

SHENTON GLOBAL LTD
STANDARD TERMS AND CONDITIONS OF SALE AND HIRE FOR ALL EQUIPMENT AND SERVICES

1 Interpretation

1.1 Definitions: In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Commencement Date: has the meaning given in clause 2.2;

Conditions: these terms and conditions as amended from time to time in accordance with clause 22.1;

Contract: the contract between the Supplier and the Customer for the supply or hire of Equipment and/or Services in accordance with these Conditions;

Customer: the person or firm who purchases or hires the Equipment and/or Services from the Supplier;

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer;

Equipment: the items of equipment listed in the Order Confirmation (or by reference to the Quotation), all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;

Force Majeure Event: means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or 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;

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;

holding company: has the meaning given in clause 1.2.5.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

month: a calendar month;

Normal Business Hours: 8.00 am to 5.00 pm on a Business Day.

Order: an order for Equipment and/or Services submitted by the Customer in accordance with clause 2;

Order Confirmation: the written confirmation of the Customer's Order, issued by the Supplier;

Power Call Retainer: a site specific retainer for the provision of emergency generator deployment;

Quotation: means the quotation provided by the Supplier to the Customer for Equipment and/or Services which are the subject of an Order;

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Order;

Specification: any specification for the Equipment that is agreed in writing by the Customer and the Supplier;

Subsidiary: has the meaning given in clause 1.2.5;

Supplier: Shenton Global Ltd registered in England and Wales with company number 10427830 whose registered office is at Shenton House, Walworth Road, Walworth Industrial Estate, Andover, Hampshire SP10 5LH;

Supplier Materials has the meaning give in clause 10.1.7;

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

year: 1 January to the following 31 December.

1.2 Construction: In these Conditions, the following rules apply:

1.2.1 Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions.

1.2.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.3 The Schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions in respect of the Equipment and/or Services to which each Schedule relates and any reference to these Conditions includes the Schedules.

1.2.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.2.5 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

1.2.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

1.2.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.2.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.2.9 A reference to **writing** or **written** includes by e-mail.

1.2.10 References to clauses and Schedules are to the clauses and Schedules of these Conditions; and references to paragraphs are to paragraphs of the relevant Schedule.

1.2.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Supply of Equipment and Services

2.1 Each Order shall be deemed to be a separate offer by the Customer to purchase or hire Equipment and/or Services on the terms of these Conditions, which the Supplier shall be free to accept or decline at its absolute discretion.

2.2 No Order shall be deemed to be accepted by the Supplier until it issues an Order Confirmation at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 The Supplier's employees or agents are not authorised to make any representations concerning the Equipment and/or Services unless confirmed by the Supplier in writing. In placing an Order the Customer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind an Order or this agreement for any such representations which are not so confirmed (unless such representations were fraudulently made).

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.6 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.

2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.8 Any Quotation given by the Supplier shall not constitute an offer, and is only valid for the period stated in the Quotation. If no period is stated, the Quotation is only valid for 7 days from its date of issue. However, where an Order is placed in response to a Quotation the provisions of the Quotation shall form part of the Contract where specified in these Conditions.

2.9 All of these Conditions shall apply to the supply or hire of both Equipment and Services except where application to one or the other is specified.

2.10 If there is any conflict or inconsistency between any of these Conditions (including the Schedules to these Conditions) and the Quotation, Order Confirmation or any other documents forming part of the Contract, the following list of priority shall apply (with the higher in the list having priority):

2.10.1 the Order Confirmation;

2.10.2 the Quotation;

2.10.3 a Schedule to these Conditions; and

2.10.4 the main body of these Conditions.

3 Purchase of Power Systems Equipment

Where the parties have agreed in the Order Confirmation that the Customer is to purchase Power Systems equipment, then the provisions of Schedule 1 shall apply to such purchase in addition to the main body of these Conditions.

4 Installation, Commissioning and Testing of Equipment

Where the parties have agreed in the Order Confirmation that the Customer requires installation, commissioning and/or testing services of Equipment, then the provisions of Schedule 2 shall apply to such services in addition to the main body of these Conditions.

