

ZIP WATER UK

TERMS AND CONDITIONS FOR HYDROCARE SERVICE PLAN

1. INTERPRETATION

1.1 Definitions:

Additional Services any additional services required by the Customer which are outside the scope of the HydroCare Plan purchase by the Customer.

Appliance the Zip Water System purchased from the Supplier by the Customer and all substitutions supplied by the Supplier.

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

Charges the charges payable by the Customer for the supply of the Services in accordance with Clause 10.

Commencement Date has the meaning given in Clause 3.2 and as set out in the Order Summary.

Conditions these terms and conditions as amended from time to time in accordance with Clause 18.9.

Contract the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Control has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer the person or firm who purchases HydroCare Service Plan from the Supplier as identified in the Order Summary.

Customer Default has the meaning set out in Clause 9.2.

Data Protection Legislation the Data Protection Act 2018 and all amendments and replacement legislation and any other regulation relating to privacy of personal data as defined by the Data Protection Act 2018.

End Of Life Date means 8 years from the date of installation or purchase of an Appliance.

Force Majeure Event means any event beyond the Supplier's reasonable control, which by its nature could not be foreseen, or, if it could have been foreseen was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors or governmental action having a material adverse effect on the performance of the Contract.

HydroCare Service Plan the service plan purchased by the Customer from the Supplier for the maintenance of the Appliance.

Initial Inspection the inspection of the Appliance carried out by the Supplier before the Supplier accepts the Order and subject to which the Charges for the HydroCare Service Plan will be agreed.

Intellectual Property Rights patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

Order the Customer's order for the HydroCare Service Plan.

Order Summary the summary of the Customer's Order setting out the details of the HydroCare Service Plan purchased by the Customer.

Limescale Management a method of preventing or removal of limescale from boiling water systems.

Services the services, supplied by the Supplier to the Customer as included in the HydroCare Service Plan purchased by the Customer.

Supplier Zip Heaters (UK) Limited t/a Zip Water UK registered in England and Wales.

Term the term of the HydroCare Service Plan as set out in the Order Summary.

Warranty Period period and duration of any warranty in relation to the Appliance as notified in writing by the Supplier to the Customer.

2. INTERPRETATION

2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

2.2 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2.3 A reference to writing or written includes fax and email.

3. BASIS OF CONTRACT

3.1 The Order constitutes an offer by the Customer to purchase the HydroCare Service Plan for the maintenance of the Appliance in accordance with these Conditions.

3.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (Commencement Date). The issuance of a written acceptance of the Order is subject to the satisfactory outcome of an Initial Inspection in accordance with Clause 4.2.

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

4. TERM

4.1 The Contract shall continue for the Term unless terminated earlier in accordance with Clause 15. At the expiry of the Term, the Contract shall automatically extend for a period of 12 months (Extended Term) unless the Customer gives written notice to the Supplier, not later than 30 days before the end of the Term to terminate the Contract. At the expiry of the Extended Term the Contract shall automatically extend for further Extended Terms of 12 months unless and until the Customer gives not less than 30 days' written notice to terminate the Contract at the end of the relevant Extended Term.

4.2 At the commencement of any Extended Term, payment of the Charges for such Extended Term shall fall due and be payable in accordance with Clause 10.

5. INITIAL INSPECTION

5.1 Before accepting the Order for the HydroCare Service Plan, the Supplier shall undertake an Initial Inspection of the Appliance and the Customer shall make available the Appliance to the Supplier in order to carry out such Initial Inspection.

5.2 In the event that the Initial Inspection reveals damage to or defect in the Appliance, such damage or defect must be remedied before the Supplier will accept the Order.

5.3 Where the Appliance requires parts in order to rectify the damage or defect, such parts shall be supplied to the Customer subject to the terms of the HydroCare Service Plan purchased by the Customer. Where the HydroCare Service Plan purchased by the Customer does not include the cost of parts or fitting, this shall be charged at the Supplier's then current rates.

5.4 If the Initial Inspection reveals the Appliance is deemed by the Supplier (in its absolute discretion), to be in poor condition, has reached or exceeded its End Of Life Date, is unserviceable or unsafe to access, the Supplier reserves the right to refuse the Order or revise the quotation for the HydroCare Service Plan selected by the Customer. In such circumstances, the Supplier will also provide a quotation for a replacement item of Appliance. Any subsequent Order will be on the basis of the Supplier's revised quotation.

