

END USER SCHEDULED SERVICING CONTRACT

1 INTERPRETATION

1.1 In this Contract, unless the context otherwise requires:

"Bank Holidays" days when the banks in England and Wales are closed for business.

"Charges" the charges payable by the Customer to the Contractor in return for the provision of the Services, as specified in Service Schedule C and revised in accordance with 1.

"Consumable Spare Parts" such Spare Parts as are commonly required to be used by the Customer and/or operator (if different) in the day-to-day operation of the Equipment, of which includes (but is not limited to) filter elements and associated joints and seals for fuel, lubricating oil, hydraulic oil and air filter systems, cleaning fluids for the Equipment, grease, fuses, lamps, and jointing compounds.

"Control" in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person (or persons) and a Change of Control occurs if a person who controls any body corporate ceases to do so or if another person acquires control of it.

"Default" has the meaning given in clause 3.5.

"Equipment" the equipment to be maintained, serviced and/or repaired by the Contractor pursuant to this Contract as listed in Service Schedule B.

"Executive Summary" the executive summary to which this Contract is attached.

"Isolation" the disconnection of the Equipment from its outside supplies including but not limited to, all AC/DC electrical supplies, gas/fuel supplies and/or any other ancillary systems.

"Mobilise" the calling out of personnel, their preparation for departure and commencement of travel to site.

"Operating Logbook" the operating logbook in respect of the Equipment provided by the Contractor to the Customer.

"Representatives" the employees, personnel, sub-contractors, agents and representatives of the Contractor.

"Scheduled Inspection" the visual or metallurgical examination, measurement or testing of parts or assemblies to establish suitability for further use.

"Scheduled Maintenance" the maintenance inspections carried out as provided in Section 1.1 of Service Schedule A.

"Scheme" has the meaning given in clause 9.1.

"Service Hours" 9 am to 5pm, Monday to Friday, exclusive of Bank Holidays.

"Services" the scheduled inspection services to be provided by the Contractor for the Equipment at the Site as specified in Service Schedule A (Section 1) and/or the Technical Support Service but excluding Unscheduled Maintenance, Unscheduled Spare Parts and/or other Spare Parts and/or labour required in connection with Unscheduled Maintenance.

"Site" the location of the Equipment specified in Service Schedule B.

"Spare Parts" component parts, assemblies and sub-assemblies manufactured and/or supplied by the Contractor for use as replacement parts for the Equipment.

"Start Date" and **"Duration"** the date and period specified in Service Schedule C.

"Technical Support Service" the advisory service to be provided pursuant to clause 4.

"Unscheduled Maintenance" maintenance carried out to correct operating faults or failures in the Equipment and the repair or replacement of damaged or worn parts in order to restore the Equipment to operable condition.

"Unscheduled Maintenance Stockholding" shall mean the stock of Spare Parts required to carry out Unscheduled Maintenance'.

1.2 The Service Schedules and Executive Summary form part of the Contract. If there is any inconsistency between an Service Schedule and the Executive Summary and/or terms of this Contract, the Service Schedules shall prevail.

1.3 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

2 SCOPE OF THE CONTRACTOR'S SERVICES

2.1 From the Start Date for the Duration of this Contract, the Contractor shall provide the Services in accordance with this Contract.

2.2 The Services shall only be provided at the Site and, unless otherwise agreed in writing between the Contractor and the Customer, only to those items of the Equipment which have been supplied by the Contractor.

2.3 The Customer warrants and represents that where it is not the owner of the Equipment it has complete authority to engage the Contractor on the owner's behalf in respect of the Services and shall indemnify and keep indemnified the Contractor for all losses, costs and liabilities it may incur as a result of the Customer being in breach of this clause (on a full indemnity basis). The provision of Unscheduled Maintenance is excluded from the Services.

2.4 If ownership of the Equipment changes, the Contractor may suspend performance of the Services until the Customer provides satisfactory evidence to the Contractor of the owner's approval of the carrying out of the Services by the Contractor on the terms of this Contract. The Customer shall keep the Contractor informed of the status of ownership of the Equipment at all times. The Customer shall at all times be responsible for the owner's actions if different from the Customer and shall indemnify and keep indemnified the Contractor against any claims, losses or liabilities of whatever nature (on a full indemnity basis) against the Contractor.