- 5 **Rental of Power Rental Equipment**
Where the parties have agreed in the Order Confirmation that the Customer is to rent Equipment from the Supplier then the provisions of Schedule 3 shall apply to such rental in addition to the main body of these Conditions.
- 6 **Purchase of Power Call Retainer**
Where the parties have agreed in the Order Confirmation that the Customer is to purchase a Power Call Retainer, then the provisions of Schedule 4 shall apply to such purchase in addition to the main body of these Conditions.
- 7 **Purchase of Power Care Maintenance Services**
Where the parties have agreed in the Order Confirmation that the Customer is to purchase maintenance services for Equipment then the provisions of Schedule 5 shall apply to such purchase in addition to the main body of these Conditions.
- 8 **Charges and Payment**
- 8.1 The prices for Equipment and/or Services shall be the prices set out in the Order Confirmation (unless specified otherwise in the Schedule applicable to these Equipment and/or Services) and shall be payable for each of the Equipment and/or Services in accordance with the terms of the Schedule applicable to those Equipment and/or Services. Time for payment shall be of the essence.
- 8.2 Unless otherwise stated in the applicable Schedule or Order Confirmation, each invoice will become due on the date it is issued by the Supplier and the final date for payment shall be 30 days from the date of the relevant invoice.
- 8.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under this agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.
- 8.4 Any applicable import or export duties or other taxes or duties are payable by the Customer in addition.
- 8.5 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 8.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8.7 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly.
- 8.8 All payments payable to the Supplier by the Customer under the Contract shall become immediately due and payable:
- 8.8.1 on termination of the Contract for any reason; or
- 8.8.2 if the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.9 inclusive.
- 9 **Intellectual Property rights**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Equipment and/or Services shall be owned by the Supplier or its licensors.
- 9.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Equipment and/or Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 9.3 All Supplier Materials are the exclusive property of the Supplier.
- 10 **Customer Obligations relating to Services**
- 10.1 The Customer shall:
- 10.1.1 ensure that the terms of the Order are complete and accurate;
- 10.1.2 co-operate with the Supplier in all matters relating to the Services;
- 10.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- 10.1.4 provide the Supplier with such information, documents, data and materials as the Supplier may reasonably require to supply the Services, without delay and ensure that such information is accurate in all material respects;
- 10.1.5 prepare the Customer's premises for the supply of the Services;
- 10.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 10.1.7 keep and maintain all materials, equipment, documents and other property of the Supplier (including leased equipment) (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 10.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 10.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 10.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10; and
- 10.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 11 **Consumer Credit Act**
The Customer warrants to the Supplier that it is a body corporate and not an individual for the purposes of the Consumer Credit Act 1974.
- 12 **Limitation of liability**
- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 12.1.1 death or personal injury resulting from negligence; or
- 12.1.2 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
- 12.1.3 fraud or fraudulent misrepresentation; or
- 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 12.1.5 breach of section 2 of the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1, the Supplier shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 12.2.1 loss of profit; or
- 12.2.2 loss of or damage to goodwill; or
- 12.2.3 loss of use or production; or
- 12.2.4 loss of downtime costs; or
- 12.2.5 loss of business, agreements or contracts; or
- 12.2.6 loss of business opportunity; or
- 12.2.7 loss of anticipated saving or wasted expenditure; or
- 12.2.8 loss or corruption of data or information; or
- 12.2.9 special, indirect or consequential damage, suffered by the Customer that arises under or in connection with the Contract including any claims against the Customer for the above types of loss or damage.
- 12.3 Subject to clause 12.1 or clause 12.2, the Supplier's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in no circumstances exceed the amount specified in the Schedule applicable to the Equipment or the Services which are the subject of the Contract.
- 12.4 Except as expressly provided in these Conditions, all other warranties, terms or conditions implied by statute or common law arising out of or in connection with the supply of the Equipment and/or Services are excluded to the fullest extent permitted by law. The Supplier's prices are determined on this basis.
- 12.5 This clause 12 shall survive termination of the Contract.
- 13 **Confidentiality**
- 13.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business,

- its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 13 shall survive termination of the Contract.
- 14 Termination and Suspension**
- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 14.1.2 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 14.1.3 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;
- 14.1.4 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986
- 14.1.5 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;
- 14.1.6 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;
- 14.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 14.1.8 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;
- 14.1.9 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 the other party's assets and such attachment or process is not discharged within 14 days
- 14.1.10 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 clause 14.1.2 to clause 14.1.9 inclusive.
- 14.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- 14.2.1 in relation to any particular Equipment and/or Services in accordance with the relevant Schedule; and/or
- 14.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this agreement on the due date for payment; and/or
- 14.2.3 there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of any or all of the Services, its obligations under any of the Schedules or all further supply of Equipment under the Contract or any other contract between the Customer and the Supplier if:
- 14.3.1 the Customer fails to make pay any amount due under the Contract on the due date for payment; or
- 14.3.2 the Customer becomes subject to any of the events listed in clause 14.1.2 to 14.1.9, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 15 Obligations on termination**
- 15.1 On termination of the Contract:
- 15.1.1 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 yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 15.1.2 the Customer shall return all of the Supplier Materials which have not been fully paid for. 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, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this agreement;
- 15.1.3 the Customer shall pay the cancellation charges, if any, relevant to the Services in question as such charge is set out in the relevant Schedule;
- 15.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 16 Consequences of termination**
- 16.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, including the following clauses listed below, shall continue in full force and effect:
- 16.1.1 Clause 12 (Limitation of liability);
- 16.1.2 Clause 13 (Confidentiality);
- 16.1.3 Clause 15 (Obligations on termination);
- 16.1.4 Clause 26 (Governing law).
- 16.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 17 Force Majeure**
- 17.1 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- 17.2 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Equipment for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.
- 18 Assignment and Subcontracting**
- 18.1 The Supplier may at any time assign, transfer, charge, 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.
- 18.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19 Partnership**
- Nothing in these Conditions 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 Severance**
- 20.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 20.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 21 Further assurance**
- At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract.
- 22 Variation and waiver**
- 22.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the authorised representatives of both parties. For the purposes of this clause in writing does not include by email, but the parties may evidence their signature by electronic means.
- 22.2 A waiver of any right or remedy under the Contract or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 22.3 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent 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 the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 23 Notices**
- 23.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- 23.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 23.1.2 sent by email to the party's nominated email address advised in writing from time to time.
- 23.2 Any notice shall be deemed to have been received:
- 23.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 23.2.2 if sent by pre-paid first-class post or other next working day delivery service, 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- 23.2.3 if sent by email, at the time of transmission, or, if this time falls outside Normal Business Hours in the place of receipt, when Normal Business Hours next resume.
- 23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 23.4 For the purposes of this clause, "writing" shall not include e-mail.
- 24 **Third Party Rights**
- 24.1 Except as expressly provided in these Conditions, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce its terms. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act. The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.
- 24.2 The Supplier's Group or any member thereof shall be entitled to enforce all of the rights and benefits under the Contract at all times as if the Supplier's Group or a member thereof were a party to the Contract.
- 25 **Health and Safety**
- 25.1 If additional works are: (i) found to be necessary (including the removal and disposal of asbestos and any other hazardous substances); or (ii) requested by the Customer, in each case during the course of the provision of the Services, the Supplier reserves the right to suspend the provision of Services.
- 25.2 It is the Customer's obligation to check whether asbestos is present at its premises and determine its type and condition, including ensuring that any area where Services may be performed have been surveyed for the presence of asbestos or other hazardous substances. Upon request by the Supplier, the Customer shall ensure that an asbestos survey has been completed and notify the Supplier of any asbestos that is present. The Supplier has no responsibility for asbestos or hazardous substances found on the Customer's premises or during the provision of Services.
- 25.3 If, in the Supplier's reasonable opinion, the safe execution of any Services at the Customer's premises is, or is likely to be, a danger to the health and safety of any of the Supplier's personnel due to local conditions, the Supplier may suspend performance and/or evacuate some or all of their personnel from the Customer's premises. The Supplier shall not be liable in any way for any delay or failure to perform its obligations under the Contract due to such suspension or evacuation.
- 26 **Governing Law and Jurisdiction**
- 26.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 26.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 26.3 Notwithstanding clause 26.2, in the event that any Contract is deemed to be a construction contract for the purposes of the Housing Grants, Construction and Regeneration Act 1996, the adjudication procedure under the Scheme of Construction Contracts 1998 shall apply.

