

## SUPPLY OF MAINTENANCE SERVICES AGREEMENT

**THIS AGREEMENT** is made on the date of signing of the quote by the Customer  
**BETWEEN**

- (1) FLR Spectron Ltd, incorporated and registered in England and Wales with company number 04085164 whose registered office is at York House, 1 Seagrave Road, London, SW6 1RP (“**Supplier**”).  
and
- (2) The client mentioned in the quote (“**Customer**”).

### BACKGROUND

- A. The Customer operates a business and wishes to appoint the Supplier for the provision of Services relating to maintenance.
- B. The Supplier is willing to provide the Services in accordance with the provisions of this Agreement.

### AGREED TERMS

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement:
  - a. “**Agreement**” shall mean this agreement including any and all Schedules and Amendments signed and initialed by the Parties and attached hereto or referenced herein.
  - b. “**Customer Manager**” means the person notified to the Supplier by the Customer whose details are set out in Schedule 1.
  - c. “**Authorised Service Recipients**” means any company that is in relation to a party, its holding company or its subsidiary or a subsidiary of its holding company, whereas “holding company” and “subsidiary” will have the meanings attributed to them in section 1159 of the Companies Act 2006.
  - d. “**Business Day**” means any day other than a Saturday or a Sunday or a day that is a statutory bank holiday in England and Wales.
  - e. “**Business Hours**” means 9am until 6pm on Business Days.
  - f. “**Charges**” means the charges for the Services set out in Schedule 2.
  - g. “**Commencement Date**” means date on which the Supplier shall commence the provision of the Services as mentioned in the quote.
  - h. “**Equipment**” means including but not limited to any parts, materials or equipment provided by the Supplier under the terms of this Agreement.
  - i. “**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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, 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.

- j. **“Party”** means Customer or Supplier.
  - k. **“Parties”** means Customer and Supplier.
  - l. **“Payment Terms”** means the periods at which the Charges shall be payable, as set out in Schedule 3.
  - m. **“Premises”** means those of the Customer’s premises where the Services are going to be carried out identified in Schedule 4, as amended by written agreement of the Parties from time to time.
  - n. **“Remote Service Desk”** means a remote service facility not on the Customer’s Premises which can be operated by a technical operator within the employment of the Supplier who can connect to the Equipment at the Customer’s Premises for the purpose of remote fault diagnostics or remote programming.
  - o. **“Services”** means the maintenance, (including preventative, corrective and proscribed) and other designated services around the provision of maintenance including but not limited to survey, measurement, part installation, test and service of Equipment, being provided by the Supplier under this Agreement and any specifics as set out in Schedule 2, together with any other services which the parties agree in writing that the Supplier shall provide to the Customer from time to time.
  - p. **“System(s)”** means including but not limited to the installations, alarms systems CCTV systems and other systems that the Services are being enacted by the Supplier under this Agreement and any agreed ways of working as set out in Schedule 2, together with any other services which the parties agree in writing that the Supplier shall provide to the Customer from time to time.
  - q. **“Supplier Manager”** means the designated person or contact whose details are set out in Schedule 1.
  - r. **“Term”** means the duration of the agreement as defined in clause 2.
- 1.2 The headings of these clauses shall not affect the interpretation thereof.
- 1.3 The masculine includes the feminine and vice versa.
- 1.4 The singular includes the plural and vice versa.
- 1.5 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- 1.6 If there is any inconsistency or conflict between what is set out in any of the conditions of this Agreement and what is set out in any of the Schedules, the conditions shall prevail. If there is any inconsistency between what is set out in any of the conditions in this Agreement and what is set out in any variation agreed and initialled by the Parties the variation shall prevail.
- 1.7 This Agreement constitutes the entire agreement between the Parties relating to the Agreement for the provision of Services. The Agreement supersedes any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the date of this Agreement, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

## 2. Commencement and Term

- 2.1 Unless terminated in accordance with clause 15, this Agreement shall be valid for an initial period of 2 (two) years commencing on the Commencement Date.
- 2.2 The Agreement between the Parties will automatically continue on the same terms as set out herein, save for the renegotiation of Charges as set out in Schedule 2, if the Customer does

not serve notice to terminate at the end of the Term 2 (two) months before the end of the Term.

