

MAINTENANCE TERMS AND CONDITIONS

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Agreement: the agreement between the Supplier and the Client for provision of the Maintenance Services which is made up of the Contract Details and these Maintenance Terms and Conditions (the Conditions).

Activation Payment Processing Charge: the charge to the Client for the Supplier providing "Payment Processing Services" in relation to Demand Flexibility Services calculated in accordance with the Contract Details.

Annual Fixed Charge: twelve times the Monthly Fixed Charge.

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Capacity Payments: all capacity payments made by third parties in relation to Demand Flexibility Services including the enrolment of the Client in Demand Flexibility Services

Charges: the charges to be paid for the Services under clause 7.

Commencement Date: the date the Agreement commences, as set out in the Contract Details.

Confidential Information: : all information of a confidential nature (in whatever form) which is received or acquired (whether directly or indirectly) by a party including:

- (a) any know-how, trade secrets, plans, developments, financial, commercial, technical, tactical, strategic, marketing, operations, Client, product, or personnel information of any kind;
- (b) all information agreed to be, or marked as, confidential; and
- (c) any information a party knows, or could reasonably be expected to know, is confidential.

Consultancy Services: the support services being operating the Equipment on behalf of the Client and providing back-office support as set out in the Contract Details.

Consumables: non-durable items used in the operation of the Equipment.

Contract Year: any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

Contract Details: the order form, to which these Conditions are incorporated.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

Corrective Maintenance: in accordance with clause 3.4:

- a) making any adjustments to the Equipment; or

- b) replacing any parts or components of the Equipment,

in each case, as required to restore the Equipment to Good Working Order.

DFS Rate: the rate set out in the Contract Details.

Demand Flexibility Services: the services to be provided by a third party to the Client which gives the Client the ability to manage the load at a specific point of the Network at certain points in time.

Emergency Maintenance: in accordance with clause 3.5(a):

- a) making any adjustments to the Equipment; or
- b) replacing any parts or components of the Equipment,

in each case, as required to restore the Equipment to Good Working Order.

End Users: the person using the Equipment to charge their EV.

Equipment: the equipment as set out in the Contract Details.

EV: a battery electric vehicle (BEV) or plug-in hybrid electric vehicle (PHEV) with the ability to receive an electric charge from the Equipment at the appropriate kilowatt rating.

Extended Term: has the meaning given in clause 2.

Good Industry Practice: the exercise of that degree of skill and care, as would be expected from a company within the relevant industry or business sector.

Good Working Order: operating in accordance with the OEM Documentation.

Gross Receipts: the amounts collected and received by the Client/Supplier from the End Users.

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.

Initial Term: has the meaning given in clause 2.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral 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, rights in computer software, 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.

Location: the location of the Equipment as set out in the Contract Details, or any other location as may be agreed by the parties in writing from time to time.

Maintenance Services: Routine Maintenance and Non-Routine Maintenance Services.

Monthly Fixed Charge: the monthly fixed charge as set out in the Contract Details and as adjusted in line with the terms of this Agreement.

Non-Routine Maintenance Services: maintenance of the Equipment undertaken other than Routine Maintenance.

OEM Documentation: the documentation prepared by the manufacturer of the Equipment and provided by the Supplier to the Client from time to time.

Payment Processing Charge: the charge to the Client for the Supplier providing "Payment Processing Services" in relation to End Users calculated in accordance with the Contact Details.

Routine Maintenance: maintenance services as set out in the Contract Details.

Services: the Maintenance Services and the Consultancy Services.

Software: software provided by the Supplier to the Client as part of the Equipment

Spare Parts: all spare components and subassemblies of the Equipment supplied for installation in the Equipment as part of the provision of the Services.

Term: the Initial Term together with all Extended Terms.

Transitional Assistance Notice: see clause 15.11.

Transitional Assistance Services: see clause 15.11.

Transition Period: see clause 15.11.

