

**ECLIPSE (IP) LIMITED**  
**TERMS AND CONDITIONS OF SUPPLY**  
VERSION 1.1, MAY 2013



**PART A - GENERAL**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In the terms and conditions of the Contract, unless the context otherwise requires, the following expressions shall have the following meanings:

- "Charges" means the charges payable by the Customer, under the Contract;
  - "ECIP" means Eclipse (IP) Ltd;
  - "Contract Hourly Rate" means the per person contract hourly rate as notified by ECIP to the Customer in writing from time to time;
  - "Contract" means a contract between ECIP and the Customer, in relation to the supply of Equipment and/or the System Installation Service and/or the Maintenance Service and/or the Rental Service, as evidenced by: (i) signature of the Quotation by the Customer; or (ii) the Customer issuing a purchase order; or (iii) ECIP issuing an acknowledgement of order.
  - "Customer" means the party to the Contract detailed in the Quotation;
  - "Equipment" means the equipment (which shall include software) detailed in the Quotation and/or Project Documentation;
  - "Expenses" means all travel, accommodation and sustenance expenses incurred by ECIP in its performance of the Contract;
  - "Fixed Rental Service" means the service relating to the rental of Equipment;
  - "Fixed Rental Term" means the term of the Fixed Rental Service, detailed in the Quotation;
  - "Freedom Rental Service" means the service relating to the rental of Equipment;
  - "Freedom Rental Term" means the term of the Freedom Rental Service, detailed in the Quotation;
  - "Force Majeure Event" means any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of electronic systems, damage to or failure of any third party's computer equipment, software, connectivity, network or telecommunications systems, or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations;
  - "Maintenance Service" means the service detailed in the Quotation and/or Project Documentation;
  - "Maintenance Term" means the term of the Maintenance Service, detailed in the Quotation;
  - "Monitoring Service" means the service detailed in the Quotation;
  - "Monitoring Service Term" means the term of the Monitoring Service, detailed in the Quotation;
  - "Normal Working Hours" means 9:00am till 5:30pm and Monday to Thursday, 9:00 till 5:00 on Fridays, excluding weekends and statutory bank holidays;
  - "Proposal" means the pre Contract document detailed in the Quotation;
  - "Project Documentation" means any documentation associated with the performance of the Contract (if any) including without limitation the Proposal, any programme schedule, design plan or specification;
  - "Quotation" means the Quotation to which these terms and conditions are attached;
  - "System Installation Service" means the service relating to the installation of a System;
  - "System" means the system detailed in the Quotation and/or Project Documentation which may or may not comprise Equipment.
  - "The Act" means the Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy Economic Development and Construction Act 2009, and any amendment thereto or re-enactment of the same
- 1.2 In these terms and conditions:
- 1.2.1 any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;
  - 1.2.2 references to any gender includes any other gender and the singular includes the plural and vice versa;
  - 1.2.3 references to a party are references to ECIP or the Customer. References to the parties are references to ECIP and the Customer;
  - 1.2.3 the headings are for ease of reference only and shall not affect the construction or interpretation.

**2. SCOPE**

- 2.1 The terms and conditions set out in this Part A shall always apply to the Contract.
- 2.2 If (with reference to the Quotation) the Contract encompasses the supply of:
  - 2.2.1 Equipment, the additional terms and conditions set out in Part B shall also apply;
  - 2.2.2 the Systems Installation Service, the additional terms and conditions set out in Part C shall also apply;
  - 2.2.3 the Maintenance Service, the additional terms and conditions set out in Part D shall also apply;
  - 2.2.4 the Rental Service, the additional terms and conditions set out in Part E shall also apply;
  - 2.2.5 the Monitoring Service, the additional terms and conditions set out in Part F shall also apply.
- 2.3 If there is any conflict between the provisions of this Part A and those of Parts B to F, the provisions of this Part A shall prevail.
- 2.4 If there is any conflict between the provisions of the Quotation and the Project Documentation, the provisions of the Quotation shall prevail.
- 2.5 The Contract may encompass the supply of goods or services by third parties other than ECIP. In such circumstances, ECIP shall have no responsibility or liability for the supply of such goods or services.

**3. PERFORMANCE**

- 3.1 Unless otherwise agreed in writing, time for performance of the Contract shall not be of the essence, which shall not be made so by the service of any notice.
- 3.2 The Contract shall be performed during Normal Working Hours.