- 2.3 The Agreement will automatically renew on the anniversary each year thereafter on the same terms (the “Subsequent Term”), save for the renegotiation of Charges as set out in Schedule 2, if the Customer does not serve notice 2 (two) months before the end of any Subsequent Term.
- 2.4 If the Customer terminates this Agreement at any time during the Term or prior to the completion of a Subsequent Term, the Customer shall pay the Supplier an early termination compensation fee on or before the date of termination. The Early Termination Compensation Fee shall be the balance of the monthly charge for the remainder of the Minimum Term or the Subsequent Term.
- 2.5

### **3. The Suppliers Responsibilities**

- 3.1 The Supplier shall provide the Services to the Customer during the Term in accordance with the terms set out in this Agreement and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
- 3.2 The Supplier will endeavour to meet, the Services’ delivery dates and any other dates for delivery of the Services agreed in writing by the Parties.
- 3.3 The Supplier agrees to:
- a. inspect and report on the condition of any System(s) and enact the requisite Services as set out in this Agreement or as agreed between the Parties;
  - b. operate any sign off procedures and paperwork as agreed between the Parties, which will be set out as Schedule 5;
  - c. agree with the Customer on the type and specification of any new parts that are required during any supply of Services.
  - d. co-operate with The Customer in all matters relating to the Services;
  - e. provide the following warranty on works enacted
    - i. 12 months warranty on all new Equipment;
    - ii. 6 months warranty on any re-conditioned Equipment or service parts that are fitted.
  - f. to provide remote repair from the Supplier’s Remote Service Desk where it is agreed between the Parties and the System(s) are fully compatible
  - g. appoint a Supplier Manager, who shall have authority under this Agreement contractually to bind the Supplier on all matters relating to the Services.
  - h. ensure that the Supplier's Team use reasonable skill and care in the performance of the Services;
  - i. where it is providing the Services at the Premises, observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises and that have been communicated to The Supplier;
  - j. notify the Customer as soon as it becomes aware of any problems, delays or health and safety hazards which arise in relation to the Services; and
  - k. obtain and, at all times, maintain all necessary licences and consents and comply with all relevant laws and regulations in relation to the Services.
  - l. Issue the requisite certification required under any Services enacted.
- 3.4 The Supplier shall use its best endeavours to meet all timescales as agreed between the Parties. The Supplier shall immediately advise the Customer of any event which may result in

the Supplier being unable to satisfactorily perform the Services as set out in any time schedule (“**Delaying Event**”). If the Delaying Event is within the Customer's control then the Customer shall immediately take all reasonable steps to remove or overcome the Delaying Event. The time in which the Supplier must complete any Services will be extended for the period in which the Supplier is affected by the Delaying Event, unless the Parties agree otherwise in writing. If the Delaying Event is not within the control of the Customer and is expected to continue for more than two (2) weeks, the Customer may seek recourse to the disputes Procedure.

- 3.5 The Supplier shall offer advice and assistance to the Customer to ensure it is able to avail itself of the Services in the most cost effective and efficient manner and will ensure that estimating and commissioning of work will be at best possible market prices, taking into account the nature of the work, quality and time-scales. The Supplier will provide cost estimates in accordance with the rates agreed between the Parties.
- 3.6 The Parties agree to adhere to any agreed Ways of Working document set out in Schedule 2 to this Agreement.

