

## TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

### AGREED TERMS

#### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions. **(Conditions).**

**Annual Service Fee:** The fee, which shall be specified in the Service Agreement, and which shall be payable to the Supplier by the Customer for the Services.

**Contract:** the Customer's purchase order and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for Services by the Supplier under condition 2.2.

**Commencement Date:** The date, which shall be specified in the Service Agreement, from which the Supplier is to provide the Services to the Customer.

**Customer:** the person, firm or Company who purchases Services from the Supplier.

**Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Equipment:** The lift equipment and any part or parts thereof (including, without limitation, the lift installation and the lift pit), which lift equipment shall be referred to in the Service Agreement.

**Initial Contract Term:** The initial period, which shall be specified in the Service Agreement, during which the Supplier is to provide the Services to the Customer.

**Input Material:** all Documents, information and materials provided by the Customer relating to the Services including, without limitation, computer programs, data, reports and specifications.

**Intellectual Property Rights:** 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 right, 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.

**Output Materials:** all Documents, information and materials provided or developed by the Supplier relating to the Services including, without limitation, computer programs, data, reports and specifications.

**Services:** the preventative and/or remedial maintenance services to be provided by the Supplier to the Customer in relation to the Equipment under the Contract and in accordance with the standards stipulated in the relevant Service Agreement.

**Service Agreement:** The agreement between the Supplier and the Customer which sets out certain standards applicable to the Services and to which these Conditions are attached.

**Supplier:** KNOWSLEY LIFT SERVICES LIMITED.

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

- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.6 References to conditions are to the conditions of the Contract.

## **2. APPLICATION OF CONDITIONS**

- 2.1 These Conditions shall:
  - (a) apply to and be incorporated into the Contract; and
  - (b) apply to, be incorporated in and be attached to the Service Agreement and prevail over any inconsistent terms or conditions, contained, or referred to, in the Service Agreement; and
  - (c) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

- 2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase Services on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
- (a) by a written acknowledgement issued and executed by the Supplier; or
  - (b) (if earlier) by the Supplier starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

- 2.3 The Customer shall ensure that the terms of its order and any Input Material are complete and accurate.
- 2.4 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

### **3. COMMENCEMENT AND DURATION**

- 3.1 The Services shall be provided by the Supplier to the Customer under the Contract and in accordance with the standards stipulated in the Service Agreement from the date of acceptance by the Supplier of the Customer's offer in accordance with condition 2.2. For the avoidance of doubt, this date shall be the Commencement Date.
- 3.2 Subject to condition 12, the Services shall be provided from the Commencement Date for the Initial Contract Term and shall continue to be provided thereafter for subsequent periods of 12 months duration, unless the Contract is earlier terminated by one of the parties giving to the other three months written notice of termination, such notice to be given three months prior to the expiry of the Initial Contract Term or the relevant 12 month period, as applicable. For the avoidance of doubt, if the Contract is terminated, either pursuant to Condition 12 or pursuant to this Condition 3.2, the Service Agreement shall also be simultaneously and automatically terminated.

### **4. OBLIGATIONS OF THE SUPPLIER**

- 4.1 The Supplier shall use its reasonable endeavours to provide the Services to the Customer under the Contract and in accordance with the standards stipulated in the Service Agreement from the Commencement Date.
- 4.2 With respect to any preventative maintenance visits, the Supplier shall use its reasonable endeavours to meet any specified performance dates but any such dates shall be estimates only and time shall not be of the essence.

4.3 With respect to any request for remedial maintenance from the Customer, the response times stipulated in the Service Agreement shall be measured from the time that the Supplier finishes responding to the Customer's last request for remedial maintenance to be undertaken in relation to the fault in the Equipment alleged by the Customer.