**4. CUSTOMER CO-OPERATION**

- 4.1 ECIP and the Customer shall each appoint a project manager who is conversant with all aspects of the terms and conditions of the Contract and is reasonably able to deal with all matters of a technical nature as well as arranging and conducting progress meetings.
- 4.2 The Customer shall co-operate with ECIP in:
  - 4.2.1 its performance of the Contract; and
  - 4.2.2 the provision of all assistance, information and documentation reasonably requested by ECIP to enable ECIP to properly perform the Contract.

**5. CHARGES**

- 5.1 ECIP shall issue to the Customer invoices for payment of the Charges at intervals of not less than fourteen days from the date of commencement of the Contract. The invoices shall state the sum that ECIP considers shall become due on the payment due date in respect of each payment and the basis upon which that sum has been calculated. The due date for payment in respect of each payment shall be seven days after the date that the respective invoice is issued. The final date for payment in relation to the sum which becomes due hereunder shall be fourteen days after the due date for payment.
- 5.2 The Customer shall give a notice to ECIP not later than five days after the payment due date. The notice shall specify the sum that the Customer considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated; and the Customer shall pay the amount specified in the notice on or before the final date for payment.
- 5.3 In the event that the Customer does not issue a notice under clause 5.2, the Customer shall pay on or before the final date for payment, the amount specified in the invoice issued under clause 5.1; and further the invoice shall (if the Contract is a contract to which the Act applies) be regarded as a notice complying with section 110A (3) of the Act given pursuant to section 110B (2) of the Act, all in terms of section 110B (4) of the Act.
- 5.4 Failure to pay any sum due under the Contract by the applicable final date for payment shall constitute a material breach of the Contract.
- 5.5 No payment shall be deemed to have been received until ECIP has received cleared funds.
- 5.6 The Customer shall make all payments due under the terms and conditions of the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by ECIP to the Customer.
- 5.7 If the Customer fails to pay ECIP any sum due pursuant to the terms and conditions of the Contract, the Customer shall be liable to pay interest to ECIP on such sum from the due date for payment at the annual rate of 8% above the base rate from time to time of Royal Bank of Scotland Plc, accruing on a daily basis until payment is made, whether before or after any judgment.

5.8 The Charges are exclusive of any incurred Expenses, value added tax, import or export duties, which the Customer shall pay in addition when it is due to pay Charges.

**6. GENERAL WARRANTIES AND LIMITATIONS**

- 6.1 All warranties, conditions and other terms implied by statute (including the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982) or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.2 All warranties provided under the terms and conditions of the Contract, shall not apply:
  - 6.2.1 in respect of any defect arising from the Customer's wilful damage, negligence, usage in abnormal working conditions, failure to follow ECIP's instructions (whether oral or in writing), misuse, alteration or repair without ECIP's prior written approval;
  - 6.2.2 if any of the Charges are outstanding.
- 6.3 Each party warrants to the other that it:
  - 6.3.1 is lawfully entitled to enter into the Contract;
  - 6.3.2 has unrestricted rights to or under, all intellectual property rights in any materials or components utilised;
  - 6.3.3 is entitled to use all know-how and confidential information necessary to enable it to fully and effectively perform any obligations.

**7. LIABILITY**

- 7.1 The following provisions set out the entire financial liability of ECIP (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 7.1.1 any breach of the terms and conditions of the Contract;
  - 7.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 7.2 Nothing in the terms and conditions of the Contract excludes or limits the liability of ECIP:
  - 7.2.1 for death or personal injury caused by ECIP's negligence;
  - 7.2.2 for any matter which it would be illegal for ECIP to exclude or attempt to exclude its liability;
  - 7.2.3 for fraud or fraudulent misrepresentation.
- 7.3 Subject to condition 7.1 and condition 7.2, in respect of the Contract:
  - 7.3.1 ECIP's total liability for any claim in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of such Contract shall be limited to a sum of money which is equal to the Charges actually paid under the Contract;
  - 7.3.2 ECIP shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with such Contract.

**8. EARLY TERMINATION**

- 8.1 Notwithstanding anything else contained in the terms and conditions of the Contract, the Contract may be terminated by ECIP with immediate effect if the Customer:
  - 8.1.1 is in material breach of the terms and conditions of the Contract and the breach is not capable of remedy; or
  - 8.1.2 is in material breach of the terms and conditions of the Contract and the breach is capable of remedy and that other party shall have failed to remedy that breach within thirty (30) days of notice, specifying the breach and requiring its remedy; or
  - 8.1.3 shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

**9. CONSEQUENCES OF TERMINATION**

- 9.1 Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party hereunder or at law, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or to continue in force on or after such termination.
- 9.2 All payments payable to ECIP under the Contract shall become due immediately upon its termination.
- 9.3 Condition 9.1 above, and any condition which is stipulated to do so, shall survive termination of the terms and conditions of the Contract.