#### **4. The Customer's Responsibilities**

- 4.1 The Customer agrees to:
  - a. co-operate with the Supplier in all matters relating to the Services and appoint a Customer's Manager in relation to the Services, who shall have the authority contractually to bind the Customer on matters relating to the Services and provide such access to the Customer's Premises as may reasonably be required by the Supplier and agreed with the Customer in advance, for the purposes of the Services;
  - b. allow free and unfettered access to enable delivery of the Services;
  - c. provide the correct electrical supply to enable delivery of the Services;
  - d. provide updates on any areas that may have a Service issue;
  - e. not to allow any person other than the Supplier to interfere adjust or attempt to repair or allow anyone else to interfere adjust or attempt to repair with any System(s) that is part of this Agreement.
  - f. inform the Supplier of any works by any third party on electricity or telephone lines.
  - g. inform the Supplier of any electrical outages howsoever caused;
  - h. pay all costs and charges for any System(s) and/or Equipment that are required under this Agreement as per any issued pro forma invoice;
  - i. allow the Supplier access to remove any System(s) or Equipment that are installed but not paid for;
  - j. provide such information as the Supplier may reasonably request and the Customer considers reasonably necessary, in order to carry out the Services in a timely manner;
  - k. inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's Premises; and
  - l. notify the Supplier of any additional Equipment fitted to System(s) at the Premises following the Commencement Date or any changes to the Equipment fitted to any System(s).

#### **5. Charging and Payment**

- 5.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges in accordance with the Payment Terms. The Charges shall include all costs incurred by the Supplier in performing its obligations under the Agreement.
- 5.2 The Supplier shall invoice the Customer for the Charges (plus VAT, where appropriate) in accordance with the Payment Terms.

- 5.3 The Customer shall pay each undisputed invoice within 30 days from the date of invoice.
- 5.4 In the event of non-payment or default in payment by the Customer in accordance with agreed terms, the Supplier shall be entitled without prejudice to any other right or remedy to charge interest, as per the Late Payment of Commercial Debts (Interest) Act 1998 and subsequent amendments, and add any reasonable legal fees and debt recovery charges in respect of all invoices which are not wholly paid by the due date.
- 5.5 Sums payable pursuant to this Agreement are exclusive of Valued Added Tax ("VAT") which shall be paid at the prevailing rate providing it is properly detailed on an invoice in compliance with prevailing legislation.
- 5.6 If Supplier and Customer fail to reach agreement on any VAT matter pursuant to this Agreement, Customer and Supplier may refer the matter to His Majesty's Revenue and Customs or a VAT tribunal for determination
- 5.7 For the avoidance of doubt the pricing shall be deemed to be inclusive of all travelling expenses, insurance costs and all other miscellaneous expenses incurred by the Supplier in the provision of Services.
- 5.8 The Customer may not set off any amount owing at any time against any amount payable by the Customer to the Supplier under this Agreement.

## **6. Scope of Services**

- 6.1 The Supplier warrants to the Customer that:
  - a. it will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry;
  - b. the Services will conform with all descriptions and specifications provided to the Customer by the Supplier; and
  - c. the Services will be provided in accordance with all applicable laws, statutes and regulations from time to time in force;
  - d. it has all rights, licenses, consents and approvals necessary to perform its obligations under this Agreement;
  - e. it shall perform the Services in accordance with the Service Level Agreement in Schedule ??;
  - f. neither the Services, or the use thereof by the Customer, infringe upon or violate the rights of any third party, including, without limitation, any Intellectual Property Rights.
- 6.2 The Customer's rights under this Agreement are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982, the Sale of Goods Act 1979 and any other applicable statute.
- 6.3 The provisions of this clause 6 shall extend to any substituted or remedial services provided by the Supplier.

## **7. Services Management Review**

- 7.1 The Customer shall appoint a Customer Manager who will have overall responsibility for managing the relationship within the Agreement and issuing instructions to the Supplier in respect of the overall Agreement.
- 7.2 The Supplier shall appoint a Supplier Manager who will have responsibility on behalf of the Supplier for the management of the overall Agreement.
- 7.3 The Supplier's performance of the Services either designated by the Customer Manager or to the terms of this Agreement shall be monitored by the Customer Manager, who shall be entitled to make recommendations to the Supplier for improving the standard of the Supplier's performance in undertaking the Services.

