

PMS Networks Ltd - Terms and Conditions for the Provision of Maintenance Services

1 This Contract

1.1 In this Contract, unless the context otherwise requires:

- a) "Equipment" means all or any part of the equipment to be maintained by the Company pursuant to this Contract being those items listed in this Contract or on a separate schedule with this Contract; or provided separately by the company to the customer.
- b) "Finance Company" means the company that purchases the Equipment from the Company and lets it to the Customer where the Customer lease rather than purchase the Equipment;
- c) "Minimum Period" means the minimum duration of this Contract;
- d) "Maintenance" means the maintenance by the Company of the Customer's Equipment under the terms of this Contract and "Maintain" shall be construed accordingly;
- e) "Maintenance Payment" means any payment for the maintenance by the Company of the Customer's Equipment under the terms of this Agreement;
- f) "Network Operator" means British Telecommunications plc or any other relevant network operator;
- g) "Termination Payment" means all Maintenance Payments which would have been payable by the Customer if this Agreement had continued for the Minimum Period, each discounted at the rate of 5% per annum from the date they would have fallen due to the date of payment by the Customer of the Termination Payment;
- h) "The Company" means PMS Networks Ltd, 96 Carver Street, Birmingham B1 3AL, and any successor in title.
- i) "The Customer" means the person or persons whose details appear in the box headed "Installation Address", and any successor in title.
- j) If the Customer consists of two or more people each of them is severally and jointly liable under this Contract.

1.2 The Contract comprised by these terms and conditions and the Contract set out overleaf, or separately supplied, to which these terms are annexed shall comprise the entire contract between the Company and the Customer.

1.3 Any other terms, conditions or provisions whether proposed by the Customer orally or in writing shall be of no effect and the supply of Services by the Company to the Customer shall not constitute acceptance of such other terms, conditions or provisions.

1.4 Unless specifically agreed in writing and signed by a duly authorised officer of the Company, information and advice given orally or contained in the Company's publicity material, advertisements and catalogues and in correspondence between the Company and the Customer before the date of this Contract is given gratuitously and without responsibility on the Company's part and shall not form part of this Contract.

1.5 Unless stated in this Contract and expressly agreed in writing and signed by a duly authorised officer of the Company, no term, condition, warranty or representation (whether express or implied by statute, law, custom or usage) as to the nature, quality or means of performance or fitness of the Service or their correspondence with any description is given by the Company, or shall form part of any contract between the Company and the Customer.

1.6 Save as referred to in Clause 1.7, no officer, employee, agent, representative or consultant of the Company is authorised to make any representation on the Company's behalf in respect to any matter to which this Contract relates, and no such representation shall form part of this Contract or impose any obligation upon the Company whether in respect of negligence or otherwise.

1.7 Only a duly authorised officer of the Company is authorised to make representations on the Company's behalf in respect of matters to which this Contract relates, and such representations must be written to bind the Company. Any other representation made by or on the Company's behalf prior to the date of this Contract is withdrawn.

1.8 The Customer warrants that it has not been induced to enter into this Contract by any representation other than one made by a duly authorised officer of the Company in writing.

1.9 A variation to this Contract shall only be binding on the Company if it is set out in writing and signed by a duly authorised officer of the Company.

1.10 The headings in this Contract are for convenience only and do not affect the meaning of its provisions.

1.11 This Contract is governed by English law and the Customer submits to the non-exclusive jurisdiction of the English courts.

1.12 A Contract under which the Company shall supply Services to the Customer shall only come into existence once the Company has received and accepted the Customer's order which, if a quotation has been issued, must be within any time specified in the quotation and until acceptance of the order the Company shall be under no obligation to the Customer.

2 Period of Maintenance

2.1 The Company shall commence performance of the Services on the date (if any) specified overleaf or the date on which the telecommunications equipment comprising the product(s) specified in this Contract ("installation") is brought into service or the date on which a satisfactory pre-maintenance inspection ("PMI") under Clause 4 is completed by a duly authorised person or authority, whichever is the earliest to occur ("the commencement date").

2.2 Subject to provisions for earlier termination herein contained this Contract shall run for the Initial Fixed Period and hereafter unless and until terminated by either party giving to the other not less than three months' prior written notice of termination such notice to expire on any anniversary of the expiry of the initial fixed period.

