

SOUND4VISION LIMITED

STANDARD TERMS OF BUSINESS

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SOUND4VISION LIMITED
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Sound4Vision (“**the Supplier**”) contracts to provide design and installation services on the terms and subject to the conditions as set out below with its Customer.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Acceptance Date: the date on which there is deemed acceptance under Clause 16.

Bespoke Furniture: any furniture which is made specifically to fit a particular item of Equipment;

Change Agreement: an agreement made under clause 14.3.

Commencement Date: the date on which this agreement becomes effective as specified in the Quotation.

Completion Date: the estimated date specified in the Implementation Plan (which may be varied in accordance with the provisions of clause 13) by which the Supplier is to provide the System Ready for Service.

Confidential Information: information of commercial value which has been kept confidential by the party from whom the information originates and which has not come into the public domain during the term of this agreement in breach of any obligation of confidence.

Contract: that part of the agreement consisting of the parties' obligations under clause 23 to clause 28 relating to support services.

Customer Equipment: any item of equipment which the Customer has chosen to purchase or supply for the purposes of the System.

Customer Specifications: the specification agreed between the Customer and the Supplier which sets out the Customer's requirements of the System contained in the Quotation.

Customer: the person named in the Quotation or a person duly authorised by the Customer to act on its behalf for the purposes of this agreement and identified to the Supplier by written notice from the Customer.

Dispute Resolution Procedure : the procedure for dealing with disputes under this agreement as set out in clause 42.

Documentation: operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine readable forms supplied by the Supplier from time to time.

Equipment: the equipment ordered by the Customer and to be supplied by the Supplier or its authorised third parties and any Customer Equipment or Special Equipment as agreed in the Quotation.

Equipment Delivery Date: the estimated delivery date specified in the Implementation Plan, on which the Supplier will deliver an item of Equipment to the Property.

Implementation Plan: the time schedule and sequence of events for the performance of this agreement set out in the Quotation, which may be varied in accordance with the provisions of clause 13.

Installation Date: the estimated date by which the Supplier shall commence installation of the System as specified in the Implementation Plan.

Manufacturer's Warranties: the warranties given by any third party manufacturer including any extended warranties in relation to any item of the Supplier Equipment.

Normal Working Hours: the hours 9 am to 5 pm UK time Monday to Friday except English Bank Holidays.

Price: the aggregate price and payments for the Work as set out in the Quotation.

Project Manager: the Supplier employee appointed under clause 22.2 who has overall responsibility for the Work.

Property: the location(s) at which the System is to be installed as specified in the Quotation.

Quotation: the quotation provided by the Supplier in writing detailing the Works to be undertaken, the System to be installed and other Customer Specifications and the Price of the System.

Ready for Service: installed, tested and having been deemed to be accepted within the provisions of clause 16.

Services: the services to be provided by the Supplier as specified in Clause 8.

Special Equipment: items of equipment which have special features and/or are limited editions which are specially requested for by the Customer

Supplier: Sound4Vision, a private limited company incorporated in England and Wales whose registered number is 6174101 and whose registered address is Rose Cottage, Chinnor Road, Towersey, Thame, Oxon OX9 3QY.

System: the system consisting of the Equipment, any software needed to integrate the System and the Documentation.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax.

Work: all the works, duties and obligations to be carried out by the Supplier pursuant to this agreement.

- 1.2 A reference to one gender includes a reference to the other gender.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.5 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this agreement.
- 1.6 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.7 A variation of the agreement shall be in writing and signed by or on behalf of all parties.
- 1.8 **Writing** or **written** includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.

2. TERMS OF AGREEMENT

- 2.1 The Supplier shall supply to the Customer:
- (a) the Equipment;
 - (b) software necessary for the integration of the System together with all the Documentation;
 - (c) the services specified in Clause 8; and
 - (d) the Support Services.
- 2.2 The supply of the System and Price are subject to the terms and conditions set out in this agreement.
- 2.3 The schedules to this agreement, together with any documents referred to in them, form an integral part of this agreement and any reference to **this agreement** means this agreement together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 2.4 In the event of any conflict or inconsistency between the terms of the Quotation and any conditions detailed in this agreement, the terms of the Quotation shall prevail. For the avoidance of doubt, the Quotation shall effectively be deemed to be **this agreement** when the Customer signs and accepts the terms contained therein.

