



Central Power Services Ltd
Garstang Road
Cloughton-on-Brock
Lancashire
PR3 0PH



0845 437 9750



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CENTRAL POWER SERVICES LIMITED TERMS AND CONDITIONS OF HIRE

1. INTERPRETATION

1.1 In these Terms, the following definitions apply:

Applicable Laws: all applicable laws, statutes and regulations and codes from time to time in force.

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

Business Hours: the period from 8.00 am to 5.00 pm. Monday – Thursday & 8.00am -3.00pm Friday

Charges: the total of charges comprising the Hire Rate and any charges associated with Delivery, as set out in the Quotation (or otherwise varied in accordance with these Terms), together with any other charges to be paid by the Customer to CPS in accordance with these Terms.

Contract: the contract between CPS and the Customer for the hire of the Equipment in accordance with these Terms.

CPS: Central Power Services Limited, a company registered in England and Wales with company number 01980449 and whose registered office is at CPS's Premises.

CPS's Premises: Garstang Road Brock Preston, Lancashire, PR3 0PH.

Customer: the person or firm who hires the Equipment from CPS, as initially identified in the Quotation.

Deemed Acceptance: has the meaning given to it in clause 6.2.

Delivery Date: means the date on which the Equipment is to be delivered to the Site, as set out in the Quotation and confirmed in the Order.

Equipment: the equipment (or any part of it) set out in the Order, having been referred to initially within the Quotation and detailed within the Specification.

Force Majeure Event: means events, circumstances or causes beyond a party's reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic, any law or any action taken by the Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition, and the collapse of buildings, fire, explosion or accident and in the case of CPS, a failure of its suppliers or contractors.

Fuel Management: means the fuel management services set out in the Schedule.

Fuel Management Charges: means any fuel management charges set out in the Schedule and/or Quotation.

Hire Period: means the period of hire which shall commence from the Delivery and continue until the Equipment is collected by CPS from the Site, as may be varied or extended in accordance with these Terms.

Hire Rate: means the rate of hire for the Equipment as set out in the Quotation.

Loss: actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements, and **Losses** shall be construed accordingly.

Order: the Customer's order for the Equipment, as set out in the Customer's written acceptance of the Quotation.

Order Confirmation: means CPS's written acceptance of the Order, raised in accordance with clause 2.4.2.

Order Period: has the meaning given to it in clause 2.2.

Promotional Materials: means CPS's catalogues, brochures, websites or such other applicable sales, descriptions, colours, particulars of weights and dimensions or promotional literature, materials or publications.

Quotation: means CPS's quotation or proposal (whether in writing or given orally) to provide the Equipment on hire to the Customer, which is based on the Specification and which incorporates these Terms.

Recommendations: has the meaning given to it in clause 7.1.1(c).

Relevant Event: has the meaning given to it in clause 6.1.



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Risk Period: has the meaning given to it in clause 8.1.

Routine Service: means a routine service, maintenance and inspection services provided to ensure the correct function and operation of the Equipment, and **Routine Services** shall be construed accordingly.

Site: the Customer's premises or other location to which the Customer wishes for the Equipment to be Delivered, as identified in the Order.

Specification: any specification for the Equipment, including any related plans and drawings, that is agreed in writing by the Customer and CPS.

Support: has the meaning given to it in clause 4.2.

Terms: the terms and conditions set out in this document as amended from time to time in accordance with clause 18.3.

Warranty Breach: has the meaning given to it in clause 6.3.

1.2 In these Terms, the following rules of interpretation apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 a reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 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.

1.2.4 any words following the terms **including**, **include** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 a reference to **writing** or **written** excludes fax but not email.

2. BASIS OF CONTRACT

2.1 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 Any Quotation that is issued by CPS shall not constitute an offer. A Quotation shall only be

valid for a period of 20 Business Days from its date specified on it (**Order Period**). If the Customer accepts the position set out in the Quotation, it shall be required to raise an Order within the Order Period.

2.3 The Order constitutes an offer by the Customer to hire the Equipment in accordance with these Terms. The Customer is responsible for ensuring and warrants that the terms of the Quotation, the Order and any applicable Specification are complete and accurate.

2.4 CPS may reject the Order at its absolute discretion and for any reason whatsoever and the order shall only be deemed to be accepted at the earlier of when CPS:

2.4.1 despatches the Equipment; or

2.4.2 issues an Order Confirmation,

at which point the Contract shall come into existence.

2.5 Once accepted, the Order may not be cancelled by the Customer except with the prior agreement of CPS in writing. Without prejudice to any further terms that may be agreed between the parties, any such agreement is on the basis that the Customer shall indemnify CPS, keep CPS indemnified and hold CPS harmless in full from and against all Losses (which

for the purpose of this clause shall include, without limitation, the cost of labour and materials, damages, charges, expenses, loss of profit, loss of business, loss of goodwill, loss of business opportunity, loss of anticipated saving and any other indirect, special or consequential loss) incurred by CPS as a result of the cancellation.



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2.6 Any samples, drawings, descriptive matter or advertising produced by CPS and any descriptions or illustrations contained in any Promotional Materials are produced for the sole purpose of giving an approximate idea of the Equipment referred to in them. They shall not form part of the Contract nor have any contractual force.

2.7 CPS' employees or agents are not authorised to make any representations concerning the Equipment unless confirmed by CPS in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.8 The Equipment shall at all times remain the property of CPS, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these Terms).

3. CHARGES AND PAYMENT

3.1 The Charges shall be as set out in the Quotation or otherwise as may be agreed in writing between the parties.

3.2 CPS may, by giving notice to the Customer at any time before Delivery, increase the Charges to reflect any increase in the cost of the Equipment that is due to any:

3.2.1 factor beyond CPS's control (including foreign exchange fluctuations, increases in taxes and duties (which shall include import and export duties), and increases in labour, materials and other manufacturing costs);

3.2.2 request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Specification; or

3.2.3 delay caused by any instructions of the Customer or failure of the Customer to give

CPS adequate or accurate information or instructions.

3.3 The Charges exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to CPS at the prevailing rate, subject to the receipt of a valid VAT invoice.

3.4 Unless otherwise set out in the Quotation or agreed in writing, the Customer shall be required

to pay for the Equipment in advance on a:

3.4.1 weekly basis where the Hire Period is for a period of one month (or less); or

3.4.2 monthly basis where the Hire Period is for a period in excess of one month, and Payment shall be made within Thirty (30) days to the bank account nominated by CPS in writing. Time for payment shall be of the essence.

3.5 CPS may invoice the Customer for the Equipment on or at any time after the Equipment is made available for collection or Delivery and otherwise in such intervals as it determines throughout the Hire Period.

3.6 CPS may also invoice the Customer for any Fuel Management Charges at intervals set out in the Schedule, or as otherwise notified by CPS to the Customer from time to time. Time for payment shall be made in accordance with clause 3.4.

3.7 If the Customer fails to make a payment due to CPS under the Contract by the due date, then, without limiting CPS's remedies under clause 13 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 3.6 shall accrue on a daily basis at a rate of 8% a year above the Bank of England's base rate from time to time.

3.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding required by law). CPS may at any time, without limiting any other rights or remedies it may have, set-off, counterclaim, deduct or withhold any amount payable by CPS to the Customer.

4. SITE CONDITIONS

4.1 The Customer warrants that the condition of the Site is suitable for the use of the Equipment and Delivery and/or recollection of it by CPS.

4.2 If, in the opinion of the Customer, the ground of the Site (including any private access road or track) is soft or otherwise unsuitable for the Equipment to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Customer shall supply and lay suitable timbers or equivalent support (**Support**) in a suitable position for the Equipment to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.

4.3 Any Support supplied by CPS is provided solely to assist the Customer under their duties within this clause 4 and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Equipment.



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4.4 The Customer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Site and the Customer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

4.5 CPS reserves the right to refuse to deliver the Equipment to the Site where it reasonably considers that the conditions at the Site are unsuitable for the Equipment to be so delivered, operated and/or stored by the Customer. The Customer shall remain responsible for payment of the Equipment at the Hire Rate until such time until the conditions at the Site are suitable, together with applicable delivery Charges.

5. DELIVERY

5.1 CPS shall use reasonable endeavours to deliver or make available the Equipment on any projected Delivery Date but for the avoidance of doubt time for delivery is not of the essence and CPS shall not be liable to the Customer in the event of any delay, including those caused by a Force Majeure Event. If CPS cannot make delivery or make the Equipment available for collection on the Delivery Date, then it shall notify the Customer and an alternative date shall be rearranged.

5.2 Where specified in the Quotation, the Customer shall collect the Equipment from CPS's Premises (or such other location as notified to by CPS to the Customer in writing), within two Business Days of CPS notifying the Customer that the Equipment is ready for collection.

5.3 Delivery shall be completed on the successful unloading of the Equipment at the Site which, unless otherwise agreed it writing, shall take place on the kerbside or such other hard standing ground as CPS may elect. Where the Equipment is to be collected by the Customer, delivery shall be completed when CPS places the Equipment at the Customer's disposal at CPS's Premises.

5.4 The Customer acknowledges that any delivery charges shall be calculated on the basis of a maximum delivery time of one hour per Site. Provided that the delay has not been caused by an event within CPS's reasonable control, where the unloading time exceeds one hour, CPS shall be entitled to charge the Customer for any additional time spent at the Site until delivery has been successfully completed in accordance with clause 5.3.

5.5 CPS reserves the right to charge the Customer for:

5.5.1 any additional time spent in connection with unloading the Equipment at any other location; and

5.5.2 any deliveries performed outside of Business Hours.

5.6 Risk in the Equipment shall pass to the Customer in accordance with clause 5.3.

5.7 If the Customer fails to accept delivery of, or collect the Equipment on the Delivery Date, then, except where such failure is caused by CPS's failure to comply with its obligations under the Contract:

5.7.1 the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date;

5.7.2 CPS shall store the Equipment until delivery takes place; and

5.7.3 the Customer shall continue to pay the Charges as though Delivery had taken place, as well as all CPS's other related costs and expenses associated with the Equipment's storage (including, at CPS's election, insurance).

6. WARRANTY AND INSPECTION

6.1 CPS warrants that as the case may be, on completion of:

6.1.1 collection, where the Customer is collecting the Equipment in accordance with clause

5.2; or

6.1.2 unloading of the Equipment, where CPS agrees to deliver the Equipment,

(each, a **Relevant Event**) the Equipment shall:

6.1.3 subject to the Customer's warranty at clause 2.3, conform in all material respects with their description and the Specification;

6.1.4 be free from material defects in design, material and workmanship;

6.1.5 be of satisfactory quality and fit for any purpose held out by CPS.



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6.2 The Customer shall be required to inspect the Equipment on the Relevant Event taking place.

