

## Enviro Technology Services Limited Terms & Conditions

### 1. Introduction

- 1.1 Enviro Technology Services Limited registered in England and Wales with company number 01726773, registered office address Brook Holt, Blackburn Road, Sheffield, South Yorkshire, England S61 2DW (“**ET**”), provide air and environmental monitoring and research equipment and services. These Terms apply to all supply of ET Services and Goods including incidental consumables related to provision of our Services.

### 2. Contracting with ET

- 2.1 The Order constitutes an offer by the Customer to purchase Services and/or purchase and/or hire Goods in accordance with these Terms.
- 2.2 The Order shall only be deemed to be accepted when ET issues written acceptance of the Order (“**Order Confirmation**”), or commences delivery at which point, and on which date the Contract shall come into existence (“**Commencement Date**”).
- 2.3 Any reports, drawings, descriptive material issued by ET, and any descriptions or illustrations contained in the ET website, are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. Any opinion expressed or information provided by ET or its Staff prior to entering a Contract with a Customer, is provided on a non-reliance basis for information only unless it is subsequently specifically confirmed in a Specification and by Order Confirmation. Nothing made available by ET under this Clause 2.3 shall form part of the Contract or have any contractual force, unless confirmed in an Order Confirmation.
- 2.4 Unless ET enter into a separate written agreement with you signed by a director of ET, these Terms apply to any arrangement for provision of Goods or Services with ET and to any Proposal and 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.
- 2.5 Any Proposal given by ET shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue, unless agreed otherwise in writing.

### 3. Supply of Services

- 3.1 ET shall supply the Services to the Customer in accordance with any applicable Specification in all material respects.

- 3.2 ET shall use reasonable endeavours to meet any performance dates specified in our Order Confirmation or Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services or delivery of Goods.
- 3.3 ET reserves the right to amend the Specification 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, and ET shall notify the Customer in any such event.
- 3.4 ET warrants to the Customer that the Services will be provided using reasonable care and skill.

#### **4. Site Assessment**

- 4.1 ET may undertake risk assessments before carrying out any Services on a Site and will report to the Customer any matters of concern. If the Customer does not (in ET's reasonably considered opinion) provide a good level of safety in good time prior to any proposed attendance at Site, then ET reserve the right to withdraw from the Site until the safety issues are resolved and to treat the circumstances as a failure to meet Customer Obligations.

#### **5. Customer's Obligations**

##### 5.1 The Customer:

- (a) shall ensure that the terms of the Order and any information it provides which ET might need to rely upon to deliver the Services or is incorporated into a Specification or described in an Order Confirmation are complete, accurate and meet any requirement the Customer may have. Unless specifically stated by ET in writing ET does not take responsibility for design or warrant that anything provided by ET will meet the Customers requirements.
- (b) warrants they have a right to use and permit ET to use any Intellectual Property Rights in any customer requirement, document, data, design or drawings provided to ET and indemnify ET against any third-party claim, loss, cost or liability arising out of any alleged infringement of third-party Intellectual Property Rights.
- (c) shall co-operate with ET in all matters relating to the provision of Goods and Services.
- (d) shall provide ET and its Staff with access to the Customer's premises, office accommodation and other facilities or access to any Site related to delivery of Services as and when reasonably required by ET.

