

## Schedule 31 (Buyer Specific Terms)

### 1. Definitions

#### 1.1 “Step-In Trigger Event” shall mean:

- 1.1.1 any event described in Clause in this Clause 1.1.1 of Schedule 31 (Buyer Specific Terms);
- 1.1.2 Not Used;
- 1.1.3 a breach of this Contract by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- 1.1.4 the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract;
- 1.1.5 the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Paragraph 2 (Step-In Rights) is necessary;
- 1.1.6 the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- 1.1.7 a need by the Buyer to take action to discharge a statutory duty, responsibility, or requirement under Law.

#### 1.2 “Replacement Supplier” means any third-party service provider of Replacement Services appointed by the Buyer from time to time (or where the Buyer is providing replacement Services for its own account, the Buyer); and

#### 1.3 “Replacement Services” any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the expiry or termination (in whole or in part) of this Contract, whether those services are provided by the Buyer internally and/or by any third party.

### 2. Step-in Rights

#### 2.1 On the occurrence of a Step-In Trigger Event, the Buyer may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Paragraph 2, either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 15 (*What you must keep confidential*)). The Step-In Notice shall set out the following:

- 2.1.1 the action the Buyer wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
- 2.1.2 the Step-In Trigger Event that has occurred and whether the Buyer believes that the Required Action is due to the Supplier's Default;
- 2.1.3 the date on which it wishes to commence the Required Action;
- 2.1.4 the time period which it believes will be necessary for the Required Action;
- 2.1.5 whether the Buyer will require access to the Supplier's premises and/or the Sites; and

- 2.1.6 to the extent practicable, the impact that the Buyer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 2.2 Following service of a Step-In Notice, the Buyer shall:
  - 2.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
  - 2.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
  - 2.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Buyer is not assuming control; and
  - 2.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Buyer's rights under this Paragraph 2.
- 2.3 For so long as and to the extent that the Required Action is continuing, then:
  - 2.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
  - 2.3.2 no deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Paragraph 2.4 shall apply to deductions from Charges in respect of other Services; and
  - 2.3.3 the Buyer shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 2.4 If the Supplier demonstrates to the reasonable satisfaction of the Buyer that the Required Action has resulted in:
  - 2.4.1 the degradation of any Services not subject to the Required Action; or
  - 2.4.2 the non-Achievement of a Milestone,beyond that which would have been the case had the Buyer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 2.5 Before ceasing to exercise its step in rights under this Paragraph 2 the Buyer shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:
  - 2.5.1 the Required Action it has actually taken; and
  - 2.5.2 the date on which the Buyer plans to end the Required Action (the **"Step-Out Date"**) subject to the Buyer being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Paragraph 2.2.
- 2.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Buyer's approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

- 2.7 If the Buyer does not approve the draft Step-Out Plan, the Buyer shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Buyer for the Buyer's approval. The Buyer shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 2.8 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Paragraph 2, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
- 2.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or
  - 2.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving the Step-In Notice is identified as not being the result of the Supplier's Default).

### **3. AGREEMENT WITH KEY-SUBCONTRACTORS**

- 3.1 The Buyer may at any time after the Start Date (whether or not the Buyer serves a Termination Notice and/or a Step-In Notice) require the Supplier to enter into an agreement with the Buyer and any Key Subcontractor(s) as nominated by the Buyer on substantially the same terms as those set out in the Annex to this Schedule 31 to enable such Key Subcontractor(s) to provide the Deliverables or substantially similar deliverables to the Buyer in the event the Buyer elects to. The Supplier shall enter into, and shall procure that such nominated Key Subcontractor(s), such agreement promptly and in accordance with the Buyer's reasonable instructions.