2.5 For the avoidance of doubt, any Unscheduled Maintenance required may be provided by the Contractor subject to agreement with the Customer and would be charged in addition to the Charges at the Contractor's prevailing rates. The terms and conditions of this Contract would apply to the provision of Unscheduled Spare Parts and Unscheduled Labour.

3 ATTENDANCE AT SITE

3.1 The Services shall be carried out by the Contractor and/or its representatives attending at the Site at such times as agreed between the Contractor and the Customer.

3.2 The Customer shall ensure that the Contractor and its Representatives have full and free access to its premises, facilities, the Equipment and associated systems and to any records of use to enable the Contractor to perform the Services in accordance with this Contract.

3.3 The Customer shall inform the Contractor and its personnel of all safety and security regulations applicable at the Site and shall take all steps as is necessary to ensure the safety of the Contractor and its Representatives attending at the Site at all times.

3.4 At the end of each visit to a Site, if required the Customer shall sign a site visit record.

3.5 If the Contractor's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Default**):

3.5.1 the Contractor shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Default, and to rely on the Default to relieve it from the performance of any of its obligations to the extent the Default prevents or delays the Contractor's performance of any of its obligations;

3.5.2 the Contractor shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Contractor's failure or delay to perform any of its obligations as set out in this clause 3.5; and

3.5.3 the Customer shall reimburse the Contractor on written demand for any costs or losses sustained or incurred by the Contractor arising directly or indirectly from the Default.

4 TECHNICAL SUPPORT SERVICE

4.1 For the Duration and during the Service Hours, the Contractor shall:

4.1.1 provide a telephone service for reporting and diagnosis of faults in the Equipment;

4.1.2 provide advice to the Customer on the measures to be taken to correct faults or operating abnormalities in or malfunctions of the Equipment;

4.1.3 respond in writing as soon as reasonably practicable to requests by the Customer for information on matters concerning the application and use of the Equipment; and

4.1.4 provide the Customer from time to time in writing with information in the form of service bulletins and other documentation on changes in the design, use or servicing of the Equipment which the Contractor recommends.

4.2 The Customer shall procure that the Contractor or its Representatives have access at all times to remotely download the data available on the control module of the Equipment.

4.3 The Customer shall procure that the Contractor has uninterrupted access to the Equipment to be able to perform its obligations under this Contract.

5 OPERATION OF THE EQUIPMENT

5.1 The day to day operation of the Equipment shall be the responsibility of the Customer.

5.2 The Customer is responsible for obtaining and maintaining all permits, licences and authorisations necessary for the operation of the Equipment and for ensuring that their operation and use of the Equipment complies with all safety and other applicable laws and regulations.

5.3 The Customer shall:

5.3.1 operate the Equipment using only appropriately qualified, trained, personnel in accordance with the instructions and recommendations of the manufacturer(s) and/or the Contractor (if different). The Customer shall ensure that all its operating personnel attend formal training courses provided by the Contractor in the operation of the Equipment at the Customer's cost, such training to be provided at the Contractor's standard rates;

5.3.2 only carry out routine maintenance of the Equipment as recommended by the Contractor and in accordance with the Contractor's specific instructions and minor faults after consultation with the Contractor's technical representatives;

5.3.3 save as stated in clause 5.3.3 above, not allow any person other than the Contractor or its Representative to repair, replace or remove any part of the Equipment without the Contractor's prior written approval;

5.3.4 advise the Contractor in writing of any alteration to the Equipment or to the conditions of its use. If such alteration materially affects the cost of providing the Services, the Parties shall agree an appropriate revision to the Charges and the terms of this Contract. If agreement is not reached within 90 days of the Contractor requesting a revision the Contractor shall be entitled to terminate by giving 90 days' written notice in writing to the Customer;

5.3.5 immediately shut down the Equipment upon request when, in the opinion of the Contractor, continued operation would constitute a risk of substantial damage to the Equipment and/or personnel in the vicinity of the Equipment;