In the event that:

6.2.1 an incorrect quantity of the Equipment has been delivered;

6.2.2 anything other than the Equipment is received; or

6.2.3 there is any other instance which the Customer reasonably considers gives rise to a

failure to comply with the warranty set out in clause 6.1, the Customer shall be required to notify CPS within 1 Business Day of the Relevant Event taking place. Where no such notification is made by the Customer to CPS in accordance with this clause, the Equipment shall be deemed to be accepted in all material respects as conforming with the Contract by the Customer (**Deemed Acceptance**).

6.3 If the Customer gives notice in writing to CPS at any time prior to Deemed Acceptance that it alleges a breach of the warranty set out in clause 6.1 (**Warranty Breach**), then the Customer agrees to:

6.3.1 provide CPS and any third party instructed on CPS's behalf with a reasonable opportunity of examining the Equipment in question, together with access to the Site (or other Customer premises), data, documentation, information, telecommunications and IT systems and such other materials as may reasonably be requested by CPS;

and

6.3.2 if requested to do so by CPS, allow CPS or any third party instructed on CPS's behalf to collect the Equipment from the Site for further inspection, in order for CPS to investigate the alleged Warranty Breach.

6.4 Subject always to clause 6.6.3, CPS may at its sole discretion whilst it investigates the alleged Warranty Breach Deliver suitable replacement Equipment (which the Customer accepts may not necessarily be the same age or type) to the Customer (**Replacement Equipment**), and the warranty contained in clause 6.1 shall be repeated in respect of such Replacement Equipment.

6.5 Where, following its investigation, CPS agrees that there has been a Warranty Breach, CPS

shall, at its sole discretion:

6.5.1 repair or replace the defective Equipment;

6.5.2 where it has supplied Replacement Equipment, agree for that Replacement

Equipment to remain at the Site in place of the Equipment; and/or

6.5.3 otherwise refund a proportionate amount of the Charges,

6.6 Where CPS does not agree that there has been a Warranty Breach, CPS shall:

6.6.1 provide the Customer with written reasons for determining such;

6.6.2 in respect of Equipment that CPS has collected for further inspection under clause

6.3.2, either:

(a) return such Equipment to the Site on a date to be agreed (not later than 5 Business Days thereafter) between the parties (and clause 5 shall apply to such

return); or

(b) where Replacement Equipment has been supplied in accordance with clause 6.4, agree for that Replacement Equipment to remain at the Site in place of the Equipment; and

6.6.3 be entitled to levy an additional charge on the Customer for any inspection, collection, supply and delivery of Replacement Equipment and other support provided under this clause 6.

7. CUSTOMER'S GENERAL OBLIGATIONS

7.1 Customer warrants, represents and undertakes that it shall, at all times throughout the Hire

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7.1.1 ensure that the Equipment is:

- (a) kept at the specific location at the Site at which CPS has agreed for it to be located;
- (b) used in accordance with good industry practice and all Applicable Laws;
- (c) used in accordance with CPS's and/or the manufacturers recommendations as to its storage, commissioning, installation, use and maintenance (**Recommendations**) or, in the absence of such Recommendations, good industry practice relating to the same;

7.1.2 not re-hire, sub-let or lend the Equipment to any third party without CPS's prior written consent;

7.1.3 take reasonable care of the Equipment and not use the Equipment following any breakdown or damage;

7.1.4 not remove or deface any labels or other indicia from the Equipment;

7.1.5 not interfere with the Equipment, its working mechanisms or any part of them;

7.1.6 take all adequate measures to safeguard the Equipment against theft, damage or other reasonable risks;

7.1.7 not use, or permit the use of, the Equipment with any illegal or unlicensed purposes. Should CPS reasonably suspect that the Customer is in breach of this clause it reserves the right to inform the police and any other relevant statutory or regulatory authorities and present details of the Customer to them;

7.2 The Customer shall at all times take all reasonable steps to keep itself acquainted with the state and condition of the Equipment. If such Equipment is continued at work or in use in an unsafe and unsatisfactory state or environment, without prejudice to CPS's other rights and remedies, the Customer shall be required to pay on demand to CPS all Losses (which for the purpose of this clause shall include the cost of labour and materials, damages, charges, expenses, loss of profit, loss of business, loss of goodwill, loss of business opportunity, loss of anticipated saving and any other indirect, special or consequential loss) suffered or incurred by CPS as a consequence.

7.3 Save where specified in clause 9.1 – 9.3, or where it is agreed between the parties that the foregoing shall be carried out by CPS, the Customer shall be responsible for the conduct and cost of any testing, inspections, examinations and/or other checks to be carried out in respect of the Equipment as required by Applicable Law and/or any Recommendations.

7.4 The Customer shall at all reasonable times allow CPS, its agents and insurers to have access to the Equipment to inspect, test, adjust, repair or replace the same.

7.5 Where the Equipment requires fuel, oil, grease and or electricity, the Customer shall ensure that the proper type and/or voltage is used at all times and that, where appropriate, the Equipment is properly installed by a qualified and competent person. It is the Customer's responsibility to check the calibration of the Equipment on each occasion before use. Final determination of the suitability of the Equipment for the Customer's specific use is the Customer's responsibility and the Customer therefore assumed all risk and liability in this regard.

8. CUSTOMER'S INSURANCE OBLIGATIONS

8.1 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Customer until such time as the Equipment is collected by or redelivered to CPS (**Risk Period**).

8.2 During the Risk Period the Customer shall, at its own expense, obtain and maintain the following insurances:

8.2.1 insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as CPS may from time to time nominate in writing;

8.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as CPS may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and

8.2.3 insurance against such other or further risks relating to the Equipment as may be required by Applicable Laws, together with such other insurance as CPS may from time to time consider reasonably necessary and advise to the Customer in writing.

8.3 All insurance policies procured by the Customer shall be endorsed to provide CPS with at least

10 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on CPS's request name CPS on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.



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8.4 If the Customer fails to effect or maintain any of the insurances required under the Contact, CPS shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

8.5 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to CPS and proof of premium payment to CPS to confirm the insurance arrangements.

8.6 Where any event or accident occurs which is a risk covered by the Customer's insurance, the

Customer shall:

8.6.1 immediately notify CPS in writing;

8.6.2 not take any action or make any omission which may compromise any claim without the consent of CPS;

8.6.3 indemnify CPS, keep CPS indemnified and hold CPS harmless in respect of any Loss to the Equipment not recoverable by CPS under the applicable policy of insurance;

8.6.4 allow CPS to take over the conduct of negotiations (except in relation to claims of the Customer for personal injuries, or Loss to the property of the Customer); and

8.6.5 at the expense of the Customer, take such proceedings (in the sole name of the Customer or jointly with CPS) as CPS shall direct, holding all sums recovered, together with any monies received by the Customer under its policy of insurance, on trust for CPS and paying or applying the same as CPS directs and as provided in these Terms.

8.7 If the Equipment is declared a total loss the Hire Period will extend and only terminate once CPS has received full replacement Equipment or has been indemnified by the Customer for all costs incurred due to the Equipment being unable to be hired out by CPS. CPS will offset any proceeds received from the sale or scraping of the Equipment after the cost of disposal or sale has been deducted from any proceeds received. The balance of any monies received from this process will be offset against the continuation of the Charges on behalf of the Customer:

8.7.1 Equipment substitutions may be considered by CPS as replacement for discontinued products always at CPS's sole discretion, which replacement shall be deemed to be included in these conditions for all purposes, and the Customer shall continue to be liable to pay Charges as if such loss had not taken place; or

8.7.2 in or towards payment to CPS of the sum necessary to compensate CPS for the loss or profit suffered as a result of the loss of the Equipment.

8.8 CPS has the right to repair or have repaired the Equipment which suffers damage (and not a total loss), but if CPS does not choose to do so, the Customer is liable at its own expense (but subject to any insurance proceeds) to reinstate or repair it and shall continue to pay Charges in respect of the Equipment during such reinstatement or repair.

8.9 The Customer is liable to pay to CPS any amount deducted by the insurers by way of excess or in respect of damage caused to the Equipment prior to the date of total loss and shall indemnify CPS, Keep CPS indemnified and hold CPS harmless in full in respect of that Loss accordingly.

9. SERVICING, BREAKDOWN, REPAIRS AND ADJUSTMENT

9.1 Where the Equipment is subject to Routine Servicing, the Customer shall arrange a Routine Service visit with CPS no less than two Business Days in advance of each Routine Service period (as set out in the Quotation or otherwise at intervals notified by CPS to the Customer)

(Routine Service Period).

9.2 Where the Customer fails to:

9.2.1 make available the Equipment on the Routine Service date nominated in accordance with clause 9.1; or

9.2.2 arrange a Routine Service within the relevant Routine Service Period, CPS shall be entitled to invoice the Customer for any late Routine Service fees and any additional costs incurred by CPS as a result of the delayed Routine Service.

9.3 Hire Rates shall include the Equipment's Routine Service performed by CPS within Business Hours only. Where the Equipment Service is performed outside of Business Hours CPS shall charge the Customer an additional Routine Service fee.

9.4 Any breakdown or the unsatisfactory working of or damage to any part of the Equipment must be notified by the Customer immediately to CPS, and confirmed in writing in any event within twenty-four (24) hours. Any claim for breakdown time will only be considered from the



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time and date at which written notification is received and acknowledged by CPS or (if earlier) the date on which CPS inspects the Equipment.

9.5 Charges will not be charged to the Customer for any stoppage due to breakdown of the Equipment caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs. In the event that the Equipment becomes temporarily unusable or unavailable in accordance with this clause, CPS shall use reasonable endeavours to make available Replacement Equipment for collection or delivery. If the Customer requires such Replacement Equipment to be Delivered to it by CPS, CPS may raise a charge.

9.6 The Customer shall not repair, modify, interfere with or alter the Equipment without the prior written permission of CPS. In particular, cables must not be cut, plugs and sockets must not be rewired and identification marks, labels or plates affixed to the Equipment must not be interfered with or otherwise covered up by the Customer. Any Equipment found to have been repaired, modified, interfered with or altered in breach of this clause will be charged at replacement cost to the Customer.

9.7 The parts of the Equipment which are not broken shall remain to be charged for at the Hire Rate. The Customer is responsible for the cost of spares and/or repairs due to theft, loss or vandalism of the Equipment.

9.8 The Customer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Equipment where:

9.8.1 the Customer makes any further use of such Equipment after giving notice in accordance with clause 9.1;

9.8.2 the defect arises because the Customer failed to follow the Recommendation or (if there are none) good industry practice regarding the same;

9.8.3 the Customer (or a third party acting on its behalf or under its instruction) alters or repairs such Equipment without the written consent of CPS;

9.8.4 the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions, or

9.8.5 otherwise due to the Customer's negligence, misdirection or misuse of the Equipment and whether by the Customer or its agents or servants, and in such circumstances the Customer shall, without limiting its other payment obligations elsewhere under the Contract and CPS's other rights and remedies, remain responsible for the full payment of applicable Charges during any downtime of the Equipment under this clause 9.5.