**10. DISPUTE RESOLUTION**

- 10.1 In the event of any bona fide dispute or difference arising between the parties in connection with the terms and conditions of the Contract (excluding any dispute relating to non payment of the Charges), the parties shall attempt to resolve such dispute or difference in good faith and without recourse to legal proceedings:
  - 10.2 If the parties are unable to resolve such dispute or difference within fifteen (15) days of initial discussions between the parties taking place, either party may request the other in writing that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall attempt to resolve the dispute within thirty (30) days of the written request to do so.
  - 10.3 If the dispute or difference is not resolved as a result of a meeting of the senior representatives of the parties pursuant to condition 10.2 above, or if no meeting of the senior representatives occurs within the prescribed time periods set out in that condition, either party may request the Centre for Dispute Resolution ("CEDR") in writing to appoint an independent expert.
  - 10.4 If either party so requests CEDR to appoint an independent expert, such party must instruct CEDR to ensure that the expert:
    - 10.4.1 acts as an expert and not an arbitrator;
    - 10.4.2 affords the parties the opportunity within reasonable time limits to make representations to him;
    - 10.4.3 informs each party of the representations of the other;
    - 10.4.4 affords each party the opportunity within reasonable time limits to make submissions to him on the representations of the other; and
    - 10.4.5 notifies the parties of his decision, with reasons as quickly as practicable.
- 10.5 The fees and expenses of the expert including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by the expert, save where otherwise directed by the expert.
- 10.6 The expert determination is to be conclusive and binding on the parties except where there is fraud or a manifest error or on a matter of law.

**11. FORCE MAJEURE**

- 11.1 If a party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under the terms and conditions of the Contract by a Force Majeure Event:
  - 11.1.1 the Affected Party's obligations under the terms and conditions of the Contract are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
  - 11.1.2 as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other party (the "Non-Affected Party") in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under the terms and conditions of the Contract;
- 11.2 If the Affected Party does not comply with condition 11.1.2 it forfeits its rights under condition 11.1.1.
- 11.3 The Affected Party shall:
  - 11.3.1 make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under the terms and conditions of the Contract; and
  - 11.3.2 as soon as reasonably possible after the Force Majeure Event, the Affected Party shall notify the other party in writing that the Force Majeure Event has ended and resume performance of its obligations under the terms and conditions of the Contract.
- 11.4 If the Force Majeure Event continues for more than three (3) months starting on the day the Force Majeure Event starts, either party may terminate the terms and conditions of the Contract by giving not less than thirty (30) days' notice in writing to the other party.

**12. CONFIDENTIALITY AND SECURITY**

- 12.1 Each party shall treat as confidential all information obtained from the other pursuant to the terms and conditions of the Contract and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this condition 12 shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the terms and conditions of the Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this condition 12) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this condition 12.
- 12.2 If ECIP shall appoint any sub-contractor then ECIP may disclose confidential information to such sub-contractor subject to such sub-contractor giving the Customer an undertaking in similar terms to the provisions of this Condition 12. The foregoing obligations as to confidentiality shall survive any termination of the terms and conditions of the Contract.

**13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1 Unless otherwise provided for in Parts A to E of the terms and conditions of the Contract, all intellectual property rights (including any rights of copyright) created or arising under the Contract shall be the exclusive property of ECIP.

**14. RECRUITMENT OF PERSONNEL**

- 14.1 The Customer shall not during the continuance of the Contract and for a period of twelve (12) months thereafter, solicit or procure the services of any employee or sub-contractor of ECIP.

**15. ASSIGNMENT AND SUB-CONTRACTING**

- 15.1 The Customer shall not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under the terms and conditions of the Contract without the prior written consent of ECIP.
- 15.2 ECIP shall have the right to sub-contract the performance of the Contract to any third party.
- 15.3 For the avoidance of doubt, the Contract is freely assignable by ECIP to any third party.