5.3.6 be responsible for ensuring that all fuels, lubricants and water used in the operation of the Equipment complies with the Contractor and/or manufacturer's specifications;

5.3.7 be responsible for ensuring that the communication to the Equipment is available at all times. All charges relating to the IT communications system shall be to the Customer's account; and

5.3.8 be responsible for communicating with the Contractor with regards to the environmental conditions for the use and storage of the Equipment;

5.3.9 co-operate with the Contractor on all matters relating to the Services; and

5.3.10 provide in a timely manner, such information as the Contractor may require and ensure it is accurate in all respects.

5.4 Failure to comply with this clause shall be deemed to constitute improper operation and the provisions of clause 6 shall apply.

6 EXCLUDED SERVICES

- 6.1 The Contractor shall have no obligation to provide the Services or provide Spare Parts where faults arise from:
- 6.1.1 misuse, incorrect use of or damage to the Equipment from whatever cause (other than any act or omission by the Contractor), including failure or fluctuation of electrical power;
- 6.1.2 the necessary provisions or environmental conditions for use and storage of the Equipment being met as specified by the Contractor;
- 6.1.3 use of the Equipment in combination with any equipment not provided by the Contractor or not designated by the Contractor for use with the Equipment, or any fault in any such equipment;
- 6.1.4 relocation or installation of the Equipment by any person other than the Contractor or a person acting under the Contractor's instructions;
- 6.1.5 any breach of the Customer's obligations under this Contract howsoever arising or having the Equipment maintained by a third party;
- 6.1.6 operator error;
- 6.1.7 use of parts which have not been supplied by the Contractor or a Contractor's Associate or repairs or modifications to the Equipment which have been made without the Contractor's approval;
- 6.1.8 failure or delay on the part of the Customer to comply with any of its obligations or fulfil any of its responsibilities as set out in the Contract;
- 6.1.9 damage resulting from operating personnel ignoring alarms or safety devices related to the Equipment or purposely rendering them ineffective;
- 6.1.10 damage resulting from foreign objects (not being part of the Equipment itself) entering or impacting part of the Equipment;
- 6.1.11 damage resulting from failure, malfunction or improper operation of plant or systems (which are not themselves the Equipment) associated with the Equipment;
- 6.1.12 accidents or other force majeure events as referred to in clause 16;
- 6.2 In the event that the Customer requests the Contractor to carry out reparation work (Unscheduled Maintenance), the Customer shall pay all costs (at the Contractor's then prevailing rates) and expenses incurred by the Contractor for such work carried out and for any Services provided, resulting from any of the circumstances set out in clause 6.1 or any fault not covered by this Contract.

7 RECORDS AND REPORTS

- 7.1 The Customer shall monitor the operation of the Equipment and maintain an operating log book in accordance with the Contractor's instructions. The Customer must ensure that all warnings/alarms/shutdowns are noted in the logbook along with supporting information such as time/date and any observations regarding the Equipment at the time. The Customer shall make the logbook available to the Contractor on request and the Contractor shall audit the log book from time to time. Failure to fulfil this obligation may be deemed to be a breach of the Customer's obligations.
- 7.2 The Customer shall promptly report all observed changes in operating condition, operating abnormalities, unplanned shutdowns of the Equipment, faults and defects in and malfunctions of the Equipment to the Contractor. Such reports shall initially be made by telephone and must be confirmed in writing by text or e-mail, within 48 hours and will not be valid until acknowledged by the Contractor. In such circumstances the Customer must record all observed warnings on the control panel, before accepting said warnings and/or shutdown messages.