9.9 No claims will be admitted (other than those allowed for under this clause 9), for stoppages through causes outside CPS's control, including but not limited Force Majeure Events, bad weather and/or ground conditions nor shall CPS be responsible for the cost or expense of recovering any Equipment from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Customer shall be responsible for the cost and expense of recovering any Equipment from soft or unsuitable ground or a hazardous environment.

9.10 Each item of Equipment is hired as a separate unit and the breakdown or stoppage of one or more units (whether the property of CPS or otherwise) through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of Equipment working in conjunction therewith, provided that where two or more items of Equipment are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

9.11 If during the Hire Period CPS decides that urgent repairs to the Equipment are necessary, then it may arrange for such repairs to be carried out on Site or at any location of its nomination.

10. END OF HIRE

10.1 At the end of the Hire Period the Customer shall make the Equipment available for collection by CPS at the Site in the same location at which it was Delivered (or such other location as the parties may agree) and the Customer's obligations under clause 4 are repeated.

10.2 Before the Equipment is collected by CPS, the Customer shall ensure that the Equipment is:

10.2.1 cleaned and where necessary, decontaminated;

10.2.2 in good working condition (fair wear and tear excepted); and

10.2.3 together with all licences, registration and other documentation relating to the Equipment, and the Customer shall be liable on demand for any Losses suffered or incurred by CPS as a consequence of the Customer's breach of this clause 10.2.

10.3 CPS shall be responsible for loading the Equipment and its successful loading shall determine the end of the Risk Period.



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10.4 Where, at the end of the Hire Period, the Customer wishes to retain the Equipment on hire, it shall issue a hire extension request to CPS in writing, no less than 48 hours prior to the expiry of the Hire Period setting out its required extension time (**Extension Request**).

10.5 CPS may accept or reject the Customer's Extension Request at its sole discretion. Where CPS accepts the proposed Extension Request, CPS shall notify the Customer in writing, setting out the period of extension to the Hire Period, including details of the additional charges and any proposed payment plans (as applicable).

10.6 Where the Customer fails to comply with its obligations set out in clause 10.1, CPS shall be entitled to invoice the Customer for any additional charges incurred by CPS, including any additional hire charge(s) calculated on weekly basis equivalent to the pro-rata Hire Rate.

11. CUSTOMER'S INDEMNITY FOR LOSS OR DAMAGE

11.1 The Customer shall indemnify CPS, keep CPS indemnified and hold CPS harmless in full from and against any and all Losses suffered or incurred by CPS:

11.1.1 arising out of or in connection with the acts or omissions (including any breach of or delay in complying with the obligations imposed by this Contract) by the Customer and any third party acting for it or on its behalf, whether during the Hire Period or where the Equipment is otherwise made available for collection in breach of these

Terms;

11.1.2 in respect of injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Equipment during the continuance of the Hire Period, and in connection therewith, in each case whether in contract, tort (including negligence), breach of statutory duty or otherwise and whether the same are of a direct, indirect, consequential or special nature and including any loss of profit, loss of goodwill or reputation, loss of business, loss of business opportunity, loss of anticipated saving and loss or corruption of data or information.

11.2 For the avoidance of doubt, Losses under clause 11.1 above shall include but not be limited to:

11.2.1 the cost of any repair, cleaning and/or decontamination required to return the Equipment to a condition fit for re-hire;

11.2.2 the full replacement cost of any Equipment (on a new for old basis) which is lost, stolen and/or damaged beyond economic repair during the Hire Period;

11.2.3 CPS's costs which may be incurred in tracking or recovering any lost or stolen Equipment; and

11.2.4 payment of the Hire Rate up to and including the date the Customer notifies CPS that the Equipment has been lost, stolen and/or damaged beyond economic repair and from that date until CPS has replaced such Equipment (or retrieved any lost or stolen Equipment), the Customer shall pay, as a genuine pre-estimate of lost profit, a sum as liquidated damages being equal the Hire Rate that would have applied for such Equipment for that period.

11.3 In order to mitigate its Losses under the indemnity contained in this clause 11, CPS shall use reasonable endeavours to purchase replacements for such Equipment as quickly as possible using the monies paid by the Customer.

12. LIMITATION OF LIABILITY

12.1 Nothing in these Terms or the Contract shall limit or exclude CPS's liability for:

12.1.1 death or personal injury caused by negligence;

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act

1973); or

12.1.4 any matter in respect of which it would be unlawful for CPS to exclude or restrict liability.

12.2 The parties each agree that the limitations and exclusions of liability contained in this clause 12 reflect the assurances provided by CPS as to the quality of the Equipment on the occurrence of a Relevant Event, as well as breakdown support that CPS will provide in connection with the Equipment in accordance with clause 9. In light of such assurances and breakdown support and subject always to clause 12.1, all implied terms and conditions as to the quality or performance of the Equipment and any other goods or services provided under the Contract are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Subject to clause 12.1:



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12.3.1 CPS shall under no circumstances whatsoever be liable to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential Loss, that arises under or in connection with the Contract; and

12.3.2 CPS's total liability to the Customer in respect of all other 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 the total Charges paid or payable by the Customer to CPS under the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, CPS may terminate this Contract with immediate effect by giving written notice to the Customer if:

13.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment.

13.1.2 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;

13.1.3 the Customer repeatedly breaches any of the terms of the contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to perform the Contract;

13.1.4 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.1.5 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

13.1.6 the Customer'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 limiting its other rights or remedies, CPS may suspend the performance of its obligations under the Contract or any other contract between the Customer and CPS if the Customer becomes subject to any of the events listed in clause 13.1.4 to clause 13.1.6, or CPS reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract, howsoever arising:

14.1.1 CPS's consent to the Customer's possession and of the Equipment shall terminate;

14.1.2 CPS may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located and the Risk Period shall only come to an end once the Equipment has been successfully collected by CPS; and

14.1.3 unless CPS agrees otherwise in writing, the Customer shall pay to CPS on demand any costs and expenses suffered or incurred by CPS in recovering the Equipment from the Site.



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14.2 On termination of the Contract pursuant to clause 14.1 or any other repudiation of the Contract by the Customer, without prejudice to any other rights or remedies of CPS, the Customer shall pay to CPS on demand a sum equal to the whole of the Rental Payments that would (but for the termination or repudiation) have been payable if the Contract had continued for the full Hire Term.

14.3 On termination of the Contract for any reason the Customer shall immediately pay to CPS all of CPS's outstanding unpaid invoices and interest and, in respect of any element of the Hire Term that has elapsed but in respect of which no invoice has been submitted, CPS shall submit an invoice, which shall be payable by the Customer immediately on receipt.

14.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

15. CONFIDENTIALITY

15.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 15.2.

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

15.2.1 to its employees, officers, representatives or advisors who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisors to whom it discloses the other party's confidential information comply with this clause 15; and

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

15.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

16. FORCE MAJEURE

16.1 CPS shall not be in breach of the Contract nor liable for delay in performing, or failing to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

16.2 CPS shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

16.3 If a Force Majeure Event prevents, hinders or delays CPS's performance of its obligations for a continuous period of more than twenty Business Days, the Customer may terminate the Contract immediately by giving written notice to CPS and source the Equipment from a third-party supplier.

17. NOTICES

17.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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 email.

17.2 Any notice shall be deemed to have been received, if:

17.2.1 delivered by hand, at the time the notice is left at the proper address;

17.2.2 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

17.2.3 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.

17.3 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.

18. GENERAL

18.1 Assignment and other dealings

18.1.1 CPS 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.



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18.1.2 The Customer 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.

18.2 Entire agreement

18.2.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

18.2.2 Each party acknowledges that in entering into the Contract it does not rely on and 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.

18.2.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18.2.4 Nothing in the Contract shall limit or exclude any liability for fraud or fraudulent misrepresentation.

18.3 Variation

Except as set out in the Contract, no variation of this Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the parties (or their authorised representatives and permitted assigns).

18.4 Waiver

18.4.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18.4.2 A failure or delay by a Party to exercise, or the single or partial exercise of, any right or remedy provided under the Contract or by law shall not 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.

18.5 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the parties shall:

18.5.1 negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision; and

18.5.2 if agreement under clause 18.5.1 cannot be reached, delete the relevant provision or part-provision.

18.6 Rights and Remedies

Except as expressly provided in these Terms and the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law and each shall be cumulative of every other right or remedy now or in the future existing and may be enforced concurrently from time to time.

18.7 Third party rights

18.7.1 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.

18.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

18.8 Multi-tiered dispute resolution procedure

If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it, expressly excluding failures by the Customer to pay undisputed Charges (**Dispute**) then, except as expressly provided in this Contract, the parties may at their discretion follow the procedure set out in this clause:



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18.8.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute;

18.8.2 if the management level employees are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it;

18.8.3 If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Customer is not registered in the United Kingdom, the parties will attempt to settle it by mediation;

18.8.4 Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, either party may request a recommendation for the nomination of a mediator from the Centre for Effective Dispute Resolution (**CEDR**);

18.8.5 The parties shall have recourse to mediation in accordance with the International Chamber of Commerce's Mediation Rules, which are deemed to be incorporated by reference into this clause;

18.8.6 To initiate the mediation, a party must give notice in writing (**ADR Notice**) to the other party to the Dispute, referring the Dispute to mediation. A copy of the ADR Notice should be sent to CEDR; and

18.8.7 If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Customer is registered in the United Kingdom, the parties may commence court proceedings under clause 18.10 in relation to the whole or part of the Dispute.

18.9 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.

18.10 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.



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Schedule – Fuel Management

- A full tank of fuel is provided on delivery. It is the Customers responsibility to check the
- Equipment's fuel levels on a daily basis and report to CPS when the fuel tank is 1/4 full to ensure continuous running.
- Where the Equipment is hired on a 'standby' basis (10 hours running) the Customer may return the tank full or be charged separately for the fuel used, at the rate set out in the Quotation.
- Where the Equipment is on standby or running up to 50 hours per week, or on an unlimited basis, the first fill of fuel will be charged for as set out in the Quotation.
- For Equipment running on an unlimited basis, the bulk fuel storage tank will be supplied by CPS only, and this will be delivered full and charged for on the Delivery Date.
- Subsequent refills of fuel can be provided by CPS if requested – see option for Fuel Management on the Order Confirmation.
- Fuel Management can only be undertaken when a bulk tank is hired from CPS. All fuel supplied within the bulk tank will be charged for on the rate set out in the Quotation.
- When the Equipment is hired out on a 50 hour or unlimited running rate basis with a bulk fuel tank, or solely with its own internal tank, and is returned full, CPS at its discretion reserves the right to credit the bulk/base fuel charge subject to a satisfactory fuel sample and quality report.
Fuel sample reports can take up to 14 days to confirm analysis and hence there may be a delay in issuing a credit note under these circumstances.
- Call outs to fuel related problems when fuel management is not carried out by CPS or contaminated fuel sample report, will result, where applicable, in an additional 'call out' charge, a tank cleaning charge, and a replacement material/repair charge (subject to the damage caused to the Equipment) – subject to CPS's standard rates.
- CPS reserves the right to increase (or decrease) the fuel charges per litre without notification and at its absolute discretion, depending on the current oil crude price fluctuations at the time of delivery, throughout the Hire Period and on completion of the Hire.
- Where fuel is supplied by CPS to the Customer for use in connection with the hire of the Equipment, the parties agree that:
 - o CPS shall not be responsible for the carbon footprint and emissions arising out of or in connection with its use of such fuel by the Customer (howsoever arising) and the Customer acknowledges that this use shall not be accounted for by CPS in its carbon reporting; and
 - o the Customer shall be responsible for:
 - the carbon footprint and emissions arising out of or in connection with its use of such fuel by the Customer (howsoever arising); and
 - accounting for such use in its carbon reporting.