4.4 The Services shall not include:

- (a) Any electrical work in relation to anything which does not form a part of the Equipment; and
- (b) Any test or inspection of the Equipment and any survey, other than any such test or inspection or survey expressly stipulated in the Service Agreement; and
- (c) Any maintenance or repair work with respect to any modification of, or addition to, the Equipment, if any such modification or addition has been undertaken without the Supplier's prior consent; and
- (d) Any refurbishment or modernisation of the Equipment; and
- (e) The repair of any damage to the Equipment caused by fire, lightning, water, or explosion or any Act of God; and
- (f) The supply of any part or component by the Supplier, if any such part or component has been rendered obsolete by any change in standards ; and
- (g) The remedy of any defect specifically identified in any insurance report; and
- (h) The renewal of any control system which has or will become obsolete; and
- (i) The remedy of anything caused by any failure of any power supply to the Customer's premises; and
- (j) The remedy of any defect existing or purported to exist at the time of, or arising out of or as a result of, the first LG1 annual inspection, if such defect was not readily apparent at the time of inspection; and
- (k) The remedy of any defect resulting from any misuse of, neglect of, or wilful or accidental damage to the Equipment,(including, but not limited to, any such damage arising from, or attributable to, any holding of any lift doors for longer than is necessary), or, without limitation, from any failure to follow any instructions contained in any operation or maintenance manual published for, or otherwise specified to be appropriate for use in conjunction with, the Equipment, or from any failure to follow any written or oral instructions of the Supplier; and
- (l) The provision of any test tools, even where such test tools are required by certain manufacturers; and
- (m) The provision of any software; and

- (n) The provision of, or changing of, the autodial system under BS 81, part 28; and
- (o) The removal of any waste materials and/or water from the lift pit; and
- (p) Any and all costs, charges and expenses associated with providing the Services at any location outside the United Kingdom, including but not limited to the travel and accommodation costs of any person or persons appointed by the Supplier to provide the Services; and
- (q) Any additional preventative maintenance visit or remedial maintenance response which, in either case, is requested or required because some act or omission of the Customer has prevented, suspended or delayed the performance of any obligation of the Supplier, or is requested or required because of the Customer's failure to perform, suspension or delay in the performance of any of the Customer's obligations under the Contract; and
- (r) The replacement and/or repair of any electrical or mechanical component of the Equipment, unless provided for in the relevant Service Agreement.

4.5 If the Supplier's performance of its obligations under the Contract or otherwise is prevented, suspended, delayed or otherwise adversely affected by any act or omission of the Customer, its agents, subcontractors, consultants or employees, or from any fraud or negligence of the Customer, or from any failure to perform, suspension or delay in the performance of any of the Customer's obligations under the Contract or otherwise, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention, suspension, delay or adversely affected performance of the Supplier's obligations.

## **5. OBLIGATIONS OF THE CUSTOMER**

5.1 With respect to any Services which the Supplier is to provide for the Customer, the Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with such access and egress to the Customer's premises, the Equipment, office accommodation, data and other facilities as may be required by the Supplier;
- (c) be responsible (at its own cost) for preparing and maintaining any relevant part of the Customer's premises for the provision of the Services;
- (d) be solely responsible for ensuring the safety of any and all of the Customer's employees, invitees and licensees who are or may be present on the Customer's premises during the performance of the Services (both inside and outside normal business hours), including but not limited to restricting access to those areas of the

Customer's premises where the Services are or are to be performed to those individuals engaged in performing the Services, or providing assistance or advice to those so engaged;

- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and in relation to the Equipment and ensure that all conditions of access/egress required under Condition 5.1 (b) above and all relevant working conditions satisfy the requirements of the Health and Safety at Work etc. Act and all other relevant legislation;
  - (f) effect and maintain appropriate insurance in an adequate amount with respect to all possible risks which may arise in connection with the deployment of any person engaged by the Supplier to perform the Services at the Customer's premises and shall, at the Supplier's request, provide such evidence of such insurance as the Supplier may reasonably require.
- 5.2 The Customer shall furnish the Supplier with complete and accurate information both prior to and during any preventative maintenance visits, such as will enable the Supplier to fulfil the Supplier's obligations under the Contract and, without limitation, to meet the standards stipulated in the Service Agreement.
- 5.3 The Customer shall ensure that any request for remedial maintenance contains complete and accurate information such as will enable the Supplier to fulfil the Supplier's obligations under the Contract and, without limitation, to meet the response times and all other standards stipulated in the Service Agreement.
- 5.4 The Customer shall ensure that a competent person is in attendance when the Services are being performed in order to enable the Services to be performed in accordance with all relevant safety procedures and also to operate any electrical systems or apparatus required to be operated in conjunction with the Equipment in order to enable the Services to be performed.
- 5.5 The Customer acknowledges that it may be necessary to bypass the Equipment during the performance of the Services. The Customer acknowledges and understands all of the attendant risks and possible consequences associated with this procedure and further acknowledges and accepts sole responsibility therefor.
- 5.6 If, at any time prior to, during, or following the performance of the Services, the Supplier believes that the Equipment is or is likely to be in a condition which could or might cause injury to persons or damage to property, then the Supplier shall have the right, but not the obligation, to immobilise the Equipment temporarily and/or to take such other temporary precautionary measures as are in the circumstances necessary and reasonable, without incurring any liability whatsoever, provided that the Supplier shall notify the Customer that the Equipment is in or is likely to be in such a condition.