2.3 In the event of the Company experiencing (in its absolute opinion) a material degree of difficulty in obtaining necessary replacement parts or materials at a reasonable price, without unreasonable effort on its part or without unreasonable delay the Company shall be entitled to terminate this Contract forthwith by giving the Customer written notice to that effect. Subject as aforesaid the Company shall be entitled to terminate this Contract on giving the Customer at least three months' notice in writing. The Company's notice must expire on the day on which the Company requires this Contract to terminate and on the expiration of such notice this Contract shall terminate.

3 Maintenance Services

3.1 Subject to the terms and conditions hereinafter appearing the Company shall from the Commencement Date use its reasonable endeavours to correct a fault in the installation by repairing or, at its option, replacing all or part of the installation (the "Fault Repair Service"). If the Company considers that it is necessary to replace all or part of the installation other than resulting from normal wear and tear, it may make additional charges under Clause 5 for the replacement parts. All replaced parts shall become the Company's property on an exchange basis and the Customer warrants that these will be their sole provisions of this Contract following breach by the Customer and these charges must be paid by the Customer on demand.

3.2 The Customer shall report any fault in the installation to the Company at the address as set out in clause 1.1.h of these terms or to such other address as the Company may from time to time notify the Customer of in writing by telephone and confirmed by facsimile or email within one day on Monday to Friday excluding public and statutory holidays in Great Britain during the hours 8:30am to 5:30pm ("Working Day") (the "Fault Report").

3.3 The Company will use its reasonable endeavours to clear a Fault Report in accordance with the response time category specified in the Contract, which if not stated shall be category (a) in Clause 3.4 by:

- a) Allocating a service request job number and advising the Customer as soon as reasonably practicable of the job number;
- b) Carrying out reasonable remote diagnostic checks from the Company's premises;
- c) Providing advice by telephone, including advice as to action and checks to be carried out by the Customer;
- d) In the event that the actions detailed in Clause 3.3 (a) to (c) above do not clear the fault or are considered inappropriate by the Company and unless the Company has diagnosed the fault as being due to a software problem, the Company shall visit the site of the installation in order to diagnose and attend to the fault.

3.4 The Fault Repair Service shall be provided as follows:

a) Standard Service - The Company shall use its reasonable endeavours to clear a Fault Report within 8 working hours during the period of 8:30am to 5:30pm on a working day or such other hours the Company may advise the Customer of by not less than seven days written notice ("Working Hours"). There is no obligation to carry out work outside working hours.

b) Special Service - The Company may agree, but shall not be obliged, to provide other levels of service response. The details of such agreed levels of response shall be set out in writing by us and referred to on the face of the Contract.

3.5 If while this Contract remains in force, the Customer acquires any additional equipment which is in addition to or substitution for any part of the installation, then the Customer shall promptly give the Company written notice for the Company to include such new equipment within the Services and if the Company agrees to offer the Services for such new equipment then it shall do so on the terms of this Contract (where upon all references to the installation in this Contract shall be deemed to include a reference to such new equipment) and (unless otherwise agreed by us in writing) subject to payment of a Supplementary Charge under Clause 5.8 below.

4 Inspection of Installation

4.1 If the Company have not carried out a PMI for the installation immediately prior to this Contract or the Customer has not had a maintenance contract with the Company immediately prior to this contract the Company shall be entitled to:

- i) Carry out a pre-maintenance inspection ("PMI") or test of the installation
- ii) Give the Customer a written estimate for restoring the installation to a standard which, in the Company's opinion, is reasonable and capable of being maintained. The inspection shall be subject to a Supplementary Charge payable by the Customer to the client pursuant to Clause 5.

4.2 If the Customer accepts our estimate then:

- i) The Company shall, without undue delay endeavour to restore the installation to a standard which, in the Company's opinion is reasonable and capable of being maintained provided that time shall not be of the essence in relation to the performance of this obligation: and
- ii) The Customer shall pay the Company's Supplementary Charge for parts and labour as estimated pursuant to Clause 5.

4.3 If the Customer rejects the Company's estimate then the Company may (without affecting its accrued rights) terminate this Contract with immediate effect by giving the Customer written notice.