- (e)** shall provide ET with such information and materials as ET may reasonably require in order to supply the Services and ensure that such information is complete and accurate in all material respects.
- (f)** shall obtain and maintain all necessary licences, permissions and consents which may be required to allow efficient delivery of Services before the date on which the Services are to start (and provide ET with copies upon request).
- (g)** shall ensure that any Site at which Services are to be supplied are in a fit state (including in respect of any issue raised following an ET risk assessment under Clause 4.1) to allow ET to undertake the Services in a reasonably efficient manner.
- (h)** shall ensure that any Site at which Services are to be supplied meets all obligations required of a Site owner or occupier because of then applying laws and regulations and any industry codes of practice applying to the Site owner or occupier and the Customer including any health and safety obligations. The Customer will ensure that all necessary health and safety and Site-specific information is provided to ET and its Staff prior to or upon attendance at any relevant Site.
- (i)** shall keep all ET Materials at a Site or the Customer's premises in safe custody at its own risk and if required in an Order Confirmation insure ET Materials.
- (j)** shall undertake or arrange (in good time) for all preliminary work, access to power, connectivity, Staff and resources as may be required by ET to permit installation, testing, commissioning and operation of any Goods, Services and/or Software agreed to be provided are undertaken by suitably qualified and experienced personnel in accordance with all regulations and provide all certification as to proof of compliance as may be reasonably required.
- (k)** shall notify ET that all relevant steps required under this clause 5.1 have been taken in good time prior to any proposed installation or Site visit date.
- (l)** shall maintain the ET Materials in good condition until returned to ET, and not dispose of or use the ET Materials other than in accordance with ET written instructions or authorisation.
- (m)** shall meet any further Customer Responsibilities set out in an Order Confirmation or Specification in a timely manner.

5.2 The parties acknowledge that weather, Site conditions, access and Customer or Site preparedness and other factors substantially outside of ET's control, or failure to meet Customer Obligations in a timely manner may impact the ability of ET to perform Services in an efficient manner or at all on a given date. In such circumstances ET reserve the right to:

- (a) amend the date of proposed Service delivery (the Customer will use reasonable endeavours to co-operate with ET to rearrange); and/or
  - (b) charge and invoice for any additional Charges or Cancellation Charges;
- 5.3 without limiting or affecting any other right or remedy available to it, ET shall have the right to suspend performance of the Services until the Customer remedies a failure to meet a Customer Obligation, and to rely on the failure to meet the Customer Obligation to relieve it from the performance of any of its obligations in each case to the extent the Customer Obligation prevents or delays ET's performance of any of its obligations.
- 5.4 ET shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ET's failure or delay in performing any of its obligations due to a Customer failing to meet a Customer Obligation.
- 5.5 The Customer shall reimburse ET on written demand for any third-party costs or charges incurred by ET arising directly or indirectly from a failure to meet a Customer Obligation.
- 5.6 Where a Site visit is cancelled by the Customer or ET cannot gain access to a Site in a condition ready for the Services to be provided at any time during a day set for a Site visit, or a Site visit cannot take place due to circumstances outside ET's reasonable control, Cancellation Charges will apply. Cancellation Charges shall be invoiced and payable as follows:
  - (i) Cancellation with greater than 7 days' notice prior to the date set for a Site visit, no Charge save for reimbursement of committed travel, hotel or other third-party charges which cannot be cancelled).
  - (ii) Cancellation between 7 days' and 3 days' notice prior to the date set for a Site visit, payment of 50% of the Charges anticipated as due for the Site visit.
  - (iii) Cancellation within 3 days prior to the date set for a Site Visit, payment of 100% of the Charges and charges anticipated as due for the Site visit.

## **6. Charges and Payment**

- 6.1 The Charges for the Services shall unless stated specifically as a fixed fee in an Order Confirmation be calculated on a time and materials basis and:
  - (a) the Charges for Services shall be calculated in accordance with ET's daily fee rates, as set out in an Order Confirmation or otherwise its current price list at the date of the Contract or the Order Confirmation.
  - (b) ET's daily fee rates for each individual member of Staff for work undertaken on Business Days are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm.

- (c) ET shall be entitled to charge an overtime rate as set out in an Order Confirmation or otherwise at an additional 100% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individual members of Staff whom it engages on the Services outside the hours referred to in clause 6.1(b).
  - (d) ET shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom ET engages in connection with the Services; including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by ET for the performance of the Services. In addition, ET may charge for the cost of materials we use in our Service provision and for any tools, equipment or consumables incidental to provision of the Services to the extent identified in an Order Confirmation.
- 6.2 Where ET supply Goods, Charges for Goods to be supplied will be as set out in an Order Confirmation.
- 6.3 ET reserves the right to increase the Charges for Services on an annual basis with effect from each anniversary of the Commencement Date by 5%, or in line with the percentage increase in the Retail Prices Index in the preceding 12 months plus 3% whichever is the greater.
- 6.4 ET shall invoice the Customer on the dates or stages identified in the Order Confirmation or otherwise monthly.
- 6.5 The Customer shall (unless separate terms are set out in any Order Confirmation) pay each invoice including any applicable VAT submitted by ET:
- (a) within 14 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by ET, and
- time for payment shall be of the essence of the Contract.
- 6.6 All Charges are exclusive of any applicable Value Added Tax, which to the extent applicable will be added at the appropriate rate and paid in full by the Customer in accordance with clause 6.5.
- 6.7 If the Customer fails to make a payment due to ET under the Contract by the due date, then, without limiting the ET's remedies under clause 9, 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 6.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time.

