



## Commercial Premises - Terms and conditions

The Client's attention is specifically drawn to clause 8 – limitation of liability and indemnity and Schedule 1 (Maintenance and Monitoring Services) which contains automatic renewals.

### DEFINITIONS

1.1 In these Conditions the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated below:

CDM Regulations: the Construction (Design and Management) Regulations 2015.

Commissioned has the meaning given to it in clause 5.3 and "Commissioning" shall be interpreted accordingly.

Conditions: these Conditions.

Contract: the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Contract Documents: has the meaning given to it in the Contract Details unless there is no Contract Details in which case it means these Conditions, the charges and/ or specification of the System or Services provided in the Company's quotation and any final drawings or plans relating to the System provided by the Company to the Client.

Company The company identified in the proposal being either Black Box Security Alarm Systems Ltd registered in England and Wales with company number 02481608 whose registered office is at 1A Chorley North Industrial Park, Drumhead Road, Chorley, Lancashire, PR6 7BX or Electronic Security Installations LTD registered in England and Wales with company number 05328060 whose registered address is Crown House Bingswood Trading Estate, Whaley Bridge, High Peak, England SK23 7LY

Data Protection Legislation all legislation and regulatory requirements in force from time to time in the United Kingdom relating to the use of personal data and the privacy of electronic communications, including without limitation, (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation and (ii) the UK General Data Protection Regulation (as defined in section 3(10) of the Data Protection Act 2018.

Force Majeure: has the meaning given to it in clause 19.1

Installation Services the services provided by the Company in installing the System at the Site.

Maintenance and Monitoring Charges the charges for the Maintenance and/ or Monitoring Services set out in the Contract Documents.

Maintenance and/ or Monitoring Services the maintenance and/ or monitoring services described in Schedule 1.

Maintenance/ Monitoring Term has the meaning given to it in Schedule 1.

Maintenance/ Monitoring Renewal Period has the meaning given to it in Schedule 1.

Services the Maintenance and/ or Monitoring Services and the Installation Services.

Service Level Agreement means the service level agreement relating to Maintenance and/ or Monitoring Services available on the Company's website as amended by the Company from time to time.

Site: the place where the System is to be delivered and / or installed.

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Contract or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Contract or with whose systems they are, or are to be, connected.

System has the meaning given to it on the Contract Details or the quotation.

Total Installation Charges means the charges for providing and installing the System set out in the quotation or Contract Details.

### 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

### BASIS OF CONTRACT

- 1.3 Save in cases where the Contract Details has been provided, in which case the Contract is made when the Client either signs the Contract Details or takes steps to indicate that the terms set out there are accepted, the Client's order for the System, or Services constitutes an offer by the Client to purchase the System and/or Services in accordance with these Conditions.
- 1.4 Where no Contract Details is signed, the Client's order is accepted when the Company issues an order acknowledgment at which point the Contract shall come into existence.
- 1.5 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions illustrations or descriptions of the System or Services contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an



approximate idea of the Services and/or System described in them. They shall not form part of the Contract or have any contractual force.

- 1.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.7 Any quotation given by the Company shall not constitute an offer and is only valid for a period of 30 calendar days from its date of issue after which prices are subject to change..
- 1.8 All of these Conditions shall apply to the supply of both the System and Services except where application to one or the other is specified.

#### **BUILDING INFORMATION MODELLING (BIM)**

- 2.1 Design, integration, re-formatting using of BIM models or software is specifically excluded, whether issued by the Client any third party. The Company is not obliged under the Contract to design, integrate, re-format using BIM models or software.
- 2.2 In the event that the Company is required by the Client or any third party to utilise and / or design in any BIM format, the Company shall be entitled to recover all costs associated with complying with this request. Costs may include purchase of computer equipment; upgrade of existing computer equipment; purchase of relevant software including licensing and training; employment / hire of specialised staff / operators and/ or increase in insurance premiums.