- 7.4 The Supplier Manager will have a regular liaison ( via telephone conference, Skype or face to face meeting with the Customer Manager (the “**Liaison Meeting**”) to discuss the Services being provided and to agree whatever progress reports or notes are required to deliver the Services.
- 7.5 At Liaison Meetings the Customer Manager and Supplier Manager will review, among other things, issues relating to the day to day performance of the Services, and the Agreement monitoring systems detailed in the specification, including but not limited to, such things as user feedback.

## **8. Change of Services**

- 8.1 If either Party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 8.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time period, provide a written estimate to the Customer of:
  - 8.2.1 the likely time required to implement the change;
  - 8.2.2 any necessary variations to the Supplier's charges arising from the change; and
  - 8.2.3 any other impact of the change on this Agreement.
- 8.3 Unless both parties consent in writing to a proposed change and the terms of such change, there shall be no change to this Agreement.

## **9. Liability and Indemnities**

- 9.1 Each Party shall indemnify the other Party against all claims, demands, proceedings, actions, damages, costs, expenses and any other liabilities in respect of, or arising out of, the provision of the Services in relation to the injury or death of any person, or loss of or damage to any property including property belonging to the the other or Party’s customer, financial loss arising from any advice given or omitted to be given by a Party or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This does not apply to the extent that such injury, death, loss or damage arises out of the act, default, or negligence of a Party, its employees, or agents not being a Party or persons engaged by a Party or a Party does not fulfil its obligations under Clause 9.
- 9.2 The Supplier’s liability under clause 9.1 for losses relating to death or personal injury or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 shall be unlimited.
- 9.3 Supplier is responsible and will arrange at his own expense for sufficient insurance coverage against the financial consequences of third party liability, illness, accidents and the like. Upon request, Supplier shall provide Customer with written evidence of such insurance.
- 9.4 The Parties will accept liability for:
  - i. death or personal injury resulting from its negligence;
  - ii. fraud or fraudulent misrepresentation;
  - iii. any other liability which cannot be excluded by law.
- 9.5 Except as provided in clause 9.4, the Supplier’s total liability in respect of any one default under this Agreement shall not exceed the total amount being paid under this Agreement. If a number of defaults give rise to substantially the same loss or are attributable to the same or similar cause, then they shall be regarded as giving rise to only one claim. The Supplier will be afforded a reasonable opportunity to remedy any such default.
- 9.6 Except as provided in clause 9.4 the Supplier shall not be liable for:
  - i. loss of business, profits, revenue, anticipated savings, (even where the same arise directly from a breach of these conditions);

- ii. special, indirect or consequential losses, even if foreseeable by or in the contemplation of the Supplier; or
  - iii. any claim made against the Supplier by any other person.
- 9.7 During the term of this Agreement, the Supplier shall maintain in force, with a reputable insurance company for the amounts not less than for:
- 9.7.1 public liability insurance of £10,000,000; and
  - 9.7.2 professional indemnity insurance of £2,000,000;
- and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.
- 9.8 Save for the provisions of clause 9.4 the Supplier shall not be liable to the Customer in any circumstance or to any extent whatever in respect of any damage or loss caused to the Customer unless written notice is received by the Supplier at the address appearing in Schedule 1 within five days of such loss occurring.
- 9.9 The Supplier cannot be held accountable for individual loss of goods or property not securely kept or insured.
- 9.10 Nothing in this Agreement shall affect the statutory rights of a consumer as defined in the applicable legislation.