**16. NOTICES**

- 16.1 Any notice given by one party to the other under the terms and conditions of the Contract must be in writing and may be delivered personally or by pre-paid registered post and in the case of post shall be deemed to have been given two (2) days after the date of posting. Notices shall be delivered or sent to the addresses specified in the Quotation or to any other address notified in writing by one party to the other for the purpose of receiving notices after the date of the terms and conditions of the Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

17.	<b>ANNOUNCEMENTS</b>
17.1	The Customer not shall make or permit any person connected with it to make any announcement concerning the Contract, except as required by law or any competent regulatory body or with the written approval of the other party, such approval not to be unreasonably withheld or delayed.
18.	<b>FURTHER ASSURANCE</b>
18.1	Either party shall at the request and cost of the other do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to the terms and conditions of the Contract.
19.	<b>SEVERANCE</b>
19.1	If any provision of the terms and conditions of the Contract is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the terms and conditions of the Contract which shall remain in full force and effect.
19.2	If any provision of the terms and conditions of the Contract is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.
20.	<b>THIRD PARTIES</b>
20.1	A person who is not party to the terms and conditions of the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the terms and conditions of the Contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
21.	<b>COSTS</b>
21.1	Each party shall bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and implementation of the terms and conditions of the Contract and all other documents to be completed in accordance with its provisions.
22	<b>NO PARTNERSHIP OR AGENCY</b>
22.1	Nothing in the terms and conditions of the Contract is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party between the parties, or to authorise either party to act as agent for the other. Save where expressly stated in the terms and conditions of the Contract, neither party shall have authority to make representations, act in the name or on behalf of or otherwise to bind the other.
23.	<b>WAIVER AND CUMULATIVE REMEDIES</b>
23.1	The rights and remedies provided by the terms and conditions of the Contract may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of the terms and conditions of the Contract or of a default under the terms and conditions of the Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of the terms and conditions of the Contract.
23.2	The rights and remedies provided by the terms and conditions of the Contract are cumulative and (unless otherwise provided in the terms and conditions of the Contract) are not exclusive of any rights or remedies provided at law or in equity.
24.	<b>ENTIRE AGREEMENT</b>
24.1	The terms and conditions of the Contract, together with the documents referred to in them, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties relating to such matters.
24.2	Each of the parties acknowledges and agrees that in entering into the terms and conditions of the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in the terms and conditions of the Contract. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of the terms and conditions of the Contract.
24.3	Nothing in this condition 24 shall operate to exclude any liability for fraud.
25.	<b>GOVERNING LAW AND JURISDICTION</b>
25.1	The terms and conditions of the Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with Scottish law.
25.2	Each party irrevocably agrees to submit to the non-exclusive jurisdiction of the Scottish courts over any claim or matter arising from or in connection with the terms and conditions of the Contract.

#### PART B – SUPPLY OF EQUIPMENT

1.	<b>DELIVERY</b>
1.1	Delivery or despatch dates shall be approximate only. Time for delivery shall not be of the essence.
1.2	Delivery shall be made to the delivery address specified in the Quotation. The Customer shall notify ECIP of any change in delivery address at least seven (7) days before the expected delivery date.
1.3	Delivery shall be deemed to have taken place when the Equipment is delivered to the delivery address or any other location agreed in writing.
1.4	If the Customer refuses or fails to take delivery of the Equipment or fails to take any action necessary on its part for delivery of the Equipment, ECIP shall be entitled to terminate that part of the Contract relating to the Equipment with immediate effect to dispose of the Equipment as ECIP may determine and to recover from the Customer any loss and additional costs incurred as a result of such refusal or failure including (without limitation) reasonable storage costs from the due date of delivery.
1.5	The Customer shall notify ECIP of any shortages or discrepancies within forty eight (48) hours of delivery. ECIP shall not be liable to rectify any shortages or discrepancies which have not been notified.
2.	<b>RISK AND TITLE</b>
2.1	Unless otherwise agreed in writing, risk in the Equipment shall pass to the Customer at the time of delivery.
2.2	The Equipment shall remain the property of ECIP until the Customer pays to ECIP the Charges (together with any accrued interest) and all other amounts owed by the Customer in respect of any other Contract or agreement.
2.3	Until title and ownership of the Equipment has passed to the Customer, the Customer shall: <ul style="list-style-type: none"> <li>2.3.1 not re-sell the Equipment;</li> <li>2.3.2 destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment;</li> <li>2.3.3 take proper care of the Equipment and take all reasonable steps to prevent any damage to or deterioration of them;</li> <li>2.3.4 keep the Equipment free from any charge lien or other encumbrance and store the Equipment in such a way as to show clearly that they belong to ECIP;</li> <li>2.3.5 give ECIP such information relating to the Equipment as ECIP may from time to time require.</li> </ul>
3.3	ECIP reserves the right to repossess and resell any of the Equipment to which it has reserved title, with the re-impoundment to the Customer of any and all monies paid for them. ECIP consents to the Customer's possession of the Equipment.
3.4	The Customer grants an irrevocable right and licence to ECIP and its employees and agents to enter the Customer's premises or the site at which the Equipment is stored, on reasonable notice during normal business hours for the purpose of inspecting and/or repossessing Equipment to which it has retained title, including any Equipment which has already been fixed.
4.	<b>NO WARRANTY</b>
4.1	The status of ECIP is that of a re-seller and not a manufacturer of the Equipment. In this respect and to the fullest extent permissible by law, ECIP is unable to offer any express warranties of any kind whatsoever in respect of the Equipment.
4.2	ECIP shall supply the Equipment on a strictly without warranty, "as is" basis.
4.3	The Equipment may be sold with a manufacturers warranty, details of which shall be dispatched with the Equipment and may be requested from ECIP in advance of delivery.
4.4	ECIP shall use its best commercial endeavours to assign the benefit of any manufacturers warranty to the Customer or any end-user.
4.5	Unless the Contract encompasses the supply of the Maintenance Service, ECIP shall have no dealings with the manufacturer on behalf of the Customer in respect of any Equipment which is found to be defective.