#### **COMPANY'S OBLIGATIONS**

- 3.1 The Company shall carry out and complete the Services in accordance with the Contract Documents, with due diligence and in a good and workmanlike manner using reasonable care and skill.
- 3.2 The Company shall use reasonable endeavours to complete the Installation Services by the date agreed.
- 3.3 The Company shall follow the reasonable instructions of the Client, its agents and employees whilst on Site.
- 3.4 The Company, at its sole discretion, may use or follow any appropriate guidance, criteria, principle, standard or specification in any part of its design of the System (if any) but the Company does not warrant that any design of the System provided to the Client under this Contract will comply with 'Secured by Design' or any other similar scheme whether promoted by the Association of Chief Police Officers (ACPO) or otherwise. The Client acknowledges and accepts that the Company is not a member of 'Secured by Design' scheme.
- 3.5 The Company shall not be responsible for verifying the adequacy or accuracy of any design or information for or relating to the System contained in any document or drawing supplied by the Client or any third party.
- 3.6 If the Company identifies a divergence between the Statutory Requirements and the System through no error or omission on its part, the Company shall be entitled from the Client to its costs incurred in making changes to the System to ensure that it complies with such Statutory Requirements and the Company shall not be liable for any failure for the System to comply with the Statutory Requirements to the extent it has acted in accordance with specific instructions of the Client or in the event the System fails to meet the Statutory Requirements due to the Client's act or omission.
- 3.7 The Company shall provide the System(s) of the standard stated in the Contract Documents.
- 3.8 The Company shall provide all labour, materials and plant required to carry out and complete the Services during normal working hours.
- 3.9 The Company shall not be obliged under the Contract to install equipment provided by the Client or any third party.
- 3.10 The Company shall comply with, and give all notices required to be given in accordance with any Statutory Requirement (including the CDM Regulations if applicable). Any related fees and charges

payable in respect of the works undertaken under the Contract shall be paid by the Client.

- 3.11 The Company will provide the items listed in the column for "Company" in Schedule 2.

#### **CLIENT'S OBLIGATIONS**

- 4.1 The Client shall at its cost:
    - (a) comply with the CDM Regulations and all other Statutory Requirements in performing its obligations under the Contract and receiving the Services and the System;
    - (b) provide sufficient access to the Site;
    - (c) provide uninterrupted continuous working for the Company to perform his obligations under this Contract and shall not hinder or prevent the Company, whether by act or omission, from performing such obligations; and
    - (d) provide the items shown in the "Client" column in Schedule 2.
    - (e) Ensure that the Site is free of asbestos. If the Company discovers asbestos during a visit to the Site it will be entitled to suspend performance of the Services immediately. The Client shall indemnify and keep indemnified the Company against all losses, liabilities and costs incurred arising out of the Company's failure to ensure the Site is free of asbestos.
  - 4.2 The Client shall provide the Company with all the information stipulated in the tender or quotation, advise of any special local conditions which may affect the Company's performance of its obligations under the Contract and shall provide any other information requested by the Company.
  - 4.3 When the System is supplied and installed for use in conjunction with equipment and/or structures which are not supplied by the Company, the Client shall be solely responsible for ensuring that such equipment and/or structures are in all respects suitable and adequate for the purpose and are properly installed.
  - 4.4 The Client shall provide free of charge any special safety precautions it requires to be in place when the Company is working on site including provision of temporary traffic control system, flagmen, warning lamps etc
  - 4.5 If performance of the Services is prevented, delayed, impeded or otherwise rendered more expensive by any act or omission of the Client its agents, contractors and employees or those of any third party to which the Client is responsible), the Client shall pay such extra charges as the Company shall reasonably require as a result of such act or omission and the Company's time for performance of the Services shall be extended accordingly. If the Company fails to comply with its obligations at clause 4.1(d), the Company may provide such items and add the cost plus an administration fee of 20% to the Total Installation Charges.
  - 4.6 Where the Company provides Services on the Client's Site, or on the Site of any third party as sub-contractor of the Client, the Client shall indemnify and keep indemnified the Company against all losses and liabilities arising out of any defect or lack of suitability of any equipment or apparatus provided by the Client or any third party;
  - 4.7 The Client shall provide the items shown in the "Client" column in 2.
- #### **COMMENCEMENT AND COMPLETION**
- 5.1 The Company shall commence the Installation Services on Site within 28 calendar days of receipt of the Client's written direction to commence the Installation Services or on such other date as the parties may agree.
  - 5.2 Any times, dates or durations for performance of the Services stated in the Contract Documents are estimates only and time is not of the essence in this Contract. The Company will use reasonable endeavours to perform by the time, date or duration advised to the Client in writing, and save as expressly stated to the contrary in this



Contract, will not be liable under any circumstances for any loss claimed to have arisen from any delay in delivery or performance. No delay in performance of the Services shall entitle the Client to terminate the Contract.

