

## 1. DEFINITIONS AND INTERPRETATION

Certain words and expressions used in, and principles of interpretation applicable to, these terms are defined or set out in clause 2 and if there is a conflict or inconsistency between any provision contained in these Conditions and any provision contained in an Order, except where provided to the contrary in the latter, these Conditions prevail to the extent of the conflict or inconsistency.

## 2. DEFINITIONS

<b>“Affiliate”</b>	means any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition, “subsidiary” and “holding company” shall have the meanings assigned to them under section 1159 and Schedule 6 of the Companies Act 2006, and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
<b>“Business Day”</b>	means a day (other than a Saturday, Sunday or a public holiday) when banks in are open for business;
<b>“Conditions”</b>	means the terms and conditions set out in this document and any special terms and conditions agreed to in writing by STR;
<b>“Consequential Loss”</b>	means indirect losses and/or loss of production, loss of product, loss of use, loss of revenue, loss of profit and/or loss of anticipated profit arising from or related to the performance of the Contract and whether or not any of such losses were foreseeable at the time of entering into the Contract;
<b>“Contract”</b>	means the contract between STR and the Customer for the sale and purchase of Equipment or any product repair and maintenance Services in accordance with these Conditions;
<b>“Co-Venturer”</b>	means any other entity with whom the Customer is or may be from time to time a party to a joint operating agreement or utilisation agreement or similar agreement relating to the operations for which the Scope of Work is being performed and the successors in interest of such Co-Venturer or the assignees of any interest of such Co-Venturer.
<b>“Customer”</b>	means the person, firm or company who contracts with STR to purchase the Equipment or perform the Services;

<b>“Customer Default”</b>	has the meaning set out in clause 8.2;
<b>"Customer Group"</b>	means the Customer, its Co-Venturers and/or any entities for which the Company is performing services, its and their respective contractors of any tier (other than the Company) and any subcontractors of such contractors, its and their respective Affiliates and its and their respective directors, officers and employees (including agency personnel) and “member of the Customer Group” shall be construed accordingly;
<b>“Equipment”</b>	means any apparatus, material or equipment (including all accessories supplied either as part of a kit or as standard with the main unit) as set out in the Order;
<b>“Force Majeure Event”</b>	has the meaning set out in clause 14.1;
<b>“Goods”</b>	means the products, parts, materials, and/or equipment in STR’s offer to the Customer and the Customer’s order to STR;
<b>“Intellectual Property Rights”</b>	means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>“Order”</b>	means the Customer’s order for the Equipment or Services, as set out in the Customer’s purchase order form or the Customer’s written acceptance of STR’s quotation, as the case may be;
<b>"Parties"</b>	means STR or the Customer as the context so requires and <b>“Parties”</b> shall mean both of them collectively;
<b>“Scope of Work”</b>	means the description or specification of the Services, as set out in the Order;

<b>“Services”</b>	means the product’s repair and maintenance services, if any, performed or to be performed by STR to the Customer, as set out in the Order;
<b>“Specification”</b>	means any specification for the Equipment to be manufactured by STR, including any related plans and drawings that is agreed in writing by the Customer and STR;
<b>“STR”</b>	means Subsea Technology & Rentals Ltd (registered in Scotland with Company Number SC404769);
<b>“STR Group”</b>	means STR, any subsidiary or holding company from time to time of STR and any subsidiary from time to time of a holding company of STR, all employees, agents, consultants and subcontractors of STR, and “member of STR Group” shall be construed accordingly.
<b>“STR Materials”</b>	has the meaning set out in clause 8.1;
<b>“Visa Default”</b>	has the meaning set out in clause 9.4; and
<b>“Written Declaration”</b>	means a written declaration, in such form as is required by STR, duly executed for and on behalf of the Customer confirming the final location(s) of the Equipment and/or the locations(s) at which the Services are to be provided and whether such location(s) is or are more or less than 12 nautical miles from the United Kingdom coastline.