6.8 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).

## **7. Intellectual Property Rights**

7.1 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 unless stated to the contrary in an Order Confirmation be owned by ET.

7.2 ET grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and use the Deliverables solely for the purpose of receiving and using the Services and the Deliverables as described and limited in any Specification, or Order Confirmation.

7.3 The Customer shall not unless ET agrees in writing sub-license, assign or otherwise transfer the rights granted in clause 7.2.

7.4 The Customer grants ET a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to ET for the term of the Contract for the purpose of providing the Goods and/or Services to the Customer.

## **8. Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

8.1 The limits and exclusions in this clause reflect the insurance cover ET has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.

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

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and

- (c) breach of the terms implied by clause 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.5 Subject to clause 8.4 (Liabilities which cannot legally be limited), ET total liability to the Customer for all other loss or damage shall not exceed greater of 100% of a relevant Contract's Charges or £20,000 whichever is the greater.
- 8.6 Subject to clause 8.3 (No limitation of customer's payment obligations) and clause 8.4 (Liabilities which cannot legally be limited), this clause 8.6 sets out the types of loss that are wholly excluded:
  - (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.
  - (g) indirect or consequential loss.
- 8.7 ET has given commitments as to compliance of the Services with relevant specifications in clause 3 and in respect of Goods in clause 11. 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 the Contract.
- 8.8 Unless the Customer notifies ET that it intends to make a claim in respect of an event within the notice period, ET shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.9 This clause 8 shall survive termination of the Contract.

## **9. Termination**

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 6 months' written notice.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to meet payments due under the Contract has been placed in jeopardy.

9.3 Without affecting any other right or remedy available to it, ET may terminate the Contract with immediate effect by giving not less than 5 Business Days' written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 Without affecting any other right or remedy available to it, ET may suspend the supply of Services or withdraw any credit or payment allowance under the Contract or any other contract between the Customer and ET if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 9.2(b), 9.2(c) or clause 9.2(d), or ET reasonably believes that the Customer is about to become subject to any of them.

## **10. Consequences of Termination**

10.1 On termination of the Contract:

- (a) the Customer shall immediately pay to ET all of ET's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied under this or any Order between the Customer and ET but for which no invoice has been submitted, ET shall be entitled to submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) the Customer shall return all of the ET Materials immediately together with any Goods and any Deliverables which have not been fully paid for. If the Customer



fails to do so, then ET may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not permitted by the Contract.

- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 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.

## **11. Goods**

- 11.1 The quantity and description of any Goods to be supplied shall be as set out in the Order Confirmation, ET reserves the right to change brand, specification, or superficial aspects of any Goods without notice, so long as this does not materially change their function. The Customer is solely responsible for determining whether the Goods are fit for the Buyer's intended purpose(s).
- 11.2 ET shall arrange for the delivery of the Goods to the location set out in the Order Confirmation subject to any delivery charges set out in an Order Confirmation. Delivery shall be complete on loading the Goods if collection is at the premises of ET, or otherwise unloading of the Goods at the delivery location. Where Goods are to be collected from ET's premises, and the Customer is notified the Goods are ready for collection and a Customer requests and ET agrees to store the Goods, the additional Storage Terms shall apply. Any dates for delivery of Goods are estimates only. ET may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 11.3 Goods and Software may be supplied with a direct manufacturer's warranty, in which case the manufacturer's warranty represents the only warranties, conditions and terms relating to fitness for purpose, quality and condition of the Goods or Software. The duration of the manufacturer's warranty shall be for such unexpired period of warranty as available at the date of supply of the Goods to the Customer and details will be provided upon request. Unless a service contract is in operation and/or it is expressly agreed by ET, all product warranty investigations, repairs and replacements are on a 'back to base' basis at ET's head-office in Stroud, UK.