### **4. ESCROW**

- 4.1 At the Supplier's cost and upon written request by the Buyer, Supplier shall within 90 days of the date of the Start Date, upon terms to be agreed between the Parties (such agreement not to be unreasonably withheld), enter into an escrow agreement ("Escrow Agreement") with such escrow agent as the Parties shall agree from time to time ("Escrow Agent"). The Supplier shall procure that the Escrow Agent enters into the Escrow Agreement and shall and include or procure the inclusion of the Buyer in the relevant escrow arrangements in respect of the Software, and any and all relevant technical documentation reasonably required by the Buyer. The Buyer shall have the right to receive such Software and such technical documentation (to include but not limited to technical data, drawings, specifications and training materials) to reasonably allow the Buyer to arrange ongoing repairs and maintenance of the Mobile Freight X-Ray Vehicle Units purchased by the Buyer under this contract for the full term of the contract to cover the 10 year life expectancy of the Units from the Escrow Agent in accordance with the terms of the Escrow Agreement(s) and in any event only if:
- 4.1.1 the Supplier goes into receivership, administration, passes a resolution for its winding up or has a winding up order issued against it which (in each case) remains in effect for more than 30 days and the receiver, administrator, liquidator, trustee in bankruptcy or other equivalent officer fails to assure the Buyer (to the Buyer's reasonable satisfaction) that it will maintain the Software and will supply the Buyer with the Services pursuant to this Contract;

- 4.1.2 (where applicable) the Buyer exercises its right to step-in pursuant to paragraph 2 above;
  - 4.1.3 the Buyer terminates the Contract pursuant to Clause 10.4; and/or
  - 4.1.4 the Supplier is in material breach of its obligations under this Contract, and has failed to remedy such default notified by the Buyer within a reasonable time (and the Buyer has given at least 14 days' notice of its intention to invoke escrow).
- 4.2 Supplier shall, subject to agreement of the Escrow Agreement, at the Buyer's reasonable expense promptly (but not more than once every six months unless otherwise agreed between the Parties) deliver to the Escrow Agent the latest release of Software in respect of which the Buyer is licensed ("Deposited Software").
- 4.3 The Buyer shall only make and use copies of the whole or any part of Software as is strictly necessary for purposes of continued supply of Services for the benefit of the Buyer and such copies of the Software shall be subject to all limitations placed on the use of the Software under this Contract.
- 4.4 In circumstances where the Buyer obtains the release of the Deposited Software from escrow, the Supplier hereby grants to the Buyer (on behalf of itself and any Replacement Supplier) a perpetual, assignable, royalty-free and non-exclusive licence to use, support, modify and enhance the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services.

## **5. OPTION TO PURCHASE**

- 5.1 Upon the commencement of any Supplier Insolvency Event the Buyer shall have the exclusive option to purchase such Goods (or any part thereof) as described in Schedule 2 (Specification) at the rates set out in Schedule 3 (Charges) or as otherwise agreed by the Parties. The Buyer shall exercise its option to purchase by giving to the Supplier not less than 10 days' written notice and the Supplier shall not be entitled to sell and/or otherwise dispose of the Goods described in Schedule 2 (Specification) unless the Buyer has informed the Supplier in writing it does not wish to purchase such Goods, or a period of 30 days has expired from the commencement of the Supplier Insolvency Event or Step-in Trigger Event.

ANNEX 1: Agreement Template

DATED 20[XX]

[BUYER]

and

[SUPPLIER LIMITED]

and

[KEY SUBCONTRACTOR]

\_\_\_\_\_

SUB-CONTRACTOR'S DIRECT AGREEMENT

\_\_\_\_\_

**THIS AGREEMENT ("Agreement")** is made as a deed dated  
**20[XX]**

**BETWEEN:**

- (1) **[NAME]** whose address is **[ADDRESS]** (the "**Buyer**");
- (2) **[SUPPLIER] LIMITED** (Company Registration Number: **[NUMBER]**),  
Registered Office: **[ADDRESS]** (the "**Supplier**");
- (3) **[SUB-CONTRACTOR] LIMITED** (Company Registration Number:  
**[NUMBER]**), Registered Office: **[ADDRESS]**) (the "**Sub-Contractor**").