VAT: value added tax chargeable in the UK.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 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 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
 - (a) another person (or its nominee) by way of security or in connection with the taking of security; or
 - (b) its nominee.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.8 A reference to legislation or a legislative provision is a reference to it as it is in force as at the date of this Agreement.
- 1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made as at the date of this Agreement under that legislation or legislative provisions.
- 1.10 A reference to **writing** or **written** excludes fax but not email.
- 1.11 References to clauses are to the clauses of this Agreement.
- 1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. Commencement and Duration

This Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with clause 12 or this clause, this Agreement shall continue for the number of years set out in the Contract Details (**Initial Term**) and shall automatically extend for one year (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 2 months before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

3. Supplier's Obligations

- 3.1 **Supply of Services.** During the Term, the Supplier shall supply the Services to the Client. The Supplier is entitled to make changes to the Services, at its sole discretion, where such changes have negligible or no obvious impact on service delivery to the Client or the End User.
- 3.2 **Supplier's Representative.** A representative of the Supplier shall attend the Location once per annum to perform the Routine Maintenance. The Supplier's representative shall perform the Routine Maintenance during Business Hours at such times as may be agreed in advance between the Client and the Supplier from time to time.
- 3.3 **Equipment Malfunction.** If the Supplier's representative discovers that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order during the course of the Routine Maintenance the representative will use all reasonable endeavours to repair it during that visit at the Location. If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours) the Supplier's representative shall either arrange for a further visit to the Location within Business Hours to complete the repair, or arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site (a "**Non-Routine Repair**"). The Supplier shall be entitled to charge and the Client shall pay for any Non-Routine Repair in accordance with clauses 3.4 and 4.
- 3.4 **Non-Routine Maintenance.** On the Client informing the Supplier that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order, the Supplier shall

use all reasonable endeavours to ensure that one of its representatives shall attend the Location within the agreed time to perform the Non-Routine Maintenance Services. The Client acknowledges and agrees that:

- 3.5 If the Supplier or one of its representatives attends the Location during Business Hours to perform the Non-Routine Maintenance Services, such Non-Routine Maintenance Services shall be considered Corrective Maintenance;
- (a) If the Supplier or one of its representatives attends the Location outside of Business Hours to perform the Non-Routine Maintenance Services, such Non-Routine Maintenance Services shall be considered Emergency Maintenance; and
 - (b) The Supplier shall use reasonable endeavours to complete the applicable Non-Routine Maintenance Services within a reasonable period of time.
- 3.6 **Further Site Visits or Repair Off-Site.** Where it is not reasonably practicable for the Supplier's representative to complete Corrective Maintenance or Emergency Maintenance at the Location on their first visit the Supplier's representative shall either arrange for a further visit to the Location within Business Hours to complete the repair (a "**Further Corrective Maintenance**") or arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site (an "**Off-site Repair**"). Where Further Corrective Maintenance is required, the Supplier shall be entitled to charge and the Client shall pay for such Further Corrective Maintenance for each visit in accordance with clauses 3.4 and 4. Where an Off-site Repair is required, the Supplier shall be entitled to charge and the Client shall pay for: (i) the time incurred to complete an Off-site Repair in accordance with the hourly rate for Corrective Maintenance as set out in the Contact Details ; and (ii) any return visit to the Location to re-install the Equipment shall be considered Corrective Maintenance and shall be charged in accordance with clauses 3.4 and 4.
- 3.7 **Liability for Delay.** The Supplier shall not be liable for any delay in providing the relevant Maintenance Service or Services.
- 3.8 **Health and Safety Compliance.** The Supplier shall procure that its representatives shall, while on site at the Location, comply with the Client's reasonable health and safety and security policies provided that these have been brought to the attention of its representatives.
- 3.9 **Supplier's Representative.** The Supplier shall appoint a representative for the Services. That person shall have authority to contractually bind the Supplier on all matters relating to the Services. The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's representative throughout the Term, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.
4. **Spare Parts and Consumables**
- 4.1 **Supply of Spare Parts and Consumables.** The Supplier shall supply and fit at the Client's cost such Spare Parts and Consumables as required to maintain the Equipment in Good Working Order or to restore the Equipment to Good Working Order.

5. **Manufacturer's Warranties.** The Client authorises the Supplier to deal with any provider of any component or manufacturer's warranties of the Equipment. The Supplier is not responsible for any dispute resolution, delays, services failures or costs associated with or of the repairs or replacement parts in relation to such component or manufacturer's warranties.

6. **Client's Obligations**

6.1 **Proper Use of Equipment.** The Client shall at all times during the Term:

- (a) use the Equipment only for its intended purpose being electric vehicle charging facility or as may be advised in writing from time to time by the Supplier;
- (b) notify the Supplier promptly if the Equipment is discovered to be defective or malfunctioning or has failed or is otherwise not in Good Working Order;
- (c) keep the Equipment in the environmental conditions recommended in the OEM Documentation or as may be advised in writing from time to time by the Supplier;
- (d) not allow any other person than the Supplier's representatives to adjust, maintain, repair, replace or remove the Equipment or any part of it, unless otherwise agreed in writing by the Supplier; and
- (e) not move the Equipment from the Location.