3. EQUIPMENT TO BE PROVIDED

- 3.1 The Supplier shall supply all items of Equipment except any Customer Equipment, together with all related Documentation provided by third party manufacturers of items of Equipment.
- 3.2 The Supplier shall provide all cabling and other equipment needed for the installation of the Equipment at the Property, including any equipment needed to connect and interface the Equipment to ensure the System is integrated.
- 3.3 The Supplier will use its reasonable endeavours to procure and supply any item of Special Equipment requested by the Customer subject to Clause 14.5 below. The Customer will need to confirm in writing and pay for the Special Equipment within seven (7) days of receipt of notice from the Supplier that it is available. Failure to do so will be deemed a cancellation of that item.

4. EQUIPMENT SYSTEM CHANGES AND TECHNOLOGY SUBSTITUTION

- 4.1 The Customer may request changes to the Equipment in accordance with the procedures set out in clause 14.

4.2 The Supplier undertakes to offer to the Customer, and the Customer may at its sole discretion at any time before the relevant Equipment Delivery Date choose to obtain from the Supplier, any item of equipment in substitution for any corresponding item of Equipment where the substitute item contains new technology or has better performance characteristics than the Equipment which the Customer had originally ordered under the Quotation. When the Supplier makes the offer, it shall notify the Customer of any change to the Price which would result from such substitution. If the Customer chooses to obtain any such substitute item, the parties shall use best endeavours to agree and execute a Change Agreement in accordance with clause 14.3.

4.3 Where the particular manufacturer's model may have changed or been made obsolete, the Supplier shall be entitled to exercise, in its absolute and sole discretion, its rights under Clause 4.2 above.

5. EQUIPMENT DELIVERY AND DELAYS

5.1 The Supplier shall deliver the items of Equipment to the Property by the applicable Equipment Delivery Dates and the Customer shall procure that the Customer Equipment shall be delivered as agreed in the Implementation Plan.

5.2 If any delivery is delayed at the request of, or because of the acts or omissions of, the Customer, or there is a delay with the Customer Equipment, the Implementation Plan shall be amended to take account of such delay in accordance with clause 13.6. If the Supplier can demonstrate that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under this agreement, the Supplier may at its sole discretion increase the Price by an amount not exceeding any such demonstrable cost. The Supplier may invoice the Customer for any additional monies that become payable in this way within [30] days of demonstrating the increase in costs.

5.3 If any delivery is delayed because of the acts or omissions of the Supplier or any third party manufacturer, the delay provisions of clause 20 shall apply.

5.4 Notwithstanding the foregoing, time is not of the essence in the performance of this agreement by the Supplier. All delivery times are estimates and the Supplier shall use reasonable efforts to meet them.

6. EQUIPMENT TESTING

6.1 Upon delivering any item of Equipment to the Property, the Supplier shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the technical specification once properly installed.

6.2 Following installation of each item of Equipment, the Supplier shall carry out the tests applicable to that item.

7. EQUIPMENT WARRANTIES

The warranties given in this clause 7 are in addition to warranties given in other parts of this agreement.

- (a) the Supplier warrants that the Equipment other than any Customer Equipment will be new and of satisfactory quality; and

- (b) as far as it is able, the Supplier will pass on to the Customer the benefits of any Manufacturer's Warranties for Equipment other than Customer Equipment for the period provided by the manufacturer unless extended by the Customer.

8. DESIGN SERVICES TO BE PROVIDED

The Supplier shall provide such Design Services which may include, without limitation, drawings and any software, which shall be proprietary to the Supplier and Clause 21 shall apply to all Design Services provided.