- 5.3 When installation of the System(s) has been completed, the Company will notify the Client and will invite the Client to attend the commissioning and testing of the System(s). The System is "Commissioned" at the earlier of: i) the Client using the System; and ii) completion of the commissioning and testing process to the reasonable satisfaction of the Company and the Client (if in attendance) and the Company has advised the Client of the same in writing. If the Company does not attend commissioning and testing, then the System is deemed Commissioned once the testing and commissioning is carried out to the reasonable satisfaction of the Company.
- 5.4 In the event that the Company is unable to Commission the System within two visits because Client has not complied with its obligations in this Contract, the Company will install and test the System(s) as far as reasonably practical. The Company will notify the Client in writing of the System(s), whether in whole or in part, that have not been installed and/ or tested, and compensate the Company for its costs in attending the Site more than twice in the sum of £500.00 + VAT per operative for each additional visit to the Site and the Total Installation Charges will be amended accordingly.

#### CLIENT'S INSTRUCTIONS

- 6.1 If delivery of any equipment comprising the System is delayed due to the Client's failure or default, the Company may arrange for storage of such equipment on the Client's behalf and all charges for storage, transport, loading and unloading, insurance and demurrage will be payable by the Client to the Company upon demand.

#### QUALITY

- 7.1 The Company warrants that on delivery, and for a period of 12 months from the date of upon which the System is Commissioned (warranty period), the System shall:
- (a) conform with the System specification referred to in the Contract Details or if there is no Contract Details in the Company's proposals;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 7.2 The Company shall only make good any defects in the System to the extent the System does not comply with the warranty given in clause 7.1 or which arise out of a failure of the Company to comply with clause (i). The Company undertakes, at its discretion, either to replace within a reasonable period of time or repair the System or any part or parts thereof. Provided that:
- (a) all monies due and payable under the Contract have been paid in full;
  - (b) notification of the defect in writing with full details thereof being received by the Company within 24 hours of the discovery of the defect;
  - (c) the Company is permitted to witness the defective System in its original installed state;
  - (d) the Company receives notification of any defect in writing within 12 calendar months from the date on which the System is Commissioned
  - (e) the System(s) have been used under proper operating conditions including having been operated within the classification and its known domestic and / or commercial use as applicable at the time the Company prepared its quotation;
  - (f) the Client or any third party has not operated the System prior to the date on which the System is Commissioned; and

- (g) the defect is not due to carelessness, improper treatment or any wilful or negligent act or omission, including lack of maintenance or any failure to comply with any instructions given by the Company or any use of the System with any part or parts which do not comply with the Company's specifications
- (h) the System(s) have not been modified by the Client or any third party without the written consent of the Company.
- (i) the defect has not arisen as a result of System is being connected to system or equipment not provided or approved by the Company.

- 7.3 The Company shall be entitled to recover all costs incurred for any visits to Site caused by the Client's or any third party's failure to properly maintain or operate the System(s) or by the Client's failure to comply with its obligations under this Contract.
- 7.4 The Company shall be entitled to recover all costs incurred as a result of attending the Site to rectify a defect for which it is not liable for under the Contract, regardless of whether:
- (a) liability under the Contract was apparent at the time of notification;
  - (b) any works are undertaken by the Company;
  - (c) the defect was notified by the Client or a third party.

#### LIMITATION OF LIABILITY AND INDEMNITY

- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract tort, misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract shall limit or exclude the Company's liability for:
- death or personal injury caused by negligence;
  - (a) fraud or fraudulent misrepresentation;
  - (b) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (c) defective products under the Consumer Protection Act 1987; and
  - (d) any other matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 8.3 Subject to clause 8.2, the Company's total liability in respect of all losses arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall in no circumstances exceed 110% of the sum of the Total Installation Cost and any Maintenance and Monitoring Charges paid or payable under the Contract in one year.
- 8.4 Subject to clause 8.2, the Company shall not be liable for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and indirect or consequential losses.
- 8.5 The Company has given commitments as to quality of the System and Services. In view of these commitments, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6 The Client shall indemnify and keep indemnified the Company and its offices, directors, employees and agents against any claims, demands, liability, direct loss and/or damages including legal fees, arising from any breach by the Customer of these Conditions.
- 8.7 Without prejudice to the foregoing provisions of this clause 8, the Company shall only be liable to the Client for liquidated damages in circumstances where completion of the Installation Services is delayed solely as a result of the Company's act or omission. In such circumstances, the Company's liability for liquidated damages is limited to 1% of the price of the Total Installation Cost for each week





or part thereof until the System is Commissioned up to a maximum of 10% of the Total Installation Cost which shall be the sole remedy for such delays. Such payments shall count towards the liability cap in clause 9.3].

