

GET FULLY FURNISHED RETAIL LTD
SUPPLY OF GOODS AND RELATED SERVICES TERMS AND CONDITIONS

BACKGROUND

- A. The Customer wishes to appoint the Supplier to provide the Goods and Services.
- B. The Supplier has agreed to provide the Goods and Services to the Customer on the terms set out in this Agreement.

AGREED TERMS

1 Interpretation

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

- 1.1.1 **"Business Day"** means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business;
- 1.1.2 **"Commencement Date"** means the date of this Agreement, as specified in the Order;
- 1.1.3 **"Deliverables"** means, in addition to the Goods, all Documents, products and materials developed by the Supplier in any form, including computer programs, data, reports and specifications (including drafts);
- 1.1.4 **"Delivery"** means completion of unloading of the Goods at the Premises and the words **"Deliver"** and **"Delivered"** shall be construed accordingly;
- 1.1.5 **"Delivery Date"** means the date on which the Goods are to be Delivered to the Customer as specified in the Order;
- 1.1.6 **"Document"** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
- 1.1.7 **"Expiry Date"** means the date on which the Agreement comes to an end as specified in the Order;
- 1.1.8 **"Goods"** means the goods as specified in the Order;
- 1.1.9 **"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

- 1.1.10 **"Order"** means an order signed by authorised representatives of each of the Supplier and the Customer from time to time for the provision of Goods and Services under this Agreement and which has been agreed and accepted by the Supplier;
- 1.1.11 **"Premises"** means the location where the Goods are to be supplied and the Services are to be performed as specified in the Order;
- 1.1.12 **"Pre-existing Materials"** means all Documents, information and materials provided by the Supplier relating to the Goods and Services which existed prior to the commencement of this Agreement, including computer programs, data, reports and specifications;
- 1.1.13 **"Services"** means the services to be provided by the Supplier under this Agreement as set out in the Order, together with any other services which the Supplier provides or agrees to provide to the Customer;
- 1.1.14 **"Supplier's Equipment"** means all (if any) equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Goods and Services which are not the subject of a separate agreement between the parties under which title passes to the Customer;
- 1.1.15 **"Supplier's Staff"** means the people engaged by the Supplier to provide the Goods and Services to the Customer including agents, subcontractors, consultants and employees;
- 1.1.16 **"Tax"** means any tax, levy, impost, duty, charge or fee; and
- 1.1.17 **"VAT"** means value added tax chargeable under English or Scots law for the time being and any similar additional Tax.
- 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 The Order and background form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Order and background.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to "writing" or "written" includes faxes but not e-mail.
- 1.7 Where the words "include(s)", "including" or "in particular" are used in this Agreement, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.9 References to clauses are to the clauses of this Agreement.

2 Term

This Agreement will come into force on the Commencement Date, and unless terminated earlier by either party in accordance with its terms, will remain in force until the Expiry Date or as otherwise mutually agreed in writing between the parties.

3 Supply of Goods and Services

3.1 The Supplier will provide the Goods and the Services to the Customer:

3.1.1 in an efficient and effective manner;

3.1.2 in accordance with:

3.1.2.1 all applicable legal requirements;

3.1.2.2 all lawful and reasonable instructions issued by the Customer from time to time; and

3.1.3 using only Supplier's Staff who have the necessary skills, qualifications and experience to manufacture the Goods and to perform the Services in accordance with this Agreement.

3.2 The Supplier may subcontract all or part of the manufacture of the Goods and the provision of the Services to the Customer to subcontractors who have the necessary skills, qualifications and experience to manufacture the Goods and to perform the Services.

4 Delivery of Goods

4.1 The Supplier shall use reasonable endeavours to Deliver the Goods to the Premises on the Delivery Dates during the Supplier's normal business hours, unless otherwise agreed in writing between the parties.

4.2 The Supplier shall ensure that if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.3 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the

cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by:

- 4.3.1 a Force Majeure Event; or
 - 4.3.2 the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods; or
 - 4.3.3 any relevant instruction related to the supply of the Goods.
- 4.4 If the Customer fails to accept or take delivery of the Goods within twenty one (21) Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under this Agreement in respect of the Goods:
- 4.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the twenty second Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - 4.4.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.5 If twenty two Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted Delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 Supplier's obligations

- 5.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer.
- 5.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.
- 5.3 The Supplier warrants to the Customer that:
 - 5.3.1 the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards;

- 5.3.2 the Services will materially conform with all descriptions and specifications provided to the Customer by the Supplier; and
 - 5.3.3 the Services and Deliverables will be provided in accordance with all applicable UK legislation from time to time in force, and the Supplier will inform the Customer as soon as it becomes aware of any changes in that legislation.
- 5.4 The Supplier warrants that on Delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:
- 5.4.1 conform in all material respects with their description and any applicable Goods specification; and
 - 5.4.2 be free from material defects in design, material and workmanship.
- 5.5 Subject to clause 5.6, if:
- 5.5.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.4;
 - 5.5.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 5.5.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.6 The Supplier shall not be liable for the Goods' failure to comply with any express or implied warranty if:
- 5.6.1 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 5.6.2 the defect arises as a result of the Supplier following any drawing, design or Goods specification supplied by the Customer;
 - 5.6.3 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 5.6.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 5.6.5 the Goods differ from their description specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.7 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 5.4.