#### PART C – SYSTEMS INSTALLATION SERVICE

1.	<b>SUPPLY OF SERVICE</b>
1.1	ECIP shall provide the System Installation Service in accordance with: <ul style="list-style-type: none"> <li>1.1.1 the Quotation; and</li> <li>1.1.2 the Project Documentation.</li> </ul>
1.2	The Customer acknowledges that System shall be based entirely upon the Quotation and/or Project Documentation and that any changes must be communicated and agreed in accordance with condition 3 below.
2.	<b>CUSTOMER OBLIGATIONS</b>
2.1	The Customer shall be entirely responsible, at its sole cost and expense, for the following: <ul style="list-style-type: none"> <li>2.1.1 obtaining any easements, way leaves, permissions, consents or licenses which are necessary before ECIP can perform this Agreement, including without limitation planning permission pursuant to the Town and Country Planning Act 1990 and building regulations consent pursuant to the Buildings Act 1984 and all associated building regulations;</li> <li>2.1.2 providing such information, drawings or specification within its possession or control as ECIP may reasonably request;</li> <li>2.1.3 providing reasonable welfare facilities;</li> <li>2.1.4 providing suitable secure space for keeping tools, fittings and materials;</li> <li>2.1.5 making available electrical power for the operation of tools and testing of the System;</li> <li>2.1.7 providing access to operational telephone systems;</li> <li>2.1.8 ensuring that neither the Customer nor its employees, agents or contractors interfere with any materials provided by ECIP in connection with the System;</li> <li>2.1.9 all of that equipment and services supplied by any third party;</li> <li>2.1.10 complying with all obligations and responsibilities under the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999, the Construction (Design &amp; Management) Regulations 2007, any approved codes of practice, industry guidance, standards and best practice as amended from time to time;</li> <li>2.1.11 provide at its own expense any necessary cherry picking vehicles or equipment.</li> </ul>