9. DESIGN CHANGES AND TECHNOLOGY SUBSTITUTION

The Customer may request changes to the Design Services in accordance with the procedures set out in clause 14.

10. DESIGN AND SOFTWARE: PROPRIETARY RIGHTS

The copyright and other intellectual property rights of whatever nature in the Design Services are and shall remain the property of the Supplier and the Supplier reserves the right to grant a licence to use any such software to any other party or parties.

11. SYSTEMS INTEGRATION SERVICES TO BE PROVIDED

The Supplier agrees to:

- (a) deliver and install the Equipment at the Property;
- (b) integrate the Equipment to form the System;
- (c) provide the System Ready for Service by the Completion Date; and
- (d) provide the Documentation to the Customer,

on the terms and conditions set out in this Agreement.

12. CONDUCT OF THE SYSTEMS INTEGRATION WORK

12.1 The Supplier shall carry out the Work with reasonable diligence and despatch, and with reasonable skill and expertise, to provide the System by the Completion Date.

12.2 The Customer shall co-operate with the Supplier in any manner reasonably required by the Supplier in order to carry out the Work, including, but not limited to, provision of information and data, ensuring and procuring that employees and/or contractors of the Customer will cooperate and liaise with the Supplier, provision of access to the Property for the Supplier's employees and contractors and provision of supplies reasonably required by the Supplier, such as a reliable source of power.

13. SYSTEMS INTEGRATION IMPLEMENTATION PLAN AND EXTENSION OF TIME

13.1 Both parties shall perform their obligations under this agreement in accordance with the Implementation Plan.

13.2 The Supplier shall complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to the provisions of clause 5.4 and clause 13.3.

- 13.3 Subject to Clause 13.4 and Clause 13.5 below, the Supplier shall be given an extension of time for completion of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:
- (a) a variation to the System is made at the Customer's request pursuant to the System changes procedure set out in clause 14; or
 - (b) a force majeure event occurs as described in clause 35; or
 - (c) delay is caused in whole or in part by an action or omission of the Customer, its employee, agent or third party contractor which may include, without limitation, the lack of access to the Property on the Delivery or Installation Dates, the lack of preparation of the Property for the System to be installed as required under Clause 15, the unavailability of Customer Equipment and/or Bespoke Furniture and the failure by the Customer to store any of the Equipment properly as instructed resulting in damaged Equipment causing the delays.

For the avoidance of doubt, delays under Clause 13.3 will not be treated a breach by the Supplier of the terms of this agreement.

- 13.4 If the Supplier is entitled to an extension of time under clause 13.3, it shall give written notice to the Customer not later than seven (7) days after the beginning of the event. Such notice shall specify the event relied on, and, in the case of a force majeure event under clause 13.3(b), shall estimate the probable extent of the delay.
- 13.5 Any delays resulting from an event set out in Clause 13.3 may result in additional costs for the Supplier. In this case, the Supplier is entitled to levy a further charge to the Customer, if the Supplier considers it appropriate.
- 13.6 The Customer and the Project Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

14. SYSTEM CHANGES

- 14.1 Subject to Clause 14.4 below, the Customer may, by giving at least 30 (thirty) days' written notice to the Supplier, request a change to the System or Design Services.
- 14.2 Within seven (7) working days of receipt of such notice, the Supplier shall, at its standard rates then in force, prepare for the Customer a written estimate of any increase in the Price, and of any effect that the requested change would have on the Implementation Plan and Completion Date.
- 14.3 Within seven (7) working days of receipt of the written estimate referred to in clause 14.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a written agreement (**Change Agreement**) specifying, in particular, any changes to the Implementation Plan and Price.
- 14.4 Subject to Clause 14.5 below, where a System change is requested that includes a cancellation of any item of Equipment ordered, the Customer will be subject to a cancellation policy as follows:

- (a) No cancellation charge will be imposed if the Customer gives at least 30 (thirty)(days]' notice prior to the Equipment Delivery Date to the Supplier;
 - (b) Where notice of cancellation is at least 14(fourteen) days but less than 30 (thirty) days prior to the Equipment Delivery Date, the Supplier will be entitled to charge up to 50% (fifty per cent) of the price of the relevant item; and
 - (c) Where the notice of cancellation given less than 14 (fourteen) days prior to the Equipment Delivery Date, the Supplier will be entitled to charge for full payment on that item.
- 14.5 If an item of Special Equipment is cancelled under Clause 14.4, the Supplier shall be entitled to reimbursement of all costs associated with ordering and procuring the supply of that item of Special Equipment. This is in addition to any further rights it may have under Clause 14.4. For the purposes of this Clause 14, "written" or "writing" may include any electronic mail or form of electronic communication and where such is applicable, the date of the communication shall be the date shown on the written communication itself.

15. PRICE, PAYMENT AND INTEREST

- 15.1 The Price is specified in the Quotation. The Customer shall in addition pay to the Supplier the amount of any tax, duty or assessment, including but not limited to any applicable VAT, which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on the Supplier's income). The Price is subject to any changes as set out in Clause 14 above.
- 15.2 The Supplier shall submit invoices in accordance with the Quotation. The Customer shall make payment of each invoice by the due date stated in that invoice or within seven (7) days of receipt of the invoice, whichever is the later.
- 15.3 Where a sum is required to be paid under this agreement but is not paid on the date the parties agreed, the person due to pay the sum shall also pay an amount equal to interest calculated under Clause 15.4 below on that sum for the period beginning with that date and ending with the date the sum is paid (and the period shall run after as well as before judgment).
- 15.4 Where the payment of any invoice or any part of an invoice is not made in accordance with this Clause 15, the Supplier, without prejudice to its other rights under this agreement, or in law, shall be entitled to charge interest on the outstanding amount at the rate of three (3) per cent per annum above the central bank's legal interest rate, in force at the time, from the due date until the outstanding amount is paid.
- 15.5 Title to the System shall only pass upon payment of the Price in full by the Customer. Until ownership of the System has passed to the Customer, the Customer shall:
- (a) hold the System on a fiduciary basis as the Supplier's bailee;
 - (b) not destroy, deface or obscure any identifying mark of packaging on or relating to any item of Equipment or any part of the System; and

- (c) maintain the System in a satisfactory condition and keep them insured on the Customer's insurance policy for the full Price against all risks.
- 15.6 Risk of loss of or damage to any part of or all the System shall pass to the Customer upon delivery of any items of Equipment by the Supplier to the Property. The Customer will be responsible for insuring the Equipment and System under his/its own insurance policy.
- 15.7 This clause 15 is without prejudice to any claim for interest under the law.
- 16. PROPERTY PREPARATION, DELIVERY AND INSTALLATION OF THE SYSTEM**
- 16.1 The Supplier shall supply to the Customer, within a reasonable time before any Equipment Delivery Date, such information and assistance as may be necessary to enable the Customer to prepare the Property for the installation of the relevant item of Equipment.
- 16.2 The Customer shall, at its own expense, prepare the Property in accordance with the information provided by the Supplier in advance of each Equipment Delivery Date. On completion of such preparation, the Supplier reserves the right to inspect the Property and specify, within a reasonable time prior to the Equipment Delivery Date, any corrections or modifications required. The Supplier shall deliver each item of Equipment to the Property on or before the Delivery Date for that item and the Customer shall ensure that the item(s) of Equipment are properly and securely stored prior to the installation of the System.
- 16.3 Where the Customer will provide at his own cost Bespoke Furniture for any item of Equipment, the Supplier will not be held responsible for any damage or defect to the item arising from or as a consequence of the Bespoke Furniture being unfit for its purpose or of poor quality or poor workmanship. The Customer shall be responsible for ensuring that all necessary works are carried out to ensure that the Bespoke Furniture will keep the Equipment safe and secure after the installation of the System. The Customer further indemnifies the Supplier for any claims arising out of or in connection with any faulty item of Bespoke Furniture.
- 17. COMPLETION DATE AND SYSTEM ACCEPTANCE**
- 17.1 On Completion Date, the Customer or its representative shall be present in person on Property together with the Project Manager. The Project Manager shall provide the necessary Documentation and the Customer shall acknowledge that all the Equipment as ordered has been supplied and installed on the Property. If the Customer fails to attend the meeting on the Completion Date, the Supplier may charge fees for attending further meetings to complete the same. Failure to attend two proposed Completion Dates will affect the Acceptance Date.
- 17.2 Notwithstanding Clause 17.1 and subject to Clauses 15.5 and 15.6 above, the Supplier is entitled to withhold completion if full payment of the Price has not been received.
- 17.3 Acceptance of the System shall be deemed to have occurred on the expiry of 30 (thirty) days after the Completion Date or the date set for the second Completion Date, whichever is the later, of the installation of the System.