**WHEREAS:**

- (A) The Supplier and the Sub-Contractor have entered into the Sub-Contract pursuant to which the Sub-Contractor will, inter alia, perform certain of the Supplier's obligations under the Project Agreement.
- (B) The Parties have entered into this Agreement for the purposes of, inter alia, regulating their relationship in circumstances where the Project Agreement and/or the Sub -Contract, is or is about to be, terminated.
- (C) This is the Sub-Contractor's Direct Agreement (Buyer) contemplated by the Project Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, including the recitals, the following words and expressions shall have the following meanings, insofar as the context shall admit:

<b>"Continuing Services"</b>	the Services (as amended under this Agreement);
<b>"Buyer Step In Period"</b>	a period of [x] months commencing on the date of either:  (a) Service by the Buyer of a Project Agreement Termination Notice; or  (b) Service by the Sub-Contractor of a notice under clause 2.4 below.
<b>"Extended Period"</b>	a period of [x] months from the Operative Date or such longer period as determined pursuant to the provisions of clause 5;

<b>"Fee"</b>	the technical Support and Maintenance fee and other amounts payable to the Sub-Contractor by the Supplier under the terms of the Sub-Contract;
<b>"Sub-Contract Termination Notice"</b>	any notice (or other act or omission evidenced in writing) pursuant to which the Sub-Contractor evinces an intention to terminate, rescind or repudiate the Sub-Contract;
<b>"Operative Date"</b>	the date upon which the Project Agreement terminates or such later date as may be requested by the Buyer in its notice served under Clause 3.1 below;
<b>"Project Agreement"</b>	the agreement dated on or about the date hereof between the Buyer and the Supplier relating to <i>[insert detail here]</i> ;
<b>"Project Agreement Termination Notice"</b>	any notice served by the Supplier or the Buyer under the terms of the Project Agreement (or other act or omission evidenced in writing) which evinces an intention by that party to terminate, rescind or repudiate the Project Agreement;;
<b>"Proposed Assignment Notice"</b>	has the meaning given to it in clause 5.1;
<b>"Proposed Substitute"</b>	a company or other legal entity (other than the Buyer) mentioned in a Proposed Assignment Notice;
<b>"Services"</b>	the technical Support and Maintenance services to be provided by the Sub-Contractor as set out in the Sub-Contract;
<b>"Sub-Contract"</b>	the agreement dated on or about the date hereof between the Supplier and the Sub-Contractor pursuant to which the Sub-Contractor agrees to provide the Services.
<b>"Step Out Date"</b>	the date set out in the notice referred to in clause 4.7 (or, if the Parties agree some other date, that date);

## 1.2 Interpretation

In this Agreement (unless the context otherwise requires or save as expressly defined or provided):

- 1.2.1 where words and expressions appear in capitalised terms and not otherwise defined herein, those words and expressions have the same meaning as in the Project Agreement.
- 1.2.2 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.3 all references to clauses are references to clauses of this Agreement;
- 1.2.4 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, assigned or assigned from time to time;
- 1.2.5 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.6 any reference to time of day shall be a reference to London time;
- 1.2.7 the words "**herein**", "**hereto**" and "**hereunder**" refer to this Agreement as a whole and not to the particular clause in which such word may be used;
- 1.2.8 words importing the singular include the plural and vice versa;
- 1.2.9 words importing a particular gender include all genders;
- 1.2.10 "**person**" includes any individual, partnership, firm, authority, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- 1.2.11 "**Working Days**" means Monday to Friday excluding English public holidays;
- 1.2.12 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;



- 1.2.13 references to “**Party**” means a party to this Agreement and references to “**Parties**” shall be construed accordingly;
- 1.2.14 all monetary amounts are expressed in pounds sterling;
- 1.2.15 references to the word “**includes**” or “**including**” are to be construed without limitation; and
- 1.2.16 the obligations of any Party under this Agreement are to be performed at that party's own cost and expense.

## **2. SUB-CONTRACTOR WARRANTY AND UNDERTAKING**

### **2.1 The Sub-Contractor warrants and undertakes to the Buyer that:**

- 2.1.1 it has complied with and fulfilled; and
- 2.1.2 it shall continue to comply with and fulfil,

all of its obligations arising under or by virtue of the Sub -Contract.

The Buyer shall only be entitled to make a claim against the Sub-Contractor under this clause 2.1 if the Project Agreement has terminated.