3.	<b>CHANGE CONTROL</b>
3.1	The provisions of this condition 3 shall apply if: <ul style="list-style-type: none"> <li>3.1.1 at any time the Customer wishes to alter all or any part of the System in which case the Customer shall provide ECIP with full written breakdown of such alterations and with such further information as ECIP may reasonably require; ECIP identifies that the System being delivered is outside the scope of the Quotation and/or Project Documentation.</li> <li>3.1.2 ECIP shall submit to the Customer as soon as reasonably practicable a full written quotation for such alterations specifying what changes (if any) will be required to the System and Charges. Upon receipt of such quotation the Customer may elect either: <ul style="list-style-type: none"> <li>3.1.3 to accept such quotation in which case the Contract shall be amended in accordance therewith; or</li> <li>3.1.4 to withdraw the proposed alterations in which case the Contract shall continue in force unchanged.</li> </ul> </li> </ul>
3.2	Neither party shall be obliged to consider or make any alterations to the System save in accordance with this condition 3.
3.3	ECIP shall be entitled, without implementing the change control procedure detailed in this condition 6, to replace any part or parts of any System provided that: <ul style="list-style-type: none"> <li>3.3.1 such parts of the System shall provide the same or materially similar functions, facilities or functional utility as the part or part of the System being replaced; and such replacement shall not adversely affect the remaining parts of the System.</li> </ul>
3.4	<b>ADDITIONAL CHARGES</b>
4.1	The Charges are based on the Systems Installation Service being performed during Normal Working Hours.
4.2	ECIP shall be entitled to charge the Customer on a time and materials basis (with reference to the Contract Hourly Rate for: <ul style="list-style-type: none"> <li>4.2.1 any part of the System Installation Service which is performed outside Normal Working Hours;</li> <li>4.2.2 works in addition to the System Installation Service necessary as a result of: <ul style="list-style-type: none"> <li>4.2.2.1 delays which are attributable to the Customer or any third party;</li> <li>4.2.2.2 the failure of the Customer to comply with its obligations under condition 2;</li> <li>4.2.2.3 the failure of the Customer to disclose relevant details which might impact on the performance of the System.</li> </ul> </li> </ul>
4.3	Unless otherwise expressly stated, the Charges are exclusive of any of the following: <ul style="list-style-type: none"> <li>4.3.1 measures required to protect the System from adverse environmental conditions and/or harmful substances whose presence was not previously notified by ECIP or was not reasonably apparent to ECIP at the time of entering into the Contract;</li> <li>4.3.2 work with asbestos or any other toxic or hazardous substances;</li> </ul>
4.4	The Customer shall fully reimburse ECIP in respect of any charges not included in the Quotation but necessarily incurred or expended by ECIP as a result of the Customer failing to carry out all or any of its obligations under the Contract.
4.5	All Charges incurred pursuant to this condition 4 shall be notified by ECIP to the Customer before they are incurred.
5	<b>ACCEPTANCE</b>
5.1	The System shall be deemed to have been accepted to the complete satisfaction of the Customer: <ul style="list-style-type: none"> <li>5.1.1 at such time that the Customer signs a certificate of completion;</li> <li>5.1.2 after the elapse of fourteen (14) days from the date of ECIP communicating to the Customer that the System is operationally ready, provided that there are no known defects;</li> <li>5.1.3 if the System is placed into live operational use by the Customer.</li> </ul>
5.2	For the avoidance of doubt, following acceptance pursuant to condition 5.1, all outstanding Charges which are payable under the Contract shall become immediately due for payment.
6.	<b>LIMITED WARRANTY</b>
6.1	ECIP warrants that it shall perform the System Installation Service: <ul style="list-style-type: none"> <li>6.1.1 using reasonable skill and care;</li> <li>6.1.2 in accordance with the Quotation and any Project Documentation.</li> </ul>
6.2	ECIP warrants that the quality of the workmanship provided as part of the Systems Installation Service shall be of satisfactory quality and fit for a purpose for a period of twelve (12) months from the date on which the works were performed.