8 CUSTOMER'S RESPONSIBILITIES

- 8.1 In addition to its responsibilities for the operation and monitoring of the Equipment as stated in clauses 5 and 7, the Customer shall:
- 8.1.1 fulfil the responsibilities specifically set out in Service Schedule A;
- 8.1.2 ensure that the Equipment is kept in suitable premises and under suitable conditions as specified by the Contractor;
- 8.1.3 provide the Contractor and its Representatives with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable the Contractor or its Representatives to perform the Services;
- 8.1.4 provide the Contractor promptly with any information that is reasonably necessary for the performance of the Services on request;
- 8.1.5 ensure that all activities carried out at the Site are done so in compliance with all HSE working directives and with due regard and compliance to the Contractor's Rules of HSSE (**The Golden Rules**) as included within the Operating Logbook and/or as available upon request; and
- 8.1.6 provide certification that all fuel deliveries are in accordance with the specification as provided by the Contractor as specified and in accordance with the Operating Logbook.
- 8.2 The Customer acknowledges that the Contractor's performance of its obligations and the supply of the Services is contingent on the Customer complying with its obligations under this Contract.
- 8.3 If the Customer fails or refuses to have the necessary work carried out to rectify a fault caused by any of the above, the Contractor shall have no liability to the Customer or any third party for any damage and/or loss which may arise as a result.
- 8.4 The Customer acknowledges that the Contractor does not hold a waste carrier's licence and as a result is not permitted to remove or transport waste oil or hazardous materials from the Site. Accordingly, removal of such items shall be the Customer's responsibility and cost. The Contractor would recommend that any hazardous material stored at or on the Site temporarily or otherwise is located in a secure bunded location.

9 LEGISLATIVE REQUIREMENTS FOR SAFETY INSPECTIONS AND REPAIRS

- 9.1 The Customer is responsible for ensuring that the Equipment complies with all

safety and other applicable laws and regulations. If at any time, after signature of this Contract, any new laws or regulations come into force the Customer may be required under such laws and regulations to establish a scheme for the periodic examination by a competent body of the Equipment or parts of it (**Scheme**). Accordingly the Customer shall be obliged to comply with such requirements at all times. The Contractor shall provide reasonable assistance to the Customer as part of the Services and the Scheme in so far as it is able. The Customer shall only use bodies approved by the Contractor to carry out the Scheme. Where inspections are carried out by bodies other than the Contractor, the Customer shall provide to the Contractor details of the provider and Scheme, including their identity, timing and extent and inspections of associated systems not included within the Equipment.

- 9.2 If an inspection under this clause 9 reveals that repairs, modifications or replacements are required to be made to any parts of the Equipment:

- 9.2.1 the Customer shall advise the Contractor in writing of the results of such inspection and of any requirement under applicable laws and regulations for its immediate attention;

- 9.2.2 if the repairs, modifications or replacements are required as a result of changes in legislation or standards affecting the specification or operation of the Equipment compared to those applicable at the time of original delivery of the Equipment to the Customer or as a result of any of the circumstances referred to in clause 8.1, the Customer shall pay the Contractor's additional charges for carrying out the work and providing the Spare Parts at the Contractor's then current rates.

10 PRICE AND PAYMENT

- 10.1 The Customer shall pay to the Contractor the Charges in accordance with the provisions of Service Schedule C and 1.

- 10.2 The Charges exclude VAT which shall be added at the prevailing rate.

- 10.3 If any law, regulation or standard comes into force after the date of signature of this Contract which increases or reduces the cost to the Contractor of performing the Services under the Contract, the Charges shall be adjusted accordingly.

- 10.4 If the Customer fails to make any payment by the due date, the Contractor shall be entitled (without prejudice to other rights and remedies which it may have) to:

- 10.4.1 suspend performance of the Services until such time as the outstanding amounts have been paid in full; and/or

- 10.4.2 charge interest on the outstanding amount at the rate of four (4) percent per annum, charged on a daily basis, above the base rate of Natwest Bank Plc.

- 10.5 In the event of a suspension, the costs reasonably and properly incurred by the Contractor as a result of the suspension shall be added to the Charges and paid by the Customer within 30 days of the invoice date.

- 10.6 The Services are based upon an anticipated operating hours of 8,000 per annum. If this increases or the Customer's requirements change, the Charges shall be varied accordingly.

- 10.7 Except where otherwise agreed in writing between the parties, all payments due to the Contractor under this Contract shall be made on the dates shown on the Contractor's monthly invoice by standing order in Pounds Sterling to the Contractor's account (Account number, Sort-Code) at Bank plc or to such other bank account as the Contractor may from time to time nominate for that purpose.