6.2 **Access to Equipment.** The Client shall ensure that the Supplier's representatives have:

- (a) full and free access to the Location and to the Equipment; and
- (b) full and free access to any records of its use kept by the Client; and
- (c) adequate and safe working space and facilities,

in each case as reasonably required to enable the Supplier to perform its obligations under this Agreement.

6.3 **Provision of Information to Supplier.** The Client shall provide the Supplier with such information concerning the Equipment, its application, use, location and environment as the Supplier may reasonably request to enable it to perform its obligations under this Agreement.

6.4 **Safety.** The Client shall take all such steps as may be necessary to ensure the safety of any of the Supplier's representatives when attending the Location.

6.5 **Malfunction Reports.** The Client shall report as soon as reasonably practicable if the Equipment is defective or malfunctioning or has failed or is otherwise not in Good Working Order either in writing or by telephone, or in such manner as the Supplier may reasonably require from time to time.

6.6 **Client Representative.** The Client shall appoint a representative for the Services. That person shall have authority to contractually bind the Client on all matters relating to the Services. The Client shall use all reasonable endeavours to ensure that the same person acts as the Client's

representative throughout the Term, but may replace that person from time to time where reasonably necessary in the interests of the Client's business.

6.7 **Delay due to Client.** If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission or default of the Client, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client and the Supplier shall be entitled to recover from the Client any additional costs and expenses that the Supplier has incurred.

6.8 **Battery Integration.** The Client agrees that the Supplier shall have an unequivocal right to install and integrate a battery energy storage system (BESS) into the Equipment. If the Supplier considers it appropriate and viable to integrate the BESS, it will discuss and negotiate with the Client:

- (a) the scope of the works required to give effect to such integration; and
- (b) a programme for integration;
- (c) the financial terms to give effect to the integration.

6.9 **Utilities.** The Client shall:

- (a) ensure the terms of its energy supply does not prohibit the connection of BESS, EV charge points and/or solar generation equipment including in particular, the use of it for cost reduction or revenue generating purposes.
- (b) provide all electricity and broadband connection (both, without cost to the Supplier) to allow the operation of the Equipment.
- (c) be responsible for:
 - (i) the standing charges associated with the supply of energy, any impact of exceeding the agreed service capacity in relation to energy supply and consumption on site, power quality issues and/or any supply or distribution upgrades required;
 - (ii) any changes to the site load profile, such as savings due to price arbitrage, reduction in peak time energy costs, and/or any cost savings derived from a reduction in service capacity provided by peak-shaving and/or the Demand Flexibility Services.
 - (iii) any additional costs which are attributable to the provision of EV charging, Demand Flexibility and/or any required upgrades required to changes in use and load profile;

7. Charges and Payment

7.1 **Charges.** The Charges are set out in the Contract Details comprise both fixed and variable charges.

- 7.2 **Set-Up Charges.** In consideration of the performance of the “EV Charging Services” of the Consultancy Services as set out in the Contract Details, the Client shall pay to the Supplier the fee specified in the Contract Details.
- 7.3 **Monthly Fixed Charges.** In consideration of the performance of the Routine Maintenance and the “EV Charging Services” of the Consultancy Services (other than the set-up and commissioning) the Client shall pay to the Supplier the Monthly Fixed Charges.
- 7.4 **Corrective Maintenance and Emergency Maintenance Charges.** In consideration of the performance of any Corrective Maintenance and/or Emergency Maintenance the Client shall pay to the Supplier the charges incurred in carrying out such Maintenance Services and calculated in accordance with the Contract Details.
- 7.5 **Payment Processing Charges.**
- (a) Use of Equipment
 - (i) Where the Equipment is used to generate revenues:
 - (A) from electric charging services to the End Users, the Supplier shall collect the Gross Receipts on behalf of the Client (including any VAT applicable) for the use of the Equipment by the End Users. The Client is responsible for the output VAT from the Gross Receipts. Once per month, the Supplier shall transfer to the Client the Gross Receipts received from the End Users during the previous month, less an amount equivalent to the Payment Processing Charge.
 - (B) from the Demand Flexibility Services, the Client:
 - (i) authorises the Supplier to collect, on behalf of the Client, all proceeds paid by the relevant third parties in relation to such services, The Client shall provide to the Supplier in good time, all necessary authorisation to enable the Supplier to enrol in Demand Flexibility Services and collect such proceeds;
 - (ii) agrees that the Supplier shall be entitled to retain from such proceeds, the following:
 - 1. where the relevant third party pays the Capacity Payments and the Activation Payment separately, then:
 - a. All Capacity Payments;
 - b. Activation Payment Processing Charge. The Client is responsible for the output VAT from the activation payments made by such third parties in relation to Demand Flexibility Services. Once per month, the Supplier shall discount the Charges payable by the Client by an amount equivalent to the activation payments received from such third parties during the previous month, less an amount equivalent to