Goods manufactured by ET shall have the benefit of a warranty for a period of 12 months from delivery, limited to the repair, replace or refund warranty set out in clause 11.5. All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods (or any Software), whether express or implied by law or otherwise are excluded to the fullest extent permitted by law.

- 11.4 The Customer shall be deemed to accept the Goods following a reasonable period for inspection (being not more than Two Business Days after delivery), if used or signed for by a Customer representative the Customer agrees Goods are deemed accepted.
- 11.5 Where Goods are rejected for good reason in accordance with the Contract, and ET have been given the opportunity to inspect the Goods, or provided with such evidence and images as they may reasonably request and they are found by ET to be defective and have not been used by the Customer and the defect has not arisen due to Customer fault, then ET shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, as the Customers sole remedy.
- 11.6 Where Goods are to be collected from ET premises, ET reserves the right to require the Customer to collect Goods within 10 Business Days of notifying the Customer the Goods are ready for collection, failing which the Customer agrees and acknowledges the Storage Terms shall apply.
- 11.7 Risk in Goods shall pass to the Customer on delivery. Title shall not pass until ET has received payment in full for the Goods.

## **12. Installation & Commissioning Services**

- 12.1 ET may provide Goods which are designed to be installed at the Customer's Site. The Customer shall ensure that it meets all Customer Obligations to allow ET to undertake installation and commissioning in an efficient and timely manner.

## **13. Software**

- 13.1 ET may provide Goods which may incorporate or are designed to work with Software made available by ET but originating from third party vendors. The Customer acknowledges that supply to the Customer and use and availability of Software by the Customer or anyone permitted to use the Software by the Customer shall be governed solely by and subject to the Customer accepting and complying with the terms of any applicable third-party vendor Software licence. ET do not provide a separate warranty or licence relating to third-party Software and title to Software shall not pass to the Customer.
- 13.2 As part of its Services, ET may agree to install, configure, test, and provide maintenance and support to Software. Specific additional terms may apply to these Services as further

described in an Order Confirmation or Specification. Where there is any conflict between these Terms and any specific terms set out in an Order Confirmation or Specification, the terms in the Order Confirmation or Specification shall prevail.

#### **14. Managed Services**

14.1 ET may agree to provide Managed Services to a Customer, and the Customer agrees to appoint ET to provide the Managed Services for the agreed duration or term as set out in an Order Confirmation or Specification. Additional Managed Services specific terms will be set out in an Order Confirmation or Specification and shall apply to the provision of Managed Services in addition to these Terms. Where there is any conflict between these Terms and any specific Managed Services terms, the Managed Services terms shall prevail.

#### **15. WEEE Regulation Compliance**

15.1 Customers are reminded that where Goods provided are subject to the Waste Electrical and Electronic Equipment Regulations 2013 (**WEEE Regs**), the Customer is obliged under the WEEE Regs (and acknowledges and agree under these Terms that they are obliged) to arrange for (and meet the costs of) WEEE Regs compliant disposal of relevant ET supplied Goods that have reached end of life. ET is a registered member of an approved WEEE Regs compliance scheme. Where relevant Goods are supplied in the United Kingdom, we offer Customers a chargeable WEEE Regs compliant option for an authorised operator to collect and dispose of relevant Goods.

#### **16. Equipment Hire**

16.1 ET shall hire the Equipment identified as for Equipment Hire in a Proposal or Order Confirmation to the Customer for use at the Site subject to the Terms set out in this clause 16.

16.2 ET shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with Customer's quiet possession of the Equipment.

#### **16.3 Rental Period**

The Rental Period starts on the Hire Start Date and shall continue for the period set out in the Order Confirmation unless and until this Contract is terminated earlier in accordance with its terms.