6. SUPPLY OF SERVICES

6.1 The Supplier shall supply the Services to the Customer in accordance with the relevant HydroCare Service Plan in all material respects.

6.2 The Supplier warrants to the Customer that the HydroCare Services will be provided using reasonable care and skill

6.3 The Supplier reserves the right to amend any HydroCare Service Plan if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services. The Supplier shall notify the Customer in any such event.

6.4 Where the Customer requires the Supplier to supply Additional Services, the Supplier shall supply such Additional Services on an ad-hoc basis.

6.5 The Customer shall pay all additional Charges associated with the supply of the Additional Services. Such payment shall be made, or (for credit account holders) be pre-authorised, in advance of receipt of the Additional Services. The Additional Service shall not be booked or carried out before pre-payment or pre-authorisation is received by the Supplier. All payments for Additional Services shall be made in accordance with Clause 10.5.

6.6 Following agreed Additional Services supplied and where a pre-authorisation of payment exists, the Supplier will collect full and final payment, on receipt of a Proof Of Service document signed as accepted by the Customer.

6.7 Where the Appliance has reached its End Of Life Date the Supplier reserves the right to not replace the system or provide any parts to repair the Appliance.

7. REFRIGERATION GUARANTEE

7.1 Subject to Clause 14, in the event that the refrigeration system on any Appliance is non-repairable on-site, within a period of 5 years for commercial installations or 7 years for domestic installations from the date of manufacture of the Appliance (taken from the serial number of the Appliance) the Supplier will replace the Appliance with a like-for-like or better reconditioned Appliance ("Refrigeration Guarantee"). *Excludes Refresh, Refresh Plus and Essential plans

7.2 A Customer can request that the Refrigeration Guarantee commences from a date other than the date of manufacture in the following circumstances:

7.2.1 where the Customer has proof of purchase of the Appliance, the Refrigeration Guarantee will commence from the date of purchase (such proof of purchase will be accepted at the sole discretion of the Supplier);

7.2.2 where the Customer has proof that the Supplier installed and/or commissioned (or arranged for the installation or commissioning of) the Appliance, the Refrigeration Guarantee will commence from the date of such installation and/or commissioning (such proof of installation and/or commissioning will be accepted at the sole discretion of the Supplier).

7.3 The Refrigeration Guarantee will not extend beyond the initial period in respect of the reconditioned Appliance.

7.4 Where the refrigeration system on any item of Appliance fails outside the term of the Warranty Period but within 1 month of the Commencement Date, the Refrigeration Guarantee shall not apply.

8. CO2 CANISTERS

8.1 Unless expressly included, the cost of CO2 canisters (and other consumables) is excluded from the HydroCare Service Plan and the Supplier's then current standard Charges for replacement CO2 canisters shall apply. Additional labour Charges associated with CO2 canister fitting and exchange will also apply and will be invoiced to the Customer in accordance with Clause 10.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

9.1.1 co-operate with the Supplier in all matters relating to the Services;

9.1.2 pay the Charges in accordance with Clause 10;

9.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's Appliance, premises and other facilities and Appliance as required by the Supplier in order to perform the Services;

9.1.4 provide the Supplier with such information and materials as the Supplier may require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

9.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the installation and use of the Appliance on its premises;

9.1.6 comply with all applicable laws, including health and safety laws;

9.1.7 comply with any additional obligations as set out in the HydroCare Service Plan;

9.1.8 provide a safe working environment;

9.1.9 shut-off any utilities as required/requested by the Supplier; and

9.1.10 use the Appliance in accordance with manufacturer's specifications and instructions for use; and

9.1.11 ensure that its request for maintenance Services to be performed by the Supplier in respect of any non-Supplier appliances does not put the Customer in breach of its contract with such third party appliance provider;

9.1.12 satisfy itself that the Services it has requested will not invalidate or limit any warranty the Customer may enjoy on such third party appliances (the Customer should note that many manufacturer/equipment warranties require maintenance and repair services be carried out only by their own approved engineers, the Supplier will not have any liability to the Customer for loss of warranty or other benefit under the Customer's contract for the third party appliance).