Activation Payment Processing Charge and any output VAT.

2. where the relevant third party pays a single payment monthly payment in relation to Demand Flexibility Services, then the DFS Rate of such monthly payments The Client is responsible for the output VAT from the payments made by such third parties in relation to Demand Flexibility Services. Once per month, the Supplier shall discount the Charges payable by the Client by an amount equivalent to DFS Rate of the payments received from such third parties during the previous month.

- (b) **Transaction Fees.** The Supplier shall be entitled to charge the Client, in addition to the Charges, any transaction fees being costs associated with individual financial transactions, typically per session or per-unit of energy including but not limited to a) Card Payment transaction costs, e.g. per-payment and payment % fees; b) Additional per-kWh, per-session or per-hour fees which result from user roaming; c) revenue retention by non-subscription, event-based services such as reserve-and-charge, plug-and-charge and flexibility/DSR sessions.

7.6 Time and Materials. Where the Charges are calculated on a time and materials basis:

- (a) the Supplier's hourly fee rates for each individual person is set out in the Contact Details, worked during Business Hours;
- (b) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.

7.7 Charges Increases. The Supplier may increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index. Without prejudice to the foregoing, if any of the Supplier's subcontractors in relation to the Consultancy Services propose or implement a change to the prices for the subcontracted services, the Supplier may (in its sole discretion) amend the Charges under this Agreement on prior written notice. The Supplier may also increase the Charges associated with or arising from changes to reporting on compliance with regulatory requirements and periodic review of updates to them from the date of this Agreement.

7.8 Monthly Invoices. The Supplier shall invoice the Client at the beginning of each month the Monthly Fixed Charge and any variable charges for Services performed during the prior month.

7.9 Payment Timing. The Client shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time. Unless otherwise agreed with the Supplier, the Client shall make all payments under this Agreement to the Supplier using "**GoCardless online payment solution**" (details of which have been provided to the Client by the Supplier).

7.10 **Failure to Pay.** Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier any sum due under this Agreement on the due date:

- (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.10(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
- (b) the Supplier may suspend all or part of the Services until payment has been made in full.

7.11 **Tax and Set-Off.** All sums payable to the Supplier under this Agreement:

- (a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Warranties

8.1 **Legal Status of Parties.** Each party warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by a duly authorised representative of that party;
- (c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and
- (d) once duly executed, this Agreement will constitute legal, valid and binding obligations.

9. Limitation of Liability

9.1 **Insurance.** The Supplier has obtained insurance cover in respect of its own legal liability.

9.2 **Scope of Limitations of Liability.** The restrictions on liability in this clause 9 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. The Supplier shall have no liability under this Agreement or otherwise, in relation to any breach of contract, tort misrepresentation, restitution or otherwise, in relation to or in connection with any failure whether by an act or omission, by the Supplier to monitor and/or report on regulatory changes in relation to, arising from or in connection with the design or use of the Equipment. The Client acknowledges that it will rely on its own legal and other professional advice in relation to duties and obligations imposed by the law.