5 Payments

5.1 Under this Contract the Maintenance Payments include only the cost of parts and labour if specified in the box headed "Details of System Maintained" used in the repair of faults to the Customers Equipment but not otherwise.

5.2 The Customer will make all payments under this Contract on the dates they are due and free of any set-off, counterclaim, deduction or withholding. This is an essential condition of this Contract and if the Customer does not make a payment on time, this will represent your intention not to continue to abide by this Contract (and will therefore constitute a repudiatory breach of this Contract by the Customer) and the Company will be entitled to accept such repudiatory breach and terminate this Contract.

5.3 The Customer must pay VAT on all payments under the Contract at the rate which applies on the date of the supply

5.4 If the Customer does not make any payment on time the Customer will pay interest at the rate of 5% above the base rate from time to time of the Lloyds TSB plc from the date the Customer should have paid it until it is paid. In addition, the Customer will pay an administration charge of £10 each month that payment is missed plus £15 every time the Company writes to the Customer chasing payment. In addition, if the Company is entitled to delay carrying out Maintenance by virtue of Clause 9.2 and in doing so any additional charges are incurred as a consequence of the delay, the charges shall be paid by the Customer to the Company forthwith on demand.

5.5 Spare

5.6 The Company is entitled to charge the Customer for the costs and expenses the Company may incur in enforcing the provisions of this Contract following breach by the Customer and these charges must be paid by the Customer on demand.

5.7 The Company is entitled to charge the Customer a reasonable and proper sum (according to the Company's usual rate of charges but at the Company's discretion) for any attendance by the Company requested by the Customer which transpire not to be the Company's responsibility under this Contract or if the equipment is reported as faulty and proves not to be so and these charges must be paid by the Customer on demand.

5.8 Where the Customer agrees to provide the Services in respect of additional equipment to the installation pursuant to Clause 3.5 then payment shall be made in accordance with the arrangements set out in Clause 5.2

5.9 The Company shall have the right to invoice the Customer for partial supply of the Services.

5.10 In the event that;

a) Any changes are made to the requirements of the Network Operator affecting the provision of the Maintenance,

b) Revised software is installed in the Equipment for any reason,

c) The software installed in the Equipment is no longer a current release; or

d) The Equipment is extended by the addition of further hardware The Company is entitled to adjust the amount it charges for Maintenance at any time. In this event, the amount the Company charge for Maintenance shall be increased to the rate applied by us at the relevant time for the maintenance of the additional hardware or Software or other changes.

5.11 In addition to any adjustment made to our charges for Maintenance pursuant to Clause 5.7 the Company may at any time upon seven days prior written notice to the Customer adjust the Company's charges for Maintenance. The Customer shall have the right to terminate this Contract by written notice within 30 days of receipt of such increases without affecting the accrued charges of the Company.

6 Method of Payment

6.1 The Customer will make all Maintenance Payments to the Company by BACS, standing Order or cheque unless the Company has agreed in writing otherwise with the Customer.

7 Title and Risk

7.1 Risk of damage to or loss of the Equipment shall pass from the Company to the Customer on delivery of the Equipment to the premises in which the Equipment is to be installed notwithstanding that the title to the Equipment may not have passed from the Company to the Customer. The Customer should therefore ensure that the Equipment is adequately insured from delivery.

7.2 The Company retain ownership of the Equipment delivered, as against the Customer case of a cash purchase and as against the Finance Company in the case where Equipment is leased and reserve the right of disposal of the Equipment either until the full purchase price for the Equipment has been paid (by the Customer or the Finance Company as the case may be) or until all debts owed (by the Customer or the Finance Company as the case may be) to the Company have been paid pending which

a) The Customer shall hold the Equipment as bailee for and on the Company's behalf:

b) The Customer shall store the Equipment in a safe and proper manner and in such a way to ensure that the Equipment is readily identified as the Company's property: in particular the Customer shall not move, interfere with, alter or in any way change the Equipment or remove any label affixed by the Company indicating that the Customer is not the owner of the Equipment; and

c) The Company shall be entitled to enter upon the Customer's premises, at all reasonable times, where the Equipment is located or thought by the Company to be stored for the purpose of removing and subsequently reselling the Equipment and the Customer irrevocably authorise the Company to enter upon the Customer's premises for this purpose.