#### PRICE AND PAYMENT

- 9.1 The Client shall pay the Total Installation Charges and/ or the Maintenance and Monitoring Charges to the Company in accordance with the Contract including by way of any staged payments agreed.
- 9.2 The Company shall submit to the Client an invoice for the Installation Charges following Commissioning of the System or on an interim basis if agreed and/ or appropriate as determined by the Company acting reasonably. The invoice (and any supporting documents) shall specify the sum that the Company considers will become due on the payment due date in respect of the Installation Fee.
- 9.3 Payment shall be due on the date the Client receives the invoice.
- 9.4 Prices
- (a) The price of the Installation Works is as set out in the Contract Details, unless Practical Completion takes place more than 3 months from the date of this Contract and is not due to the act or omission of the Company, then the Company may by notice increase the Total Installation Charges in accordance with the all prices Retail Price Index published by the Office for National Statistics.
- (b) The Maintenance and Monitoring Charges are as set out the Contract Documents. The Company may, by notification to the Client, increase the Maintenance and/ or Monitoring Charges annually with effect from each anniversary of the date of Commissioning to take account of its increased costs of providing the services and in its supply chain. Such changes shall take effect on each anniversary of the date of Commissioning.
- 9.5 Not later than five days after payment becomes due, the Client shall notify the Company of the sum that the Client considers to have been due at the payment due date in respect of the payment and the basis upon which that sum is calculated.
- 9.6 The final date for payment shall be 28 days after the date on which payment becomes due.
- 9.7 Unless the Client has served a notice under clause 9.8, the Client shall pay the Company the sum referred to in the Client's notice under clause 9.5 (or, if the Client has not served notice under clause 9.8, the sum referred to in the invoice referred to in clause 9.2). (in this clause 9.7 the "notified sum" on or before the final date for payment of each invoice.
- 9.8 Not less than 7 days before the final date for payment (in this clause 9.8 the "prescribed period"), the Client may give the Company notice that it intends to pay less than the notified sum (in this clause 9.8 a "pay less notice"). Any pay less notice shall specify:
- (a) The sum that the payer considers to be due on the date the notice is served; and
- (b) The basis upon which it was calculated.
- 9.9 The Company shall submit invoices for Maintenance and/ or Monitoring Services each year of the Maintenance and/ or Monitoring Term or Maintenance and Monitoring Renewal Period or on an ad hoc basis for Corrective Maintenance, and the Client shall pay them within 28 days of receipt.
- 9.10 Where payment is paid late by the Client, the Company may enforce recover any costs incurred by the Company as a result of enforcing the terms of the Contract.
- 9.11 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purpose is made under the Contract by the Company to the Client, the Client shall, on receipt of a valid VAT invoice from the Company pay to the Company such additional amounts in respect of VAT as are chargeable on the

supply of the System or Services at the same time as payment is due for the supply of the Services or System.

- 9.12 The Company's invoice at the rate chargeable at the time of issuing the Company's invoice. The Client is responsible for notifying the Company of the correct VAT rate. Where no notification is given, VAT will be charged at the current highest prevailing rate
- 9.13 If the Client fails to make any payment due to the Company under the Contract by the final date for payment (and fails (if applicable) to give a pay less notice under clause 9.8 (or a pay less notice isn't applicable) then without limiting the Company's remedies under the Contract, the Client shall pay interest on the overdue amount at the rate of 8% per annum above the official dealing rate of the Bank of England (the base rate) from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 9.14 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

#### RISK AND TITLE

- 10.1 The risk in the equipment comprising the System shall pass to the Client on completion of delivery to the Site.
- 10.2 Title in the equipment comprising the System shall not pass to the Client until the earlier of:
- (a) the Company receives payment for such equipment; and
- (b) the equipment is installed at the Site; and
- (c) the Client resells the equipment, in which case title to the equipment shall pass immediately prior to such sale.
- 10.3 Until title to the Equipment has passed to the Client, the Client shall:
- (a) store the equipment separately from all other goods held by the Client so that they remain readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the equipment;
- (c) maintain the equipment in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery to Site.
- (d) notify the Company immediately if it becomes subject to any of the events listed in clause 13.1(b), 13.1(c) or 13.1(d).