- 2.2 The obligations of the Sub-Contractor under or pursuant to clause 2.1 are in addition to and without prejudice to any other present or future liability of the Sub-Contractor to the Buyer (including, without prejudice to the generality of the foregoing, any liability in negligence or any other liability under this Agreement) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Buyer by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Buyer.
- 2.3 Notwithstanding any provision to the contrary in the Sub-Contract (or any other agreement to which the Buyer is not a party), and other than where the Sub-Contract terminates or expires by (i) effluxion of time in accordance with the Sub-Contract or (ii) at the election of the Supplier, no act or omission of the Sub-Contractor will be effective to terminate, rescind or repudiate the Sub-Contract until the expiry of the Buyer's Step In Period or, if the Extended Period has arisen, that termination, rescission or repudiation is in accordance with clause 4.4.
- 2.4 If at any time the Sub-Contractor becomes entitled to terminate the Sub-Contract in accordance with its terms then prior to taking any action to terminate the Sub-Contract it shall serve on the Buyer written notice of its intention to terminate.

## **3. STEP IN**

- 3.1 If:
- 3.1.1 the Buyer Step In Period has arisen; or
  - 3.1.2 the Supplier has served a Project Agreement Termination Notice on the Buyer,
- the Buyer may give written notice to the Supplier and the Sub-Contractor that the Buyer will require the Sub-Contractor to:
- 3.1.3 provide the Continuing Services for the Extended Period but for a period no longer than that contemplated under the Sub-Contract; or
  - 3.1.4 effect, within the period reasonably specified by the Buyer an orderly handover (to the Buyer or to another party (not being a competitor of Sub-Contractor) if the Buyer so directs) of the Services pursuant to the provisions of clause 5.3.
- 3.2 The Buyer must give notice in accordance with clause 3.1 above either within the Buyer's Step-In Period or within 3 months of the date of receipt of the Supplier's Project Agreement Termination Notice (as appropriate).
4. **THE CONTINUING SERVICES AND THE EXTENDED PERIOD**
- 4.1 In consideration for the Sub-Contractor providing the Continuing Services for the Extended Period (on the same terms and conditions, as the context shall admit, as set out in the Sub -Contract), the Buyer shall pay to the Sub-Contractor:
- 4.1.1 the Fee, on the basis (where applicable) set out in the Sub -Contract; and
  - 4.1.2 in the case where the terms and conditions of the Sub-Contract have been amended under clause 4.2 below, any further costs, expenses and amounts as the Parties shall agree.
- 4.2 The Buyer and the Sub-Contractor may, by agreement, amend the terms of the Sub-Contract to properly reflect the Fee to be paid and the Continuing Services to be provided throughout the Extended Period (or any other relevant matters). If that agreement is so amended all references in this Agreement to the Fee and the Sub-Contract shall be construed accordingly.
- 4.3 During the Extended Period, the Sub-Contractor shall only be entitled to terminate, rescind or repudiate the Sub-Contract if the Buyer:
- 4.3.1 commits a material breach under the Sub-Contract and fails to remedy such breach within 1 months of notification in writing by the Sub-Contractor of such non-payment; or

4.3.2 fails to perform or discharge when falling due the performance or discharge of any obligation under the Sub-Contract the non-performance or discharge of which would give or would have given rise to a right of termination under the Sub -Contract.

provided that, in any event, all of the acts or omissions constituting the relevant default first arose after the Operative Date and in relation to clause 4.3.2 above:

4.3.3 if the breach is remediable, it has not been remedied within the period set out in clause 4.3.4; and

4.3.4 the Sub-Contractor has properly served notice of the same (setting out reasonable details thereof) on the Buyer and 30 days have elapsed since the service of that notice.

4.4 The Buyer shall, if it exercises its rights under clause 3 be responsible for all duties, obligations and liabilities of the Supplier to the Sub-Contractor under the Sub-Contract relating to the Continuing Services from the Operative Date.

4.5 The Sub-Contractor shall, if the Buyer exercises its rights under clause 3, owe all of its duties, obligations and liabilities under the Sub-Contract to the Buyer from the Operative Date.

4.6 The Supplier shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Sub-Contract notwithstanding:-

4.6.1 the service of any notice under clause 3 or the expiry of the Step In Period; or

4.6.2 any other provision of this Agreement.

