 19.2 The Customer shall not be entitled to assign, or deal in any other manner with, the Contract or any part of it, including sub-contracting any of its obligations under the Contract, without the prior written consent of the Company.
- 20 FORCE MAJEURE**
- If either party is delayed or prevented in the performance of any of its obligations under the Contract by an event, circumstance or cause beyond its reasonable control which, by its nature, could not have been foreseen or, if foreseeable, was unavoidable (including war or other armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, national or international emergency or calamity, strikes, lock-outs or other industrial disputes, (whether involving its own workforce or any third party's), failure of energy supply or telecommunications, disruption to transport (including adverse traffic), malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of buildings or other structures, fires, floods, storms, earthquakes, natural disasters, extreme adverse weather conditions, other acts of God, presence of dangerous or protected, structures, substances or animals, loss at sea, epidemics, pandemics or similar events (including any government restrictions imposed in relation to an epidemic, pandemic or similar event, such as restrictions on working conditions and/or lockdowns) and default of suppliers or sub-contractors) that party shall not be liable for such delay or non-performance and the time for performance of the affected obligation shall be extended by such period as

is reasonable to enable that party, using reasonable endeavours, to perform that obligation.

**21 COMMUNICATIONS**

- 21.1 Any communication between the parties about the Contract shall be in writing, in English, and delivered personally, sent by pre-paid registered post or recorded delivery (or pre-paid registered air mail if overseas) to the other party's registered office or address set out in the Proposal or such changed address as shall be notified to that party by the other party from time to time.
- 21.2 Communications shall be deemed to have been received:
  - 21.2.1 if delivered personally, at the time of delivery to the address;
  - 21.2.2 if sent by pre-paid registered post or recorded delivery, 48 hours after posting; and
  - 21.2.3 if sent by pre-paid registered airmail, at 9.00am on the fifth (5<sup>th</sup>) Working Day after posting.
- 21.3 This clause 21 does not apply to the service of any proceedings or other documents in any legal action or any arbitration or other method of dispute resolution.

**22 GENERAL**

- 22.1 The Contract does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the parties.
- 22.2 If any provision, or part of a provision, of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable (a "void provision") such invalidity, illegality or unenforceability shall not affect the other provisions of the Contract, which shall remain in full force and effect. If a void

provision would be valid, legal and enforceable if some part of it were deleted, that void provision shall apply with such modification as may be necessary to make it valid, legal and enforceable and if it cannot be made valid, legal and enforceable it shall be deemed to be deleted.

- 22.3 No provision of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.
- 22.4 A failure to exercise, or delay in exercising a right, power or remedy provided to a party by these Terms or by law does not constitute a waiver of that, or any other, right, power or remedy and shall not (and nor shall any single or partial exercise of any such right, power or remedy) preclude the further exercise of that, or any other, right, power or remedy.
- 22.5 Any waiver by a party of any breach of, or any default under, any provision of the Contract by the other party will only be effective if in writing and will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 22.6 This Contract may be executed in counterparts or duplicates, each of which, when executed, shall constitute an original of this Contract and such counterparts or duplicates together shall constitute one and the same instrument.
- 22.7 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be exclusively governed by and construed in accordance with the law of England and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such matter.