### 3. ACCEPTANCE

- 3.1 The 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.
- 3.2 The Order constitutes an offer by the Customer to purchase the Equipment or engage STR to perform the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification or Scope of Work are complete and accurate.
- 3.3 The Order shall only be deemed to be accepted when STR issues a written acceptance of the Order, at which point the Contract shall come into existence. For the avoidance of doubt, no terms or conditions endorsed upon, delivered with or contained in the Order or other document will form part of the Contract

- 3.4 The Contract constitutes the entire agreement between the Parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of STR which is not set out in the Contract.
- 3.5 Any samples, drawings, descriptive matter, or advertising produced by STR and any descriptions or illustrations contained in STR's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment or Services described in them. None of them shall form part of the Contract or have any contractual force.
- 3.6 In respect of Equipment, fitness for use is for the Customer to determine; no performance objective is expressed or implied by STR. The Equipment may appear to offer comparable or similar specifications to other manufacturers' products but will not necessarily perform identically to such other manufacturers' products.
- 3.7 A quotation for the provision of Equipment or the performance of Services given by STR shall not constitute an offer. A quotation shall only be valid for a period of thirty (30) days from its date of issue and shall also be subject to availability of the Equipment for purchase or the relevant Equipment or personnel for the performance of Services.

#### **4. PROVISION OF EQUIPMENT**

- 4.1 To the extent that the Equipment is to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify STR against all liabilities, costs, expenses, damages and losses (including any direct, indirect or Consequential Losses, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by STR in connection with any claim made against STR for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with STR's use of the Specification. This clause 4 shall survive termination of the Contract.
- 4.2 STR reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

#### **5. DELIVERY**

- 5.1 STR shall deliver the Equipment to the location set out in the Order or such other location as the Parties may agree at any time after STR notifies the Customer that the Equipment is ready for delivery or collection, provided that such agreement is made prior to STR proceeding to deliver the Equipment to the location set out in the Order.
- 5.2 Delivery dates quoted by STR are approximate only, and the time of delivery is not of the essence. It is expressly agreed that STR shall not be liable to the Customer for any

delay in delivery or, where delivery is affected by the Customer's preferred courier or a third-party courier, of the condition of the Equipment or otherwise howsoever arising.

- 5.3 If the Customer fails to collect or take delivery of the Equipment within three (3) Business Days of STR notifying the Customer that the Equipment is ready, then, except where such failure or delay is caused by a Force Majeure Event or STR's failure to comply with its obligations under the Contract:
- a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which STR notified the Customer that the Equipment was ready; and
  - b) STR shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.4 If ten (10) Business Days after the day on which STR notified the Customer that the Equipment was ready, the Customer has not taken delivery of it, STR may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 5.5 STR may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.6 The Customer shall cross reference the Equipment on collection or delivery against the Order and the manifest and undertake a visual check of the Equipment to ensure it meets the Order requirements and is in an acceptable condition. The Customer shall notify STR of any defect in the condition of the Equipment or want of specification within twenty-four (24) hours of the collection or delivery of the Equipment, and failure to do so shall be conclusive proof that it has examined the Equipment and found it to be in good condition and capable of performing its functions in accordance with the manufacturer's specification.
- 5.7 STR will undertake reasonable efforts to promptly provide replacements or corrections to any part of the Equipment that does not substantially perform the functions specified in the manufacturer's specification identified by the Customer and notified to the Company within twenty-four (24) hours of the collection or delivery.

**6. TITLE & RISK**

- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery or upon collection by the Customer.

- 6.2 Title to the Equipment shall not pass to the Customer until STR has received payment in full (in cash or cleared funds) for the Equipment in accordance with clause 10.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- a) store the Equipment separately from all other Equipment or equipment held by the Customer so that they remain readily identifiable as STR's property;
  - b) not resell the Equipment nor remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - c) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
  - d) notify STR immediately if it becomes subject to any of the events listed in clause 12.2; and
  - e) give STR such information relating to the Equipment as STR may reasonably require from time to time, but the Customer may use the Equipment in the ordinary course of its business.
- 6.4 If before title to the Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clause 12.2, or STR reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Equipment has not been irrevocably incorporated into another product, and without limiting any other right or remedy STR may have, STR may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover them.

## **7. PERFORMANCE OF SERVICES**

- 7.1 STR shall perform the Services in accordance with the Order in all material respects.
- 7.2 STR shall use reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 7.3 STR shall have the right to make any changes to the Services which are necessary to comply with any applicable law or health and safety requirement, or which do not materially affect the nature or quality of the Services and STR shall notify the Customer of any such event.

7.4 If the Customer fails to permit performance in accordance with any performance dates, payment for the Services shall nonetheless be due in accordance with clause 10.