4.7 The Buyer may, at any time during the Extended Period, give the Sub-Contractor 60 Working Days prior written notice of the termination of the same.

4.8 The Buyer shall be released from all continuing obligations and liabilities with respect to the provision of the Continuing Services on the Step Out Date.

## **5. EXPIRY OF THE EXTENDED PERIOD**

5.1 At the expiry of the Extended Period, the provisions of this clause 5 shall apply save where the Sub-Contractor and the Buyer agree to continue the provision of the Continuing Services beyond the Extended Period.

5.2 If the Sub-Contractor and the Buyer agree to continue the provision of the Continuing Services beyond the Extended Period, such extension shall be upon terms and conditions that shall have applied during the Extended Period, as may be amended by agreement between the Parties (such terms to be no more onerous than the terms and conditions that have applied during the Extended Period).

- 5.3 The Sub-Contractor shall, subject to reimbursement of its reasonable costs and expenses in relation to the same (save where any termination by the Buyer of the Project Agreement is occasioned by a default by the Sub-Contractor under the Sub-Contract whereupon such costs and expenses shall be for the account of the Sub-Contractor) pursuant to clause 3.1.4 or during and following the end of the Extended Period, as the case may be, provide assistance to the Buyer with any transitional arrangements that may be required by the Buyer to the extent reasonable and necessary to achieve the minimum disruption to the provision of the Services and an orderly handover and the implementation of an alternative to the Continuing Services, whether provided by the Buyer or a third party only where that third party has a legal right to provide the Continuing Services as delivered by the Sub-Contractor without the additional grant of rights by Sub-Contractor (or as the Buyer shall direct).

## 6. NOVATION AND ASSIGNMENT

- 6.1 At any time after the Buyer Step In Period has arisen or the Supplier has served a Project Agreement Termination Notice and prior to the expiry or termination of the Extended Period the Buyer may serve one or more written notices on the Sub-Contractor and the Supplier (a "**Proposed Assignment Notice(s)**") requiring the Supplier's rights and obligations under the Sub-Contract to be assigned either to itself or to a company or other legal entity identified in the Proposed Assignment Notice(s) and approved by the Sub-Contractor in accordance with the provisions of this clause 6. No approval shall be required where the Proposed Substitute is the Buyer.
- 6.2 The Buyer shall (as soon as practicable after the service of a Proposed Assignment Notice) supply the Sub-Contractor with such information as the Sub-Contractor reasonably requires to enable it to decide whether to grant such approval, including:
- 6.2.1 the name and registered address of the Proposed Substitute;
  - 6.2.2 the names of the shareholders of the Proposed Substitute and the share capital held by each of them;
  - 6.2.3 the names of the directors and secretary of the Proposed Substitute; and
  - 6.2.4 the resources which are available or to be made available to the Proposed Substitute to enable it to fulfil the obligations of the Supplier under the Sub -Contract.
- 6.3 The approval of the Sub-Contractor must not be unreasonably withheld or delayed where the Proposed Substitute has:
- 6.3.1 the legal capacity, power and authority to become a party to and perform the obligations of the Supplier under the Sub -Contract, including if necessary its ability to maintain in force all necessary authorisations and consents;

- 6.3.2 sufficient technical resource available to it to enable it to perform the obligations of the Supplier under the Sub -Contract;
  - 6.3.3 sufficient finance available whether from a guarantor or otherwise to enable it to perform the obligations of the Supplier under the Sub - Contract.
- 6.4 The Sub-Contractor must notify the Buyer in writing within 14 days of the later of receipt of a Proposed Assignment Notice and receipt of the information reasonably required under clause 6.2 whether or not it has decided to grant such approval and, if not, the reasons therefore.
- 6.5 If the Sub-Contractor exercises its right to withhold approval to an assignment, the same shall not prejudice the ability of the Buyer to give one or more subsequent Proposed Assignment Notices containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which the Buyer has good cause to believe would satisfy the Sub-Contractor's requirements in relation to the matters in clause 6.3.
- 6.6 Following the approval of the Proposed Substitute by the Sub-Contractor the Supplier and the Sub-Contractor shall enter into a deed of assignment in the same or substantially the same form as set out in the Schedule (and any other requisite agreements required to effect or make good the arrangements contemplated by the same);