9.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed, or any liability arises to or in respect of a third party appliance or its manufacturer/supplier, as a result of 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, the Supplier shall have the right to suspend performance of the 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 Supplier's performance of any of its obligations; and

9.2.2 the Supplier shall not be liable for any costs, expenses, damages, fines or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations; and

9.2.3 the Customer shall reimburse the Supplier on written demand for any costs, expenses, damages, fines or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

10. PRICE AND PAYMENT

10.1 Charges and payment shall be governed by these Conditions and the Order Summary. In the event of any conflict between these Conditions or an Order Summary, the Order Summary shall prevail to the extent of the conflict or inconsistency.

10.2 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date provided that the Supplier gives not less than 60 days' advance written notice of any increase in the Charges. If the Customer does not agree with any increase in the Charges then the Customer may serve notice in writing to the Supplier to terminate the Contract at any time prior to the date on which the increase is due to take effect.

10.3 The Supplier shall invoice the Customer on the Commencement Date of the HydroCare Service Plan and after this in line with the billing cycle agreed between the parties (that is, monthly, quarterly, 6 monthly or annually) as set out in the Order Summary.

10.4 Where the Charges relate to an Extended Term, the Supplier will issue invoices for the Charges due for the whole of the Extended Term in accordance with the billing cycle agreed. Where the Customer is required to issue a purchase order for the payment of the Supplier's invoices it shall do so at least 28 days before the due date for payment of the Charges.

10.5 The Customer shall pay each invoice submitted by the Supplier:

10.5.1 within 30 days of the date of the invoice;

10.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier; and

10.5.3 time for payment of the Charges shall be of the essence of the Contract;

10.5.4 where the Customer requests a change to the payment terms agreed at the outset of the Service Plan (as set out here or specifically agreed in the Order) the Supplier may charge an admin fee of up to £35 in order to action such change (unless such charge is specifically prohibited by consumer protection laws applicable to the Customer in respect of this Contract. Where such admin charge is limited by any applicable consumer law, the Supplier shall charge the maximum permitted admin charge up to a maximum of £35).

10.5.5 where the Customer requests a duplicate invoice, proof of service or order summary the Supplier may charge an admin fee of up to £10 per document requested in order to action such request (unless such charge is specifically prohibited by consumer protection laws applicable to the Customer in respect of this Contract. Where such admin charge is limited by any applicable consumer law, the Supplier shall charge the maximum permitted admin charge up to a maximum of £10).

10.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

10.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 15, 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 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10.9 In the case of late payment of any amounts due and payable by the Customer to the Supplier under the Contract, the Supplier may, after having notified the Customer in writing, suspend its performance of the Services until payment of the outstanding amount is made to the Supplier. Where the Supplier has suspended its performance of the Services under the Contract for late payment, the Contract will expire at the end of the Term or any Extended Term and will not be extended. Any amounts due to the Supplier at the end of the Term or Extended Term will be payable in accordance with Clause 15.4.

10.10 Where the Customer requires Services falling outside of the scope of the HydroCare Service Plan, the Supplier may, at its sole discretion, require pre-payment or pre-authorisation of payment ahead of booking or carrying out such Services. Payment for such Services will be in accordance with the Supplier's then current pricing schedule and shall be paid in accordance with Clause 10.5.

11. SPECIAL TERMS WHICH APPLY TO CONSUMERS

11.1 This Clause 11 applies if the Customer is a Consumer. Consumer has the meaning given to it under Regulation 4 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013/3134.

11.2 The Consumer has the right to cancel the Contract under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

11.3 Where the Consumer wishes to exercise their right to cancel the Contract, they must do so within 14 days of the date the Order. The Consumer will not have the right to cancel if:

11.3.1 The Order relates to urgent repairs or maintenance; or

11.3.2 The Consumer requests that the Services commence within 14 days from the date of the Contract.

11.4 Notice of cancellation should be given to the Supplier by email, at email address shown on the Order Summary or by phone to the Supplier's telephone number shown on the Supplier's website available at <https://www.zipwater.co.uk/>.