7.5 For the avoidance of doubt, STR will only undertake performance of Services in respect of items, goods, machinery or equipment ordered or hired from STR.

## **8. CUSTOMERS OBLIGATIONS**

8.1 The Customer shall:

- a) ensure that the terms of the Order and any information it provides in the Scope of Work are true, complete and accurate;
- b) co-operate with STR in all matters relating to the Services;
- c) provide STR, its employees, agents, consultants and subcontractors with access to the Customer's premises, office accommodation and other facilities as reasonably required by STR in order to perform the Services;
- d) provide STR with such information and materials as STR may reasonably require in order to perform the Services and ensure that such information is true, complete and accurate in all material respects;
- e) prepare the Customer's premises for the performance of the Services;
- f) ensure that the Customer's premises comply with any applicable law or health and safety requirements;
- g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- h) keep and maintain all materials, equipment, documents and other property of STR (STR Materials) at the Customer's premises in safe custody at its own risk, maintain the STR Materials in good condition until returned to STR, and not dispose of or use the STR Materials other than in accordance with STR's written instructions or authorisation.

- 8.2 If STR's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- a) STR shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays STR's performance of any of its obligations;
  - b) STR shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the STR's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - c) the Customer shall reimburse STR on written demand for any costs or losses sustained or incurred by STR arising directly or indirectly from the Customer Default.

8.3 The Customer warrants the accuracy of any drawing, design, specification or information supplied by the Customer or produced by third parties on behalf of the Customer to STR (including but not limited to information relating to the sea bed, subsea conditions, swells, tides, artificial obstructions, pipelines, cables and any geophysical conditions). The Customer shall indemnify STR against all liability incurred by STR as a result of any delay, impracticability, inefficiency, lack of safety or defect in the Equipment or Services where any of these is due wholly or partly to any errors, omissions or discrepancies in any such drawing, design, specification or information.

## 9. QUALITY

- 9.1 STR warrants to the Customer that the Services will be performed using reasonable care and skill and undertakes to provide sufficient personnel at all times to ensure the Services are performed in accordance with the Contract.
- 9.2 STR shall ensure that all personnel employed in relation to the performance of the Services shall, for the work which they are required to perform, be competent, properly qualified, skilled and experienced in accordance with good industry practice.
- 9.3 STR shall ensure that all personnel employed in relation to the performance of the Services shall comply with applicable laws including immigration laws and, where required, shall use reasonable endeavours to ensure that such personnel are in possession of a valid work permit for the duration of the Contract.
- 9.4 If, notwithstanding STR's reasonable endeavours, STR's performance of any of its obligations under the Contract is prevented or delayed as a result of personnel



employed in relation to the performance of the Services not being in possession of a valid work permit for the duration of the Contract (Visa Default):

- a) STR shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Visa Default is remedied, and to rely on the Visa Default to relieve it from the performance of any of its obligations to the extent the Visa Default prevents or delays STR's performance of any of its obligations; and
- b) STR shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from STR's failure or delay to perform any of its obligations as set out in this clause 9.4.

9.5 STR warrants that on the date of delivery to the Customer, any Equipment shall:

- a) conform in all material respects with its description in the Order and any applicable Specification; and
- b) Where Goods are supplied and fitted by STR, STR warrants that such Goods be free from material defects and workmanship for a period of twelve (12) months.

9.6 Subject to clause 9.7, if:

- a) Warranty claims made will be subject to receipt by STR (at the Customer's cost) of a full written report of claimed defects accompanied by the relevant technical records and details of any work carried out on, maintenance records and storage of the goods after delivery together with delivery to the Company of the Goods to be remedied within twenty-four (24) hours of discovery that some or all of the Equipment does not comply with the warranty in clause 9.5;
- b) STR is given a reasonable opportunity of examining such Equipment; and
- c) the Customer (if asked to do so by STR) returns such Equipment to STR's place of business at the Customer's cost;

STR shall, at its option, repair or replace the defective Equipment, or refund the purchase price of the defective Equipment in full.