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TERMS & CONDITIONS OF SERVICE

PARTIES

(1) **CENTRAL POWER SERVICES LIMITED** incorporated and registered in England and Wales with company number 01980449 whose registered office is at Central Power Services Ltd, Garstang Road, Claughton-On-Brock, Preston, Lancashire, England, PR3 0PH (**CPS**)

(2) **The customer / Client / End user**

BACKGROUND

(A) The Customer/ client or end user wishes for CPS to provide the Services (as defined below) in relation to the specified Equipment and CPS is willing to supply the Services on the terms set out in this Agreement.

IT IS AGREED THAT

1. INTERPRETATION

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

1.1 Definitions:

Additional Services: any Corrective Maintenance, Emergency Maintenance or Excluded Maintenance performed by CPS under this Agreement.

Additional Services Charges: the charges payable in consideration of the provision of any Additional Services, to be calculated in accordance with Part 3 of the Schedule.

Affected Party: has the meaning given to it in clause 14.1.1.

Agreement: means this contract between the Customer and CPS for the supply of the Maintenance Services.

Applicable Laws: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes.

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

Business Hours: the period from 8.00 am to 5.00 pm Monday – Thursday and 8.00am – 3.00pm on Friday.

Charges: the Standard Maintenance Charges and the Additional Services Charges, as varied from time to time in accordance with clause 8.6.

Commencement Date: shall be the date specified in Part 1 of the Schedule.

Confidential Information: means any and all confidential information (whether in oral, written or electronic form) imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, services, software, products, solutions and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party or any group of companies to which that party belongs.

Corrective Maintenance: means, in accordance with clause 3:

1.1.1 making any adjustments to the Equipment; or

1.1.2 replacing any parts or components of the Equipment, in each case, as required to restore the Equipment to Good Working Order and as more particularly described in the Schedule.

Emergency Maintenance: means:

1.1.3 making any adjustments to the Equipment; and

1.1.4 replacing any parts or components of the Equipment, in each case, which are required to restore the Equipment to Good Working Order.

Equipment: the equipment identified in Part 2 of the Schedule.

Excluded Causes: means:



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1.1.5 a defect in the manufacturer's design of the Equipment;

1.1.6 faulty materials or workmanship in the manufacture of the Equipment;

1.1.7 the use of the Equipment with equipment or materials not supplied or approved by CPS or the manufacturer.

1.1.8 the use of the Equipment in breach of any of the provisions of the agreement under which the Equipment was supplied;

1.1.9 a failure, interruption or surge in the electrical power or its related infrastructure connected to the Equipment;

1.1.10 a failure or malfunctioning of the air conditioning or other environmental controls required for the normal operation of the Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or

1.1.11 the Customer's neglect or misuse of the Equipment..

Excluded Maintenance: any Maintenance Services required to rectify any defect or malfunctioning or failure in the Equipment to Good Working Order where the defect or malfunctioning or failure results from or is caused by any of the Excluded Causes.

Extended Term: has the meaning given to it in Part 1 of the Schedule.

Fix Time: the applicable fix time set out in Part 3 of the Schedule.

Force Majeure Event: means events, circumstances or causes beyond a party's reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic, any law or any action taken by the Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition, and the collapse of buildings, fire, explosion or accident and in the case of CPS, a failure of its suppliers or contractors.

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

Good Working Order: operating in accordance with the applicable specification of the manufacturer of the Equipment.

Initial Term: has the meaning given to it in Part 1 of the Schedule.

Location: the location(s) of the Equipment as specified in Part 2 of the Schedule, or any other location as may be agreed by the parties in writing from time to time.

Loss: means actions, awards, charges, claims, compensation, costs, damages, demands, expenses, interest, fees, fines, liabilities, losses, penalties, proceedings and settlements, and **Losses** shall be construed accordingly.

Maintenance Services: all Preventative Maintenance, Corrective Maintenance and Additional Services.

OOH Charges: means CPS's charges for Maintenance Services performed outside of Business Hours, as specified in Part 3 of the Schedule.

Preventative Maintenance: means:

1.1.12 testing that the Equipment is functional; and

1.1.13 making any adjustments as may be required to ensure the Equipment remains in Good Working Order, as more particularly described in the Schedule.

Response Time: the applicable response time set out in Part 3 of the Schedule.

Service Levels: the service levels to which the Services are to be provided, as set out in the Schedule or otherwise as may be notified in writing to the Customer.

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

Standard Maintenance Charges: the charges payable in consideration of the provision of the Preventative Maintenance, to be calculated in accordance with Part 3 of the Schedule.

Term: the Initial Term and each Extended Term.



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VAT: value added tax chargeable in the UK.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedule forms 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 Schedule.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provisions.

1.9 A reference to **writing** or **written** includes email but not fax.

1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. COMMENCEMENT, DURATION AND EXCLUSIVITY

2.1 This Agreement shall commence or be deemed to have commenced on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 11, for the Initial Term and shall automatically extend for Extended Terms at the end of the Initial Term and at the end of each Extended Term (collectively, the **Term**). Either party may give written notice to the other party, not later than 3 months before the end of the Initial term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

3. MAINTENANCE SERVICES

3.1 During the Term, CPS shall provide the Customer with the Maintenance Services.

Preventative Maintenance

3.2 A representative of CPS shall attend each Location on in accordance with the regularity set out in the Schedule to perform Preventative Maintenance. CPS's representative shall perform the Preventative Maintenance during Business Hours at such times as may be agreed in advance between the Customer and CPS from time to time in respect of each Location.

3.3 If CPS's representative discovers that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order during the course of the Preventative Maintenance the representative will:

3.3.1 notify the Customer of such and seek instructions as to whether or not it is permitted to carry out Corrective Maintenance in connection with that Equipment (which, for the avoidance of doubt, shall be provided subject to the Customer's payment of Additional Services Charges);

3.3.2 if instructed by the Customer to repair the Equipment, use reasonable endeavours to repair it during that visit at the Location; and

3.3.3 if it is not reasonably practicable to repair the Equipment during that visit to the Location (or it is not reasonably practicable to do so during Business Hours), either arrange for a further visit to the Location within Business Hours to complete the repair or arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site.

Corrective Maintenance

3.4 On Customer informing CPS that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order, CPS shall use all reasonable endeavours to ensure that one of its representatives shall:

3.4.1 attend the Location during Business Hours within the relevant Response Time to perform Corrective Maintenance; and



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3.4.2 use reasonable endeavours to complete the Corrective Maintenance within the relevant Fix Time.

3.5 Where it is not reasonably practicable for CPS's representative to complete Corrective Maintenance at each Location on their first visit, CPS's representative shall either arrange for a further visit to the Location within Business Hours to complete the repair, or arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site.

3.6 CPS shall not be liable for any delay in providing the relevant Maintenance Service if in CPS's reasonable opinion it needs to remove the Equipment (or part of the Equipment, if applicable) for repair off-site and Customer unreasonably refuses this request.

Emergency Maintenance

3.7 On the Customer informing CPS outside of Business Hours that the Equipment is malfunctioning, has failed or is not in Good Working Order, CPS shall:

3.7.1 use reasonable endeavours to perform Emergency Maintenance of the Equipment at the Location within the relevant Fix Time; or

3.7.2 where, in CPS's opinion, its representative cannot reasonably perform Emergency Maintenance at the Location on the first visit, CPS's representative shall either arrange for a further visit to the Location within Business Hours to complete the Emergency Maintenance or arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site.

3.8 Emergency Maintenance shall be charged at the Additional Services Rates for each of CPS's representatives involved in the performance of the Emergency Maintenance. Any additional charges shall be calculated, in the case of Emergency Maintenance that is performed at the Location, from the time at which the relevant CPS representative(s) arrive at the Location until they leave the Location.

3.9 In performing any Maintenance Services, CPS shall use reasonable endeavours to restore any malfunctioning or failed Equipment to Good Working Order while in attendance at the Location at the first visit. Where this is not reasonably practicable, or not reasonably practicable within Business Hours (in the

case of Preventative Maintenance and Corrective Maintenance), CPS shall either arrange for a further

visit to the Location within Business Hours to complete the repair, or remove the Equipment or part of the

Equipment for repair off-site.

3.10 CPS shall confirm that its representatives shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its representatives.

Cancellation

3.11 In the event that the Customer wishes to cancel any Maintenance Services in whole or in part then it must provide CPS with written notice to that effect in advance of the date on which the Maintenance Services are to be performed (**Relevant Date**). Unless otherwise agreed in writing by CPS, if such notice is received by CPS:

3.11.1 at least 5 clear Business Days prior to the Relevant Date, CPS shall not charge the Customer in connection with such Maintenance Services;

3.11.2 at least 2 clear Business Days but less than 5 clear Business Days prior to the Relevant Date, CPS shall be entitled to charge and invoice the Customer for 50% of the Charges expected or otherwise agreed between the parties and such invoice shall be payable by the Customer in accordance with this Agreement; or

3.11.3 less than 2 clear Business Days prior to the Relevant Date, CPS shall be entitled to charge and invoice the Customer for 100% of the Charges expected or otherwise agreed between the parties and such invoice shall be payable by the Customer in accordance with this Contract.

Out of Hours Support

3.12 Where any Maintenance Services are required outside of Business Hours CPS shall, unless otherwise agreed in writing, be entitled to levy OOH Charges.

4. SERVICE LEVELS

4.1 CPS shall use reasonable endeavours to ensure that the Services meet or exceed any specified Service Levels at all times from the Commencement Date, provided always that time shall not be of the essence for the performance of the Maintenance Services under the Agreement.

4.2 If CPS fails to perform the Maintenance Services in accordance with the Service Levels, CPS:



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4.2.1 shall arrange all additional resources as are reasonably necessary to perform the Services in accordance with the Service Levels as soon as possible and at no additional charge to Customer; and

4.2.2 may at its absolute discretion elect to credit Customer with the service credits, which shall take effect as an adjustment to the Charges.

5. SPARE PARTS AND REPLACEMENTS

5.1 In performing the Maintenance Services, CPS shall use reasonable endeavours to source Spare Parts required to restore the Equipment to Good Working Order.