SCHEDULE 1

Terms and Conditions Applicable to the Purchase of Power Systems Equipment

- 1 **Equipment**
- 1.1 The Equipment is described in the Quotation and/or in any applicable Specification.
- 1.2 To the extent that any Equipment is to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier in relation to:

- 1.2.1 the use of the Customer's Specification in the supply or use of the Equipment; and
- 1.2.2 for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification.
- This paragraph 1.2 shall survive termination of the Contract.
- 1.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 2 **Delivery**
- 2.1 The Supplier shall ensure that:
- 2.1.1 where applicable, each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered; and
- 2.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 2.2 The Supplier shall deliver the Equipment to the location set out in the Order Confirmation or such other location as the parties may agree in writing (**Delivery Location**).
- 2.3 Delivery of the Equipment shall be completed on the completion of unloading of the Equipment at the Delivery Location.
- 2.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event, Customer Default or the Customer's failure to provide the Supplier with adequate access to the Delivery Location, delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 2.5 If the Supplier fails to completely deliver the Equipment, its liability shall be limited to the additional costs and expenses incurred by the Customer in obtaining replacement equipment of similar description and quality in the cheapest market available, less the price of the Equipment.
- 2.6 If the Customer fails to take delivery of the Equipment within the time period stated in the Quotation or otherwise within 5 Business Days of the Supplier notifying the Customer that the Equipment is ready for dispatch from the Supplier's premises, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- 2.6.1 delivery of the Equipment shall be deemed to have been completed at 9.00 am on the fifth Business Day from the day that the Supplier notified the Customer that the Equipment was ready for dispatch from its premises; and
- 2.6.2 the Supplier shall store the Equipment until actual delivery takes place, and has the right to charge the Customer for all related costs and expenses (including insurance).
- 2.7 If after a reasonable period of time after the day on which the Supplier notified the Customer that the Equipment was ready for delivery (as determined by the Supplier) the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Equipment.
- 2.8 The Supplier may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment. References in these Conditions to Orders shall, where applicable, be read as references to instalments.
- 3 **Quality**
- 3.1 The Supplier warrants that on delivery, and for a period ending on the earlier to occur of: (i) 12 months from the date of delivery to the Delivery Location; or (ii) 18 months from the date the Supplier notifies the Customer of readiness for dispatch of the Equipment from the Supplier's site (**warranty period**), the Equipment shall:
- 3.1.1 conform in all material respects with the Specification;
- 3.1.2 be free from material defects in materials and workmanship.
- 3.2 Subject to paragraph 3.3, if:
- 3.2.1 the Customer gives notice in writing to the Supplier during the warranty period within ten (10) Business Days of discovery that a part of the Equipment does not comply with the warranty set out in paragraph 3.1;
- 3.2.2 the Supplier is given a reasonable opportunity of examining such alleged defective part within the Equipment; and
- 3.2.3 the Customer provides the Supplier with the required access to the Equipment in order to provide a remedy,

- the Supplier shall, at its option, repair or replace the defective part of the Equipment, or refund the price of the defective part of the Equipment in full.
- 3.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty set out in paragraph 3.1 in any of the following events:
- 3.3.1 the Customer makes any further use of such Equipment after giving notice in accordance with paragraph 3.2;
- 3.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- 3.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- 3.3.4 the Customer alters or repairs such Equipment without the written consent of the Supplier;
- 3.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 3.3.6 the Equipment differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 3.4 Except as provided in this paragraph 3, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in paragraph 3.1.
- 3.5 Notwithstanding paragraph 3.2, the Supplier shall not be responsible for the cost of removing the Equipment from its installed base at the Delivery Location nor for any removal of systems, structures or parts connected to the Equipment. If required by the Supplier, the Customer shall relocate the Equipment to a suitable location at the Customer's site to allow the Supplier to collect and return the Equipment to the Supplier's site for repairs or replacement.
- 3.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 3.7 The terms of this Schedule shall apply to any repaired or replacement parts of the Equipment supplied by the Supplier.
- 4 **Title and Risk**
- 4.1 The risk in the Equipment shall pass to the Customer on completion of delivery in accordance with paragraph 2.
- 4.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Equipment shall pass at the time of payment of all such sums.
- 4.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- 4.3.1 store the Equipment separately from all other equipment or materials held by the Customer so that they remain readily identifiable as the Supplier's property;
- 4.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- 4.3.3 maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 4.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1.2 to 14.1.9 inclusive of the main body of these Conditions; and
- 4.3.5 give the Supplier such information relating to the Equipment as the Supplier may require from time to time.
- 4.4 If before title to the Equipment passes to the Customer the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment or becomes subject to any of the events listed in clause 14.1.2 to 14.1.9 inclusive of the main body of these Conditions, then, without limiting any other right or remedy the Supplier may at any time:
- 4.4.1 require the Customer to deliver up all Equipment in its possession which have not been resold, or irrevocably incorporated into another product; and
- 4.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.
- 5 **Price and Payment**
- 5.1 The price of the Equipment shall be the price set out in the relevant Order Confirmation.
- 5.2 The price of the Equipment is exclusive of the costs and charges of packaging, insurance and transport of the Equipment, which shall be invoiced to the Customer.
- 5.3 The Supplier may invoice the Customer for the Equipment on in accordance with any terms set out in the Quotation or Order Confirmation issued by the Supplier.