9.7 STR shall not be liable for the Equipment's failure to comply with the warranty in clause 9.5 in any of the following events:

- a) the Customer makes any further use of such Equipment after giving notice in accordance with clause 9.6;

- b) the defect arises because the Customer failed to follow manufacturers oral or written instructions, industry best practise as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- c) the defect arises as a result of STR following any drawing, design or Specification supplied by the Customer;
- d) the Customer alters or repairs such Equipment without the written consent of STR;
- e) the defect arises as a result of fair wear and tear, damage, negligence (of the Customer or a third party), or abnormal storage or working conditions; or
- f) the Equipment differs from its description in the Order or the Specification as a result of changes made by STR to ensure they comply with applicable statutory or regulatory requirements.

9.8 Except as agreed in writing by STR, the warranty in clause 9.5 shall not extend to Equipment (or any part of the Equipment) not manufactured by STR, in respect of which the Customer shall only be entitled to the benefit of the unexpired duration of any such warranty or guarantee as is given by the manufacturer to STR.

9.9 Except as provided in this clause 9, STR shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty in clause 9.5.

9.10 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

9.11 These Conditions shall apply to any repaired or replaced Equipment supplied by STR.

## **10. CHARGES, PRICE & PAYMENT**

10.1 The charges for the Services shall be either (i) on a time and materials basis and calculated in accordance with STR's standard fee rates, as set out in the Order; or (ii) the price as set out in the Order.

10.2 The price of the Equipment shall be the price set out in the Order, or, if no price is quoted, the price set out in STR's published price list in force as at the date of delivery.

10.3 STR shall be entitled to charge the Customer for any expenses reasonably incurred by the personnel engaged in the performance of the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by STR for the performance of the Services.

- 10.4 STR may, by giving notice to the Customer at any time before delivery of the Equipment or commencement of the performance of Services, increase the price of the Equipment or the charges for the Services to reflect any increase in the cost of the Equipment or performance of the Services that is due to:
- a) any factor beyond STR's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - b) in respect of Equipment, any request by the Customer to change the delivery date(s), quantity or type of Equipment ordered, or the Specification;
  - c) in respect of Services, any request by the Customer to change the date(s) when the Services are to be performed or the Scope of Work; or
  - d) any delay caused by any instructions of the Customer or failure of the Customer to give STR adequate or accurate information or instructions.
- 10.5 The price of the Equipment is exclusive of the costs and charges of packaging, insurance and transport of the Equipment, which shall be payable by the Customer and invoiced to the Customer accordingly.
- 10.6 The price of the Equipment and the charges for the Services are exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from STR, pay to STR such additional amounts in respect of VAT as are chargeable on the supply of the Equipment or Services.
- 10.7 STR may require the Customer to pay for the Equipment or for the performance of the Services either in whole or in part prior to delivery or performance, but otherwise may invoice the Customer for the Equipment or Services on or at any time after the completion of delivery or performance of the Services.
- 10.8 The Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by STR. Time of payment is of the essence.
- 10.9 If the Customer fails to make any payment due to STR under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% above the Bank of England's base rate per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after decree. The Customer shall pay the interest together with the overdue amount.

- 10.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding. STR may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by STR to the Customer.
- 10.11 If the Customer fails to make any payment on the due date or if at any time prior to the date of delivery or performance STR has reasonable grounds to believe that the Customer will not be able to pay for the Equipment or Services in full on the due date for payment, STR shall have the right to demand from the Customer such security as STR may deem reasonable to secure payment and, in the absence of such security being offered to STR within such period as STR shall deem reasonable, STR may suspend or cancel deliveries of any Equipment or performance of any Services due to the Customer without further liability and the Customer shall indemnify STR in respect of any losses (including without limitation loss of profit) incurred by STR.
- 10.12 Where STR sources Equipment or Services from third parties that charge on the basis of a currency other than GBP, STR reserves the right to calculate any invoices for the Customer in GBP utilising the Reuters listed exchange rate for such currency as at the date of invoice. Where payment of such invoice is made outwith the stated 30 days for payment then STR reserves the right to recalculate the amount due and reissue a further invoice in order to account for any costs related to exchange rate fluctuations between the invoice date and the payment date which it may incur.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Contract shall be owned by STR.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on STR obtaining a written licence from the relevant licensor on such terms as will entitle STR to license such rights to the Customer.
- 11.3 All STR Materials are the exclusive property of STR.
- 11.4 All pre-existing intellectual property of STR Materials is and remains the property of STR at all times.