#### **16.4 Rental Payments and Deposit**

- 16.5 Customer shall pay the Rental Payments to ET in accordance with the Order Confirmation. The Rental Payments shall be made in cleared funds to the bank account nominated in writing by ET.
- 16.6 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by Customer at the rate and in the manner from time to time prescribed by law.
- 16.7 If a deposit is confirmed as required in an Order Confirmation, then the Customer will pay a deposit to ET in cleared funds prior to the Delivery Date. The deposit is held against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Equipment. If the Customer fails to make any Rental Payments in accordance with the Order Confirmation or causes any loss or damage to the Equipment (in whole or in part), ET shall be entitled to apply the Deposit against such default, loss or damage. Customer shall pay to ET any sums deducted from the Deposit within ten Business Days of a demand for the same. Any net balance of the Deposit as against sums due to ET shall be refundable within ten Business Days of the end of the Rental Period.
- 16.8 **Delivery and Installation**
- 16.9 Delivery of any Hire Equipment shall be made by ET to the Site. ET shall use reasonable endeavours to effect delivery by the date agreed for delivery to Site ("**Delivery Date**"). Risk shall transfer in accordance with clause 16.16 of these Terms.
- 16.10 The Customer shall procure that a duly authorised representative of the Customer shall be present at the delivery of the Hire Equipment. Acceptance of delivery by such representative shall constitute conclusive evidence that Customer has examined the Hire Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by ET, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 16.11 Where ET agree to install Hire Equipment at a Site, this shall be at the Customer's expense. The Customer shall procure that a duly authorised representative of the Customer shall be present at the installation of the Hire Equipment. Acceptance shall be on successful completion of ET's standard tests on installation, or by the Customer representative of installation shall constitute conclusive evidence that the Customer has examined the Hire Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by ET, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 16.12 To facilitate Delivery and Installation of Hire Equipment, Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions

to enable Delivery and installation to be carried out safely and expeditiously (including any preparatory works, power, connectivity, water, materials, facilities, access and working conditions specified in the Proposal or Order Confirmation).

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

- (a) the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date; and
- (b) ET shall store the Equipment until delivery takes place, and charge Customer for all related costs and expenses (including insurance) in accordance with its Storage Terms.

#### 16.14 **Title, Risk and Insurance**

16.15 The Equipment shall at all times remain the property of ET, and 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).

16.16 The risk of loss, theft, damage or destruction of the Equipment shall pass to Customer on Delivery. The Equipment shall remain at the sole risk of Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of Customer (**Risk Period**) until such time as the Equipment is collected or returned to ET. During the Rental Period and the Risk Period, Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) 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 ET may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as ET 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
- (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as ET may from time to time consider reasonably necessary and advise to Customer in writing.
- (d) Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

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

16.18 Customer shall give immediate written notice to ET in the event of any loss, accident or damage to the Equipment arising out of or in connection with Customer's possession or use of the Equipment. In the event of damage or accident, ET shall reasonably assess the condition of the Equipment and shall decide in its sole reasonably exercised discretion whether the Equipment is a Total Loss or can be repaired. Accordingly, the Customer shall be responsible for the cost of repair or Total Loss full replacement value of the Equipment and ET shall be entitled to invoice and charge for the relevant amount in accordance with these Terms.

**16.19 Customer's Additional Hire Related Responsibilities**

16.20 Customer shall during its possession or responsibility for the Equipment (including any Rental Period):

- (a) ensure that the Equipment is kept and operated in a suitable environment, which shall as a minimum meet the requirements set out in the Proposal or Order Confirmation, used only for the purposes for which it is designed, and operated in a proper manner by trained competent Staff in accordance with any operating instructions;
- (b) take such steps (including compliance with all safety and usage instructions provided by ET) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- (d) make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of ET. Title in all substitutions, replacements, renewals made in or to the Equipment shall vest in ET immediately on installation;
- (e) keep ET fully informed of all material matters relating to the Equipment;
- (f) keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without ET's prior written consent;
- (g) permit ET or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Site or any premises at