- 5.4 The Customer shall pay the invoice in full and in cleared funds in accordance with the payment terms specified in the Order Confirmation that relates to the Equipment in question. The payment shall be made to the bank account nominated in writing by the Supplier.
- 6 **Limitation of Liability**
- Subject to clause 12.1 in the main body of these Conditions (Limitation of Liability), the Supplier's total liability to the Customer in respect of all losses arising under or in connection with a particular Order for Equipment, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Equipment.
- SCHEDULE 2**
- Terms and Conditions Applicable to the Installation, Commissioning and Testing of Equipment**
- 1 **Interpretation**
- 1.1 The following definitions apply in this Schedule:
- Charges:** the charges payable by the Customer for the supply of the Services in accordance with paragraph 3 of this Schedule 2; and
- Service Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer.
- 2 **Supply of Services**
- 2.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification and/or the Quotation in all material respects.
- 2.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 2.4 Unless otherwise expressly stated in the Quotation, the Supplier shall not be deemed to be a supervisor or nor have any responsibility for any persons who are not employees, subcontractors or authorised representatives of the Supplier.
- 2.5 The Supplier warrants to the Customer the Services will be provided:
- (a) using all reasonable skill and care; and
- (b) in accordance with all applicable laws and regulations in force from time to time
- 2.6 Subject to paragraph 2.7, if:
- 2.6.1 the Customer gives notice in writing to the Supplier during the warranty period within ten (10) Business Days of discovery that the Services do not comply with the warranty set out in paragraph 2.5; and
- 2.6.2 the Supplier is given a reasonable opportunity of examination, the Supplier shall reperform any defective Services.
- 2.7 The Supplier shall not be liable for any failure of the Services to comply with the warranty set out in paragraph 2.5 in any of the following events:
- 2.7.1 the Customer makes any further use of Equipment after giving notice in accordance with paragraph 2.6.1;
- 2.7.2 the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- 2.7.3 the Customer alters or repairs the Equipment without the written consent of the Supplier; or
- 2.7.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 2.8 Except as provided in this paragraph 2, the Supplier shall have no liability to the Customer in respect of any failure of the Services to comply with the warranty set out in paragraph 2.5.
- 2.9 The terms of this Schedule shall apply to any Services reperformed by the Supplier.
- 3 **Charges and payment**
- 3.1 The Charges for the Services shall be as set out in the relevant Order Confirmation.
- 3.2 The Supplier shall invoice the Customer in accordance with the payment terms and due dates set out in the Order Confirmation and the Customer shall pay each invoice in accordance with the Order Confirmation in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 4 **Limitation of liability**
- Subject to clause 12.1 in the main body of these Conditions (Limitation of Liability), the Supplier's total liability to the Customer in respect of all losses arising under or in connection with a particular Order for Services, whether in contract, tort (including

negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges paid or payable for the relevant Order.

SCHEDULE 3

Terms and Conditions Applicable to the Rental of Equipment

1 Interpretation

1.1 The following definitions apply in this Schedule:

Delivery: the transfer of physical possession of the Equipment to the Customer;

Delivery Date: the date that the Customer takes Delivery of the Equipment;

Payment Schedule: the payment schedule set out in the Quotation or subsequent Order Confirmation;

Rental: the hire of Equipment pursuant to an Order;

Rental Payments: the payments made by or on behalf of Customer for hire of the Equipment;

Rental Period: the period of hire for the Rental as set out in paragraph 3 of this Schedule 3;

Total Loss: the Equipment is, in the Supplier's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.

2 Equipment Hire

2.1 The Supplier shall hire the Equipment to the Customer subject to these Conditions.

2.2 The Supplier shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Customer's quiet possession of the Equipment.

3 Rental Period

3.1 Subject to paragraph 3.2, the Rental Period starts on the Delivery Date and shall continue for the period specified in the Quotation or as otherwise agreed in writing by the parties, unless the Rental is terminated earlier in accordance with its terms.

3.2 If the Customer is an individual, partnership or other unincorporated body, the Rental Period will automatically terminate not later than 88 days from the Delivery Date and the Customer shall make the Equipment available for collection by the Supplier.

4 Rental Payments

4.1 The Customer shall pay the Rental Payments to the Supplier in accordance with the Payment Schedule. The Rental Payments shall be paid in pounds sterling and shall be made by BACS.

4.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.

5 Delivery and installation

5.1 Delivery of the Equipment shall be made by the Supplier to the location set out in the Order Confirmation or such other location as the parties may agree in writing (**Delivery Location**).

5.2 The Supplier shall use reasonable endeavours to effect Delivery by the date and time agreed between the parties however dates quoted for delivery are approximate only and the time of delivery is not of the essence. Title and risk shall transfer in accordance with paragraph 6 of this Schedule.

5.3 The Customer shall procure that a duly authorised representative of the Customer shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Supplier, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

5.4 Where it has been agreed that the Supplier will install the Equipment the provisions of Schedule 2 of these Conditions shall apply to such installation.

5.5 To facilitate Delivery and installation where relevant, the Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and installation to be carried out safely and expeditiously.

5.6 If the Customer fails to accept delivery of the Equipment on the Delivery Date, then, except where such failure is caused by the Supplier's failure to comply with its obligations under these Conditions:

5.6.1 the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date; and

5.6.2 the Supplier shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.7 The Customer shall not be permitted to move or relocate the Equipment from the Delivery Location without the express prior written consent of the Supplier.

6 Title, risk and insurance

6.1 The Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these Conditions).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Equipment is redelivered to the Supplier. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

6.2.1 insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;

6.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and

6.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Customer.

6.3 All insurance policies procured by the Customer shall be endorsed to provide the Supplier with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Supplier's request name the Supplier on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

6.4 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.