11.5 If the Consumer cancels this Contract, the Supplier will reimburse to the Consumer all payments received from the Consumer unless the Consumer requested for the Supplier to start providing the services during the cancellation period, in which case the Consumer agrees to pay the Supplier for the services provided up to the time of cancellation, which will be an amount in proportion to the services performed up to that point in comparison with the full price under this Contract;

11.6 Any personal data of the Consumer shall be processed in accordance with the Supplier's privacy policy available at <https://www.zipwater.co.uk/privacy-policy>.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

12.2 Save where prohibited by consumer protection legislation applicable to the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any

claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights where the Customer:

12.2.1 provides specific instructions to the Supplier;

12.2.2 requests Services be performed on third party manufactured or owned appliances where the Customer is prohibited from obtaining third party maintenance and repair services for that equipment by the contract between the Customer and third party supplier/manufacturer/owner or where the Customer has otherwise failed to perform its own obligations as set out in Clause 9; or

12.2.3 supplies materials for use by the Supplier in the performance of the Services.

13. DATA PROTECTION AND DATA PROCESSING

13.1 To the extent that the parties process personal data in connection with the Contract, they will each comply with all applicable requirements of the Data Protection Legislation.

14. EXCLUSIONS FROM THE HYDRO-CARE SERVICE PLANS

14.1 The Supplier shall not be responsible for the repair, replacement or maintenance of non-Supplier appliances unless specifically agreed in writing by the Supplier in the Order. Where the Supplier has agreed to carry out Services in respect of non-Supplier appliances, such services shall be subject always to the following terms:

14.1.1 The Supplier reserves the right (subject to agreement with Customer) to replace a non-Supplier appliance or consumable for an equivalent Supplier appliance or consumable should a repair or planned service not be possible or commercially viable;

14.1.2 The Supplier shall at all times use OEM, equivalent or higher-grade parts, filters and spares ("consumables") during all work conducted on non-Supplier appliances;

14.1.3 where a fault is present in any part or component of a non-Supplier appliance and the Supplier is unable to procure OEM, equivalent or higher-grade parts or spares, the Supplier shall be entitled to replace the non-Supplier appliance at the cost of the Customer [subject to the Supplier informing the Customer of such cost in advance];

14.1.4 non-Supplier appliances that are older than 5 years and require replacement will be at the cost of the customer, [the cost of replacements for appliances less than 5 years old will be subject to agreement between the Customer and Supplier];

14.1.5 the Customer shall carry out all its obligations regarding third party appliances to be maintained by the Supplier.

14.2 Notwithstanding any other provisions of these Conditions, the Supplier shall be under no liability to provide the Services where:

14.2.1 The Services are required to remedy maintenance or repair work carried out on the Appliance by unauthorised third parties or Customer itself;

14.2.2 The damage or defect arises from neglect, misuse or vandalism of the Appliance or where the Appliance is exposed to excessive heat or excessive cold;

14.2.3 Breakdown arises from incorrect installation of the Appliance by anyone other than the Supplier;

14.2.4 The damage or defect arises due to the condition of the water used in the Appliance (for example if there is a contamination in the local supply);

14.2.5 There have been fluctuations in electrical power, water supplies, water purity or ventilation which cause damage to the Appliance;

14.2.6 Use of the Appliance has been under environmental, power or operating conditions beyond the limits or constraints specified by the Supplier or any other use which is not in accordance with instructions or anticipated purpose for the Appliance;

14.2.7 There are limescale-related issues with the Appliance where no limescale Management plan is included in the HydroCare Service Plan purchased by the Customer. The Supplier reserves the right to charge additional costs in relation to any limescale related repairs or services where limescale Management cover is not included in the HydroCare Service Plan purchased by the Customer; or

14.2.8 Appliance with refrigeration systems fail the Initial Inspection. For the avoidance of doubt such Appliance shall not be covered by a HydroCare Service Plan.

14.3 The Supplier shall not be liable for inbound water quality used in the Appliance that causes failure to the Appliance, or quality issues with the Appliance, its performance or the water delivered from the Appliance.