which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

- (h)** not, without the prior written consent of ET, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (i)** not without the prior written consent of ET, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and Customer shall be responsible for, repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify ET against all losses, costs or expenses incurred as a result of such affixation or removal;
- (j)** not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of ET in the Equipment and, where the Equipment has become affixed to any land or building, Customer must take all necessary steps to ensure that ET may enter such land or building and recover the Equipment both during the Rental Period and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of ET of any rights such person may have or acquire in the Equipment and a right for ET to enter onto such land or building to remove the Equipment;
- (k)** not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, Customer shall notify ET and Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify ET on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (l)** not use the Equipment for any unlawful purpose;
- (m)** ensure that at all times the Equipment remains identifiable as being ET's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- (n)** deliver up the Equipment at the end of the Rental Period at such address as ET requires, or if necessary allow ET or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
- (o)** not do or permit to be done anything which could invalidate the insurances referred to in clause 16.16.

16.21 Customer acknowledges that ET shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by Customer or its officers, employees, agents and contractors, and Customer shall indemnify ET in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by ET arising out of, or in connection with any failure by Customer to comply with its obligations in this clause 16.

## **17. Data Protection**

17.1 The parties will comply with the applicable Data Protection Laws, (“**Data Controller**” and “**Personal Data**” have the meaning defined in the Data Protection Laws) The parties acknowledge that each act as independent Data Controllers and no processing of Customer Personal Data is anticipated as necessary for the performance of the Contract. If any Personal Data processing is contemplated the parties will enter into a separate data processing agreement.

## **18. Modern Slavery & Anti-Bribery Compliance**

18.1 The parties acknowledge and agree that they will each comply with their obligations under the Bribery Act 2010 and the Modern Slavery Act 2015 and will maintain and enforce adequate policies and procedures to ensure compliance.

## **19. Freedom of Information Act**

19.1 Where the Customer is subject to the Freedom of Information Act 2000 (or any successor legislation) and requested to disclose details of a Contract, or any information relating to the Contract, the Customer will promptly inform ET and take due account of ET representations before disclosing any details of the Contract or any information relating to the Contract. If ET requests (at ET’s own cost), the Customer will permit ET to oppose or commence proceedings to resist disclosure.

## **20. General**

20.1 **Force Majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (“**Force Majeure Event**”).

20.2 If a Force Majeure Event persists for more than 20 Business Days, either party may provide not less than 5 Business Days’ notice of termination.



### 20.3 Assignment and Other Dealings

- (a) ET may at any time assign, 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.
- (b) The Customer shall 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 ET.

20.4 The Customer may request a change to the Services, which ET will consider and provide details of any price variation and details of the impact of any change in circumstances or requested Services, ET shall have no obligation to undertake any Services until confirmed in an Order Confirmation.

### 20.5 Subcontractors

- (a) The parties acknowledge that ET may utilise subcontractors to undertake Services, ET shall be responsible for the acts and omissions of any Subcontractor as if they were the acts or omissions of ET.

### 20.6 Confidentiality.

- (a) Each party undertakes (in addition to any other legal obligation as to confidentiality) that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or ET of the other party, except as permitted by clause 20.6(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 20.5; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Unless agreed otherwise in writing, neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 20.7 Entire Agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party 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.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

20.8 **Variation.** Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20.9 **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.

20.10 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 20.10 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20.11 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by email to the address specified in the Order Confirmation.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

- (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 20.11(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 20.11 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