7.3 In all cases notwithstanding that the Customer (or the finance Company) has fully paid for the Equipment the Customer shall only acquire a license to use any software required as part of or for the operation of the Equipment.

8 Your Obligations

8.1 The Customer is responsible for choosing the Equipment and for making sure that it is fit and suitable for your, the Customer's, purposes.

8.2 The Customer is responsible for caring for and operating the installation in accordance with the Company's and/or manufacturer's and/or supplier's instructions as applicable.

8.3 The Customer is responsible for ensuring that the environmental conditions at all areas where the Equipment is installed are approved by the Company, the Network Operator and any other relevant authority at all times.

8.4 In order to facilitate the efficient provision of Maintenance, the Customer shall ensure that the Company has unrestricted access to the Equipment and adequate working space, and such other facilities as we may reasonably require, during working hours (as defined in Clause 3.4 and such other hours as may be necessary for the proper performance of the Company's obligations or the enforcement of the Company's rights and entitlements hereunder and allow the Company to perform the Services without interruption or disturbance.

8.5 The customer shall observe all legal requirements relating to health and safety at work in respect of the premises in which the Equipment is located or installed.

8.6 The Customer shall ensure that all technical manuals, records and other documentation, whether provided by the supplier and/or the installer of the Equipment, that might assist the Company in the provision of Maintenance or are in any way relevant to the Equipment are, preserved in good order, located in the proximity of the control equipment and immediately available to the Company for reference purposes.

8.7 The Customer shall ensure that unless the Company shall have first given its consent in writing the Customer does not cause or permit the Equipment to be altered, adjusted or interfered with except by the Company.

8.8 The Customer must not connect any other equipment to the Installation without prior written consent from the Company.

8.9 The Customer shall indemnify the Company against all claims from third parties in the event that:

a) The Customer cause or permit the Equipment to be altered, adjusted, misused or interfered with by any person (although in the case where a claim is being made as a result of the Equipment being altered, adjusted, misused or interfered by the Company, only in the case where the Company does so with the Customer's consent) without obtaining all necessary consents; or

b) The Company is unable to keep the Equipment in good working order due to causes within the Customer's control.

8.10 The Customer must ensure that all areas of the premises in which the Equipment is to be installed is suitable for the installation of the Equipment and in particular the Customer will ensure that any works that the Company notify the Customer should be carried out at the premises prior to installation are completed prior to the commencement of the installation.

8.11 The Customer undertakes to notify the Company of any dangers that are not immediately obvious (such as buried power cables) prior to the commencement of the installation of the Equipment.

8.12 In order to facilitate the efficient installation of the Equipment the Customer shall ensure that the Company have unrestricted access, at all reasonable times, to all areas of the premises in which the Equipment is to be installed, adequate working space and such other facilities as the Company may reasonably require.

8.13 The Customer must agree to promptly carry out any diagnostic and test routines supplied by the Company or included in the manufacturer's instructions

and to allow the Company to carry out remote diagnostic tests where appropriate. (If, as a result of the Customer's failure to do so, the Company has to do additional work, the Company may make a Supplementary Charge under Clause 5).

8.14 The Customer will provide at its own cost any lifting facilities, scaffolding, unskilled labour, masons, joiners and other building tradesmen, electrical power heating, lighting and ventilation that the Company may require for the proper and efficient installation of the Equipment and in particular any cutting away and making good of walls, ceilings and floors and fittings of cableways is your, the Customer's, responsibility.

8.15 The Customer must at its own cost ensure that all necessary way leaves, easements and any necessary third party consents are obtained in good time before we commence installation.

8.16 The Customer must ensure that the Network Operator has carried out all necessary works in order to enable the Company to connect the Equipment to its network when installing the Equipment and to complete the commissioning of the Equipment.

8.17 If the Network Operator is unable to complete the Network Services, the Company cannot be held responsible for any subsequent delay on its part.

8.18 The Customer will comply with the terms of any software license applicable to the Equipment or the operation of it. The Customer will indemnify the Company in respect of any claim made against the Company for breach of any software license.