#### CANCELLATION OF INSTALLATION SERVICES

The Client has no right to cancel once the Company has started to provide Installation Services. If the Client cancels once the Contract has been formed but before the Company has started to provide the Installation Services, the Client will pay to the Company 25% of the Total Installation Charges. The due date for payment of cancellation fees shall be the date of the invoice and the final date for payment shall be 30 calendar days after the date of invoice.

#### SUSPENSION

- 12.1 Without affecting any right or remedy available to it, If the Client fails to pay any sum when due to the Company under this Contract or under any other contract with the Company by the final date for payment, becomes subject to any of the events listed in 13.1(b), 13.1(c) or 13.1(d) or the Company reasonably believes that the Client is about to become subject to any of them, then the Company may suspend the performance of any or all of its obligations under the Contract until such payment is made in full
- 12.2 Where the Company exercises its right of suspension under clause 12.1, it shall be entitled to recover a reasonable amount from the Client in respect of costs and expenses incurred by it as a result of the exercise of the right.
- 12.3 The Company shall make applications in respect of any such costs



and expenses shall to the Client and the Company shall with its application or on request submit such details of the costs and expenses as are reasonably necessary to enable the Client to ascertain its entitlement.

#### TERMINATION

- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - (c) 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
  - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment and fails to make such payment within 7 days of being requested in writing to do so.
- 13.3 On termination of the Contract for the reasons stated above in clause 13.1:
- (a) the Company shall immediately leave the Site
  - (b) the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Installation Services or System supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - (c) the Client shall return all of the Company equipment and any with respect to which title has not passed. If the Client fails to do so, then the Company may enter the Client's premises or the premises where such equipment is located and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
  - (d) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### SETTLEMENT OF DISPUTES

- 14.1 If a dispute or difference arises under this Contract relating to a design, technical or specification matter which cannot be resolved by direct negotiations, the dispute will be referred to the National Security Inspectorate (NSI) for their opinion on the matter prior to any other action or method of dispute resolution being engaged by either party.
- 14.2 Following the opinion of the National Security Inspectorate (NSI), either party may refer the dispute to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for

Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be The Royal Institute of Chartered Surveyors.

- 14.3 If a dispute or difference arises under this Contract which falls outside that as defined by 14.1, either Party may at any time refer the dispute to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be The Royal Institute of Chartered Surveyors.

#### INTELLECTUAL PROPERTY

No right of ownership or interest in the Company's patents, registered designs, trademarks, copyrights or any other intellectual property owned by the Company shall pass to the Client in relation to the System or Services provided under the Contract. The Company gives no warranties or representations in relation to the Company's patents, registered designs, trademarks, copyrights or any other intellectual property and, in particular, does not warrant or represent that any registered patents, registered designs, trademarks, copyrights or any intellectual property are valid or will remain registered.

#### DATA PROTECTION AND DATA PROCESSING

- 16.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 16, **Applicable Laws** means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means any Data Protection Legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.
- 16.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Company is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The details of the processing are as follows: the subject matter, nature and purpose of the Processing is remote diagnostics by the Company to enable it to perform its obligations under this Contract as they relate to Maintenance and/ or Monitoring Services] the personal data processed: includes contact details and CCTV images and the name of individuals who interact with the System, the categories of data subjects are staff and customers of and visitors to the Client], the duration of the Processing is the term of this Contract.
- 16.3 Without prejudice to the generality of clause 16.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Company for the duration and purposes of the Contract.
- 16.4 Without prejudice to the generality of clause 20.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under the Contract:
- (a) process that Personal Data only on the written instructions of the Customer unless the Company is required by Applicable Laws to otherwise process that Personal Data. Where the Company is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Company shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the



nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (d) not transfer any Personal Data outside of the United Kingdom and European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Company has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
    - (iii) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) the Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 16.4.
- 16.5 The Client consents to the Company appointing third-party processors of Personal Data under the Contract provided that it puts in place with such processors a written agreement incorporating terms which are substantially similar to those set out in this clause [16] which reflect the requirements of the Data Protection Legislation. As between the Client and the Company, the Company remains fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 16.5.
- 16.6 Either party may, at any time on not less than 30 days' notice, revise this clause [16] by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

#### **BRIBERY ACT 2010**

Either party will be entitled to terminate this contract immediately if the other party commits, or has committed, an offence under the Bribery Act 2010.