5.8 The terms of this Agreement shall apply to any repaired or replacement Goods supplied by the Supplier under Clause 5.5.

6 Customer's obligations

6.1 The Customer will, at its own cost:

6.1.1 make all reasonable efforts to provide to the Supplier any information in the Customer's possession which the Supplier reasonably requires for the purposes of providing the Goods and Services;

6.1.2 provide, in a timely manner, such material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;

6.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's Premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services; and

6.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

6.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

6.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this Agreement to the expiry of six months after the termination of this Agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Goods or Services.

7 Title and risk

7.1 The risk in the Goods shall pass to the Customer on completion of Delivery.

7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

7.3.1 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

- 7.3.2 notify the Supplier immediately if it becomes subject to any of the events listed in Clauses 13.2.3 and 13.2.4; and
 - 7.3.3 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clauses 13.2.3 and 13.2.4, then, without limiting any other right or remedy the Supplier may have:
- 7.4.1 the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and
 - 7.4.2 the Supplier may at any time:
 - 7.4.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 7.4.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8 Change control

- 8.1 Subject to the remaining terms of this Agreement, if either party wishes to change the scope or provision of the Goods or Services, it shall submit details of the requested change to the other in writing.
- 8.2 If either party requests a change to the scope or execution of the Goods or Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
 - 8.2.1 the likely time required to implement the change;
 - 8.2.2 any necessary variations to the Supplier's charges arising from the change; and
 - 8.2.3 any other impact of the change on this Agreement.
- 8.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Goods and Services and any other relevant terms of this Agreement to take account of the change and this Agreement has been varied in accordance with Clause 16.
- 8.4 Notwithstanding Clause 8.3, the Supplier may, from time to time and without notice, change the Goods or Services in order to comply with any applicable statutory requirements, provided that

such changes do not materially affect the nature, scope of, or the charges for the Goods and Services.

9 Charges and payment

- 9.1 In consideration of the provision of the Goods and Services by the Supplier, the Customer shall pay the charges as set out in the Order, which, in the case of Goods, is inclusive of all costs and charges of packaging, insurance and transport of the Goods.
- 9.2 Where Goods and/or Services are provided for a fixed price, the total price for the Goods and/or Services shall be the amount set out in the Order as amended from time to time in accordance with Clause 9.4. The Customer shall pay the total price to the Supplier (without deduction or set-off) in instalments, as set out in the Order and the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and VAT, where appropriate, calculated as provided in Clause 9.3.
- 9.3 Any fixed price and daily rate contained in the Order excludes:
- 9.3.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier in connection with the Services. Such expenses shall be invoiced by the Supplier at cost; and
 - 9.3.2 VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 9.4 The parties agree that the Supplier may review and increase its standard daily fee rates or the charges in respect of the Goods and Services set out in the Order, provided that such charges cannot be increased more than once in any twelve (12) month period. The Supplier shall give the Customer written notice of any such increase two (2) months before the proposed date of that increase.
- 9.5 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within thirty (30) days of receipt to a bank account nominated in writing by the Supplier, or as otherwise expressly agreed in writing between the parties.
- 9.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- 9.6.1 charge interest on such sum from the due date for payment at the annual rate of 8% above the base rate from time to time of HSBC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand; and
 - 9.6.2 suspend all Services and the provision of Goods until payment has been made in full.

- 9.7 All sums payable to the Supplier under this Agreement shall become due immediately on its termination, despite any other provision. This Clause 9.7 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 9.8 Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under this Agreement against any amounts payable by it to the other party under this Agreement.
- 9.9 The Customer shall make all payments under this Agreement without withholding or deduction of, or in respect of, any Tax unless required by law. If any such withholding or deduction is required, the Customer shall, when making the payment to which the withholding or deduction relates, pay to the Supplier such additional amount as will ensure that the Supplier receives the same total amount that it would have received if no such withholding or deduction had been required.

10 Intellectual property rights

- 10.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Goods, Services, Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to Clause 10.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Goods, Deliverables and the Services. If this Agreement is terminated, this licence will automatically terminate.
- 10.2 The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods specification. This Clause 10.3 shall survive termination of this Agreement.