18. DELAYS IN PROVISION OF SYSTEM

- 18.1 The Supplier shall provide the System Ready for Service on or before the Completion Date.
- 18.2 If the System is not Ready for Service by the Completion Date, the Supplier shall be liable for any reasonable costs that the Customer can demonstrate it incurred as a direct result of such delay subject to any delays resulting from any event as set out in Clause 13.3.

19. INDEPENDENT CONTRACTOR

- 19.1 For the purpose of the Work, the Supplier is an independent contractor and shall not hold itself out as an agent of the Customer except as expressly authorised in writing by the Customer.
- 19.2 The Supplier shall have complete control of the Work and shall efficiently and competently direct and supervise its employees, agents and subcontractors who are carrying out the Work.

20. LIMITED WARRANTY AS TO SYSTEM

- 20.1 The Supplier warrants that the System at the Acceptance Date, and for such period of the Manufacturer's Warranties after that date, will perform in accordance with the relevant technical specification. The sole remedy for breach of the warranty under this clause 20.1 shall be correction of defects by the Supplier within a reasonable time from notification by the Customer of the defect that constitutes such breach.
- 20.2 The above warranties are in lieu of all other express or implied warranties or conditions including, but not limited to, implied warranties or conditions of merchantability and fitness for a particular purpose. The Supplier specifically denies any implied or express representation that the System will be fit:
- (a) to operate in conjunction with any other equipment or software products other than with those Equipment items and software products that are identified in the Documentation as being compatible with the System; or
 - (b) to operate uninterrupted or error-free; or
 - (c) to have all program defects corrected.
- 20.3 Any unauthorised modifications, use or improper installation of the System by the Customer and/or its employees or third parties shall render all the Supplier's warranties and support obligations null and void.
- 20.4 Subject to clause 20.7, the Supplier shall defend, hold harmless and indemnify the Customer against all loss, damage, claims, liabilities, fees, costs and expenses arising out of any action brought against the Customer based on a claim that the System infringes any intellectual property right of any third party, provided that:
- (a) the Supplier is notified promptly in writing of any such claim;
 - (b) the Customer makes no admission or settlement of such claim without the Supplier's prior written consent;

- (c) the Supplier has sole control of the defence and any negotiations for compromise; and
 - (d) the Customer provides, at the Supplier's expense, such assistance as the Supplier reasonably requires.
- 20.5 If the System becomes or, in the opinion of qualified legal counsel, is likely to become, the subject of any such claim, the Customer will permit the Supplier:
 - (a) to replace all or part of the System with functionally equivalent equipment, software or documentation without any charge to the Customer; and/or
 - (b) to modify the System as necessary to avoid such claim, provided that the System (as amended) functions in substantially the same way as the System before modification; and/or
 - (c) to procure for the Customer a licence from the relevant complainant to continue using the System.
- 20.6 If the System is determined in a court of law to be infringing and the Supplier is unable after commercially reasonable efforts to procure for the Customer the right to continue using the System, or to provide the Customer, with a functionally equivalent non-infringing System, this agreement and any licence to use the Supplier Software shall be terminated.
- 20.7 The Supplier shall have no liability for any claim of intellectual property infringement:
 - (a) caused by the Customer's use of the System in combination with software not supplied or approved in writing by the Supplier; or
 - (b) resulting from any unauthorised modification of the System; or
 - (c) based on use of any version of the System other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version.