9.3 **Liability for Deliberate Default.** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

- 9.4 **No Limitation of the Client's Payment Obligations.** Nothing in this clause 9 shall limit the Client's payment obligations under this Agreement.
- 9.5 **Unlimited Liability.** Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation.
- 9.6 **Total Aggregate Liability of Supplier.** Subject to clause 9.3 and clause 9.4 and clause 9.8, the Supplier's total aggregate liability in respect of all claims, losses or damages arising in each Contract Year, shall not exceed the an amount equal to the Annual Fixed Charge for that Contract Year.
- 9.7 **Exclusions of Liability.**
- (a) The Client acknowledges and agrees that clause 9.7(b) sets out types of loss that are deemed to be excluded from the Supplier's potential liability to the Client under this Agreement and therefore the Client shall not seek to recover any amounts related to such excluded types of loss if they were to arise.
 - (b) **Types of loss wholly excluded:**
 - (i) Loss of profits.
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.
- 9.8 **Time Limitation for Claims.** Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9.9 **Suspension.** If the Maintenance Services are suspended without fault of the Supplier, the Supplier shall not be responsible for any loss or damage suffered or likely to be suffered by the Client as a result of such suspension. During the period of suspension, the Client is responsible for maintaining the Equipment in accordance with the requirements of the OEM Documentation.

10. Intellectual Property Rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Supplier.
- 10.2 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the agreement for the purpose of providing the Services to the Client.

11. Non-Solicitation

- 11.1 **No Solicitation of Restricted Persons.** In order to protect their respective legitimate business interests each party covenants with the other for itself and as agent for each member of its Group that it shall not (and shall procure that no member of its Group shall) (except with the prior written consent of the other party):

- (a) attempt to solicit or entice away; or
- (b) solicit or entice away,

from the employment or service of the other party or any member of its Group the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party or any member of its Group.

- 11.2 **Term of Restrictive Covenant.** The parties shall be bound by the covenant set out in clause 11.1 during the Term, and for a period of 12 months after termination or expiry of this Agreement.
- 11.3 **Restricted Persons.** For the purposes of this clause 11, a **Restricted Person** shall mean any firm, company or person employed or engaged by a party or any member of its Group during the Term who has been engaged in the provision of the Services or the management of this Agreement.
- 11.4 **Consent.** Any consent given in accordance with clause 11.1 shall be subject to payment to the consenting party of a sum equivalent to 20% of the then current annual remuneration of the Restricted Person or, if higher, 20% of the annual remuneration to be paid to the Restricted Person.

12. Termination

- 12.1 **Termination by Either Party.** Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (d) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (e) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

12.2 **Termination by Supplier.** Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Client.

13. Consequences of Termination and Survival

13.1 **Unpaid Invoices and Survival.** On termination or expiry of this Agreement:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
- (b) any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

13.2 **Accrued Rights.** Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

14. Confidentiality

14.1 **No Disclosure of Confidential Information.** Each party undertakes that it shall not at any time and for a period of five years after termination or expiry of this Agreement, disclose to any person any Confidential Information concerning the business, affairs, Clients, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2.

14.2 **Exceptions.** Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 **Restrictions on use of Confidential Information.** No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

15. General

15.1 **Force Majeure.** Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this Agreement by giving 14 days' written notice to the affected party.

15.2 **Assignment and Other Dealings.** The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the agreement. The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the Supplier.

15.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

15.4 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15.5 Severance

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under clause the parties shall negotiate in good faith to agree a replacement provision

that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.6 Software Licence

- (a) The Client acknowledges that all Intellectual Property Rights in the Software and any maintenance releases in relation to the Software belong and shall belong to the Supplier or the relevant third-party owners (as the case may be), and the Client shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Agreement.
- (b) The Supplier grants to the Client a non-exclusive licence for the Initial Term or the date of termination of this Agreement, whichever is the earlier, to use the Software for the operation of the Equipment at the Site only.
- (c) In relation to scope of use:
 - (i) for the purposes of clause 14.6(b), use of the Software shall be restricted to use of the Software in the operation of the Equipment.
 - (ii) the Client may not use the Software other than as specified in this Agreement without the prior written consent of the Supplier, and the Client acknowledges that additional fees may be payable on any change of use approved by the Supplier.
 - (iii) the Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.
 - (iv) the third-party software shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the third-party software shall be subject to the third-party additional terms.
 - (v) the Client shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Client's breach of any third-party additional terms howsoever arising.
 - (vi) the Supplier may treat the Client's breach of any third-party additional terms as a breach of this licence.
- (d) The Client may not use any such information provided by the Supplier or obtained by the Client to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it. The Client shall not:
 - (i) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
 - (ii) allow the Software to become the subject of any charge, lien or encumbrance;
 - (iii) deal in any other manner with any or all of its rights and obligations under this Agreement,

- (iv) use the Software other than on the Equipment.