- 10.8 All amounts due under this agreement shall be paid by the Customer to the Contractor in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 10.9 The Customer shall bear the costs of:

- 10.9.1 transport of the Contractor's representatives to and from the Site for the purposes of carrying out Scheduled and Unscheduled Maintenance; and

- 10.9.2 subsistence and overnight accommodation of the Contractor's representatives during the course of visits to Site.

- 10.10 If the Equipment is removed from Site for investigation and/or repair by the Contractor, the Customer shall be responsible for the costs of transportation and insurance to and from the Site.

- 10.11 If a Site visit is required under the Technical Support Service or for any other Unscheduled Maintenance, the Customer will be charged at the Contractor's then current rates.

11 CONTRACTOR'S WARRANTY

- 11.1 Subject to the remaining provisions of this clause, the Contractor warrants that the Services shall be carried out with due care and skill and the Equipment will be free from defects for a period of:

- 11.1.1 12 months after the Start Date or 24 months after the Start Date in respect of Spare Parts incorporated to remedy defects which have already been incorporated into the Equipment because of an earlier defect in respect of the Equipment; or

- 11.1.2 60 months from the Start Date for any defect that arises within the gasifier assembly,

("Warranty Period").

- 11.2 Defects in the Equipment (including any parts) must be notified by the Customer in writing to the Contractor ("**Defect Notice**"):

- 11.2.1 in the case of a defect that is apparent on normal visual inspection, within five business days of delivery;

- 11.2.2 in the case of defects not apparent on normal visual inspection, within a reasonable time of the latent defect having become apparent and in any event before the end of the Warranty Period.

- 11.3 Following service of a Defect Notice, the Customer to the Contractor under clause 11.2 above, the Customer shall return any defective parts to the Contractor at its own cost within one day of the Defect Notice being given. The Contractor's liability under the warranty is limited to the repair or replacement of