21. CONFIDENTIALITY

- 21.1 In relation to the Customer's Confidential Information:
 - (a) the Supplier shall treat as confidential all Confidential Information of the Customer supplied under this agreement. The Supplier shall not divulge any such Confidential Information to any person except to its own employees and then only to those employees who need to know the same. The Supplier shall ensure that its employees are aware of, and comply with, the provisions of this clause 21;
 - (b) the Supplier may provide any subcontractor with such Customer's Confidential Information as it needs to know in order to perform its obligations relating to the Work, provided that such sub-contractor has first entered into a written obligation of confidentiality in terms similar to clause 21.1(a); and
 - (c) the foregoing obligations shall remain in full force and effect notwithstanding any termination of the Licence or this agreement.

- 21.2 In relation to the Supplier's Confidential Information:
- (a) the Customer shall treat as confidential all Confidential Information of the Supplier contained or embodied in the System or Documentation or otherwise supplied to the Customer during the performance of this agreement;
 - (b) the Customer shall not, without the prior written consent of the Supplier, divulge any part of the Supplier's Confidential Information to any person other than:
 - (i) its representative; and
 - (ii) other employees of the Customer who need to know the same for purposes relating to the Work;
 - (c) the Customer undertakes to ensure that the persons mentioned in clause 21.2(b) are made aware, prior to the disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Supplier; and
 - (d) the foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Licence or this agreement.

22. PROJECT MANAGEMENT

- 22.1 No later than five (5) days after the Commencement Date, the Customer shall notify the Supplier of the name of the person appointed as the Customer Representative.
- 22.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the Work and to whom all questions regarding this agreement can be referred. The name of the appointed individual shall be notified in writing to the Customer.
- 22.3 The Customer shall co-operate with the Project Manager and shall attend meetings scheduled by the Project Manager at reasonable intervals not less than once a week to advise and assist the Supplier on all matters relating to the Work.
- 22.4 The provision of employees, subcontractors and agents of the Supplier to carry out the Work shall be at the discretion of the Supplier.

23. SUPPORT SERVICES

- 23.1 The Supplier shall ensure that support is available by telephone and/or e-mail during Normal Working Hours to provide assistance to the Customer in respect of the following:
- (a) remedying Defects in the System; and
 - (b) providing advice on the use of the System.
- 23.2 The Supplier shall use reasonable endeavours to correct Defects notified to it by the Customer in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:
- (a) the Customer shall promptly notify the Supplier of all Defects. Where such notification is made orally, the Customer shall provide written

confirmation (which may be sent by by e-mail) of the notification within two working days;

- (b) within two hours of such notification, the Supplier shall acknowledge receipt of the notification and shall consult with the Customer orally to determine the nature of the Defect. Following that, if the Defect continues, the Supplier shall provide on-Property assistance within a reasonable period of time.

23.3 The Supplier shall comply with, and shall ensure that its employees and agents while working at the Property comply with, the Customer's safety and security requirements which apply in respect of the Property, as notified in writing to the Supplier from time to time.

24. CUSTOMER'S OBLIGATIONS IN RELATION TO SUPPORT SERVICES

24.1 During the term of the Support Services as set out in Clause 25 below, the Customer shall not, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the System.

24.2 The Customer shall allow the Supplier such access to the Property as is necessary to carry out its obligations under the Support Services. The Customer shall obtain for the Supplier all permissions necessary to obtain such access.

25. DURATION OF CONTRACT FOR SUPPORT SERVICES

25.1 The Supplier will provide free support for one (1) month after the Acceptance Date subject to Clause 26 below. Where the Defect occurs after the expiry of one (1) month following the Acceptance Date (“**Support Commencement Date**”), the Supplier shall be entitled to charge for both labour and parts at its prevailing rates at the time.

25.2 The Customer may enter into a Support Services agreement for a minimum period of one (1) year which may be automatically renewed for the same period on the expiry of the original period.