## **10. Intellectual Property Rights**

- 10.1 In providing the Services, the Supplier does not assign to the Customer any of its existing and future Intellectual Property Rights in the execution of the Services under this Agreement.
- 10.2 The Supplier hereby grants to the Customer a perpetual non-exclusive royalty-free license to use any deliverable or material created by the Supplier in the performance of this Agreement in which, but for this clause 10.2, the Supplier would own the IPR (including but not limited to data, drawings, design, working papers and the contents of any report). The Supplier agrees that the Customer may without let or hindrance publish, alter, release, license or otherwise exploit and deal with such material as it thinks fit, via any medium.
- 10.3 The Supplier warrants that the delivery of the Services (excluding the Customer Materials), and their use by the Customer in accordance with the terms of this Agreement, will not infringe the Intellectual Property Rights of any third party.
- 10.4 Subject to the Customer's compliance with Clause 10.1, the Supplier hereby indemnifies and undertakes to keep indemnified the Customer against any losses, damages, claims, obligations, liabilities, costs and expenses (excluding legal fees and costs and expenses incurred in investigating, preparing, defending or prosecuting any litigation, claim, proceeding or demand) arising out of or in connection with any breach by the Supplier of the warranty in in this Clause 10 during the Term of this Agreement.
- 10.5 The Customer will, upon becoming aware of an actual or potential IPR infringement and claim, notify the Supplier; and
- 10.5.1 provide the Supplier all reasonable assistance in relation to the IPR infringement or claim; and
  - 10.5.2 allow the Supplier the exclusive conduct of any claim and all related disputes, proceedings, negotiations and settlements; and
  - 10.5.3 not admit liability in connection with any claim or settle any claim without the prior written consent of the Supplier.
- 10.6 Works and materials comprised in the delivery of the Services, the Intellectual Property Rights in which are owned in whole or part by a third party (excluding the Customer Materials) will be, as agreed between the parties:
- 10.6.1 supplied in accordance with the relevant licensor's standard terms for online use;
  - 10.6.2 supplied on licence terms notified by the Supplier to the Customer;

- 10.6.3 sub-licensed by the Supplier to the Customer on terms notified by the Supplier to the Customer; and/or
- 10.6.4 sub-licensed by the Supplier to the Customer on the basis of a non-exclusive, worldwide, royalty-free licence to use the works and materials in connection with the delivery of the Services.

## 11. Data Protection

- 11.1 For the purposes of this clause, 'Data Subject', 'Personal Data', 'Data Controller' and 'Data Processor' shall all have the meaning set forth in the Data Protection Act 2018.
- 11.2 The Parties acknowledge that, in performing the Services, the Supplier may be processing personal data on behalf of the Customer. Both Parties warrant that they will duly observe all their obligations under the GDPR 2018 which arise in connection with this Agreement. In particular, where the Supplier processes Personal Data on behalf of the Customer, the Supplier warrants that it will:
  - 11.2.1 process Personal Data only in accordance with this Agreement and act on and comply with instructions of the Customer as the Data Controller, given and varied by the Customer from time to time;
  - 11.2.2 establish and maintain at all times appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
  - 11.2.3 where a Data Subject exercises his or her right under the GDPR 2018 in respect of Personal Data processed by the Supplier on behalf of the Customer or where the Customer is required to deal or comply with any assessment, enquiry, notice or investigation by the Information Commissioner, the Supplier will cooperate as requested by the Customer to enable the Customer to comply with the obligations of the Customer (as Data Controller) under the GDPR 2018 which arise as a result of the exercise of such rights or as a result of such assessment, enquiry, notice or investigation.
- 11.3 The Supplier shall:
  - 11.3.1 delete Personal Data that it is processing on the Customer's behalf upon the Customer's written request;
  - 11.3.2 cooperate with the Customer to the extent permitted by the Supplier's security policies and procedures to enable it to monitor compliance with the obligations referred to in this clause 11; and
  - 11.3.3 immediately notify the Customer if it breaches its data processing and information security obligations under this Agreement (including this clause 11) and also notify the Customer if it is investigated by any governmental or regulatory body regarding any breach of the GDPR 2018 pertaining to Personal Data it is processing.

## 12. Confidentiality

- 12.1 All technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential or commercially sensitive nature belonging to a party and any other confidential information concerning such party's business, products or services shall be termed "**Confidential Information**" for the purposes of this Agreement.
- 12.2 Any Confidential Information provided by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**"), regardless of whether such information was provided prior to or after the date of this Agreement, shall be regarded as confidential and shall not be disclosed to any



third party without the prior consent of the Disclosing Party, save that this clause shall not apply to any information:

- (i) required to be disclosed by law or a competent authority; or
- (ii) which comes into the possession of one party prior to its disclosure by the other party;
- (iii) which is acquired lawfully and in good faith from an independent third party; or
- (iv) which is already in the public domain other than as a result of a breach of this clause by the Receiving Party.