6.5 If the Customer fails to effect or maintain any of the insurances required under this Schedule, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

6.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

7 Customer's responsibilities

7.1 The Customer shall at all times:

7.1.1 ensure that the Equipment is kept and operated in a suitable environment and in the condition in which it was delivered, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;

7.1.2 take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

7.1.3 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;

7.1.4 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Supplier unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of the same make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Supplier immediately upon installation;

7.1.5 keep the Supplier fully informed of all material matters relating to the Equipment;

7.1.6 at all times keep the Equipment in the possession or control of the Customer and not move or relocate the Equipment from the Delivery Location;

7.1.7 permit the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter

- upon any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 7.1.8 maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;
- 7.1.9 not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 7.1.10 not without the prior written consent of the Supplier, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
- 7.1.11 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Equipment both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Equipment and a right for the Supplier to enter onto such land or building to remove the Equipment;
- 7.1.12 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 7.1.13 not use the Equipment for any unlawful purpose;
- 7.1.14 ensure that at all times the Equipment remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- 7.1.15 deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as the Supplier requires, or if necessary, allow the Supplier or its representatives access to the Delivery Location (or any premises where the Equipment is located with the Supplier's prior consent in accordance with paragraph 5.7 of this Schedule) for the purpose of removing the Equipment; and
- 7.1.16 not do or permit to be done anything which could invalidate the insurances referred to in paragraph 6.
- 7.2 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Supplier in full and on demand against all losses, liabilities, claims, damages, costs or expenses of whatever nature suffered or incurred by the Supplier arising out of or in connection with:
- 7.2.1 negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors ;
- 7.2.2 any Total Loss of the Equipment; and
- 7.2.3 any failure by the Customer to comply with these Conditions.
- 8 Breakdowns**
- 8.1 The Supplier warrants that the Equipment shall substantially conform to its specification. The Supplier shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which causes a breakdown of the Equipment, and which manifests itself during the Rental Period, provided that:
- 8.1.1 the Customer notifies the Supplier of any defect in writing immediately on becoming aware of the defect;
- 8.1.2 the Supplier is permitted to make a full examination of the alleged defect;
- 8.1.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel;
- 8.1.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf;

- 8.1.5 the defect or breakdown did not arise out of a failure by the Customer to carry out any scheduled or preventative maintenance of servicing of the Equipment in line with the manufacturer's or the Supplier's recommendations; and
- 8.1.6 the defect is directly attributable to defective material or workmanship.
- 8.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Supplier, the Customer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer.
- 8.3 If the Supplier fails to remedy any material defect in the Equipment in accordance with paragraph 8.1, the Supplier shall, at the Supplier's option: (i) replace the Equipment entirely; (ii) terminate the Contract for the defective Equipment; or (iii) accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the Rental Period.
- 9 Limitation of liability**
- 9.1 Subject to clause 12.1 in the main body of these Conditions (Limitation of Liability), the Supplier's maximum aggregate liability for breach of this Schedule (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in respect of each Order in no circumstances exceed the aggregate Rental Payments paid or payable by the Customer to the Supplier in the twelve month period immediately preceding the date the liability arose.
- 9.2 These Conditions set forth the full extent of the Supplier's obligations and liabilities in respect of the Equipment and its hiring to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in this Schedule. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within these Conditions, whether by statute, common law or otherwise, is expressly excluded.
- 10 Total Loss**
- In the event a Total Loss occurs in relation to the Equipment, the Supplier shall at its option determine whether it can be replaced and the Rental continues for the remaining Rental Period or whether the Rental shall be treated as terminating automatically at the date the Total Loss is notified to the Supplier.
- 11 Consequences of Termination**
- 11.1 Upon termination of a Rental, however caused:
- 11.1.1 the Supplier's consent to the Customer's possession of the Equipment shall terminate;
- 11.1.2 the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
- 11.1.3 without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Supplier on demand:
- (a) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 8.5 in the main body of these Conditions;
- (b) any costs and expenses incurred by the Supplier in recovering the Equipment and/or in collecting any sums due under these Conditions (including any storage, insurance, repair, transport, legal and remarketing costs).

SCHEDULE 4

Terms and Conditions Applicable to Power Call Retainers

- 1 Interpretation**
- 1.1 The following definitions apply in this Schedule:
- Power Call Working Hours:** 24 hours a day, 7 days a week, 365 days a year.
- Registration Fee:** the registration fee specified in the Quotation.
- Retainer Fee:** the retainer fee specified in the Quotation.
- Site Registration:** acceptance of an Order by the Supplier and the issuance by the Supplier of a contract certificate to the Customer in respect of the Site.
- Site:** the Customer's premises as notified to the Supplier by the Customer prior to Site Registration and set out contract certificate.
- Total Loss:** the Equipment is, in the Supplier's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.
- 1.2 In respect of each Power Call Retainer the provisions of this Schedule will apply.
- 2 General and Term**
- 2.1 Each Power Call Retainer shall relate to a particular Site.