5.2 Where the relevant Spare Parts are specified as being included in the Standard Maintenance Charges in the Schedule, CPS will provide those spare parts without further charge.

5.3 Where the relevant Spare Parts are not specified as being included in the Standard Maintenance Charges in the Schedule, CPS shall be entitled to levy Additional Service Charges in connection with such Spare Parts.

5.4 All Spare Parts and/or replacements provided by CPS to the Customer shall become part of the Equipment. All parts and components removed from the Equipment by CPS in the course of performing the Maintenance Services shall no longer constitute part of the Equipment.

5.5 Should it be found that any spare part is obsolete, CPS reserve the right to substitute that part for a different part to meet the original specification

6. EQUIPMENT USE AND STORAGE

6.1 The Customer shall at all times during the Term:

6.1.1 immediately notify CPS if the Equipment is discovered to be defective or malfunctioning or has failed or is otherwise not in Good Working Order;

6.1.2 keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment or as may be advised from time to time by CPS;

6.2 The Customer shall ensure that CPS's representatives have:

6.2.1 full and free access to the Location and to the Equipment; and

6.2.2 full and free access to any data, information and records concerning the Equipment, its application, use, location and environment of its use that are kept or held by the Customer; and

6.2.3 adequate and safe working space and facilities, in each case as reasonably required to enable CPS to perform its obligations under this Agreement.

6.3 The Customer shall report that the Equipment is defective or malfunctioning or has failed or is otherwise not in Good Working Order either in writing or by telephone, or in such manner as CPS may reasonably require from time to time.

6.4 If CPS' performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer**

Default):

6.4.1 without limiting or affecting any other right or remedy available to it, CPS shall have the right to suspend performance of the Maintenance Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the CPS' performance of any of its obligations;

6.4.2 CPS shall not be liable for any or Losses sustained or incurred by the Customer arising directly or indirectly from the CPS' failure or delay to perform any of its obligations as set out in this clause 6.5; and

6.4.3 the Customer shall reimburse CPS on written demand for all Losses sustained or incurred by CPS arising directly or indirectly from the Customer Default.

7. EXCLUDED MAINTENANCE

7.1 CPS is not obliged to perform any Excluded Maintenance.



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7.2 Where CPS is performing or has performed the Maintenance Services in circumstances where it is established that the Equipment was not in Good Working Order due to any of the Excluded Causes, CPS may charge, and Customer shall pay, the Additional Services Charges in respect of that work.

7.3 If on investigation CPS reasonably determines that any defect in or malfunctioning of the Equipment is the result of an Excluded Cause, the Customer shall pay Additional Services Charges in respect of the time incurred by CPS in making the investigation and determining the cause of the defect in or malfunctioning of the Equipment.

8. CHARGES AND PAYMENT

8.1 In consideration of the performance of the Preventative Maintenance by CPS, the Customer shall pay to CPS the Standard Maintenance Charges.

8.2 In consideration of the performance of any Additional Services by CPS, the Customer shall pay to CPS the Additional Services Charges.

8.3 The Standard Maintenance Charges and the Additional Services Charges shall be inclusive of all expenses, other than those recoverable in accordance with clause 5.1, and CPS shall otherwise be responsible for all costs and expenses incurred in providing the Maintenance Services (other than those which are otherwise recoverable under this Agreement).

8.4 The Customer shall pay each invoice submitted to it by CPS in accordance with the payment terms set out in the Schedule or, in the absence of such payment terms, within 30 days of receipt of the relevant invoice from CPS.

8.5 All payments made by the Customer under this Agreement shall be made to the bank account nominated by CPS in writing from time to time. Time for payment under this Agreement shall be of the essence.

8.6 CPS may increase the Charges on:

8.6.1 the provision of not less than 30 days' (or such shorter period as CPS reasonably determines given the surrounding circumstances in which it is being provided) written notice to take account of increased costs faced by CPS in providing the Maintenance Services, provided that CPS shall use reasonable endeavours to mitigate the impact of such increased costs on the Charges; and

8.6.2 otherwise on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, with each increase taking effect on the applicable anniversary of the Commencement Date and which shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

8.7 Without prejudice to any other right or remedy that it may have, if Customer fails to pay CPS any sum due under this Agreement on the due date:

8.7.1 The Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7.1 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and

8.7.2 CPS may suspend all or part of the Maintenance Services until payment has been made in full.

8.8 All sums payable to CPS under this Agreement:

8.8.1 are exclusive of VAT, and Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

8.8.2 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).

9. WARRANTIES

9.1 Each party warrants that:

9.1.1 it has full capacity and authority to enter into and to perform this Agreement;

9.1.2 this Agreement is executed by a duly authorised representative of that party;

9.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and

9.1.4 once duly executed, this Agreement will constitute legal, valid and binding obligations.



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9.2 CPS warrants to the Customer that:

9.2.1 the Maintenance Services shall be performed:

9.2.1.1 by suitably qualified and experienced personnel; and

9.2.1.2 using all reasonable skill and care and in accordance with Good Industry Practice;

9.2.2 all Spare Parts supplied shall operate materially in accordance with their technical specifications and be of a satisfactory quality (provided that the Customer acknowledges and agrees that Spare Parts may not be new when supplied).

10. LIMITATION OF LIABILITY

10.1 Nothing in this Agreement shall limit or exclude either party's liability for:

10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

10.1.2 fraud or fraudulent misrepresentation; or

10.1.3 any matter in respect of which it would be unlawful for that party to exclude or restrict liability.

10.2 CPS has given commitments as to the performance of the Services in clause 4 (Service Levels) and a warranty in respect of performance of the Services and the performance of Spare Parts and equipment supplied or used in the course of the provision of the Services in clause 9.2 (Warranties). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

10.3 Subject always to clause 10.1:

10.3.1 CPS shall under no circumstances whatsoever be liable to Customer, whether in contract, tort

(including negligence), breach of statutory duty, or otherwise, for any:

10.3.1.1 loss of profit;

10.3.1.2 loss of goodwill;

10.3.1.3 loss of business;

10.3.1.4 loss of business opportunity;

10.3.1.5 loss of anticipated saving;

10.3.1.6 loss or corruption of data or information; or

10.3.1.7 any indirect, special or consequential Loss, that arises under or in connection with this Agreement; and

10.3.2 CPS total liability to Customer in respect of all other Losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total Charges paid by Customer to CPS in the immediately preceding 12 months under this Agreement.

11. TERMINATION

11.1 Without limiting its other rights or remedies, CPS may terminate this Agreement with immediate effect by giving written notice to the Customer if:

11.1.1 the Customer fails to pay any amount due under the Agreement on the due date for payment.

11.1.2 the Customer commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;

11.1.3 the Customer repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to perform the Agreement;

11.1.4 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;



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11.1.5 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

11.1.6 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.

11.2 Without limiting its other rights or remedies, CPS may suspend the performance of its obligations under the Agreement or any other contract between the Customer and CPS if the Customer becomes subject to any of the events listed in clause 11.1.4 to clause 11.1.6, or CPS reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.

12. CONSEQUENCES OF TERMINATION AND SURVIVAL

12.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

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

12.3 On termination of this Agreement for any reason;

12.3.1 except as provided for in clause 12.4, the Customer shall as soon as reasonably practicable:

12.3.1.1 return or destroy (in the case of electronic data, delete), as directed in writing by CPS, any documents, handbooks, CD-ROMs, DVDs, other tangible digital media or other information or data provided to it by CPS for the purposes of this Agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the CPS's Confidential Information. If required by CPS, the Customer shall provide written evidence (in the form of a letter signed by its Director) no later than 14 days after termination of this Agreement that these have been destroyed or deleted and that it has not retained any copies of them, except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in clause 14; and

12.3.1.2 return all of CPS's equipment and materials, failing which CPA may enter the Location or other relevant premises and take possession of them. Until these are returned or repossessed, the Customer shall be solely responsible for their safe-keeping; and

12.3.2 the Customer shall immediately pay any outstanding amounts owed to CPS under this Agreement.

12.4 If a party is required by any Applicable Laws, or government or regulatory body of competent jurisdiction to retain any documents or materials which it would otherwise be required to return or destroy under clause 12.3, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain and the reasons for such retention, and it shall be entitled to retain such documents or materials for the period required by the relevant Applicable Law or government or regulatory body provided at all times that clause 13 shall continue to apply to any retained documents and materials.

13. CONFIDENTIALITY

13.1 Each party agrees and undertakes that it shall maintain the confidentiality of and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party the other party's Confidential Information and shall not, without the prior written consent of the other party, use, disclose, copy or modify such Confidential Information or permit others to do so other than as necessary for the performance of its rights and obligations under the Agreement.

13.2 Each party shall:

13.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under the Agreement; and

13.2.2 to procure that such persons are made aware of and agree to observe the obligations in this clause.

13.3 Each party shall:

13.3.1 give notice to the other party of any unauthorised misuse, disclosure, theft or loss of its Confidential Information immediately upon becoming aware of the same;

13.3.2 take all reasonable steps to maintain the confidentiality of the Confidential Information;

13.3.3 maintain adequate security measures to safeguard the Confidential Information from theft, and from access by any person other than as permitted by the Agreement; and



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13.3.4 promptly bring to the other party's attention any infringement of its right in, or any unauthorised use of, the Confidential Information, which it becomes aware of.

13.4 The provisions of this clause shall not apply to information which is:

13.4.1 or comes into the public domain through no fault of the other party, its officers, employees,

agents or contractors;

13.4.2 lawfully received by the other party from a third party free of any obligation of confidence at the time of its disclosure;

13.4.3 independently developed by the other party, without access to or use of such information; or

13.4.4 required by any Applicable Law, by court or governmental or regulatory order to be disclosed

provided that the other party is, where possible, notified at the earliest opportunity.

14. GENERAL

14.1 Force majeure.

14.1.1 Provided it has complied with Clause 14.1.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.1.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

14.1.3 The Affected Party shall:

14.1.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 10 Business Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

14.1.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

14.1.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 calendar months, the party not affected by the Force Majeure Event may terminate this Agreement by giving 10 Business Days written notice to the Affected Party.

14.1.5 This clause 14 shall not apply in respect of the Customer's obligation to pay the Charges to CPS.

14.2 Assignment and other dealings

This Agreement is personal to the parties and neither party shall assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the written consent of the other party (such consent to not be unreasonably withheld or delayed).

14.3 Entire agreement

14.3.1 This Agreement constitutes the entire agreement between the parties.

14.3.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

14.4 Waiver

14.4.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

14.4.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.



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14.5 Severance

14.5.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or partprovision shall be deemed deleted. Any modification to or deletion of a provision or partprovision under this clause shall not affect the validity and enforceability of the rest of this

Agreement.

14.5.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.6 Variation

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

14.7 No partnership or agency

14.7.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitment for or on behalf of any other party.