8.19 If the Equipment is leased, following the Customer's acceptance, express or deemed, that the Company have complied with its obligations relating to installation and commissioning (including testing) of the Equipment as contained in Clause 9.1, the Customer will, on being requested by the Company to do so, forthwith provide confirmation of such acceptance to the Finance Company in such form as the Company may reasonably require in order to obtain payment from the Finance Company. If the Customer does not comply with this obligation, the Customer authorises the Company to provide the confirmation on its behalf.

9 Our Obligations

9.1 The Company shall use all reasonable endeavours to ensure that adequate arrangements are in place to enable the Customer to report faults in the Equipment to the Company and have them logged during the Company's working hours (as defined in Clause 3.4) either by ensuring that the fault desk is manned or by giving the Customer access to an electronic faults logging system.

9.2 Subject to the Customer logging its fault during the Company's working hours (as defined in Clause 3.4) and subject to no sums due from the Customer to the Company, or any other company within its Group, being in arrears for more than fifteen days.

a) The Company shall use all reasonable endeavours to ensure that a suitable qualified technician is available to discuss the fault in the Customer's Equipment within the applicable Fault Repair Service time of the fault being logged with the Company, and

b) Subject also to the provisions of Clauses 9.4 and 9.5 the Company shall use all reasonable endeavours to ensure that a qualified technician attends, if applicable and necessary, at the premises in which the Equipment is installed or located for the purpose of rectifying the fault.

9.3 The Company shall use all reasonable endeavours to ensure that at all times:

a) The engineers that it uses to maintain the customer's equipment have had their technical ability in relation to the Customer's equipment approved by the manufacturer of the Customer's equipment; and

b) The Company and its staff operate a Quality Control System based on ISO9002

9.4 The Company's obligations to Maintain the Equipment shall not extend to making good any failure that arises or continues as a consequence of:

a) Force Majeure/Act Of God (whether happening in the United Kingdom or elsewhere);

b) The Customer causing or permitting the Equipment to be altered, adjusted, misused or interfered with by any person;

c) The Customer failing to follow all recommendations made by the Company or any Network Operator in relation to the Equipment;

d) Any other action taken by government or any regulator;

e) Any causes external to the Equipment such as, but not limited to, any defect, failure or fluctuation of electrical power or any air conditioning, any fire, explosion, accident, lightning damage or electromagnetic/radio interference;

f) Industrial disputes

g) Failure of any Network Operator or its equipment or failure attributable to any Network Operator or its equipment;

h) Any circumstances other than normal fair wear and tear;

i) Failure of line wiring (where included as part of the Equipment) other than by reason of fair wear and tear;

j) The Company experiencing (in its absolute opinion) a material degree of difficulty in obtaining necessary replacement parts or materials at a reasonable price, without unreasonable effort on our part or without unreasonable delay; or

k) Any cause beyond the Company's reasonable control.

9.5 In addition the company shall not be obliged to:

a) Make any alteration of the Equipment to meet any change in your requirements or the requirements of any Network Operator;

b) Carry out any electrical or other work external to the Equipment; or

c) Move or re-install the Equipment.

9.6 The Company may remove all or part of the Installation from the Customer's premises for the purpose of inspection, testing and repair.

9.7 The Company is not obliged to provide the Fault Repair Service at Premises other than the Installation address specified in the "Installation Address",

10 Guarantee

10.1 The Company shall repair the performance of any Services carried out under this Contract which are proved to its reasonable satisfaction to be defective without any additional charge being made to the Customer provided:

a) The Customer as soon as reasonably practicable and in any case within 3 working days of completion of the Services informs the Company of the alleged defects and grants the Company full access to the location of the installation; and

b) The Customer has paid all Charges for the Services in full; and

c) The installation if not defective by reason of the Customer breaching its obligations under this Contract and in particular but without limitation no unauthorised repairs or alterations have been made to the defective installation; and

d) The installation has been maintained and used with reasonable care and in accordance with the Company's and/or manufacturer's and/or supplier's instructions as applicable; and

e) The Customer provides full information and documentation to verify compliance with these conditions and enables the Company to effect the repairs;

10.2 If after reasonable efforts (including repairing the performance of the relevant Services) the Company is unable to rectify or identify the source of the fault in the Fault Report then such fault shall be deemed not to be covered by this Contract and we shall be deemed to have fully discharged our obligations therein.