12.3 The restrictions contained in clause 12 shall not prevent either Party from disclosing such of the information received from the Disclosing Party to its employees, agents and professional advisors as may be necessary to fulfil their obligations under this Agreement (“**Recipients**”), provided that such Recipients are apprised of, and undertake to observe, the conditions of confidentiality herein set out and the Receiving Party remains liable for the Recipient’s performance therewith.

### 13. Anti-bribery

13.1 The Supplier shall:

- 13.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- 13.1.2 comply with any Ethics and Anti-bribery Policy of the Customer (“**Relevant Policies**”);
- 13.1.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;
- 13.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

13.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 13 (“**Relevant Terms**”). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

13.3 Breach of this clause 13 shall be deemed a material breach of this Agreement without remedy.

13.4 For the purpose of this clause 13, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this clause 13, a person associated with The Supplier includes but is not limited to any subcontractor of the Supplier.

### 14. Force majeure

14.1 Neither Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control

including but not limited to, any of the following: act of God, governmental act, act of terrorism, war, fire, flood, explosion or civil commotion (“**Force Majeure Event**”).

- 14.2 In the event of either Party being delayed or prevented from performing its obligations under this Agreement as a result of a Force Majeure Event such party shall:
- 14.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - 14.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention upon the performance of its obligations under this Agreement; and
  - 14.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 14.3 The Supplier will not be entitled to claim if it is delayed or affected by a Force Majeure Event if the cause in question is one which a reasonable service provider should have foreseen and provided for, nor shall it be so entitled unless it has performed, and continues to perform to the best of its ability, all its obligations under clause 14.2.
- 14.4 If the Supplier is prevented from performing its obligations by a Force Majeure Event for more than 90 days, the Customer may terminate this Agreement by notice to the Supplier. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

## 15. Termination

- 15.1 The Customer may terminate this Agreement on 30 days written notice if the Supplier fails to comply with any one or more of any agreed service levels on any occasion during two (2) consecutive calendar months or during any three (3) calendar months within a Year (unless the failure is caused by a Force Majeure Event) and is unable to remedy the breach within 72 hours.
- 15.1.1 Where the Supplier remedies said breach the remedied breach will not be classed as a service level default in any totting up procedure as set out in clause 15.1.
- 15.2 The Supplier may terminate this Agreement at any time by giving the Customer 30 days’ notice in writing where the Customer is in breach and fails to remedy the breach within 48 hours. The Supplier may extend the period of notice at any time before it expires subject to agreement on the level of services to be provided by the Supplier during the period of extension.
- 15.3 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement immediately on giving written notice to the other if:
- 15.3.1 an order is made or a petition presented for the bankruptcy of, winding up of, or for a provisional liquidator to be appointed in respect of, the other Party; a resolution is passed or a meeting convened for the purpose of winding up the other Party; an administration order is made or an application presented for an administration order to be made against the other Party; a notice of intention to appoint administrators or a notice of appointment of administrators is filed in relation to the other Party; a receiver is appointed over any of the other Party’s property or business; the foregoing is taken or threatened in respect of any of the other Party’s assets; the other party makes a composition in satisfaction of its debts, enters into a scheme of arrangement or any other compromise or arrangement with some or all of its creditors and/or members or such an arrangement being proposed; the other party ceases or threatens to cease trading; or the other Party suffers any similar action to any of the above; or

15.3.2 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

15.4 In addition and without prejudice to this clause 15.5 if the Supplier terminates the Agreement in accordance with clause 15 then the Customer shall fully indemnify the Supplier in respect of any loss or damage suffered as a consequence of termination including the cost of any staff costs and losses incurred through laying off of staff for the remainder of the period of the Agreement to the extent that such cost exceeds the payment that otherwise would have been payable to the Supplier.

15.5 Clauses **Error! Reference source not found.** (IPR), 11 (Data Protection), 12 (Confidentiality) and 13 (Anti Bribery) shall survive the termination of this Agreement.