#### PART D – MAINTENANCE SERVICE

1.	<b>SUPPLY OF SERVICE</b>								
1.1	ECIP shall provide the Maintenance Service in accordance with: <ul style="list-style-type: none"> <li>1.1.1 the Quotation; and</li> <li>1.1.2 any Project Documentation</li> </ul>								
1.2	The Customer acknowledges that the Quotation and/or Project Documentation, accurately reflect the nature of the Maintenance Service to be provided.								
2.	<b>TERM</b>								
2.1	The Maintenance Service shall commence upon the signature of the Quotation and shall continue for the Maintenance Term.								
2.2	Upon expiry of the Maintenance Term, the Maintenance Service shall continue (subject to earlier termination in accordance with the Contract) on a rolling monthly, subject to either party having the right to terminate the Contract on the provision of three (3) months written notice.								
2.3	The Maintenance Service shall not continue in accordance with condition 2.2 if either party serves notice to terminate prior to the expiry of the Maintenance Term.								
2.4	ECIP shall have the right to increase the Charges and Contract Hourly Rate with effect from the anniversary of the commencement of the Maintenance Term. Such increase shall not exceed any percentage increase in the retail price index.								
3.	<b>SERVICE CREDITS</b>								
3.1	If at the end of each month of the Contract any agreed Service Level has not been met, ECIP shall by way of compensatory payment, reduce the Charges payable for the following month of the Term or Subsequent Term, by the amounts recorded in the table below ("Service Credit"): <table border="1" style="margin-left: 20px; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Charges paid per annum</th> <th style="text-align: left;">(Service Credit)</th> </tr> </thead> <tbody> <tr> <td>Up to £1,000</td> <td>£30.00</td> </tr> <tr> <td>£1,001 - £3,000</td> <td>£50.00</td> </tr> <tr> <td>Over £3,001</td> <td>£100.00</td> </tr> </tbody> </table>	Charges paid per annum	(Service Credit)	Up to £1,000	£30.00	£1,001 - £3,000	£50.00	Over £3,001	£100.00
Charges paid per annum	(Service Credit)								
Up to £1,000	£30.00								
£1,001 - £3,000	£50.00								
Over £3,001	£100.00								
3.2	The Client acknowledges that the Service Credit is reasonable, offered in lieu of any right of termination, is not a penalty and represents a genuine attempt to pre-estimate an adjustment to the Charges to reflect the value of the Maintenance Services actually rendered.								
4.	<b>SUSPENSION</b>								
4.1	ECIP shall have the right to suspend the provision of the Maintenance Services for such amount of time that any of the Charges remain unpaid.								
5	<b>CUSTOMER'S OBLIGATIONS</b>								
5.1	The Customer shall at its sole cost and expense: <ul style="list-style-type: none"> <li>5.1.1 provide ECIP with full, safe and prompt access to the System to enable ECIP to carry out its obligations under the Contract;</li> <li>5.1.2 provide adequate working space around the System for the use of ECIP's personnel and make available all reasonable facilities as may be requested from time to time by ECIP for the storage and safe keeping of any test equipment and spare parts;</li> <li>5.1.3 use all reasonable endeavours to provide a suitable vehicle parking facility for use by ECIP's personnel which is free from any legal restrictions and which is immediately close to the System;</li> <li>5.1.4 ensure, in the interest of health and safety, that ECIP's personnel are met promptly by a member of the Customer's staff and while on the Customer's premises for the purposes of this Agreement, are at all times accompanied by a member of the Customer's staff familiar with the Customer's premises and safety procedures;</li> <li>5.1.5 make available to ECIP, free of charge, all facilities and services reasonably required by ECIP to enable ECIP properly to provide the Maintenance Services;</li> <li>5.1.6 provide such telecommunication facilities as are reasonably required;</li> <li>5.1.7 make sure that the relevant environmental conditions (in particular those (if any) defined in the relevant Product user manuals) are maintained for the System and shall further maintain in good condition the place where the System are situated, the cables and fittings to the System and associated with the System, and the electricity supply thereto</li> <li>5.1.8 save for discrete additions generally recognised as being compatible with the System, not make any modifications to the System without ECIP's prior consent.</li> <li>5.1.9 ensure that the System is used in a proper manner, in accordance with the relevant user manuals and by competent trained employees only or by persons under their supervision.</li> <li>5.1.10 ensure that the external surfaces of the System are, where appropriate, kept clean and in good condition and shall carry out any minor maintenance requirements recommended by ECIP (or recommended in the relevant Product user manual) from time to time.</li> <li>5.1.11 save as aforesaid, and except when operating under instructions from ECIP not attempt to adjust, repair, support or maintain the System and shall not request, permit or authorise anyone other than ECIP or the manufacturer of the System (where such System are under a warranty from a manufacturer other than ECIP) to carry out any adjustments, repairs, support or maintenance of the System;</li> <li>5.1.12 use on or with the System only such accessory, attachment, component or additional equipment or System as ECIP recommends, or are recommended in accordance with the relevant user manuals, or are commonly and properly used on or with the System.</li> <li>5.1.13 not use in conjunction with the System any accessory, attachment, component or additional equipment or System other than those which have been supplied or approved by ECIP for use in the manner proposed, or which are specifically approved as compatible by the relevant user manuals.</li> <li>5.1.14 promptly notify ECIP if the System needs service or is not operating correctly. Failure by the Customer to notify ECIP within two weeks of the Customer first becoming aware of such failure or incorrect working shall free ECIP from all obligations to investigate or correct such failure or incorrect working.</li> <li>5.1.15 make available to ECIP, free of charge, such information as may be necessary to enable ECIP properly to conduct telephone diagnosis as part of the any telephone support service;</li> <li>5.1.16 provide at its own expense any necessary cherry picking vehicles or equipment.</li> </ul>								
6	<b>EXCLUSIONS FROM MAINTENANCE SERVICES</b>								
6.1	The Maintenance Services do not include support which is necessitated as a result of: <ul style="list-style-type: none"> <li>6.1.1 failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions; or</li> </ul>								