- 2.2 In the event the Customer requires more than one Site then the Customer will raise a separate Order and a separate Power Call Retainer will apply to that Site.
- 2.3 Each Power Call Retainer will commence on Site Registration and unless terminated earlier in accordance with these Conditions, each Power Call Retainer shall continue for the initial term set out in the Order Confirmation (or 36 months if not stated in the Order Confirmation) (**Initial Term**) and shall automatically extend for 12 months (**Extended Term**) at the end of the Initial Term. Either party may give written notice to the other not later than three months before the end of the Initial Term or the relevant Extended Term, to terminate the Power Call Retainer at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 3 **Site Registration**
- 3.1 Site Registration is normally free-of-charge subject to Site survey. The Customer will be charged for the full installation of a suitably rated manual generator changeover system positioned adjacent to the mains supply equipment fed via an external wall mounted generator connection inlet.
- 3.2 Where the installation exceeds the Supplier's standard Site Registration specification an additional charge may apply.
- 3.3 All hardware installed will remain the property of the Supplier and will be removed in the event that a renewal of a Power Call Retainer is not purchased on expiry of the Initial Term or Extended Term, as the case may be.
- 3.4 The responsibility, liability and maintenance of the installation hardware and on-site cable/s passes to the Customer after installation.
- 3.5 A load measurement will be taken during the installation and used by the Supplier for the purpose of fuel usage calculations following subsequent generator deployment.
- 4 **Fees**
- In consideration of payment of the Registration Fee and the Retainer Fee the Supplier will ensure that a suitable generator will be made available in accordance with the terms and conditions set out in this Schedule.
- 5 **Deployment Commencement**
- 5.1 When the Customer requires an emergency generator it will contact the Supplier's Power Call control centre using the Power Call emergency response number provided by the Supplier.
- 5.2 Generator deployment will be triggered on the verbal issuing of a deployment reference number to the Customer by the Supplier.
- 6 **Response time**
- 6.1 Following receipt of an emergency call in accordance with paragraph 5 of this Schedule a fully fuelled 77 kVA Power Call generator complete with up to 10 metres of connection cables will be dispatched direct to the Site with a maximum deployment time of 3 hours from the time the emergency call ended.
- 6.2 It will be the responsibility of the Customer to provide access to any secured Site at the time of generator deployment.
- 6.3 The Supplier shall not be liable for any failure to meet its obligations under the Power Call Retainer, including the response time under paragraph 6.1, that is caused by a Force Majeure Event, Customer Default or the Customer's failure to provide the Supplier with adequate access to the Site or any other instructions that are relevant to the supply of the Equipment.
- 6.4 Subject to paragraph 6.3, if the Supplier fails to meet the maximum deployment time of 3 hours under paragraph 6.1 due to a delay directly caused by the Supplier, the Customer shall be entitled to a refund of that portion of the Retainer Fee paid or payable for the 12 month period within which the failure occurs.
- 7 **Connection**
- 7.1 The generator will be connected to the external connection point by the Supplier's delivery engineer. Once connected the Customer will select 'generator' using the changeover switch.
- 7.2 The Supplier or its representatives are not responsible for the consequences of an unsafe or unchecked electrical system. Instructions in the basic operation of the generator will be given to a nominated person at the Site and a signature will be required by the delivery engineer to confirm that the system is operational and that the instructions have been received and understood. Security and insurance of the Equipment whilst on the Site is the Customer's responsibility.
- 8 **Deployment Duration**
- 8.1 The Power Call Retainer allows for the operation of the generator as a 'Prime Power' source for the duration of the power failure up to a maximum of 7 days per deployment.
- 8.2 The Supplier reserves the right to invoice additional charges for a single deployment of greater than 7 days.
- 8.3 There is no limit to the number of deployments in any one 12 month contract period subject to each being caused by genuine mains power failure. Use of a Power Call generator for planned outages

(i.e. maintenance shutdowns etc) will constitute a fixed fee the charging and level of which is at the discretion of the Supplier.

9 **Refuelling**

- 9.1 The generator will be deployed with a full tank of diesel fuel (approx 220 litres). Fuel consumption is directly dependant on generator load.
- 9.2 The Supplier will calculate the approximate fuel consumption based on the initial load measurement made during the Site Registration visit and advise the Customer when refueling will be necessary.
- 9.3 A separate invoice will then be issued for all fuel used and charged at the Supplier's prevailing price at the time of delivery.
- 10 **Customer Responsibilities**
- 10.1 The Customer shall at all times:
- 10.1.1 ensure that the generator is kept and operated in a suitable environment and in the condition in which it was delivered, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- 10.1.2 take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the generator is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- 10.1.3 make no alteration to the generator and shall not remove any existing component(s) from the generator without the prior written consent of the Supplier unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of the same make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the generator shall vest in the Supplier immediately upon installation;
- 10.1.4 keep the Supplier fully informed of all material matters relating to the generator;
- 10.1.5 at all times keep the generator in the possession or control of the Customer at the Site;
- 10.1.6 permit the Supplier or its duly authorised representative to inspect the generator at all reasonable times and for such purpose to enter upon the Site and shall grant reasonable access and facilities for such inspection;
- 10.1.7 maintain operating and maintenance records of the generator and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;
- 10.1.8 not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the generator or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 10.1.9 not without the prior written consent of the Supplier, attach the generator to any land or building so as to cause the generator to become a permanent or immovable fixture on such land or building. If the generator does become affixed to any land or building then the generator must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the generator from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
- 10.1.10 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the generator and, where the generator has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the generator both during the term of the Power Call Retainer and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the generator and a right for the Supplier to enter onto such land or building to remove the generator;
- 10.1.11 not suffer or permit the generator to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the generator is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the generator and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 10.1.12 not use the generator for any unlawful purpose;

- 10.1.13 ensure that at all times the generator remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the generator;
- 10.1.14 allow the Supplier or its representatives access to the Site for the purpose of removing the generator.
- 10.2 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the generator arising out of or in connection with any negligence, misuse, mishandling of the generator or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Supplier in full and on demand against all losses, liabilities, claims, damages, costs or expenses of whatever nature suffered or incurred by the Supplier arising out of or in connection with:
- 10.2.1 negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors ;
- 10.2.2 any Total Loss of the Equipment; and
- 10.2.3 any failure by the Customer to comply with these Conditions.
- 11 **Deployment Termination**
- 11.1 Following the end of the deployment:
- 11.1.1 the Customer should contact the Supplier's Powercall control centre who will arrange for the collection of the generator from the specific Site at the next available opportunity during Normal Working Hours; without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Supplier on demand:
- 11.1.2 (a) all fees and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 8.5 in the main body of these Conditions;
- (b) any costs and expenses incurred by the Supplier in recovering the generator and/or in collecting any sums due under these Conditions (including any storage, insurance, repair of any damage, transport, legal and remarketing costs).
- 12 **Invoicing**
- 12.1 The Retainer Fee will be invoiced annually in advance, and the Registration Fee (where applicable) within 30 days of the commencement of the Power Call Retainer, payable within 30 days of the date of the invoice. Payment of the Retainer Fee will be via monthly standing order arrangement. Alternative invoicing arrangements will need to be pre-agreed at the point of commencement of the Power Call Retainer.
- 12.2 The Supplier reserves the right to refuse deployment in the event that any existing invoices remain unpaid.
- 13 **Breakdown**
- 13.1 The Supplier warrants that the generator shall substantially conform to its specification. The Supplier shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which causes a breakdown of the generator which manifests itself during deployment on Site, provided that:
- 13.1.1 the Customer notifies the Supplier of any defect in writing immediately of becoming aware of the defect;
- 13.1.2 the Supplier is permitted to make a full examination of the alleged defect;
- 13.1.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel;
- 13.1.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf; and
- 13.1.5 the defect or breakdown did not arise out of a failure by the Customer to carry out any scheduled or preventative maintenance of servicing of the Equipment in line with the manufacturer's or the Supplier's recommendations; and
- 13.1.6 the defect is directly attributable to defective material or workmanship.
- 13.2 If the Supplier fails to remedy any material defect in the generator in accordance with paragraph 13.1, the Supplier shall, at the Supplier's option: (i) replace the generator entirely; or (ii) make an appropriate reduction to the Retainer Fee payable for the applicable Initial Term of Extended Term in which the failure occurred.
- 14 **Limitation of liability**
- 14.1 Subject to clause 12.1 in the main body of these Conditions (Limitation of Liability), the Supplier's maximum aggregate liability for breach of this Schedule (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in respect of each Order in no circumstances exceed the aggregate Retainer Fee paid or payable by the Customer to the Supplier in the twelve month period immediately preceding the date the liability arose.