#### 20.12 Third Party Rights.

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

#### 20.13 Dispute Resolution

- (a) If a dispute arises under or in connection with a Contract, including any question regarding its existence, validity, or termination (**Dispute**), then prior to bringing any proceedings or commencing any alternative dispute resolution procedure, a party must first provide written notice of the Dispute. The Dispute shall be discussed by the parties' representatives responsible for managing the Contract, if the Dispute is not resolved within 10 Business Days of notice, the parties shall escalate the Dispute to their respective senior management or board directors, who shall discuss the Dispute. If after a further 10 Business Days, the Dispute is still not resolved, either party may refer the Dispute to alternative dispute resolution and the parties shall follow the process set out in clause 20.13(b).
- (b) Any Dispute which is not resolved under clause 20.13(a) shall, at the written request of any party (such written request to be in the form of a notice of arbitration under the then applicable Centre for Effective Dispute Resolution ("**CEDR**") Rules) (an "**Arbitration Request**"), be referred to and finally resolved by arbitration in London in accordance with the CEDR Rules, which Rules are deemed to be incorporated by reference into this clause. An Arbitration Request shall summarise the basis of the Contract Dispute and the other parties to the dispute. The arbitration shall be before a single arbitrator who shall be appointed by agreement in writing by both parties or, if they are unable to agree on the identity of the arbitrator within ten Business Days after service of the Arbitration Request, or if the person appointed is unable or unwilling to act, shall be appointed by CEDR on the application of either party.

- (c) Notwithstanding any other provision of these Terms, a party may seek interim or other equitable relief necessary (including injunctive relief) where damages would be an inadequate remedy.

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

20.15 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction.

## SCHEDULE 1 : DEFINITIONS AND INTERPRETATION

### Interpretation

**The following definitions and rules of interpretation apply in these Terms.**

#### **Interpretation:**

Unless expressly provided otherwise in these Terms a reference to legislation or a legislative provision:

- (i) is a reference to it as it is in force as at a relevant Commencement Date; and shall include all subordinate legislation made at the Commencement Date under that legislation or legislative provision.
- (b) 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.
- (c) A reference to writing or written includes email, but not fax.

### Definitions

**Act:** the Housing Grants, Construction and Regeneration Act 1996 (or any successor legislation).

**Business Day:** Monday to Friday, except public holidays in the locations ET provides relevant Services.

**Cancellation Charges:** the charges applied for cancellation of a Site visit or a Site not being in a suitable condition or not available to access and undertake Services as further defined in clause 5.6.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 6.

**Commencement Date:** has the meaning given in clause 2.2.

**Contract:** the contract between ET and the Customer for the supply of Services in accordance with these Terms.

**Customer:** the person or firm who purchases Services from ET.

**Customer Obligation:** has the meaning set out in clause 5.1.

**Data Protection Laws:** The Data Protection Act 2018, and the UK GDPR as defined in the Data Protection Act 2018, each as may be amended or varied from time to time.

**Deliverables:** any items specifically described as deliverables set out in an Order Confirmation.

**ET Materials:** any materials, Equipment, documents and other property of ET.

**Equipment:** any equipment to be used by or on behalf of ET at a Site as described in an Order Confirmation.

**Equipment Hire:** ET making its Equipment available for use by a Customer on terms set out in a Proposal.

**Goods:** any goods to be supplied by ET to the Customer as described in an Order Confirmation.

**Hire Equipment:** Equipment made available on a hire basis by ET.

**Hire Start Date:** The date confirmed in a Proposal or Order Confirmation when Equipment Hire (or on delivery to Site if later) will commence.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, 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.

**Managed Services:** any monitoring, support or maintenance services to be provided by ET.

**Order:** the Customer's order for Goods and/or Services as set out in the Customer's purchase order form or other written email communication, or the Customer's written acceptance of ET's Proposal.

**Order Confirmation:** our written confirmation of an Order.

**Proposal:** Any proposal, estimate or quotation for delivery of Goods or Services or in respect of deployment of Equipment.

**Rental Payments:** the payments to be made by or on behalf of the Customer for hire of relevant Equipment.

**Rental Period:** the period of Equipment Hire as set out in an Order Confirmation.

**Services:** the services, including any Managed Services and the Deliverables, supplied by ET to the Customer as may be further specified in a Specification.

**Site:** any location at which Services may be supplied.

**Software:** any software incorporated into Goods or provided as part of the Services by ET.

**Specification:** the description or specification of the Services provided in writing by ET to the Customer (in respect of Managed Services the term Specification shall include any Managed Services contract specification).

**Storage Terms:** The additional terms applicable if ET agrees to store Goods for a Customer.

**Staff:** means employees, agents, consultants and subcontractors of the relevant party.

**Terms:** these terms as amended from time to time in accordance with clause 20.8.

**Total Loss:** the Equipment is, in ET's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.