26. WARRANTIES AND LIMITATIONS OF LIABILITY RELATING TO SUPPORT SERVICES

26.1 The Supplier's obligations under the Support Services are subject to, and contingent on, the proper use and care by the Customer of the System, and do not cover any part of the System which has been modified by anyone other than the Supplier, except with the Supplier's express prior written permission.

26.2 The Supplier shall have no liability to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.

26.3 Other than for death or personal injury caused by the negligence of the Supplier, its servants or agents, which shall be unlimited, the Supplier's total liability of any kind under any cause of action in relation to the provision of Support Services shall be limited to the amount paid for such Support Services in the year in which such cause of action arises.

27. CHARGES AND PAYMENT FOR SUPPORT SERVICES

- 27.1 The Customer shall pay the Supplier the annual support charge (together with VAT thereon), as set out in as detailed in the Quotation, on the Support Commencement Date (as calculated under Clause 25 above) on a monthly basis. The annual support charge is exclusive of, and the Customer shall be responsible for, all applicable taxes, duties and assessments (other than taxes on the income of the Supplier).
- 27.2 The Supplier may increase the annual charge at any anniversary of the Support Commencement Date by no more than the percentage change in the All Item Index of the General Index of Retail Prices issued by the UK Central Statistical Office (or any successor index to it) for the period since the Support Commencement Date or the most recent increase, whichever is the later.
- 27.3 The Supplier shall invoice the Customer for the annual support charge no later than 30 days before any anniversary of the Support Commencement Date at the invoicing address specified in the Quotation. Interest at the rate specified in Quotation shall be payable on all sums due and unpaid.
- 27.4 If the Supplier visits the Property at the Customer's request to investigate a failure of the Customer's system, which proves in the Supplier's reasonable opinion not to have been caused by a Defect, the Supplier shall be entitled to charge the Customer for the time spent on such visit on a time-and-materials basis at its standard rates then in force.

28. TERMINATION OF CONTRACT FOR SUPPORT SERVICES

In addition to the grounds for termination set out in clause 32, the Customer shall be entitled to terminate the Contract for support services at the expiry of one (1) year from the Support Commencement Date, or on any anniversary of the Support Commencement Date after that date, by giving at least 90 days' prior written notice.

29. TERM OF AGREEMENT

This agreement excluding the contract for Support Services shall be effective from the Commencement Date and shall continue in force until it is terminated in accordance with the provisions of this agreement.

30. LIMITATION OF LIABILITY

- 30.1 The Supplier's entire liability under this agreement (other than under clause 23 to clause 28) or for any cause of action related to the System shall be limited to the amount of the Price. The Supplier shall not be liable for indirect, special or consequential damages resulting from use of the System.
- 30.2 The exclusions in this clause 31 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents for fraud, breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982, or any other liability which may not be excluded by law.

31. PUBLICITY

The Supplier agrees not to use the Customer's name or the existence of this agreement in any publicity materials or advertising without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.

32. TERMINATION

32.1 Either party may terminate this agreement immediately by written notice to the other party if:

- (a) the other party commits a material or persistent breach of any of its obligations under this agreement and (in the case of a breach capable of being remedied) does not remedy such breach within 30 days of receiving from the other party written notice of the breach and a request to remedy the breach; or
- (b) any distress or execution is levied on the other party's property or if the other party has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, commits any act of bankruptcy, is wound up or goes into liquidation, or if the other party suffers any analogous proceedings under foreign law.

32.2 Either party may terminate this agreement in accordance with the provisions contained in clause 34 (frustration of contract) and clause 35 (force majeure).

32.3 The Supplier may terminate this agreement immediately by written notice to the Customer if there is any change of control of the Customer within the meaning of section 840 of the Income and Corporation Taxes Act 1988.