## 16. Consequences of Termination

16.1 On termination of this Agreement for any reason, the Supplier shall within 5 Business Days deliver to the Customer:

16.1.1 all Confidential Information and all material, information and data provided by the Customer to the Supplier for the purposes of this Agreement the Supplier shall certify to the Customer that it has not retained any copies of such material, information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 12; and

16.1.2 any reports or other deliverables required under this Agreement in respect of the Services provided up until termination, whether or not completed; and

16.1.3 all Intellectual Property Rights in such reports and deliverables shall automatically pass to the Customer (to the extent that they have not already done so by virtue of this Agreement).

16.2 On termination of this Agreement for any reason the Customer shall pay the Supplier for any invoices due and for any charges accrued up to the point of termination.

## 17. Remedies

If any Services in Schedule 2, are not supplied in accordance with, or the Supplier fails to comply with, any terms of this Agreement, the Customer shall be entitled (without prejudice to any other right or remedy) to require the Supplier, without charge to the Customer, to carry out such additional work as is necessary to correct the Supplier's failure.

## 18. Dispute Resolution

18.1 In the event of a disagreement or dispute between the Parties in relation to the Services or in relation to the interpretation of this Agreement, the Parties shall, in the first instance, endeavor to resolve the disagreement or dispute themselves (or through their representatives).

18.2 In the event of a failure to reach an agreement in accordance with clause 18.1 within a reasonable time then the disagreement or dispute shall be referred to any mediation or conciliation procedure or by reference to a third independent party agreed by the Parties. Any such mediation or conciliation will not be binding on the Parties.

18.3 If such dispute or difference is not resolved within twenty-one days of the dispute being referred to mediation or conciliation under clause 18.2 then such dispute or difference shall if so agreed by the Parties (the Parties agree to seek the lowest cost arbitration available) and referred to an arbitrator agreed between the Parties or in default of such agreement to be nominated by the President of the Chartered Institute of Arbitrators and such a referral to arbitration shall be deemed to be a referral in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force.

- 18.4 The costs of mediation, conciliation and/or the appointment of the arbitrator shall be shared equally between the Parties and the arbitrator shall determine which Party shall pay any costs subsequently incurred.
- 18.5 Nothing in this clause 18 shall prevent either party from issuing legal proceedings.

**19. Variation**

No variation of this Agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the Parties.

**20. Waiver**

- 20.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that right or remedy. A waiver (which may be given subject to conditions) of any right or remedy provided under this Agreement or by law shall only be effective if it is in writing.
- 20.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

**21. Severance**

- 21.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, including but without limitation by reason of the provisions of any legislation, Regulation, Order, Direction of the Secretary of State or other provision having the force of law or by reason of any decision of any Court of competent jurisdiction that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 21.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

**22. Assignment**

Either Party may, with prior written notice to the other Party, assign, transfer, charge, mortgage or subcontract this Agreement or all or any of its rights or obligations under this Agreement.

**23. No Partnership or Agency**

Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**24. Notices**

- 24.1 All notices served under this Agreement shall be in writing (for the purposes of this clause 24 'in writing' does not constitute email) and shall be delivered by hand or sent by pre-paid first class recorded delivery post, in respect of both the Agreement to its address as stated above

(which addresses may themselves be amended by notice in accordance with this clause). Notices served by hand will be deemed delivered on the day of service. Notices sent by post shall be deemed to have been received by the addressee 2 days after the day on which they were posted (excluding weekends and public holidays).

24.2 Day to day communications under this Agreement in the ordinary course of the Services may be sent by email.

**25. Counterparts**

This Agreement may be executed in counterparts and delivered in electronic form by, email or in original hard copy. Each such counterpart shall be deemed an original and when considered together shall be one Agreement.

**26. Contracts (Rights of Third Parties)**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement shall be entitled to enforce any of the provisions of the Agreement pursuant to that Act.

**27. Governing Law**

This Agreement is governed by, and is to be construed in accordance with, English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.