## **12. TERMINATION**

- 12.1 If the Customer becomes subject to any of the events listed in clause 12.2, or STR reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to STR, STR may cancel or suspend all further performance of Services or supply of Equipment under the Contract or under any other contract between the

Customer and STR without incurring any liability to the Customer and all outstanding sums in respect of the Equipment or Services performed for the Customer shall become immediately due.

12.2 For the purposes of clause 12.1, the relevant events are:

- a) where the Customer fails to make payment in respect of any Equipment or Services in accordance with the Contract and has been afforded time to pay, including notification of such failure to pay and warning of the risk of termination; or
- b) the Customer commits a material breach of any other term of the Contract and either such breach cannot be remedied or (if such breach can be remedied) fails to remedy that breach within a period of five (5) Business Days after being notified by STR to do so; or
- c) 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- d) 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; or
- e) a petition is filed, a notice is given or an order is made which places the Customer into sequestration or bankruptcy; or
- f) 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; or
- g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer; or
- h) the holder of a floating charge over the assets of the Customer has become entitled to appoint or has appointed a receiver; or
- i) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- j) any event analogous to (a) to (h) inclusive, occurs in relation to any other legal jurisdiction; or
- k) the Customer's financial position deteriorates to such an extent that in STR's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- l) the Customer breaches, or STR has reason to believe the Customer has breached, any provision of clause 16.
- m) in accordance with Clause 14.4, where any force majeure event has subsisted for a period of fourteen (14) days.

12.3 Termination or expiry of the Contract shall not affect any rights, remedies or obligations of STR 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.

### **13. MUTUAL INDEMNITIES AND LIMITATION LIABILITY**

13.1 STR shall be responsible for and shall save, indemnify, defend and hold harmless the Customer Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- a) personal injury including death of, or injury or disease to, any person employed by STR or any other member of STR Group, arising from or relating to the performance of the Contract;
- b) personal injury including death of, or injury or disease to, any person employed by any third party, or loss of or damage to the property of any third party, to the extent that an such personal injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of STR. For the purposes of this clause 13.1(b), "third party" means any party which is not STR, the Customer or another member of the Customer Group or STR Group; and
- c) loss of or damage to property of STR Group located at the Customer's premises (other than the Equipment) arising from or related to the performance of the Contract.

- 13.2 The Customer shall be responsible for and shall save, indemnify, defend and hold harmless STR Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- a) personal injury including death of, or injury or disease to, any person employed by the Customer or any other member of the Customer Group, arising from or relating to the performance of the Contract;
  - b) personal injury including death of, or injury or disease to, any person employed by any third party, or loss of or damage to the property of any third party, to the extent that an such personal injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Customer or any other member of the Customer Group. For the purposes of this clause 13.2(b), “third party” means any party which is not STR, the Customer or another member of the Customer Group; and
  - c) loss of or damage to property of the Customer or any other member of the Customer Group and, following delivery of the Equipment, the Equipment, arising from or related to the performance of the Contract.
- 13.3 Except as provided by clause 13.2, STR shall save, indemnify, defend and hold harmless Customer Group from and against any claim of whatsoever nature arising from pollution emanating from STR's premises or property (excluding, following delivery of the Equipment, the Equipment), relating to or in connection with the performance or non-performance of the Contract.
- 13.4 Except as provided by clause 13.1, the Customer shall save, indemnify, defend and hold harmless STR from and against any claim of whatsoever nature arising from pollution emanating from the property of the Customer or any other member of the Customer Group and, following delivery of the Equipment, the Equipment, arising from, relating to or in connection with the performance or non-performance of the Contract.
- 13.5 If either Party becomes aware of any incident likely to give rise to a claim under this clause 13, it shall notify the other and both Parties shall co-operate fully in investigating the incident.
- 13.6 Notwithstanding any provision to the contrary elsewhere in the Contract, the Customer shall save, indemnify, defend and hold harmless the STR Group from the Customer Group's own Consequential Loss and STR shall save, indemnify, defend and hold harmless the Customer Group from the STR Group's own Consequential Loss, arising under or in connection with the Contract, in each case however caused, even if foreseeable.