- 5.7 The Customer shall not use or permit to be used the whole or any part of the Equipment before the Equipment has been serviced by the Supplier and the Supplier has notified the Customer that the Equipment is fit for use. If the Equipment is, contrary to the provisions of this Condition 5.7, so used, the Customer shall fully and promptly indemnify and hold the Supplier harmless against any liability that shall or may be incurred by or on behalf of the Supplier to any person, whether arising directly or indirectly from any such use.
- 5.8 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from any act or omission of the Customer which directly or indirectly prevents, suspends, delays, or otherwise adversely affects, or varies, the performance of any obligation of the Supplier under the Contract or otherwise, or which arises directly or indirectly from the Customer's fraud, negligence, failure to perform, suspension or delay in the performance of any of its obligations under the Contract or otherwise, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5.9 The Customer shall hold the Supplier harmless and keep the Supplier indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Supplier as a result of or in connection with any claim made against the Supplier in respect of any liability, loss, damage, injury, cost or expense sustained by any third party to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from any act or omission of the Customer which directly or indirectly prevents, suspends, delays or otherwise adversely affects the performance of any obligation of the Supplier under the Contract or otherwise, or which arises directly or indirectly from the Customer's fraud, negligence, failure to perform, suspension or delay in the performance of any of its obligations under the Contract or otherwise, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5.10 Prior to performance of the Services, the Customer shall remove from the Customer's premises any item that could pose an obstacle to the performance of the Services. The Customer shall incur additional charges if the Supplier has to remove, dismantle and/or dispose of any item at the Customer's premises. Without limitation, the Customer acknowledges that no cleanup work will be carried out by the Supplier and that any waste material arising from the performance of the Services shall be removed by the Customer at the Customer's cost. If the Supplier discovers, before or during the performance of the Services, problems at the Customer's premises which materially affect the Supplier's ability to perform the Services in accordance with the Supplier's standards at the price quoted, it shall be free to vary the price. Without limitation, any additional costs caused by any delay in the performance of the Services, or any suspension of performance, at the Customer's premises (for reasons beyond the control of the Supplier) e.g. industrial action,

shall be treated as a variation to the Customer's original order and the Customer shall be liable for any such additional costs.

- 5.11 The Customer shall not, without the prior written consent of the Supplier, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf) , at any time from the date of the Contract to the expiry of 6 months after the last date of Supply of the Services, solicit or entice away from the Supplier or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.
- 5.12 Any consent given by the Supplier in accordance with Condition 5.11 shall be subject to the Customer paying to the Supplier a sum equivalent to 15 % of the then current annual remuneration of the Supplier's employee, consultant or subcontractor.

## **6. ANNUAL SERVICE FEE**

- 6.1 The Customer shall pay the Annual Service Fee to the Supplier in quarterly instalments on the first day of each quarter for which payment is due.
- 6.2 Time for payment shall be of the essence.
- 6.3 The Annual Service Fee shall be exclusive of any VAT, which the Customer shall pay to the Supplier on the due date for payment of the Annual Service Fee.
- 6.4 The Customer shall pay to the Supplier any additional sums which, in the Supplier's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer directly or indirectly, including, without limitation, any failure by the Customer to fulfil any obligation set forth in Condition 5. The Supplier reserves the right to increase the Service Fee due to any change in the Services requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 6.5 The Annual Service Fee is based on costs current at the Commencement Date and may be varied in accordance with any change in any such costs from time to time, in accordance with the index figures issued by the Lift and Escalator Industry Association.
- 6.6 The Annual Service Fee will be subject to further variation in respect of any additional costs, taxes, or other expenditure arising by virtue of any statute, regulation or order issued by any Government Department or other duly constituted authority.

6.7 Any adjustment or variation made in accordance with Conditions 6.4, 6.5 or 6.6 may be invoiced to the Customer as soon as the amount of any such adjustment and/or variation has been ascertained and shall be payable by the Customer forthwith on receipt by it of a notice from the Supplier outlining the amount of the adjustment or variation, as the case may be.