11 Limitation of Liability

11.1 The Company does not exclude its liability for death or personal injury which is caused by its negligence but all other liability whether arising by virtue of breach of express or implied terms of this Contract, any liability in tort, breach of statutory duty or otherwise are excluded (in so far as the law allows).

11.2 The Company is not liable for any consequential loss, loss of business and/or loss of profit which the Customer may suffer as a result of our breach of our obligations under this Contract.

11.3 Subject to Clause 11.1 and without limiting Clause 11.2 in the case of any damage to the Equipment or any other property which is caused by the Company's negligence the Company's liability shall not exceed one years Maintenance Payments at rate prevailing at the date of damage in respect of any single event or series of events arising from a common cause.

11.4 The Company shall not be liable for any charges made by any Network Operator which shall be the Customer's sole responsibility

11.5 The Customer must acknowledge that the price of the Service reflects the limitations contained in this Clause 11. The Customer shall effect insurance cover in respect of all risks relating to the Services which are not covered by the guarantee contained in Clause 10 or the liability accepted under this Clause 11.

11.6 No officer or employee of the Company will be liable to the Customer in any circumstances for any loss, expenses or damage of any kind (whether direct, financial or consequential and whether arising from negligence or otherwise) arising from any act or omission of theirs during the performance of their employment or other duties. All officers and employees of the Company from time to time shall be entitled to the benefit of the exemption, limitations, terms and conditions in this Contract, and for this purpose only the Company enters into this Contract as their agent

11.7 The Company shall not be liable to the Customer for any loss damage or injury to the extent that arises from or is caused by acts or omissions by the Customer or others including without limitation the Customer's failure to comply with the Company's and/or manufacturer's and/or supplier's instructions as applicable.

11.8 The Company shall not be liable in any way for the failure or delay in performing under this Contract resulting from circumstances beyond the Company's reasonable control:

11.9 The Customer acknowledges that the Company's liability is limited to the express obligations on its part contained herein and that this Contract does not impose or imply any additional duties or obligations on the Company's part by reason of its position as an expert in its field or otherwise and the Customer hereby agrees to specifically exclude any such additional duties and/or responsibilities.

12 Proprietary Rights

12.1 All copyright, design rights, trademarks, know-how, patent, trade secret and other proprietary and intellectual property rights in the Services, and all information which we may provide to the Customer or its agents shall (as between the parties) belong to and at all times remain vested in the Company, and the Customer shall not acquire any intellectual property rights or license relating to the Services and may not copy or imitate the Services.

12.2 The Customer shall treat as confidential all information of a confidential nature which the Company may make available to the Customer (the "Confidential Information") and shall not without prior written consent from the Company:

- a) Exploit any part of the Confidential Information save as is reasonably necessary to enable it to enjoy the Services; or
- b) Disclose any part of the Confidential Information other than to its employees or Customers (or potential customers) who need to know the Confidential Information for any purpose of enjoying the Services provided that:
- c) Such person is made aware prior to disclosure of the proprietary and Confidential Information; and
- d) Such person owes an express duty of confidence to the Customer.

12.3 Where propriety equipment and/or software is installed by PMS Networks Ltd at your request, the Terms and Conditions applied by the manufacturer or developer under which that supply is made to PMS Networks Ltd shall be deemed to apply in these terms and conditions and will override any conflict with these terms and conditions.

12.4 The provision of this Clause 12 shall survive the termination of this Contract.

13 Termination

13.1 The Company can or the Customer (as applicable) may terminate this Contract in accordance with Clauses 2.2 and 5.11.