14.7.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

14.8 Third party rights

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

14.8.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

14.9 Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

14.10 Notices

14.10.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be: sent by email to the following to the designated customers e mail address Any notice shall be deemed to have been received, 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.

14.10.2 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.

14.11 Governing law

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

14.12 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation. This Agreement has been entered into on the date stated on the Service Contract Quotation

Service Levels

1. CPS shall use reasonable endeavours to carry out Corrective Maintenance relating to:

(a) generators within 8 Business Hours; and

(b) UPS within 1 Business Day.



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TERMS & CONDITIONS OF BUSINESS FOR SERVICE CONTRACTS

1. DEFINITIONS. In these Conditions the following expressions shall have the following meanings:- "**Equipment**" means all plant serviced by Central Power Services Limited under this contract, "**Tender**" means any offer to service Equipment by Central Power Services Limited, "**Purchaser**" means the person, company or firm entering into this contract with Central Power Services Limited for the service of such Equipment.

2. ACCEPTANCE OF CONDITIONS. These are the only conditions on which Central Power Services Limited deals. Acceptance of a Tender creates a contract between Central Power Services Limited and the Purchaser subject to these conditions, which may only be varied by writing signed on behalf of Central Power Services Limited.

3. VALIDITY. Unless previously withdrawn, or otherwise specified, a Tender shall be open for acceptance within thirty days after date of issue and is subject to confirmation at the time of such acceptance.

4. ACCEPTANCE OF TENDER. The acceptance of a Tender must be accompanied by full and final information to permit Central Power Services Limited to proceed without interruption, and enable Central Power Services Limited to deal with the order forthwith, otherwise Central Power Services Limited by written agreement with the purchaser amend the Tender prices to cover any increase in cost which has taken place after acceptance, and extend if necessary the quoted service date. A contract shall include only such Equipment and work as specified therein.

5. DATA. All performance figures, descriptive and forwarding specifications, drawings and particulars submitted with a Tender are approximate only and the descriptions and illustrations contained in Central Power Services Limited's catalogues, price lists and other advertisement matter are intended merely to present a general idea of the Equipment described therein and shall not form part of any Tender. After acceptance of a Tender, one set emergency contact details will be supplied free of charge by Central Power Services Limited if requested.

6. SERVICING. All Equipment serviced by Central Power Services Limited is subject to Central Power Services Limited's standard inspection and tests work format. If special tests or tests in the presence of the Purchaser or his representative are required these may be at additional cost if agreed in writing in advance with the purchaser unless otherwise stated in the Tender. Central Power Services Limited's bona fide Service Work Format shall be accepted by the Purchaser as evidence of the results achieved on completion of the service.

7. DELIVERY. Any time or dates quoted for servicing are approximate only. Central Power Services Limited will use its best efforts to keep to the dates given but cannot accept any liability whatsoever for failure to do so.

8. REPAIRS. When repairs are included in a Tender only skilled supervision during normal working hours is covered unless otherwise stated. After the repair is complete, any further attendance required by the Purchaser, or necessary because the Purchaser is not ready to have the Equipment put into service, will be charged for at Central Power Services Limited's stated rates.

9. PAYMENT. Unless otherwise stated in the Tender, the total contract amount will be payable 30 days after the receipt of the official purchase order number. Interest at the annual rate of 2.5% above the prevailing Royal Bank of Scotland base rate will be charged on accounts unpaid within thirty days of receipt of invoice.

10. TERMINATION OF CONTRACT. Subject to Central Power Services Limited's duty to mitigate its losses if a contract is terminated by the purchaser for any reason, prior to completion then the balance of the contract will still be payable if such termination is on the date of cancellation. any materials have been procured for the service contract, or to effect a repair, then these materials will also be payable.

11. ACCEPTANCE. The service shall be deemed to have been accepted by Purchaser from the date of the service and the engineers report.

12. OWNERSHIP. Notwithstanding acceptance and the granting of credit:-

(i) the materials supplied on the service or repair remains the absolute property of Central Power Services Limited until the price has been received in full by Central Power Services Limited

(ii) until payment is received in full, and without prejudice to any other remedies, Central Power Services Limited or its agents shall be entitled immediately after giving notice of its intention to do so, to enter the premises of the Purchaser and repossess any Equipment to which it has title under this contract.

13. STORAGE. If Central Power Services Limited does not receive forwarding instructions within fourteen days of notification to the Purchaser that the Equipment purchased to carry out a service or repair, is available for despatch, risk will immediately pass to Purchaser, insurance will be the responsibility of the Purchaser, and Purchaser will pay Central Power Services Limited storage charges.

14. WARRANTY Central Power Services Limited warrants that services shall be provided with reasonable skill and care and the materials used in the manufacture of its Equipment are of suitable quality for the purpose made known to Central Power Services Limited and that all precautions which are usual and reasonable have been taken by Central Power Services Limited. If within 12 months from the date of fitting of parts, any defect has been caused by faulty design on Central Power Services Limited's part or faulty materials, and not caused by fair wear and tear,



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damage in transit, accident or misuse or neglect, Central Power Services Limited shall supply free of charge such new or repaired parts as may be required to make good such defect subject to the following.

- (i) Notice of any defect has been given to Central Power Services Limited by the Purchaser within seven days of discovery.
- (ii) In respect of spare parts the warranty period will be 6 months from date of despatch by Central Power Services Limited or on fitment whichever is the sooner.
- (iii) Central Power Services Limited's warranty is not assignable upon resale by the original Purchaser.
- (iv) Central Power Services Limited shall not be liable for the cost of fitting replacement parts and any defective parts replaced by Central Power Services Limited shall become Central Power Services Limited's property. Central Power Services Limited may choose the method of delivery of such replacement parts at its sole discretion.

Any warranty claim must contain full details of the defect, description of goods, date of despatch, name and address of vendor, and serial number of machines or for spares parts order reference under which the goods were supplied.

Central Power Services Limited's warranty for labour /workmanship is valid for three months from the date of service.

This warranty does not extend to:-

- (i) Equipment which has not been serviced, operated, stored or maintained in accordance with Central Power Services Limited's recommendations or specifications for servicing.
- (ii) Equipment which has not been operated at rated output
- (iii) Failure to use approved lubricants and consumable components such as oil or air filters, and failure due to Central Power Services Limited's recommendations not being carried out.
- (iv) Equipment which has been repaired or altered without Central Power Services Limited's written approval.
- (v) Equipment on which identification numbers have been altered or removed,
- (vi) Equipment run under conditions detrimental to successful running or likely to cause excessive wear and tear.
- (vii) Proprietary articles on Equipment supplied by Central Power Services Limited and not of Central Power Services Limited's manufacture subject only to the maker's warranty (if any).

Central Power Services Limited's liability under this condition is limited to the Tender price of the equipment in which it is alleged a defect exists and save as set out in this condition all other terms, conditions, warranties, representations and guarantees, whether express or implied by statute common law or otherwise and whether in relation to the Equipment or its installation are hereby excluded provided that nothing in these Conditions excludes the conditions implied by Section 12 Sale of Goods Act, 1979.

15 INTELLECTUAL PROPERTY.

(i) In the event of any claim being made or legal proceedings being brought against Purchaser in respect of infringement of patents by the manufacture or sale by Central Power Services Limited of Equipment, the Purchaser shall notify Central Power Services Limited as soon as reasonably practicable. Company may, with the Purchaser's assistance if required, but at Central Power Services Limited's expense, conduct all negotiations for the settlement of such claim or litigation. Central Power Services Limited will indemnify the Purchaser in respect of any such claims or litigation subject to such notification, provided that such Equipment has not been used for any purpose other than that for which it was supplied.

(ii) The Purchaser shall indemnify Central Power Services Limited for any costs, charges, damages and expenses incurred by Central Power Services Limited as a result of any action, claim or demand brought against Central Power Services Limited as a result of Central Power Services Limited's compliance with or use of the Purchaser's designs, specifications, drawings or data.

ARBITRATION AND LAW. If at any time any dispute or claim arises between Central Power Services Limited and Purchaser in connection with any dealings, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to arbitration in the United Kingdom by an arbitration mutually agreed upon, or failing agreement to an arbitrator to be appointed by the President for the time being of the Institute of Mechanical Engineers or the Institute of Electrical Engineers. Such submission shall be deemed to be a submission to arbitration Acts, 1950 to 1979 or any statutory re-enactment or modification thereof, for the time being in force.



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GENERAL LIABILITY. "Central Power Services Ltd shall produce on the signing of the contract an Employers Liability Insurance policy for its work people. Furthermore, Central Power Services Ltd shall be responsible for any injury damage or accident to any person or property by or during the performance of this Contract for which Central Power Services Ltd are legally liable and shall compensate for any such injury damage or accident at the expense of Central Power Services Ltd and shall indemnify the Purchaser from and against the same and from and against all actions suits claims penalties liabilities costs expenses and demands of every kind arising out of or incidental to the Contract and also from and against any claims for compensation under any Act of Parliament for the time being in force or at Common Law, but only where this results in injury or damage for which Central Power Services Ltd are found to be legally liable. Central Power Services Ltd Shall produce a policy or policies of insurance covering the above- mentioned risks whenever requested to do so by the purchaser and the Public Liability Insurance Policy must provide for a cover for not less than Five million pounds in respect of any one accident or series of accidents arising from any one incident unlimited during the period of insurance".

English Law shall apply to these conditions and dealing under them.



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TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Terms, the following definitions apply:

Applicable Laws: all applicable laws, statutes and regulations and codes from time to time in force.

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

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

Certificate of Test: means the certificate to be issued by CPS to the Customer on the successful completion of Testing in accordance with clause 3.4.

Charges: the charges payable by the Customer to CPS in consideration of CPS's provision of the Supply.

Contract: the contract between CPS and the Customer for the provision of the Supply in accordance with these Terms.

CPS: Central Power Services Limited, a company registered in England and Wales with company number 01980449 and whose registered office is at CPS's Premises.

CPS's Equipment and Materials: equipment, including tools, systems, cabling, facilities, documents, information, items and materials in any form which are used or provided by CPS or any third party instructed on its behalf in connection with the Supply.

CPS's Premises: Garstang Road Brock Preston, Lancashire, PR3 0PH.

Customer: the person or firm who purchases the Supply from CPS, as initially identified in the Quotation.

Deliverables: the Certificate of Test, any Specification prepared by CPS and all other records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, as made available by CPS to the Customer in connection with the Supply.

Delivery Location: means the location specified in the Quotation or otherwise as may be agreed in writing between the parties.

Deemed Acceptance: has the meaning given to it in clause 6.2.

Force Majeure Event: means events, circumstances or causes beyond a party's reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic, any law or any action taken by the Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition, and the collapse of buildings, fire, explosion or accident and in the case of CPS, a failure of its suppliers or contractors.

Goods: the goods (or any part of them) set out in the Order, having been referred to initially within the Quotation and detailed within the Specification.