- 6.1.2 accident, transportation, neglect, misuse, abuse or default of or by the Customer, its employees or agents or any third party; or
  - 6.1.3 any fault in attachments or associated components (whether or not supplied by ECIP) which do not form part of the System covered by this Agreement; or
  - 6.1.4 any attempt by any person other than ECIP personnel or any person authorised by ECIP (via the telephone or otherwise) or an authorised ECIP sub-contractor, to adjust, repair or support the System; or
  - 6.1.5 user error.
- 6.2 In addition, the Maintenance Services do not include:
- 6.2.1 the provision of Maintenance Services at a place other than the location detailed in the Quotation;
  - 6.2.2 electrical or other environmental work external to the System; and
  - 6.2.3 the support of any attachments or associated components which do not form part of the System.

**7. ADDITIONAL CHARGES**

- 7.1 ECIP shall be entitled to charge the Customer on a time and materials basis (with reference to the Contract Hourly Rate for work performed):
  - 7.1.1 pursuant to conditions 5 or 6;
  - 7.1.2 which in the reasonable opinion of ECIP, were not necessary; or
  - 7.1.3 which arises as a consequence of the Customers failure to comply with its obligations under the Contract.
- 7.2 All Charges incurred pursuant to this condition 7 shall be notified by ECIP to the Customer before they are incurred.

**PART E – RENTAL SERVICE**

**1. SUPPLY OF SERVICE**

- 1.1 ECIP shall provide the Rental Service in accordance with:
  - 1.1.1 the Quotation; and
  - 1.1.2 any Project Documentation.
- 1.2 The Customer acknowledges that the Quotation and/or Project Documentation, accurately reflect the nature of the Rental Service to be provided.

**2. TITLE AND RISK**

- 2.1 Legal, beneficial and equitable title and ownership of the Equipment shall always remain with ECIP and shall never pass to the Client.
- 2.2 All risk in the Equipment vests with the Client.
- 2.3 The Client agrees shall always take good care of the Equipment. Where necessary, any repair or replacement of the Equipment shall be the responsibility and cost of the Client

**3. LIMITED WARRANTY**

- 3.1 ECIP warrants that the Equipment shall perform in accordance with the manufacturers operating manual.

**4. INSURANCE**

- 4.1 The Client shall insure the Equipment for its full replacement value against the risks of fire, theft and damage, accidental or otherwise.
- 4.2 The Client shall hold the proceeds of any claim on the insurance policy relating to such Equipment, on trust for ECIP.
- 4.3 The Client shall provide ECIP with evidence of any insurance referred to in this condition 4.

**4. INCREASE IN CHARGES**

- 4.1 ECIP shall have the right to increase the Charges:
  - 4.1.1 with effect from the anniversary of the commencement of the Rental Term. Such increase shall not exceed any percentage increase in the retail price index;
  - 4.1.2 ay any time, by 8% for each 5% rise in corporation tax.

**5. FIXED RENTAL TERM**

- 5.1 The Fixed Rental Service shall commence upon the signature of the Quotation and shall continue for the Fixed Rental Term.
- 5.2 The Client shall have the right to terminate the Contract at any time upon the provision of one (1) months written notice subject to the Client (by way of compensation for early termination), paying ECIP a sum of money which is equal to the Charges payable had the Fixed Rental Term run its course, LESS a sum of money which is equal to the proceeds of any sale of the Equipment. If the Equipment has not been sold after two (2) months, it shall be deemed to have a nil value. Upon expiry of the Fixed Rental Term, the Client shall return the Equipment to ECIP, in full working order and without delay.
- 5.3

**6. FREEDOM RENTAL TERM**

- 6.1 The Freedom Rental Service shall commence upon the signature of the Quotation and shall continue unless terminated by the Customer or ECIP upon the provision of one (1) months written notice.
- 6.2 Upon termination of the Fixed Rental Term, the Client shall return the Equipment to ECIP, in full working order and without delay.

**PART F – MONITORING SERVICE**

**1. STATUS OF ECIP**

- 1.1 The Customer appoints ECIP to act as its agent for the purpose of arranging the Monitoring Service and facilitating payment of the Charges on its behalf.
- 1.2 The Customer acknowledges that as agent of a disclosed principal, ECIP shall have no liability to the Customer for the performance of the Monitoring Service.