## **7. ACKNOWLEDGEMENT, RELEASE, ETC**

- 7.1 The Supplier agrees to and acknowledges the provisions of this Agreement and shall not terminate, rescind or repudiate the Sub-Contract without giving 30 days' notice to the Buyer, and shall not undertake any such termination in cases whereby the rights of the Buyer under this Agreement would be prejudiced. The Supplier shall procure that any replacement or substitute for the Sub-Contractor enters into an agreement in the same form as this Agreement prior to its appointment.
- 7.2 A Sub-Contract Termination Notice and a notice given under clause 3 may each be revoked (in writing to the recipient) by the Party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

## **8. GENERAL**

### **8.1 Notice**

All notices or communications to be given hereunder shall be deemed to have been duly given or made when delivered by hand; by registered first class post or recorded delivery; by facsimile transmission confirmed by registered first class post or recorded delivery to the party to which such notice or

communication is required to be given or made under this Agreement addressed as follows:

8.1.1 if to the Buyer at [ADDRESS] and/or to such facsimile transmission number as may be notified to the Supplier and the Sub-Contractor from time to time (for the attention of: *[insert]*);

8.1.2 if to the Supplier at [ADDRESS] and/or to such facsimile transmission number as may be notified to the Buyer and the Sub-Contractor from time to time (for the attention of: *[insert]*);

8.1.3 if to the Sub-Contractor at *[insert]* (for the attention of: *[insert]*);

or any such other address and/or facsimile transmission number (and for the attention of such other person) as the respective parties hereto may hereafter specify to the others in writing.

## **8.2 Subject to Clause 8.1**

Notices sent in accordance with Clause 8.1 shall be deemed to be served three (3) Working Days following the day of despatch of the notice PROVIDED ALWAYS that if actual acknowledgement (as opposed to an automatic acknowledgement) of receipt is received in relation to a notice sent by facsimile transmission or electronic mail, such notice will be deemed to be served on the date of such acknowledgement of receipt. Notices served by hand will be deemed to be served on the date of actual receipt

## **8.3 Confidentiality**

Each Party shall ensure that all Confidential Information which is supplied to it by any other Party or otherwise becomes available to it shall be treated as confidential and that the provisions of clause 15 of the Project Agreement for the Buyer and the Supplier and *[insert]* for the Sub-Contractor and Supplier shall be strictly observed.

## **8.4 No Announcements**

Except with the written consent of the other Parties, no Party shall make any press announcement relevant to or derived from the subject matter of this Agreement.

## **8.5 Costs and Expenses**

Each Party shall be responsible for paying its own costs and expenses in relation to the preparation and execution of this Agreement.

## **8.6 Severability**

If any provision of this Agreement shall be or become illegal, invalid or unenforceable in whole or in part, the effectiveness of the remaining provisions of this Agreement shall not be prejudiced or impaired.

**8.7 Amendments**

No amendments to any part of this Agreement shall be binding on either Party unless in writing and insofar as the provisions of the Law of Property (Miscellaneous Provisions) Act 1989 are relevant, in accordance with those provisions.

**8.8 No Waiver**

Any failure of or delay by a Party in relation to the exercise of its rights under this Agreement shall not constitute a waiver of any such rights nor shall any waiver in respect of one act or omission operate as a waiver in respect of any other or future acts or omissions.

**8.9 No Partnership or Agency**

Nothing in this Agreement shall be construed as establishing or implying a partnership or joint venture between Parties nor (except where specifically provided) shall be deemed to constitute any of the Parties as the agent of any of the others or to allow any Party to hold itself out as acting on behalf of the others.

**8.10 Privity**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Parties acknowledge that:

8.10.1 this Agreement is intended and agreed to be for the benefit solely of the Parties and their lawful successors and permitted assigns and is not intended to and does not create or confer any right or benefit enforceable by any other person or third party; and

8.10.2 all or any of the provisions of this Agreement may be rescinded or varied by the Parties as provided in this Agreement in their entirety or in part without the consent of or the need to give any notice to any person or third party not a Party.