32.4 Any termination of this agreement (however caused) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this agreement which is expressly or by implication intended to come into or continue in force on or after such termination, except that the Supplier shall not be liable to the Customer for any loss, claims, damage, fees, liabilities, costs or expenses, whether direct, indirect, financial, economic, consequential (including without limitation loss of profit, loss of goodwill, loss of sale revenue, loss of contract and loss of opportunity) or otherwise, suffered by Customer as a direct or indirect result of such termination.

33. ASSIGNMENT

The Customer shall not assign, or grant any security interest over, any of its rights or obligations under this agreement, or any document referred to in it, without the prior written consent of the Supplier.

34. FRUSTRATION OF CONTRACT

34.1 Neither party shall be liable for any delay in performing any of its obligations under the agreement if such delay is caused by circumstances beyond the reasonable control of the party so delaying and could not have been reasonably foreseen at the date of this agreement. Any party claiming that such circumstances have occurred shall give the other party full details of those circumstances in writing and, if possible, the estimated length of the delay. If the

other party agrees that the circumstances fall within the provisions of this clause 35.1, it shall confirm in writing that the first party shall, subject to an undertaking that such party will use its best endeavours to resume full performance without avoidable delay, be entitled to a reasonable extension of time under clause 13.3 for the performance of such obligations.

34.2 If any delaying event under clause 35.1 continues in existence for a period of [180 days] or more, either party may give the other party written notice of its intention to terminate this agreement at the expiry of [30] days from the date of such notice unless, in the meantime, the delaying event has ended and work under this agreement has resumed.

34.3 In the event of termination under clause 35.2, all sums paid to the Supplier by the Customer under this agreement shall be refunded to the Customer, save that the Supplier shall be entitled to payment on a time-and-materials basis for all work done prior to termination, provided that the Supplier takes all reasonable steps to mitigate the amount due.

35. FORCE MAJEURE

Neither party shall be liable for any delay in meeting, or failure to meet, its obligations under this agreement due to any cause outside its reasonable control including (without limitation) acts of God, war, riot, malicious acts of damage, fire, acts of any government authority, failure of the public electricity supply, strike, lock-out or labour dispute or apprehension thereof (whether or not the settlement of the matter is at the discretion of the party in question).

36. NOTICES

Any notice given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post (except in the event of a current industrial dispute affecting the postal service, when the relevant party shall serve by another means permitted in this clause 36) to the address specified in the Quotation, or to such other address as a party may from time to time notify to the other party. A notice delivered by hand is deemed to have been served when delivered. A correctly addressed notice sent by post is deemed to have been delivered 48 hours after the time of despatch. In proving the service of the notice, it shall be sufficient to prove in the case of a letter, that such letter was properly delivered or stamped, addressed and placed in the post (as the case may be).

37. WAIVER

37.1 A waiver of any right under this agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.

37.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

38. SEVERANCE

38.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

38.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

39. THIRD PARTY RIGHTS

This agreement, and the documents referred to in it, are made for the benefit of the parties to them and their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else.

40. AUTHORITY

Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.

41. ENTIRE AGREEMENT

The parties agree that this agreement constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter of this agreement, which supersedes all proposals, oral or written, and all other communications between them relating to it.

42. DISPUTE RESOLUTION

42.1 Any dispute which may arise between the parties concerning this agreement shall be determined as provided in this clause 45.

42.2 For the purpose of this clause 45, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.

42.3 Unless this agreement has already been terminated by the date of the notice of dispute, the Supplier shall in every case continue with the Work with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments in accordance with this agreement.

42.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 45.4 shall be extendable by mutual agreement):

- (a) within [two] days, the Project Manager and the Customer Representative shall meet to attempt to settle the dispute;
- (b) if the Project Manager and the Customer Representative are unable to reach a settlement within [seven] days from the date of service of the notice, the [managing directors] of each of the parties shall meet within the following [seven] days to attempt to settle the dispute; and
- (c) if no settlement results from the meeting specified in clause 45.4(b), for the following [28] days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

42.5 If no settlement is reached under the provisions of clause 45.4:

- (a) in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court in the most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and
- (b) in any other case, the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.

43. GOVERNING LAW

This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.