- 13.7 STR's total cumulative liability to the Customer arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total sums paid by the Customer to STR for the Equipment or for the Services, exclusive of Value Added Tax.
- 13.8 All exclusions and indemnities given under this clause 13, save for those under clause 13.1(b) and clause 13.2(b), shall apply irrespective of cause and notwithstanding the negligence or breach of duty (statutory or otherwise) of the indemnified party or any entity or party and shall apply irrespective of any claim in tort, delict, under contract or otherwise at law.
- 13.9 This clause 13 shall survive the termination of the Contract.

#### **14. FORCE MAJEURE**

- 14.1 Neither Party shall 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. A Force Majeure Event means any event beyond a Party's reasonable control, which by its nature could not have been 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, pandemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 14.2 Following notification of a Force Majeure in accordance with clause 14.1, both Party's shall meet without delay and in any event within seven (7) days from the date of the notice with a view to agreeing mutually acceptable course of action to minimise any effects of such occurrence.
- 14.3 Should the Customer fail to meet with STR within a period of seven (7) days from the date of the notice with a view to mutually discuss and agree an acceptable course of action to minimise any effects of such occurrence, STR has the right to suspend the work until a mutually agreed project recommencement date and or project termination, whichever comes first.
- 14.4 Should the Customer fail to meet with STR within a period of fourteen (14) days from the date of the notice with a view to mutually discuss and agree an acceptable course of action to minimise any effects of such occurrence, STR has the right to terminate the work in accordance with the terms of termination set out in these terms and conditions.



14.5 For the avoidance of doubt, the occurrence of any Force Majeure Event shall not relieve the Customer from its obligation to make payment.

## 15. VAT

15.1 On or prior to the date on which the Equipment is delivered to or collected by the Customer and/or the Services are performed by STR the Customer shall provide STR with a Written Declaration confirming the final location(s) of the Equipment and/or the locations(s) at which the Services are to be provided such that STR can determine if Value Added Tax is chargeable and payable in connection with the rental of the Equipment and/or the provision of the Services. If the Customer fails to provide a Written Declaration on or prior to the date on which the Equipment is delivered to or collected by the Customer and/or the Services are to be performed Value Added Tax shall be deemed chargeable and payable on the rental of the Equipment and/or the provision of the Services and any invoice from STR shall include the Value Added Tax payable.

15.2 If HMRC, at any time, determines that Value Added Tax is payable on the rental of the Equipment and/or the provision of the Services, STR shall deliver a VAT invoice in respect of the Value Added Tax payable and the Customer shall within five days of the receipt of such VAT invoice pay to STR a sum equal to (i) the amount of Value Added Tax determined by HMRC to be chargeable and (ii) any penalties and/or interest charged by HMRC due to late payment of such Value Added Tax.

15.3 The Customer shall save, indemnify, defend and hold harmless STR from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities arising as a result of the Written Declaration containing errors or incorrect information and/or any determination by HMRC that Value Added Tax is chargeable on the rental of the Equipment and/or the supply of the Services and/or any failure by STR to charge Value Added Tax on the rental of the Equipment and/or the supply of the Services.

## 16. GENERAL

### 16.1 Assignment and other dealings

a) STR may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of STR.

### 16.2 Notices

- a) 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, commercial courier, fax or e-mail.
- b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2 (a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 16.3 Severance

- a) 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 remainder of the Contract.
- b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
  - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 11.4;
  - (ii) any costs and expenses incurred by STR in recovering the Equipment and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

### 16.4 Waiver

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 16.5 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by STR.

## 16.6 Confidentiality

A Party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other Party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its projects or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 16.6 shall survive termination of the Contract.

## 16.7 Governing Law

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with English Law. Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## 17. Business Ethics

### 17.1 The Customer Shall:

- a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "Relevant Requirements");
- b) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- c) promptly report to STR any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract;
- d) immediately notify STR (in writing) if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract); and
- e) if required to do so by STR, certify to STR in writing signed by an officer of the Customer, compliance with this clause 17 by the Customer and all persons associated with it pursuant to clause 17.2 below. The Customer shall provide such supporting evidence of compliance as STR may reasonably request.

17.2 The Customer shall ensure that any person associated with the Customer who is providing goods and/or services does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 17 (the "**Relevant Terms**"). The Customer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to STR for any breach by such persons of any of the Relevant Terms.

16.3 For the purpose of this clause 17, the meaning of adequate procedures and foreign public official and whether a person is "**associated**" with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 17.3 a person "**associated**" with the Customer includes but is not limited to any subcontractor of the Customer.