Intellectual Property Rights: means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Loss: actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements, and **Losses** shall be construed accordingly.

Order: the Customer's order for the Supply, as set out in the Customer's written acceptance of the Quotation.

Order Confirmation: means CPS's written acceptance of the Order, raised in accordance with clause 2.4.2.

Order Period: has the meaning given to it in clause 2.2.

Promotional Materials: means CPS's catalogues, brochures, websites or such other applicable sales, descriptions, colours, particulars of weights and dimensions or promotional literature, materials or publications.



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Quotation: means CPS's quotation or proposal (whether in writing or given orally) to provide the Supply to the Customer, which is based on the Specification and which incorporates these Terms.

Relevant Event: has the meaning given to it in clause 6.1.

Specification: any specification for the Supply, including any related plans and drawings, that is agreed in writing by the Customer and CPS.

Supply: the Goods and Works (if any) to be provided by CPS to the Customer under the Contract.

Terms: the terms and conditions set out in this document as amended from time to time in accordance with clause 17.3.

Testing: means standard testing and inspection of the Goods by CPS to ensure their conformity with the Specification.

Warranty Breach: has the meaning given to it in clause 6.3.

Works: the assembly, installation, commissioning and associated services supplied by CPS to the Customer in connection with providing the Supply, as set out in the Order, having been referred to initially within the Quotation and detailed within the Specification.

1.2 In these Terms, the following rules of interpretation apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 a reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 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.

1.2.4 any words following the terms **including**, **include** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 a reference to **writing** or **written** excludes fax but not email.

2. BASIS OF CONTRACT

2.1 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 Any Quotation that is issued by CPS shall not constitute an offer. A Quotation shall only be valid for a period of 20 Business Days from its date specified on it (**Order Period**). If the Customer accepts the position set out in the Quotation, it shall be required to raise an Order within the Order Period.

2.3 The Order constitutes an offer by the Customer to purchase the Supply in accordance with these Terms. The Customer is responsible for ensuring and warrants that the terms of the Quotation, the Order and any applicable Specification are complete and accurate.

2.4 CPS may reject the Order at its absolute discretion and for any reason whatsoever and the order shall only be deemed to be accepted at the earlier of when CPS:

2.4.1 commences its obligations in respect of the Supply; or

2.4.2 issues an Order Confirmation, at which point the Contract shall come into existence.

2.5 Once accepted, the Order may not be cancelled by the Customer except with the prior agreement of CPS in writing. Without prejudice to any further terms that may be agreed between the parties, any such agreement is on the basis that the Customer shall indemnify CPS, keep CPS indemnified and hold CPS harmless in full against all Losses (which for the purpose of this clause shall include, without limitation, the cost of labour and materials, damages, charges, expenses, loss of profit, loss of business, loss of goodwill, loss of business opportunity, loss of anticipated saving and any other indirect, special or consequential loss) incurred by CPS as a result of the cancellation.

2.6 Any samples, drawings, descriptive matter or advertising produced by CPS and any descriptions or illustrations contained in any Promotional Materials are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.7 CPS' employees or agents are not authorised to make any representations concerning the Supply unless confirmed by CPS in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.8 These Terms shall apply to the supply of both Goods and Works, except where application to one or the other is specified.



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3. SPECIFICATION

3.1 Each component part of the Supply is described in the Quotation as modified by any applicable Specification.

3.2 CPS reserves the right to amend the Specification if required by any Applicable Law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Supply, and CPS shall notify the Customer in any such event.

3.3 All Goods supplied by CPS shall be subject to Testing prior to them being made available for delivery or collection pursuant to clause 4. If additional Testing or Testing in the presence of the Customer is required, such is subject to additional Charges unless otherwise agreed in writing by CPS. Where CPS agrees to carry out Testing in the presence of the Customer it shall provide the Customer with 5 Business Days' advance notice of the Goods being ready for Testing. Where the Customer fails to attend CPS's Premises on the date notified to it in order to observe the Testing, it shall be carried out in the absence of the Customer and CPS shall have no obligation to repeat the Testing once completed.

3.4 Where requested by the Customer in writing, once Testing of the Goods has been completed, CPS shall provide a Certificate of Test to the Customer, which shall, in the absence of manifest error or omission, be deemed to be accepted by the Customer as confirmation that the Goods comply with the Specification.

4. DELIVERY

4.1 Unless otherwise agreed, delivery of the Goods (or each constituent part, as the case may be) shall be completed on their successful unloading at the Delivery Location, provided always that where CPS agrees in writing that the Customer may unload the Goods, delivery shall be completed when the Goods are ready to be unloaded at the Delivery Location by the Customer.

4.2 In making delivery of the Goods, the Customer shall provide CPS, or any courier or agent instructed on its behalf, with safe and unrestricted access to, movement around and egress from the Delivery Location.

4.3 CPS shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and CPS reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.4 Where the Customer wishes to collect the Goods from CPS's Premises, the Customer shall collect the Goods from CPS's Premises within Business Hours and warrants that it shall comply with all reasonable instructions provided by CPS in relation to the collection of the Goods. CPS shall not, unless otherwise agreed in writing, have any responsibility for loading the Goods onto the Customer's mode of transport, and any supply under this clause 4.4 shall be on an Ex Works (EXW) Incoterms 2020 basis, with the named location being the warehouse floor at CPS's Premises.

4.5 Any dates quoted for delivery or collection (as the case may be) are approximate only, and the time of delivery is not of the essence.

4.6 If CPS 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. CPS shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide CPS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If the Customer fails to accept delivery of, or otherwise collect (in the circumstances described in clause 4.4), the Goods within three Business Days of CPS notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or CPS's failure to comply with its obligations under the Contract in respect of the Goods:

4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which CPS notified the Customer that the Goods were ready; and

4.7.2 CPS shall store the Goods until actual delivery or collection takes place and charge the Customer for all related costs and expenses (including, at the election of CPS insurance).

4.8 If ten Business Days after the day on which CPS notified the Customer that the Goods were ready for delivery or collection the Customer has not accepted actual delivery or otherwise collected them, CPS may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, together with the costs referred to in clause

4.7.2, 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.

4.9 CPS may deliver the Goods by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel that or any other instalment.



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5. WORKS

5.1 Where the Supply is specified in the Quotation as including Works, CPS shall, subject to the Customer promptly complying with its obligations under the Contract, provide the Works in accordance with the Specification and any programme contained therein in all material respects. Unless otherwise agreed in writing, all Works shall take place during Business Hours.

5.2 CPS shall use all reasonable endeavours to meet any performance dates for the supply the Works specified in the Quotation or Specification (as the case may be), but any such dates shall be estimates only and time shall not be of the essence for the supply of the Works. CPS may in its absolute discretion appoint third-party subcontractors in the performance of the Works under the Contract. Where any estimated performance dates are contingent on the supply of any third-party goods and/or services, CPS shall have no liability whatsoever for any Losses caused as a result of any failure or delay by that third party to provide such goods and/or services.

5.3 CPS warrants to the Customer that the Works will be provided using reasonable care and skill.

6. QUALITY

6.1 CPS warrants that as the case may be, on the completion of:

6.1.1 collection, where the Customer is collecting the Goods in accordance with clause 4.4;

or

6.1.2 delivery, where CPS is not performing Works in connection with the Goods; or

6.1.3 the Works, where CPS is performing Works in connection with the Goods,

(each, a **Relevant Event**) the Goods shall:

6.1.4 subject to the Customer's warranty at clause 2.3, conform in all material respects with their description and the Specification;

6.1.5 be free from material defects in design, material and workmanship;

6.1.6 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982, as the case may be); and

6.1.7 be fit for any purpose held out by CPS.

6.2 The Customer shall be required to inspect the Goods on the Relevant Event taking place. In the event that:

6.2.1 an incorrect quantity of the Goods;

6.2.2 anything other than the Goods are received and/or installed; or

6.2.3 there is any other instance which the Customer reasonably considers gives rise to a failure to comply with the warranties set out in clauses 5.3 or 6.1 by CPS, the Customer shall be required to notify CPS within 5 Business Days of the Relevant Event taking place. Where no such notification is made by the Customer to CPS in accordance with this clause, the Goods shall be deemed to be accepted in all material respects as conforming with the Contract by the Customer (**Deemed Acceptance**).

6.3 If the Customer gives notice in writing to CPS at any time prior to Deemed Acceptance that it alleges a breach of either of the warranties set out in clauses 5.3 or 6.1 (**Warranty Breach**), then the Customer agrees to:

6.3.1 provide CPS and any third party instructed on CPS's behalf with a reasonable opportunity of examining the Goods in question, together with access to the Delivery Location (or other Customer premises), data, documentation, information, telecommunications and IT systems and such other materials as may reasonably be requested by CPS; and

6.3.2 if requested to do so by CPS, allow CPS or any third party instructed on CPS's behalf to collect the Goods from the Delivery Location (or other Customer premises) for further inspection, in order for CPS to investigate the Warranty Breach.

6.4 Where CPS agrees that there has been a Warranty Breach, CPS shall, at its option:

6.4.1 repair or replace the defective Goods; and/or

6.4.2 reperform any defective Works; and/or



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6.4.3 otherwise refund a proportionate amount of the Charges.

6.5 Where CPS does not agree that there has been a Warranty Breach, CPS shall:

6.5.1 provide the Customer with written reasons for determining such;

6.5.2 in respect of Goods that CPS has collected for further inspection under clause 6.3.2, return such Goods to the location from which they were collected on a date to be agreed (not later than 5 Business Days thereafter) between the parties (and clause 4 shall apply to such return); and

6.5.3 be entitled to levy an additional charge on the Customer for any inspection, collection, return and other support provided under this clause 6.

6.6 CPS shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 or for any breach of the warranty set out in clause 5.3 in any of the following events:

6.6.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;

6.6.2 the defect arises because the Customer failed to follow CPS' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

6.6.3 the defect arises as a result of CPS following any drawing, design or Specification supplied by the Customer;

6.6.4 the Customer alters or repairs such Goods without the written consent of CPS;

6.6.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

6.6.6 the Goods differ from the Specification as a result of changes made to ensure it complies with applicable statutory or regulatory requirements under clause 3.2.

6.7 Except as provided in this clause 6, CPS shall have no liability to the Customer in respect of a Warranty Breach.

6.8 These Terms shall apply to any repaired or replacement Goods supplied, and any replacement Works that performed, by CPS.

7. MANUFACTURER WARRANTIES

Notwithstanding the provisions contained in clause 6 the Goods may, in some circumstances, benefit from a manufacturer warranty. In such circumstances, CPS shall use reasonable endeavours to ensure that the Customer receives the benefit of that warranty in place of CPS. Alternatively, the Customer may be required to register the Goods with the manufacturer in order to obtain the benefit of any manufacturer warranty. Whilst CPS shall provide reasonable assistance with the registration of any manufacturer warranty, it shall be the Customer's sole responsibility to investigate whether such warranty exists.