13.2 The Company can terminate this Contract by giving the Customer written notice if

- a) The Customer does not pay any Maintenance or any other payments under this or any other Contract with the Company on time;
- b) The Customer does not abide by any of the terms and conditions of this Contract or any other Contract with the Company;
- c) The Customer sells the Equipment or does anything that affects or may affect the Company's ability to provide Maintenance;
- d) The Equipment is taken to settle a debt (including the levying of any distress);
- e) The Customer (or if a partnership any of its partner forming the partnership) die, become insolvent, or have an interim or bankruptcy order or a sequestration order made against them;
- f) The Customer is a company and it has a receiver appointed over all or any part of its assets, it has an administrative receiver appointed or a petition is presented for the appointment of an administrator or liquidator or it passes a resolution authorising its voluntary liquidation.
- g) The Customer (or if a partnership any of its partners forming the partnership) enter into or try to enter into a voluntary arrangement.
- h) The Customer suspends or threatens to suspend payment of its debts or is deemed unable to pay its debts for the purpose of section 123 Insolvency Act 1986 or ceases or threatens to cease to carry on its business or any material part as a going concern; or as a result of any change in the powers, business or circumstances of the Customer it is unlikely to be in a position to fulfil the Contract or any transaction pursuant thereto; or
- i) A petition is presented against the Customer (or if it is a partnership any of the partners forming the partnership) under section 264 of the Insolvency Act 1986;
- j) The Customer (or if a partnership any of the partners forming the partnership) appears unable to pay its debts or appears to have no reasonable prospect of being able to pay the debt pursuant to or as provided in section 268 of the Insolvency Act 1986;
- k) The Company's statutory or other governmental authority or license to carry on or to continue performing the Services is revoked or not renewed in any circumstances whatsoever; or
- l) At any time the Company has reasonable grounds to believe that any of the events mentioned in Clause 13.2 above is likely to happen within a period of three months thereafter.

13.3 If the Company terminates this Contract under Clause 13.2 or if the Customer otherwise repudiates the Contract and the Company accepts such repudiation the Customer will forthwith pay to the Company the Termination Payment as agreed liquidated damages which the Customer agrees are a true reflection of the loss the Company will have suffered together with all Maintenance Payments then due but unpaid and any interest accrued thereon and any other sums payable by the Customer under this Contract.

13.4 Without prejudice to Clause 3.3 the Customer undertakes as a separate and independent obligation that if this Contract is terminated for any reason whatsoever during the Minimum Period the Customer will pay to the Company a sum representing the incentive discount (if any) given by the Company to the Customer to in the form of reduced Maintenance Payments during the first year of this Contract being the difference between the aggregate Maintenance Payments for the first year of this Contract and the aggregate Maintenance payments payable for any subsequent year.

13.5 On termination of this contract for any reason (without affecting the Company's rights):

- a) The Company shall be discharged from any further liability to perform under this Contract;
- b) The Customer shall pay the Company on demand for all the Services and other work performed by the Company for the Customer prior to termination; and
- c) The Company is granted an irrevocable license to enter the Customer's premises to recover any goods or materials which are the Company's property.

14 Other

14.1 If any part of this Contract shall be unenforceable or held by any court to be unenforceable, this shall not affect the remaining parts.

14.2 If the Company does not enforce this Contract against the Customer or if the Company gives the Customer time to pay or any other indulgence, this shall not be a waiver of the Company's rights against the Customer.

14.3 The Company may assign the benefit of this Contract. The Customer shall not be entitled to assign the benefit of this Contract without the Company's consent.

14.4 The Company reserves the right to use sub-contractors to endeavour to meet its obligation.

14.5 Should any provision of this Contract become illegal or void for any reason, the validity of the remaining provisions shall not be affected and the parties shall enter into negotiations in good faith to find a replacement for the provisions which is of similar economic effect.

14.6 The representations, warranties, undertakings, agreements and other provisions in this Contract shall continue to subsist after termination for so long as may be necessary for the purpose of giving full effect to them in accordance with the terms of this Contract.

14.7 Nothing contained in this Contract shall constitute a partnership or agency between the parties and no party shall hold out as an agent for the other party.

15 Communications

15.1 Notices may be given to:

- a) A body corporate by being handed to Director
- b) An individual, partnership or a corporate body being sent to the party's address by facsimile, telex, or registered post and by email where appropriate. Each party's address shall be set out in this Contract unless otherwise notified in writing to the other party. Each party shall promptly notify any change of address to the other in writing.

15.2 Any notice or other written communication we may send to one another will be considered as delivered two working days after being posted if sent to the addresses stated above and on associated contract documents or any other United Kingdom address we may advise to each other during the contract.