- any defective parts (or Equipment) during the Warranty Period. Once it has done so, the Contractor shall have no further liability to the Customer for the Equipment (or part's) failure to comply with the warranty in clause 11.1.
- 11.4 The Contractor shall conduct an investigation as to whether the Equipment (or parts as the case may be) subject to a Defect Notice is covered by the warranty set out in this clause and shall notify the Customer of the result of its investigation. If an investigation shows that it is covered by the warranty and the Customer has paid for the replacement parts, the Contractor shall supply further replacement parts of the same quality or value at no additional cost. If the investigation identifies that it is not covered by the warranty, the Customer shall account to the Contractor for the time spent in investigating the warranty claim, the time spent in repairing the defect and the costs of any replacement parts supplied by the Contractor to the Customer.
- 11.5 The Contractor shall not be liable for the Equipment's (or any part) failure to comply with the warranty set out in clause 11.1 in any of the following events:
- 11.5.1 the Customer makes any further use of the Equipment or parts after giving a Defect Notice;
- 11.5.2 the defect arises because the Customer failed to follow the Equipment or (if there are none) good trade practice regarding the same;
- 11.5.3 the defect arises outside of the Warranty Period;
- 11.5.4 the defect arises as a result of the Contractor following any drawing, design or specification supplied by the Customer;
- 11.5.5 the Customer alters or repairs the Equipment or the part without the written consent of the Contractor;
- 11.5.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- 11.5.7 the Equipment (or parts) differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
- 11.5.8 failures or defects arising in any of the circumstances referred to in clauses 6 and 8; or
- 11.5.9 if the Customer has not paid the Contractor in full up to the date of a Defect Notice all sums due and owing from the Customer to the Contractor.
- 11.6 The Services do not include the carrying out of Unscheduled Maintenance or maintenance arising from any of the circumstances specified in clause 6, except as specified in this clause 11.
- 11.7 The warranty in this clause 11 does not extend to the provision of manpower to carry out any repair work, either as a result of a warranty event or other Unscheduled Maintenance. The Customer may request the Contractor to carry out such repair work in which case, the Contractor shall be paid at its prevailing rates.
- 11.8 The undertaking and obligations of the Contractor under this clause 11 are in place of and exclude all other warranties and conditions, whether oral, written, statutory, express or implied. **ANY IMPLIED WARRANTIES OR CONDITIONS AS TO FITNESS AND/OR MERCHANTABILITY SHALL NOT APPLY** and are hereby excluded to the fullest extent permissible by law.
- 12 LIMITATION OF LIABILITY**
- 12.1 For the purpose of this clause and clause 14.2 "Contractor" shall include the Contractor, its sub-contractors, its Affiliates and, where the context so admits, their respective servants, agents and employees of all of the foregoing.
- 12.2 Subject to clause 12.7, the Contractor shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this contract for:
- 12.2.1 loss of profits;
- 12.2.2 loss of sales or business;
- 12.2.3 loss of agreements or contracts;
- 12.2.4 loss of anticipated savings;
- 12.2.5 loss of use or corruption of software, data or information;
- 12.2.6 loss of or damage to goodwill;
- 12.2.7 any increase in operating costs;
- 12.2.8 loss of production; and
- 12.2.9 any indirect or consequential loss.
- 12.3 Subject to clause 12.7, the Contractor's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to 50% of the annual Charges payable under this Contract in the year preceding a claim.
- 12.4 The Customer shall indemnify the Contractor against any and all claims in respect of or consequent to pollution or release of substances capable of causing harm to living organisms or interference with ecological systems arising from the Equipment or any Spare Parts or Services provided by the Contractor, except in respect of personal injury or death caused by the Contractor. This indemnity shall not apply if the Customer is in full compliance with the terms of this Contract and the operation, use and storage of the Equipment.
- 12.5 The Contractor's liabilities and the Customer's remedies in respect of defects in the Services and any damage to the Equipment resulting therefrom whether arising from breach of contract or warranty, negligence or otherwise are solely and exclusively as stated in this clause 12.
- 12.6 Unless otherwise agreed in writing the Contractor shall have no liability for the costs of dismantling, transportation, re-assembly and re-installation of any parts affected under this warranty or undertaking. These costs shall be borne by the Customer or reimbursed to the Contractor on presentation of its invoice.
- 12.7 Nothing in this Contract shall exclude or limit a party's liability for:
- 12.7.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

12.7.2 fraud or fraudulent misrepresentation; and

12.7.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

12.8 The conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.

13 INSURANCE

13.1 The Customer agrees to carry and maintain in force for the duration of this Contract:

13.1.1 all Risks/Property Damage insurance in respect of the property of the Customer and the Equipment with a minimum indemnity based on the current re-instatement value of the Customer's Property and Equipment to cover the responsibilities of the Customer under this Contract;

13.1.2 public liability insurance with a minimum indemnity of five million pounds sterling per occurrence or series of occurrences; and

13.1.3 loss of profits, business opportunities and earnings insurance.

13.2 Notwithstanding any provision to the contrary in this Contract, the insurances described in clause 13.1 shall be primary as to all other policies (including any deductibles or self-insured retentions) and self-insurance which may provide coverage. The Customer shall provide evidence of such insurances and payment to the Contractor on request. The Customer shall procure that the insurer(s) providing coverage under clause 13.1 shall include the Contractor as additional assureds and shall waive all rights of subrogation and/or contribution against, the Contractor to the extent of the liabilities assumed by the Customer under this Contract.

13.3 The Customer shall furnish to the Contractor on request, certificates of insurance as evidence of its compliance with clause 13.1.1 and 13.1.2 and such insurances shall also where possible provide that the Contractor shall be given not less than 30 days' notice of cancellation or material change to cover.

14 CONFIDENTIALITY

14.1 The provisions of the Contract shall be treated by both parties as confidential and shall not be disclosed by either party to any third party without the prior written consent of the other except where and to the extent that such disclosure is reasonably required in connection with applications and reports to governmental authorities, the borrowing of funds, obtaining of insurance or bona fide sale or assignment of any interest in this Contract permitted hereunder.