11 Confidentiality and the Supplier's property

- 11.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

- 11.2 The Customer may disclose such information:
- 11.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this Agreement; and
 - 11.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 11.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this Clause 11.
- 11.4 The Customer shall not use any such information for any purpose other than to perform its obligations under this Agreement.
- 11.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

12 Limitation of liability

- 12.1 This Clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
- 12.1.1 any breach of this Agreement however arising;
 - 12.1.2 any use made by the Customer of the Goods, Services, the Deliverables or any part of them; and
 - 12.1.3 any representation, statement, tortious or delictual act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 12.3 Nothing in this Agreement limits or excludes the liability of the Supplier:
- 12.3.1 for death or personal injury resulting from its negligence; or
 - 12.3.2 fraud or fraudulent misrepresentation.
- 12.4 Subject to Clauses 12.2 and 12.3 the Supplier shall not under any circumstances whatever be liable for:

- 12.4.1 loss of profits; or
- 12.4.2 loss of business; or
- 12.4.3 depletion of goodwill and/or similar losses; or
- 12.4.4 loss of anticipated savings; or
- 12.4.5 loss of goods; or
- 12.4.6 loss of contract; or
- 12.4.7 loss of use; or
- 12.4.8 loss of corruption of data or information; or
- 12.4.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

12.5 Subject to Clauses 12.2, 12.3 and 12.4 the liability of the Supplier:

- 12.5.1 arising under or in connection with the Order, whether arising in contract, tort, delict (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the total value of that Order; and
- 12.5.2 for any other type of liability arising under or in connection with this Agreement, whether arising in contract, tort, delict (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the greater of:
 - 12.5.2.1 the aggregate price paid for the Goods and Services under this Agreement in the twelve (12) months preceding the date on which the incident giving rise to a claim occurs; and
 - 12.5.2.2 ONE THOUSAND POUNDS STERLING (£1,000).

13 Termination

- 13.1 Without affecting any of its rights or remedies, the Supplier may terminate this Agreement on giving not less than three (3) months' written notice to the Customer.
- 13.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving notice to the other if:

- 13.2.1 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 sixty (60) days after being notified in writing to make such payment; or
 - 13.2.2 the other party commits a material breach of any of the material terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within sixty (60) days of that party being notified in writing of the breach; or
 - 13.2.3 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 13.2.4 an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the other party with its creditors or an application to a court for protection from its creditors is made by the other party;
 - 13.2.5 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 13.2.3 and 13.2.4; or
 - 13.2.6 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 13.3 On termination of this Agreement for any reason:
- 13.3.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - 13.3.2 the Customer shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;

- 13.3.3 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
- 13.3.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: Clauses 6.2 and 6.3 (Customer's obligations), Clause 9.7 (Charges and payment), Clause 10 (Intellectual property rights), Clause 11 (Confidentiality and the Supplier's property), Clause 12 (Limitation of liability), Clause 13.3 (Termination), Clause 15 (Restrictions) and Clause 23 (Governing law and jurisdiction).

14 Force majeure

- 14.1 A party, provided that it has complied with the provisions of Clause 14.2, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (and, subject to Clause 14.3, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including but not limited to any of the following:
 - 14.1.1 acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - 14.1.2 pandemic or epidemic;
 - 14.1.3 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - 14.1.4 terrorist attack, civil war, civil commotion or riots;
 - 14.1.5 nuclear, chemical or biological contamination or sonic boom;
 - 14.1.6 compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
 - 14.1.7 fire, explosion or accidental damage;
 - 14.1.8 loss at sea;
 - 14.1.9 extreme adverse weather conditions;
 - 14.1.10 collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - 14.1.11 any labour dispute, including but not limited to strikes, industrial action or lockouts;

- 14.1.12 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - 14.1.13 interruption or failure of utility service, including but not limited to electric power, gas or water.
- 14.2 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 14.2.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - 14.2.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - 14.2.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 14.3 If the Force Majeure Event prevails for a continuous period of more than three months, either party may terminate this Agreement by giving 30 days' written notice to all the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

15 Restrictions

- 15.1 In order to protect the business connections of the Supplier to which the Customer has access as a result of this Agreement, upon termination of this Agreement the Supplier shall notify the Customer the details of any subcontractors and the Customer shall not for twelve months after termination of this Agreement, solicit or engage in any capacity the business of the subcontractor to provide services to the Customer in competition with the Supplier.
- 15.2 The restrictions in Clause 15.1 shall not prevent the Customer from being engaged or concerned in any business concern insofar as any subcontractor's work shall relate solely to geographical areas where the business concern is not in competition with the Supplier.
- 15.3 The restrictions imposed on the Customer by this Clause 15 apply to the Customer acting:
- 15.3.1 directly or indirectly; and
 - 15.3.2 on its own behalf or on behalf of, or in conjunction with, any firm, company or person.

16 Variation

Subject to Clause 3 and Clause 6, no variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

17 Waiver

17.1 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

17.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

18 Cumulative remedies

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

19 Severance

19.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

20 Entire agreement

20.1 This Agreement and any documents referred to in it or annexed to it and initialled by the parties constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.

20.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it or annexed to it, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement or those documents (whether made innocently or negligently) shall be for breach of contract.

- 20.3 Nothing in this clause shall limit or exclude any liability for fraud.

21 Assignment

- 21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 21.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 21.3 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

22 No partnership or agency

Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise the Customer to act as agent for the Supplier, and the Customer shall not have authority to act in the name or on behalf of or otherwise to bind the Supplier in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23 Governing law and jurisdiction

- 23.1 This Agreement 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) will be governed by and construed in accordance with the law of Scotland.
- 23.2 The parties irrevocably agree that the Scottish courts will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).