**8.11 Entire Agreement**

This Agreement (when taken together with the Sub-Contract and the Project Agreement) constitutes the whole agreement and understanding of the Buyer, the Supplier and the Sub-Contractor as to the subject matter of this Agreement.

## 8.12 Fraud and Fraudulent Misrepresentation

Nothing in this Agreement is intended to, or shall operate so as to, exclude or limit any liability for fraud or fraudulent misrepresentation.

### 8.13 Conflict and Priority

In the event of any inconsistency between this Agreement and the Sub-Contract, this Agreement shall take precedence to the extent of such inconsistency.

## 8.14 Further Assurance

Each Party shall from time to time at the request of the other Party execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions or the purposes of this Agreement.

## 8.15 Governing Law and Jurisdiction

This Agreement shall be governed by and interpreted in accordance with law and the Parties submit to the exclusive jurisdiction of the English Courts.

## 8.16 Counterparts

This Agreement may be executed in one or more counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall constitute an original, but all counterparts shall together constitute one and the same instrument.

**IN WITNESS** whereof the Parties have executed and delivered this document as a Deed the day and year first before written.

Executed as a Deed by \_\_\_\_\_ )  
**The Buyer** \_\_\_\_\_ )  
 acting by: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Executed as a Deed by \_\_\_\_\_ )  
**[SUPPLIER]** )  
**The Supplier** )  
 acting by: \_\_\_\_\_ )

Director \_\_\_\_\_ )



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Schedule 31 (Buyer Specific Terms)  
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Director/Secretary

Executed as a Deed by  
[SUB CONTRACTOR] LIMITED  
The Sub-Contractor  
acting by:

)  
)  
)

Director  
Director/Secretary

)  
)

## SCHEDULE

### Deed of Assignment

**THIS AGREEMENT** is made the            day of  
[YEAR]

**BETWEEN:**

- (1) **[CONTRACTOR] LIMITED** (Company Registration Number: [NUMBER]),  
Registered Office: [ADDRESS] (the "**Contractor**");
- (2) **[SUB-CONTRACTOR] LIMITED** (Company Registration Number:  
[NUMBER]), Registered Office: [ADDRESS]) (the "**Sub-Contractor**").
- (3) **[ASSIGNEE] LIMITED** (Company Registration Number: [NUMBER]),  
Registered Office: [ADDRESS]) (the "**Assignee**")

(individually, a "**Party**", collectively, the "**Parties**").

**WHEREAS:**

- (A) The Supplier and the Sub-Contractor entered into the Sub-Contract ("**Sub-Contract**").
- (B) The Parties wish to assign all of the Supplier's rights and obligations under the Sub-Contract to the Assignee and for that purpose have determined to enter into this novation agreement.

**NOW IT IS HEREBY AGREED** as follows:

In consideration of the payment of £1 (one pound) by the Sub-Contractor to each of Supplier and the Assignee (receipt of which is hereby acknowledged), the Parties agree as follows:

1. From the date of this agreement the Sub-Contract shall be assigned to the Assignee (the "**Assignment**") and all of the rights and obligations of the Supplier under that agreement shall from that date be rights and obligations of the Assignee subject as follows:
  - 1.1 with effect from the date hereof all of the rights and obligations of the Supplier hereafter arising under the Sub-Contract shall be rights and obligations of the Assignee;
  - 1.2 the Assignment shall be without prejudice to any rights and obligations of the Sub-Contractor arising before the Assignment;

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- 1.3 the Sub-Contract shall continue in full force and effect.
2. This agreement shall be governed by and subject to the laws of England and Wales. The parties submit to the exclusive jurisdiction of courts of England and Wales.

**AS WITNESS** the hands of the Parties or their duly authorised representatives the day and year first above written.

**SIGNED** by )  
duly authorised for and on behalf of **the** )  
**Supplier** )

**SIGNED** by )  
duly authorised for and on behalf of **the Sub-** )  
**Contractor.** )  
)

**SIGNED** by )  
duly authorised for and on behalf of **the** )  
**Assignee** )