15. TERMINATION

15.1 If the Customer becomes subject to any of the events listed in Clause 15.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

15.2 For the purposes of Clause 15.1, the relevant events are:

15.2.1 the Customer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or LLP) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

15.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

15.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

15.2.4 (being a company) an application is made to court, or an order is made, for the appointment of administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

15.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

15.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

15.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;

15.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress execution, sequestration or other such process is levied or enforced against the whole or any part of its assets and such attachment or process is not discharged within 14 days;

15.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 15.2.1 to 15.2.6 inclusive;

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

15.2.11 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

15.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

15.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the HydroCare Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Clause 15.2.1 to Clause 15.2.12, or the Supplier 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, or the Customer fails to observe any of these Conditions and fails to rectify such non-observance to the reasonable satisfaction of the Supplier within 14 days of a notice of breach from the Supplier setting out the nature of the breach.

15.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's unpaid outstanding invoices and interest. Where the Customer terminates the Contract before the end of the Term or any Extended Term, the Customer shall pay all Charges payable to the Supplier for the remainder of the Term or the Extended Term.

15.5 Interest shall be payable on all outstanding sums in accordance with Clause 10.7.

15.6 Termination of the Contract, however arising, shall not affect any of the parties' rights or remedies, obligations and liabilities that have accrued as at termination, and the Customer acknowledges that the charges are non-refundable notwithstanding early termination by either party under these Conditions.

15.7 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

15.7.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or

15.7.2 there is a change of control of the Customer.

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

16. LIMITATION OF LIABILITY

16.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

16.1.1 death or personal injury caused by negligence;

16.1.2 fraud or fraudulent misrepresentation; and

16.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

16.2 Subject to Clause 16.3, the Supplier shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty following types of loss are wholly excluded:

16.2.1 Loss of profits

16.2.2 Loss of sales or business.

16.2.3 Loss of agreements or contracts.

16.2.4 Loss of anticipated savings.

16.2.5 Loss of use or corruption of software, data or information.

16.2.6 Loss of or damage to goodwill.

16.2.7 Indirect or consequential loss.

16.3 Subject to Clause 16.1, the Supplier's total liability to the Customer in aggregate for all claims in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, other act, default, omission, statement or otherwise, shall in no circumstances exceed the total amount paid by the Customer to the Supplier under the Contract.

16.4 Where the Customer is dealing as a Consumer, nothing in this Contract shall affect or limit the consumer's statutory rights. Except for any legal responsibility that the Supplier cannot exclude in law (such as for death or personal injury) or arising under applicable laws relating to the protection of the Consumer's personal information, the Supplier is not legally responsible to the Consumer for any losses that:

16.4.1 were not foreseeable when the Contract was formed;

16.4.2 were not caused by any breach on the Supplier's part;

16.4.3 are business losses; or

16.4.4 are losses to non-consumers.

16.5 The Supplier has given commitments as to compliance of the Services with relevant specifications in Clause 6.3. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

16.6 This Clause 16 shall survive termination of the Contract.

17. FORCE MAJEURE

17.1 The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

18. GENERAL

18.1 Assignment and other dealings.

18.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

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 of its rights and obligations under the Contract without the prior written consent of the Supplier.

18.2 Notice.

18.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or sent by email to the address specified in the Order Summary.

18.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in the Order Summary; if sent by pre-paid first-class post or other next working day delivery service, at 9:00am on the second Business Day after posting. If sent by email, the communication shall be deemed to have been received at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause business hours means 9:00am to 5:00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

18.2.3 The provision of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

18.3 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 relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.

18.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise 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 any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 Third party rights. 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.

18.6 Partnership. Nothing contained in this Contract shall be deemed to create any partnership, joint venture or agency between the parties, nor shall any fiduciary or similar relationship be deemed to exist between the parties.

18.7 Confidential Information. The Conditions of this Contract and any confidential information disclosed by either party to the other (including sales information, forecasts, financial affairs, business relationships and any other information that might reasonably be considered to be confidential) shall be kept confidential during the term of this Contract and for a period of two (2) years thereafter, save to the extent that such confidential information is (i) required to be disclosed by law, (ii) already in the public domain or (iii) known to or independently developed by or learned by a party other than by means of a breach of confidentiality.

18.8 Entire agreement.

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

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

18.9 Variation. The Supplier may, from time to time, vary these Conditions. Where it does so, it will notify the Customer in writing. No variation of these Conditions shall be effective unless it is in writing and signed by the Supplier (or its authorised representative).

18.10 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.

18.11 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.