8. TITLE AND RISK

8.1 Save to the extent that CPS causes any damage to the Goods (or any constituent part) in performing the Works, the risk in the Goods shall pass to the Customer in accordance with clause 4.1 (where Goods are being delivered) or clause 4.4 (where Goods are being collected).

8.2 Title to the Goods shall not pass to the Customer until CPS receives payment in full (in cash or cleared funds) for the Goods and any other goods that CPS has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

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

8.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as CPS's property;

8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

8.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

8.3.4 notify CPS immediately if it becomes subject to any of the events listed in clause

12.1.4 to clause 12.1.6; and

8.3.5 give CPS such information as CPS may reasonably require from time to time relating to:



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(a) the Goods; and

(b) the ongoing financial position of the Customer.

8.4 Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before CPS receives payment for the Goods. However, if the Customer resells the Goods before that time:

8.4.1 it does so as principal and not as CPS's agent; and

8.4.2 title to the Goods shall pass from CPS to the Customer immediately before the time at which resale by the Customer occurs.

8.5 At any time before title to the Goods passes to the Customer, then without limiting any other right or remedy, CPS may:

8.5.1 by notice in writing, terminate the Customer's right under clause 8.4 to resell the Goods or use them in the ordinary course of its business; and

8.5.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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.

9. CUSTOMER'S OBLIGATIONS

9.1 In addition to its other obligations under the Contract, the Customer shall:

9.1.1 co-operate with CPS in all matters relating to the performance of its obligations under this Contract;

9.1.2 provide CPS, its employees, agents, consultants and subcontractors, with access to the Delivery Location and the Customer's other premises, office accommodation and other facilities as reasonably required by CPS to provide the Supply;

9.1.3 as soon as reasonably practicable, provide CPS with such information and materials as CPS may reasonably require in order to provide the Supply, (including but not limited to any risk assessment method statements and any other relevant health and safety information/materials) and ensure that such information is complete and accurate in all material respects;

9.1.4 prepare the Customer's premises for the provision of the Supply;

9.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Supply before the date on which the same are required;

9.1.6 comply with all Applicable Laws;

9.1.7 keep all CPS's Materials and Equipment, documents and other property of CPS at the Customer's premises in safe custody at its own risk, maintain them in good condition until returned to CPS, and not dispose of or use them other than in accordance with CPS' written instructions or authorisation;

9.1.8 ensure that there are adequate and suitable:

(a) ground conditions; and

(b) electrical power and associated services, utilities and telecommunications as required under the Quotation and Specification; at the Customer's premises or the Delivery Location (as the case may be) in order for the Supply to be provided; and

9.1.9 comply with any additional obligations as set out in the Quotation and the Specification.

9.2 If CPS' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation

(Customer Default):

9.2.1 without limiting or affecting any other right or remedy available to it, CPS shall have the right to suspend performance of the Services or the supply of the Solution until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the CPS' performance of any of its obligations;

9.2.2 CPS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the CPS' failure or delay to perform any of its obligations as set out in this clause 9.2; and



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

10. CHARGES AND PAYMENT

10.1 The Charges shall be as set out in the Quotation or otherwise as may be agreed in writing between the parties. CPS Standard payment terms are proforma 100% cleared funds prior to any plant being ordered. Payment milestones and/or different terms of credit will be subject to negotiation and satisfactory credit clearances.

10.2 Any deposits paid in the event of the works being cancelled by the customer are non refundable

10.3 CPS shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom CPS engages in connection with the Works, including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by CPS for the performance of the Works, and for the cost of any materials in connection with the Works.

10.4 CPS may, by giving notice to the Customer at any time before delivery, increase the Charges to reflect any increase in the cost of the Goods that is due to any:

10.4.1 factor beyond CPS's control (including foreign exchange fluctuations, increases in taxes and duties (which shall include import and export duties), and increases in labour, materials and other manufacturing costs);

10.4.2 request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

10.4.3 delay caused by any instructions of the Customer or failure of the Customer to give CPS adequate or accurate information or instructions.

10.5 The Charges exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to CPS at the prevailing rate, subject to the receipt of a valid VAT invoice.

10.6 Unless otherwise agreed between the parties in writing, CPS may invoice the Customer:

10.6.1 for the Goods on or at any time after the Goods are made available for collection or delivery; or

10.6.2 in the case of Works, at the earlier of:

(a) their being completed; or

(b) 3 months following the subject of the Works (where applicable) having been supplied to the Customer; or

10.6.3 in accordance with any payment schedule specified in a Quotation or Order Confirmation.

10.7 Unless otherwise set out in the Quotation or agreed in writing, the Customer shall be required to pay for the Supply within 7 days from the date of the invoice. Payment shall be made to the bank account nominated by CPS in writing. Time for payment shall be of the essence.

10.8 If the Customer fails to make a payment due to CPS under the Contract by the due date, then, without limiting CPS's remedies under clause 12:

10.8.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.7 shall accrue on a daily basis at a rate of 8% a year above the Bank of England's base rate from time to time; and

10.8.2 CPS shall be entitled to suspend performance of the Supply until such time as the overdue sum (together with interest) has been paid in full by the Customer, and CPS shall only be required to recommence the performance of the Supply once the Customer provides satisfactory security to CPS in respect of the Customer's future payment obligations.

10.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding required by law). CPS may at any time, without limiting any other rights or remedies it may have, set-off, counterclaim, deduct or withhold any amount payable by CPS to the Customer.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Terms or the Contract shall limit or exclude CPS's liability for:

11.1.1 death or personal injury caused by negligence;

11.1.2 fraud or fraudulent misrepresentation;



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11.1.3 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); or

11.1.4 any matter in respect of which it would be unlawful for CPS to exclude or restrict liability.

11.2 In light of the assurances provided by CPS under these Terms as to the quality of the Supply, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4, 5 and

13 of the Supply of Goods and Services Act 1982 (as the case may be) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Subject to clause 11.1:

11.3.1 CPS shall under no circumstances whatsoever be liable to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential Loss, that arises under or in connection with the Contract; and

11.3.2 CPS's total liability to the Customer in respect of all other 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 the total Charges paid or payable by the Customer to CPS under the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, CPS may terminate this Contract with immediate effect by giving written notice to the Customer if:

12.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment.

12.1.2 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;

12.1.3 the Customer repeatedly breaches any of the terms of the contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to perform the Contract;

12.1.4 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.1.5 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

12.1.6 the Customer'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.

12.2 Without limiting its other rights or remedies, CPS may suspend provision of the Goods under the Contract or any other contract between the Customer and CPS if the Customer becomes subject to any of the events listed in clause 12.1.4 to clause 12.1.6, or CPS reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 On termination of the Contract for any reason the Customer shall immediately pay to CPS all of CPS's outstanding unpaid invoices and interest and, in respect of elements of the Supply that have been provided but in respect of which no invoice has been submitted, CPS shall submit an invoice, which shall be payable by the Customer immediately on receipt.



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12.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

12.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 All Intellectual Property Rights in or arising out of or in connection with the Supply, including any Deliverables (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by CPS.

13.2 CPS makes no warranty and provides no assurance to the Customer that the Deliverables shall not breach the rights (including Intellectual Property Rights) of any third parties.

13.3 CPS grants to the Customer or shall procure the direct grant to the Customer of, a fully paidup, revocable, non-exclusive, royalty-free licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving the Supply and receiving the benefit of the Supply in connection with its business.

13.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause

13.4 without the written consent of CPS (such consent to not be unreasonably withheld or delayed).

13.5 Where applicable, the Customer grants CPS a fully paid-up, non-exclusive, royalty-free, nontransferable licence to copy and modify any materials provided by the Customer to CPS for the term of the Contract for the purpose of providing the Services and/or the Solution to the Customer. The Customer warrants that such materials do not breach the Intellectual Property Rights of any third party.

13.6 The Services and any element of the Deliverables are not intended to constitute advice in any specific situation and may not constitute a complete, comprehensive and definitive outline of the subject matter and as such should not be relied on as such by the Customer.

14. CONFIDENTIALITY

14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 14.2.

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

14.2.1 to its employees, officers, representatives or advisors who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisors to whom it discloses the other party's confidential information comply with this clause 14; and

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

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

FORCE MAJEURE

15.1 CPS shall not be in breach of the Contract nor liable for delay in performing, or failing to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

15.2 CPS shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

15.3 If a Force Majeure Event prevents, hinders or delays CPS's performance of its obligations for a continuous period of more than twenty Business Days, the Customer may terminate the Contract immediately by giving written notice to CPS and source the Goods from a third-party supplier.

16. NOTICES

16.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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 email.

16.2 Any notice shall be deemed to have been received, if:

16.2.1 delivered by hand, at the time the notice is left at the proper address;



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16.2.2 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

16.2.3 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.

16.3 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.

17. GENERAL

17.1 Assignment and other dealings

17.1.1 CPS 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.

17.1.2 The Customer 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.

17.2 Entire agreement

17.2.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

17.2.2 Each party acknowledges that in entering into the Contract it does not rely on and 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.

17.2.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

17.2.4 Nothing in the Contract shall limit or exclude any liability for fraud or fraudulent misrepresentation.

17.3 Variation

Except as set out in the Contract, no variation of this Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the parties (or their authorised representatives and permitted assigns).

17.4 Waiver

17.4.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.4.2 A failure or delay by a Party to exercise, or the single or partial exercise of, any right or remedy provided under the Contract or by law shall not 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.

17.5 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the parties shall:

17.5.1 negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision; and

17.5.2 if agreement under clause 17.5.1 cannot be reached, delete the relevant provision or part-provision.

17.6 Rights and Remedies

Except as expressly provided in these Terms and the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law and each shall be cumulative of every other right or remedy now or in the future existing and may be enforced concurrently from time to time.

17.7 Third party rights

17.7.1 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.



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17.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

17.8 Multi-tiered dispute resolution procedure

If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it, expressly excluding failures by the Customer to pay undisputed Charges (**Dispute**) then, except as expressly provided in this Contract, the parties may at their discretion follow the procedure set out in this clause:

17.8.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute;

17.8.2 if the management level employees are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it;

17.8.3 If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Customer is not registered in the United Kingdom, the parties will attempt to settle it by mediation;

17.8.4 Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, either party may request a recommendation for the nomination of a mediator from the Centre for Effective Dispute Resolution (**CEDR**);

17.8.5 The parties shall have recourse to mediation in accordance with the International Chamber of Commerce's Mediation Rules, which are deemed to be incorporated by reference into this clause;

17.8.6 To initiate the mediation, a party must give notice in writing (**ADR Notice**) to the other party to the Dispute, referring the Dispute to mediation. A copy of the ADR Notice should be sent to CEDR; and

17.8.7 If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Customer is registered in the United Kingdom, the parties may commence court proceedings under clause 17.10 in relation to the whole or part of the Dispute.

17.9 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.

17.10 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.