#### **INSURANCE**

- 18.1 The Client shall insure in the joint names of the Client and the Company the whole and every part of the equipment comprising the System and the Company's equipment including hired plant from the

date such equipment arrives on Site until the System is Commissioned, at full replacement value against all loss or damage from any cause whatsoever.

- 18.2 The Client shall indemnify the Company against all losses, liabilities, claims, costs or expenses arising from damage or injury to persons or property, which may arise out of or in conjunction with the execution of the Contract, provided that this indemnity shall not apply to liabilities arising from negligence of the Company or its servants or agents.
- 18.3 The Client agrees to indemnify and keep indemnified the Company against all losses, damage, injury, costs and expenses of whatever nature suffered by the Company arising out of claims under the Consumer Protection Act 1987 and against all losses, damage, injury, costs and expenses of whatever nature suffered by the Company to the extent that the same arise out of :-
- (a) the Company adhering to Client drawings or specifications for the System or Services;
  - (b) defective materials or products supplied by the Client or for which Client has specified manufacturer or supplier to the Company which are then incorporated by the Company in the System; or
  - (c) the improper incorporation, assembling, use, processing, storage or handling of any equipment comprising the System by the Client.

#### **FORCE MAJEURE**

- 19.1 The Company shall not be in breach of the Contract nor liable for any delay in performing, or failure to perform, any of its obligations under the Contract, if such delay or failure results from events, circumstances or causes beyond its reasonable control including: act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage; governmental decisions or actions (including prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licences or labour trouble, strike, lockout or injunction, nuclear, chemical or biological contamination or sonic boom, collapse of buildings, fire, explosion or accident or epidemic or pandemic (**Force Majeure**)). In such circumstances the time for performance shall be extended by a period equivalent to the period during which the performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 150 days, then the Client may terminate this agreement by giving 14 days' written notice to the affected party.

#### **GENERAL**

##### **20.1 Assignment and other dealings.**

- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Client may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

##### **20.2 Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of 5 years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, products, designs, customers, clients or suppliers of the other party, except as permitted by clause (b)).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract.



Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 20.2; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

#### 20.3 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the address specified in the Contract.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### 20.4 Entire agreement.

- (a) The 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.
- (b) 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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

20.6 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 20.7 the parties shall negotiate in good faith to agree a

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

#### 20.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

20.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

20.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.





## SCHEDULE 1- MAINTENANCE AND MONITORING

### 1. MAINTENANCE

1.1 In the event that Maintenance and/ or Monitoring of the Systems is expressly stated as included by the Company in the Contract Details or Contract Documents, the clauses set out in this Schedule apply.

### 2. PREVENTATIVE MAINTENANCE

2.1 The Company will attend the Site to carry out Preventative Maintenance.

2.2 "Preventative Maintenance" is the routine inspection and testing of the System(s) to verify that they continue to function as intended and as determined by the Contract and / or any the relevant industry standards and to identify any items found faulty, worn or in need of replacement. Further information is provided in the Service Level Agreement.

2.3 The Company will carry out Preventative Maintenance to all System(s) in accordance with the Contract and the relevant British / European Standards and / or Industry Standards in force at the time the maintenance is carried out by the Company or the standard applicable at the time of original commissioning.

2.4 The Maintenance and Monitoring Charges are due annually in advance by the Client in accordance with clause 9.9 of these Conditions.

2.5 The Company may increase the annual Maintenance and Monitoring Charges once in each year of the Contract at any time by up to 10% by notice to the Client to cover cost increases outside the Company's control.

2.6 If the Company identifies that the System(s), either in part or in whole, require remedial works, including; replacement of parts of the System(s) (including batteries); upgrading or re-programming of the System(s) software; additional works to the Systems whether to address deficiencies in the initial installation (whether installed by the Company or otherwise) or to include additional Site requirements; all labour, plant and material costs incurred by the Company to carry out these remedial works shall for the Client's account in addition to the annual maintenance charge referred to in paragraph 2.4.