## **7. PAYMENT**

7.1 No payment shall be deemed to have been received until the Supplier has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Supplier, the Customer shall reimburse the Supplier for any bank charges incurred by the Supplier.

7.2 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.

7.3 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 the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.

7.4 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 8 % above the Bank of England's base rate from time to time , accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall reimburse the Supplier for any and all costs incurred by the Supplier in recovering payment pursuant to this Condition 7 including, without limitation, a £25.00 administration fee for any payment not received by the Supplier after 7 days from the due date for payment and the charges of a third party collection agent, who will be appointed by the Supplier to recover any payment not received by the Supplier after 30 days from the due date for payment.

7.5 Any failure by the Customer to pay the Supplier any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 12.1 or 12.2 shall entitle the Supplier, at any time and without notice to the Customer and without limitation to any other remedy available to the Supplier:

7.5.1 To suspend or cancel the performance of any or all of the Services; and

7.5.2 To treat the Contract as having been repudiated by the Customer.

- 7.6 The Customer may not cancel any order for Services (being an offer) which has been accepted by the Supplier pursuant to Condition 2.2 and if the Customer cancels, or purports to cancel any such order then the Supplier may, by notice in writing to the Customer, elect to treat the Contract as repudiated.
- 7.7 For the avoidance of doubt, and notwithstanding the exercise of any remedy by the Supplier in accordance with Condition 7.5.1 or 7.5.2 or otherwise, the Customer shall remain liable to pay and shall pay the Supplier at the Contract rate, any and all payments subsisting at the relevant time.

## **8. INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights and all other rights in the Output Materials shall be owned by the Supplier and the Customer shall acquire no right or rights therein. The Customer licenses all Intellectual Property Rights and all other rights in the Input Materials to the Supplier free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Supplier to provide the Services to the Customer.

## **9. CONFIDENTIALITY**

- 9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 9.2 The Customer may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
  - (b) as may be required by law, court order or any governmental or regulatory authority.
- 9.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 9.
- 9.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.

**10. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

10.1 This condition 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services and the Output Materials or any part of them or it; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- (c) for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) the Supplier shall not be liable for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss of corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

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

## **11. DATA PROTECTION**

The Supplier is registered under the Data Protection Act 1998. The Supplier shall not use any personal data submitted by the Customer to the Supplier other than in connection with the provision of the Services and shall not disclose any such personal data to any third party without obtaining the Customer's prior consent.

## **12. TERMINATION**

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract 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 Contract; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Supplier) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a

scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 12.1(d) to condition 12.1(j)condition 12.1(h) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

12.2 In addition to the rights granted to the Supplier by Condition 12.1, the Supplier may also terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:

- (a) Without the Supplier's prior written consent, any Services are performed by anyone other than the Supplier's servants or agents; or
- (b) After receiving written notice from the Supplier of the need for work to be carried out or replacements to be made which are not included in the Service Agreement, the Customer refuses or fails to carry out the said work and/or make the said replacement; or
- (c) In the opinion of the Supplier, the Equipment is being improperly used by the Customer.

12.3 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return all of the Supplier's Output Materials. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

### **13. FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of, or interruption to, any utility service (which shall include, without limitation, any telecommunications service and/or any service provided via the internet) failure of any transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

### **14. VARIATION**

14.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

14.2 Subject to condition 14.1, no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

### **15. WAIVER**

15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or

remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. 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.

- 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**16. SEVERANCE**

- 16.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- 16.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**17. ENTIRE AGREEMENT**

- 17.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

- 17.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).

- 17.3 Nothing in this condition shall limit or exclude any liability for fraud.

**18. ASSIGNMENT**

- 18.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under the Contract.

- 18.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

- 18.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

**19. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**20. RIGHTS OF THIRD PARTIES**

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

**21. NOTICES**

21.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified by the relevant party by notice in writing to the other party.

21.2 Any notice shall be deemed to have been duly received if delivered personally, or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21.3 This condition 21 shall not apply to the service of any in any proceedings or other documents in any legal action.

21.4 A notice required to be given under the Contract shall not be validly served if sent by e-mail.

**22. GOVERNING LAW AND JURISDICTION**

22.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.