without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

- (e) The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Client.
- (f) The Client shall:
 - (i) keep a complete and accurate record of the Client's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
 - (ii) notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person;
 - (iii) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced (together with interest)
- (g) The Client shall permit the Supplier to inspect and have access to the Software, the Equipment and any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Client is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Client of such inspections, which shall take place at reasonable times.
- (h) The Supplier retains all rights, title, and interest in and to any and all data, information, or other materials generated, collected, or otherwise derived from the use of the Equipment or the Software ("Data"). The Client acknowledges and agrees that the Supplier shall have the exclusive right to access, collect, store, and retain such Data, and the Client waives any claim or right to ownership, use, or control over such Data. The Supplier may use, analyse, and modify the Data for any purpose, including but not limited to improving, optimizing, or enhancing the Equipment, and may share or disclose such Data to third parties as part of its regular business operations, subject to any applicable data protection laws and regulations.

15.7 Variation. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.8 Third Party Rights

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

15.9 Rights and Remedies. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15.10 Notices

- (a) Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
 - (i) 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
 - (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):
Supplier: notices@3ti.co.uk
Client email: as stated in the Contact Details
Client address: as stated in the Contact Details
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 09:00 on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) 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.

15.11 Exit Plan

- (a) The Supplier will use reasonable endeavours to see that an orderly transition of the Services from the Supplier to the Client or any Replacement Supplier in the event of any termination or expiry of this Agreement.
- (b) The Exit Plan shall:
 - (i) address each of the issues to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Client and shall ensure that there is no disruption in the supply of the Services;
 - (ii) detail how the Services will transfer to the Replacement Supplier and/or the Client;
 - (iii) specify the scope of the Transitional Assistance Services that may be required by the Client, any charges that would be payable for the provision of Transitional Assistance Services and detail how such services would be provided (if required) during the Termination Period;
 - (iv) provide a timetable and identify critical issues for carrying out the Transitional Assistance Services; and
 - (v) set out the management structure to be put in place and employed during the Termination Period.

- (c) The Client shall be entitled to require the provision of transitional assistance services (**Transitional Assistance Services**) by sending the Supplier a notice to that effect (**Transitional Assistance Notice**) at any time before termination or expiry. The Transitional Assistance Notice shall specify:
 - (i) the date from which Transitional Assistance Services are required;
 - (ii) the nature and extent of the Transitional Assistance Services required; and
 - (iii) the period during which it is anticipated that Transitional Assistance Services will be required (**Transitional Period**) (which shall continue no longer than 3 months after the date that the Supplier ceases to provide the Services or, in the event that a Termination Period is specified by the Client, no longer than the end of the Termination Period).
- (d) The Client shall have an option to extend the Transitional Period beyond the period specified in the Transitional Assistance Notice by written notice to the Supplier provided that such extension shall not extend beyond 6 months after the expiry of the period referred to in clause 15.11(c).
- (e) The Client shall have the right to terminate its requirement for Transitional Assistance Services by serving not less than 30 days' notice on the Supplier to such effect.
- (f) The Transitional Assistance Services shall be provided in good faith and in accordance with good industry practice.
- (g) Where the Supplier demonstrates to the Client's reasonable satisfaction that transfer of the Services during the Transitional Period will have a material adverse effect on the Supplier's ability to meet a particular Service and such adverse effect is not due to a failure by the Supplier to perform this Agreement, the parties shall vary the relevant Service to take account of such adverse effect.
- (h) The Client and the Supplier acknowledge that the transition of the Services to the Replacement Supplier may be phased over a period of time so that certain identified Services are transferred to the Replacement Supplier before others.
- (i) The Client shall, at the Supplier's reasonable request, require the Replacement Supplier and any agent or personnel of the Replacement Supplier, to enter into an appropriate confidentiality undertaking with the Supplier.
- (j) In consideration of the Supplier complying with its obligations under this clause 15.11, the Client shall continue to pay to the Supplier the prices and payments as set in this Agreement.

15.12 Public Announcements. The Supplier shall be entitled to use the Client's name and logo for use in public announcements, articles, interviews, promotions, marketing pieces, advertisements, press releases or other such publicity. The Supplier will seek the Client's prior written approval before such use which shall not be unreasonably withheld.

15.13 Governing Law. This Agreement 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.

15.14 **Jurisdiction.** 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 this Agreement or its subject matter or formation.