14.2 Subject to clause 14.3, technical information supplied by one party to the other in connection with this Contract shall remain the property of the furnishing party, shall be kept confidential and shall not be copied, modified, disclosed or used by the receiving party otherwise than for the purposes of the operation, repair and maintenance of the Equipment pursuant to this Contract.

14.3 All of the intellectual property rights in data downloaded to the Contractor and the Services shall vest in the Contractor. The Contractor may supply an undertaking to keep downloaded data confidential on terms mutually acceptable to both parties, if so requested by the Customer but shall otherwise have no obligation to keep such data confidential.

14.4 Each party may disclose the other party's confidential information:

14.4.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.4; and

14.4.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15 ASSIGNMENT AND SUBCONTRACTING

15.1 The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without the Contractor's prior written consent.

15.2 The Contractor may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Contract.

16 FORCE MAJEURE

16.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Contractor including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Contractor 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.

16.2 The Contractor shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

16.3 If the Force Majeure Event prevents the Contractor from providing any of the Services for more than 4 weeks, the Contractor shall (acting reasonably), without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer. The Contractor and the Customer agree that, the Contract shall not be unreasonably terminated and shall negotiate in good faith with regards to agreeing a plan to resume provision of the Services at an agreed date. Should the Contractor be prevented from resumption of the Services at that date as a result of the original Force Majeure Event, the Contractor's right to terminate may be re-enacted.

17 DURATION OF THE CONTRACT

17.1 This Contract shall commence on the date it is signed and continue until terminated in accordance with this agreement.

18 TERMINATION

18.1 Without affecting any other right or remedy available to it, either party may

- terminate this Contract with immediate effect by giving written notice to the other party if:
- 18.1.1 the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 18.1.2 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), 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;
 - 18.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 18.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion (acting reasonably) the other party's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.
- 18.2 Without affecting any other right or remedy available to it, the Contractor may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 18.2.1 the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 30 days after being notified to make such payment; or
 - 18.2.2 there is a change of Control of the Customer.
- 18.3 The Customer shall be entitled at any time to terminate this Contract by not less than 30 days' notice in writing to the Contractor in the event that it ceases permanently to operate the Equipment.
- 18.4 On termination of the Contract if value of the Services performed are higher than the value of the Charges paid, the Customer shall pay to the Contractor within thirty days of such termination an amount equal to the difference - such amount to be calculated in accordance with the Contractor's standard rates of charge prevailing at that time.
- 18.5 Upon the expiry or termination of this Contract for whatever reason:
- 18.5.1 the obligations of the Contractor to provide the Services shall cease;
 - 18.5.2 any Spare Parts or tools belonging to the Contractor and stored by the Customer shall be returned to the Contractor unless the parties then agree that they shall be purchased by the Customer;
 - 18.5.3 the Customer shall pay immediately to the Contractor any outstanding balance of Charges accrued up to the date of expiry or termination and all of the Contractor's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Contractor may submit an invoice, which shall be payable immediately on receipt; and
 - 18.5.4 save as otherwise agreed between the parties, 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 this Contract containing, reflecting, incorporating or based on the other party's Confidential Information. If required by the other party, it shall provide written evidence (in the form of a letter signed by its managing director) no later than 14 days after termination of this Contract that these have been destroyed and that it has not retained any copies of them, except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in clause 14.
- 18.6 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and
- 18.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

19 GOVERNING LAW

- 19.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
 - 19.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- ## 20 ENTIRE AGREEMENT
- 20.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - 20.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- ## 21 NOTICES
- 21.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
 - 21.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 21.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
 - 21.3 General communications shall be sent to the address specified in the Executive Summary.
 - 21.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- ## 22 VARIATION
- 22.1 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- ## 23 WAIVER
- 23.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
 - 23.2 waive that or any other right or remedy; or
 - 23.3 prevent or restrict the further exercise of that or any other right or remedy.
- ## 24 SEVERANCE
- 24.1 If any provision or part-provision of this 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 this Contract.
- ## 25 THIRD PARTY RIGHTS
- 25.1 No one other than a party to this agreement shall have any right to enforce any of its terms.