- 14.2 These Conditions set forth the full extent of the Supplier's obligations and liabilities in respect of the generator and its hiring to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in this Schedule. Any condition, warranty or other term concerning the generator which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

SCHEDULE 5

Terms and Conditions Applicable to Power Care Maintenance Services

1 Interpretation

1.1 The following definitions apply in this Schedule:

Contract Certificate: means a certificate provided by the Supplier to the Customer setting out the key terms of an agreed Maintenance Contract;

Corrective Maintenance: means:

- (a) making any adjustments to the Maintained Equipment; and
- (b) replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order; in accordance with paragraph 2.3 of this Schedule;

Excluded Causes: means:

- (a) a defect in the manufacturer's design of the Maintained Equipment;
- (b) faulty materials or workmanship in the manufacture of the Maintained Equipment;
- (c) use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by the Supplier;
- (d) any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents unless approved by the Supplier in accordance with paragraph 4.1.6 of this Schedule;
- (e) the Customer or a third party moving the Maintained Equipment;
- (f) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied, including any failure to follow any written instructions as to the storage, commissioning, installation, use and maintenance of the Maintained Equipment or (if there are none) good trade practice regarding the same;
- (g) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
- (h) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or
- (i) the neglect, misuse or abnormal storage or working conditions of the Maintained Equipment.

Excluded Maintenance: any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes;

Excluded Maintenance Fees: the fees payable in consideration of the provision of any Excluded Maintenance;

Good Industry Practice: in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances;

Good Working Order: the Maintained Equipment operates in accordance with the Operating Manuals;

Initial Period: the period commencing on the Maintenance Commencement Date and specified in the Maintenance Contract;

Location: the location of the Maintained Equipment at the Customer's premises as notified to the Supplier by the Customer or any other location as may be agreed by the parties in writing from time to time;

Maintained Equipment: the equipment specified in the Maintenance Contract;

Maintenance Commencement Date: the date specified in the Maintenance Contract;

Maintenance Contract: the Contract setting out the terms of the Maintenance Services which incorporates the Quotation, Order Confirmation and any specific terms agreed in writing between the parties, as well as these Conditions;

Maintenance Fees: the fees payable by the Customer for the provision of the Maintenance Services, as set out in the Quotation, as these fees are varied from time to time in accordance with these Conditions;

Maintenance Services: Preventative Maintenance and Corrective Maintenance of the Maintained Equipment;

Maintenance Term: the Initial Period together with all Renewal Periods;

Operating Manuals: all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment;

Preventative Maintenance: means:

- (a) testing that the Maintained Equipment is functional; and
- (b) making any adjustments as may be required to ensure the Maintained Equipment remains in Good Working Order; in accordance with paragraph 2.2 of this Schedule;

Renewal Period: each successive 12-month period after the Initial Period for which the Maintenance Services are renewed; and

Response Time: the applicable response times as set out in the Maintenance Contract depending on the nature of the call out;

2 Maintenance Services

- 2.1 During the Maintenance Term, the Supplier shall provide the Customer with the Maintenance Services for the Maintained Equipment at the Location. The Supplier shall provide the Customer with a Contract Certificate prior to the Maintenance Commencement Date.
- 2.2 The Supplier shall attend at the Location during Normal Business Hours twice a year to perform Preventative Maintenance of the Maintained Equipment unless otherwise agreed between the parties in writing.
- 2.3 On the Customer informing the Supplier that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall:
 - 2.3.1 use all reasonable endeavours to attend at the Location within the relevant Response Time; and
 - 2.3.2 use all reasonable endeavours to perform Corrective Maintenance of the Maintained Equipment as soon as reasonably practicable.
- 2.4 In performing the Maintenance Services, the Supplier shall use all reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order while in attendance at the Location. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours (in the case of Preventative Maintenance), the Supplier shall either arrange for a further visit to the Location within Normal Business Hours to complete the repair, or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site.
- 2.5 The Supplier shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.

3 Replacements and spare parts

- 3.1 In performing the Preventative Maintenance, Corrective Maintenance and any Excluded Maintenance, the Supplier shall use all reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. The Maintenance Contract shall specify whether spare parts are inclusive or exclusive in the Maintenance Fees.
- 3.2 All spare parts and/or replacements provided by the Supplier to the Customer shall become part of the Maintained Equipment and title shall pass to the Customer upon installation into the Maintained Equipment. All parts and components removed from the Maintained Equipment by the Supplier in the course of performing the Preventative Maintenance, Corrective Maintenance or Excluded Maintenance shall no longer constitute part of the Maintained Equipment and title shall pass to the Supplier upon removal from the Maintained Equipment.
- 3.3 Any spare parts installed into the Maintained Equipment by the Supplier shall be provided with such warranty as provided by the manufacturer of the relevant spare part.