2.7 The Company shall carry out Preventative Maintenance during normal business hours which shall be classed as any weekday which is not a public holiday between the hours of 9.00am to 5.00pm. Should the Client not be able to allow the Company to carry out Preventative Maintenance during normal business hours, the Company shall be entitled to recover all additional costs incurred in accordance with the Service Level Agreement..

### 3. CORRECTIVE MAINTENANCE

3.1 The Company will attend the Site in response to a request from the Client to carry out Corrective Maintenance in accordance with the Service Level Agreement.

3.2 "Corrective Maintenance" means the investigation and repair of faults reported by the Client including false alarms from the any of the System(s).

3.3 Corrective Maintenance will be carried out to the System(s) in accordance with the Contract and any relevant British / European Standards and / or Industry Standards in force at the time the maintenance is carried out by the Company or the standard applicable at the time of original commissioning.

3.4 All costs incurred by the Company in responding to and / or carrying out Corrective Maintenance reported by the Client shall be charged to and payable the Client in addition to the Maintenance and Monitoring Charges.

3.5 All reports / notifications for Corrective Maintenance / additional works must be giving in writing by the Client.

3.6 The Company shall carry out Corrective Maintenance during normal business hours which shall be classed as any weekday which is not a public holiday between the hours of 9.00am to 5.00pm. Should the Client not be able to allow the Company to carry out Preventative

Maintenance during normal business hours, the Company shall be entitled to recover from the Client all additional costs incurred.

### 4. MAINTENANCE TERM AND CANCELLATION

4.1 The Maintenance and/ or monitoring term shall start on the date on which the System is Commissioned where there are linked Installation Services or, where the Contract is for Maintenance only, the date of the Contract and shall continue for 3 years ("Maintenance and/ or Monitoring Term") and, thereafter, be automatically renewed for successive periods of 3 years (each a Maintenance and Monitoring Renewal Period) unless:

(a) either party notified the other party of termination, in writing, at least 60 days before the end of the initial Maintenance and/ or Monitoring Term or any Maintenance and Monitoring Renewal Period, which case the Maintenance and/ or Monitoring Services shall terminate upon expiry of the applicable initial Maintenance and/ or Monitoring Term or Maintenance and Monitoring Renewal Period; or

(b) otherwise terminated in accordance with the Contract.





**SCHEDULE 2 - OBLIGATIONS OF THE PARTIES ON SITE**

Item	Client to provide	Company to provide
Unimpeded and suitable vehicular access for the Company to unload within 5m of the building or working area were practical.	✓	X
Suitable and secure parking for the Company to leave vehicles.	✓	X
Lockable secure storage for plant and materials which can be solely controlled and supervised by the Company	✓	X
Site office and accommodation for use by Company operatives	✓	X
Temporary electricity supply; 110 volt power	✓	X
Permanent electricity supply; 230 volt AC power (required for testing and commissioning)	✓	X
Telephone lines installed, commissioned and fully working	✓	X
Complete IT infrastructure including data outlets, switches, IP addresses etc. all fully commissioned and working	✓	X
Unloading and distribution on Site	X	✓
Shared toilets & mess room, shared first aid, shared drying room	✓	X
Electrical adaptors, leads etc	X	✓
Safety lighting	✓	X
Task lighting	X	✓
Scaffolding and powered access including but not limited to scissor lifts unless otherwise stated in the Contract	✓	X
Clear working area	✓	X
Rubbish skips (located at designated point on site)	✓	X
Plant, small tools and tackle	X	✓
The finished floor in and around the installation site with a tolerance across the diameter +/- 5mm	✓	X
Setting out including provision of all levels datums and gridlines	✓	X
Dealing with asbestos	✓	X
Protection of all surrounding equipment, floors, furnishings, external areas etc during installation	✓	X
Restriction of access to the site whilst the Company is installing the works to ensure safety to non-Company personnel. Note that this may include but is not limited to hoarding, heras fencing etc.	✓	X

Protection and responsibility of Company materials and any equipment on Site the System is Commissioned	✓	X
Security	✓	X
Builders work	✓	X
Cleaning of installed equipment	✓	X
Final clean including removal of protective tape (where applicable)	✓	X