4 Customer's obligations

- 4.1 The Customer shall:
 - 4.1.1 ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions as the Supplier may give from time to time;
 - 4.1.2 notify the Supplier promptly if the Maintained Equipment is discovered to be operating incorrectly;
 - 4.1.3 at all reasonable times permit full and free access to the Location and to the Maintained Equipment to the Supplier, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable the Supplier to perform the Maintenance Services while at the Location;
 - 4.1.4 provide the Supplier with any information that is reasonably requested in the performance of the Maintenance Services;
 - 4.1.5 take any steps reasonably necessary to ensure the safety of the Supplier's personnel when attending the Location;
 - 4.1.6 not allow any person other than the Supplier to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of the Supplier;

- 4.1.7 not move the Maintained Equipment from the Location without the prior written approval of the Supplier (approval not to be unreasonably withheld or delayed);
- 4.1.8 store any reserve equipment only in conditions approved by the Supplier, and make this equipment available for periodic maintenance, as with all other Maintained Equipment; and
- 4.1.9 only use supplies or materials supplied or approved by the Supplier (approval not to be unreasonably withheld or delayed).

5 Excluded Maintenance

- 5.1 The Supplier is not obliged to perform any Excluded Maintenance.
- 5.2 Where the Supplier is performing or has performed the Maintenance Services in circumstances where it is established that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge, and the Customer shall pay, the Excluded Maintenance Fees in respect of that work.

6 Charges

- 6.1 For the performance of the Maintenance Services, the Customer shall pay to the Supplier the Maintenance Fees.
- 6.2 For the performance of any Excluded Maintenance, the Customer shall pay to the Supplier the Excluded Maintenance Fees.
- 6.3 The Maintenance Fees and the Excluded Maintenance Fees shall be inclusive of all expenses, other than those recoverable in accordance with paragraph 3.1 of this Schedule, and the Supplier shall be responsible for all costs and expenses incurred in providing the Maintenance Services (other than those recoverable in accordance with paragraph 3.1).
- 6.4 The Maintenance Fees shall be due and payable monthly in full to the Supplier, within 30 days of receipt of a valid invoice from the Supplier unless otherwise specified in the Maintenance Contract. Any Excluded Maintenance Fees shall be due and payable monthly, within 30 days of receipt of a valid invoice from the Supplier. Any charges for spare parts recoverable in accordance with paragraph 3.1 shall be due within 30 days of receipt of a valid invoice from the Supplier.
- 6.5 The Supplier may, unless otherwise specified in the Maintenance Contract, at any time after the first anniversary of the Maintenance Commencement Date, increase the Maintenance Fees and the Excluded Maintenance Fees by giving to the Customer not less than two months written notice, provided that:
 - 6.5.1 the increase shall not exceed a percentage equal to the percentage increase in the Retail Prices Index published by the Office for National Statistics (or its successor from time to time) for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect pursuant to this paragraph (in the case of the second or any subsequent increase) up to the date of this notice; and
 - 6.5.2 the increases shall be no more frequent than once in any 12-month period.

7 Supplier Warranties

- 7.1 The Supplier warrants to the Customer that:
 - 7.1.1 the Maintenance Services shall be performed:
 - (a) by an appropriate number of suitably qualified and experienced personnel;
 - (b) using all reasonable skill and care; and
 - (c) in accordance with all applicable laws and regulations in force from time to time.
 - 7.1.2 the Supplier has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, the Contract.
- 7.2 Subject to paragraph 7.3, if:
 - 7.2.1 the Customer gives notice in writing to the Supplier during the warranty period within 10 Business Days of discovery that the Services do not comply with the warranty set out in paragraph 7.1.1; and
 - 7.2.2 the Supplier is given a reasonable opportunity of examination, the Supplier shall reperform any defective Maintenance Services.
- 7.3 The Supplier shall not be liable for any failure of Maintenance Services to comply with the warranty set out in paragraph 7.1.1 in any of the following events:
 - 7.3.1 the Customer makes any further use of Maintained Equipment after giving notice in accordance with paragraph 7.2.1;
 - 7.3.2 the failure is due to any Excluded Cause; or
 - 7.3.3 the defect arises as a result of fair wear and tear.
- 7.4 Except as provided in this paragraph 7, the Supplier shall have no liability to the Customer in respect of any failure of the Maintenance Services to comply with the warranty set out in paragraph 7.1.1.
- 7.5 The terms of this Schedule shall apply to any Maintenance Services reperformed by the Supplier.
- 7.6 Except as expressly stated in these Conditions, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for

- purpose and suitability) are hereby excluded to the fullest extent permitted by law.
- 8 **Limitation of liability**
- 8.1 Subject to clause 12.1 in the main body of these Conditions (Limitation of Liability), the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Schedule shall in respect of each Maintenance Contract in no circumstances exceed the Maintenance Fees paid or payable by the Customer to the Supplier in respect of that Maintenance Contract in the twelve month period immediately preceding the date the liability arose.
- 9 **Term and termination**
- 9.1 The Maintenance Services requested pursuant to an Order and accepted under a Maintenance Contract shall commence on the Maintenance Commencement Date and unless terminated earlier in accordance with these Conditions shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 30 days before the end of the Initial Period or the relevant Renewal Period, to terminate the Maintenance Services at the end of the Initial Period or the relevant Renewal Period, as the case may be.
- 9.2 On termination of the Maintenance Services for any reason, each party shall as soon as reasonably practicable:
- 9.2.1 return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information provided to it by the other party or data for the purposes of the Contract, including all documents and materials (and any copies)

- containing, reflecting, incorporating or based on the other party's confidential information;
- 9.2.2 delete (to the extent possible) any proprietary software belonging to the other party and all the other party's confidential information from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party; and
- 9.2.3 return all of the other party's equipment and materials, failing which the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping.
- 9.3 Regardless of its obligations in paragraph 9, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under paragraph 9.2, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain.

SEPTEMBER 2023