

## 1. DEFINITIONS AND INTERPRETATION

1.1 Certain words and expressions used in, and principles of interpretation applicable to, these terms are defined or set out in clause 1.2 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.

1.2 In these Conditions, the following definitions apply:

<b>"Additional Charges"</b>	means the additional charges referred to in clause 12.1;
<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 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 (except for loss of revenue, loss of profit or anticipated profit under the Contract suffered by STR), 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 comprised of the Order and 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 hires or agrees to hire the Equipment from STR;
<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 described in STR's specification list;
<b>"Force Majeure Event"</b>	has the meaning set out in clause 15;
<b>"Order"</b>	means the Customer's order for the Equipment, 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>"Party"</b>	means each of the Customer and STR as the context requires and <b>"Parties"</b> shall mean both of them collectively;
<b>"Rental Payment(s)"</b>	means the payment(s) made, or to be made, by or on behalf of the Customer for the hire of the Equipment and as set out in the Order;
<b>"Rental Period"</b>	means the period of hire set out in clause 3;
<b>"Risk Period"</b>	has the meaning set out in clause 5.3; and
<b>"STR"</b>	means Subsea Technology & Rentals Limited (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>"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 whether such location(s) is or are more or less than 12 nautical miles from the United Kingdom coastline.

## 2. ACCEPTANCE

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to hire the Equipment in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 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.
- 2.4 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.
- 2.5 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 described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 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.
- 2.7 A quotation for the Equipment 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 be subject to availability of the Equipment.

## 3. RENTAL PERIOD

- 3.1 The Rental Period shall be as set out in the Order, unless the Contract is terminated earlier in accordance with these Conditions.
- 3.2 The Rental Period may be extended by mutual written agreement of both parties and the daily rate set out in the Order shall apply to any extended Rental Period.
- 3.3 Unless agreed otherwise (in writing between both Parties) Rental Payments shall remain due and shall be charged at the daily rate set out in the Order during any period in which the Equipment has broken down, is damaged or is otherwise unused.
- 3.4 If the Rental Period has not been extended in accordance with clause 3.2 and the Equipment is not returned to STR on the return date set out in the Order, the

Customer will be charged at the daily rate set out in the Order until the Equipment has been returned to STR.

## 4. DELIVERY

- 4.1 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.
- 4.2 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 of the Equipment howsoever arising.
- 4.3 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.
- 4.4 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.

## 5. TITLE

- 5.1 The Equipment shall at all times remain the property of STR, and the 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 Conditions).
- 5.2 The Customer shall give STR immediate notice in the event the Equipment is lost, stolen or damaged as a result of the Customer's possession or use of the Equipment or if there is a claim or, for any reason, a threat of seizure of the Equipment.
- 5.3 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on dispatch of the Equipment to the Customer, or where applicable, the Customer's appointed agent. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer ("**Risk Period**") until such time as the Equipment is returned to STR.

## 6. TRAINING AND ENGINEERING SUPPORT

- 6.1 The Customer represents and acknowledges that he has requisite knowledge and experience to operate the Equipment.
- 6.2 STR representatives may be called upon to provide start up operator training for the Customer, if necessary and requested by the Customer. For the avoidance of doubt, the cost of start-up operator training is not included in the Rental Payment(s) and will be quoted separately upon request.
- 6.3 Where an engineer is supplied by STR with STR's Equipment, such engineer shall carry out the scope of work agreed in the Order and shall be charged on a day-rate basis. For the avoidance of doubt, the cost of supply of an engineer is not included in the Rental Payment(s) and will be quoted for separately either upon request or where an engineer is required for the relevant Equipment.
- 6.4 For the avoidance of doubt, any trainer or engineer provided pursuant to this clause 6 will not undertake any work out with that trainer or engineer's agreed competencies and workscope.
- 6.5 Upon confirmation STR's engineer is to be supplied to the Customer, the Customer shall provide STR with a point of contact onboard the vessel or worksite that the STR Engineer must report to on arrival.
- 6.6 All work undertaken by STR Personnel shall be under the direction and control the Customer. STR Personnel will participate as members of the Customer's offshore crew and co-operate with the Customer's personnel with a view to operating the Equipment in accordance with their reasonable requirements. STR Personnel will follow the instruction of and report to the Customer's Party Chief or the project manager. Any Deliverables provided by STR shall be factual only and shall not include any interpretation (unless the Scope of Work specifically provides for any interpretation), commentary or recommendation. STR provides no warranty, and accepts no liability, in respect of the Deliverables nor in respect of any subsequent reliance on such Deliverables by the Customer.
- 6.7 Payment for such training and engineering support shall be due in accordance clause 11.

## 7. LIABILITY AND EQUIPMENT BREAKDOWN

- 7.1 Notwithstanding the Customer's obligations set out in clause 9.1, in the event that the Equipment experiences a breakdown due to any material defect in materials or workmanship within 12 months from the date on which the Equipment to delivered to the Customer in accordance with clause 4.1 STR shall, at STR's option, repair or replace the Equipment provided that:

- (a) the Customer notifies STR of such defect in writing within 10 Business Days of the defect occurring or of becoming aware of the defect;
  - (b) STR is permitted to make a full examination of the alleged defect;
  - (c) the defect did not materialise as a result of misuse, neglect, alternation, mishandling or unauthorised manipulation by any person other than the Customer's authorised personnel;
  - (d) the defect is directly attributable to defective material or workmanship.
- 7.2 So far as practicable STR will use reasonable endeavours to repair the Equipment at the worksite. However, both parties acknowledge that due to the complex technical nature of the Equipment and the fact that either STR or Customer's Personnel may not have the competency to carry out repairs to the Equipment; it may not be practicable to repair the Equipment at the worksite. If STR determines that the Equipment cannot be repaired at the Worksite the Customer shall be responsible for the removal of the Equipment from the Worksite to an onshore location to be agreed between STR and the Customer. During Periods during which the Equipment is being repaired, STR's liability shall be limited to the cost of repair, including parts and labour, to return the Equipment to full working order.
- 7.3 STR may, at its sole discretion, extend the Rental Period at no cost to the Customer for the time required to replace or repair the Equipment. STR shall not be obligated to bear the costs of Customer's labour or standby time in connection to any breakdown, nor any costs related to the delay of any of the Customer's projects.
- 7.4 Without prejudice to clause 7.4 and clause 7.5 STR's maximum aggregate liability for breach of the Contract and any other losses arising under or, in connection with, the Contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, delict (including negligence), misrepresentation or otherwise, shall in no circumstances exceed:
- 7.4.1 for claims relating to breakdown of the Equipment, the costs referred to in clause 7.2; and
  - 7.4.2 in the case of any other claims, an amount equal to any Rental Payments received by STR during the period of the relevant breach.
- 7.5 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.
- 7.6 Nothing in these Conditions shall exclude or in any way limit STR's liability for:

- 7.6.1 death or personal injury caused by its own negligence or the negligence of its employees, agents or subcontractors (as applicable); or
  - 7.6.2 fraud or fraudulent misrepresentation.
- 7.7 These Conditions set forth the full extent of STR's obligations and liabilities in respect of the Equipment and its rental to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on STR except as specifically stated in these Conditions. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.
- 7.8 This clause 7 shall survive the termination of the Contract.
- 8. MUTUAL HOLD HARMLESS**
  - 8.1 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:
    - 8.1.1 loss of or damage to the Equipment or the property of the Customer or any member of the Customer Group, whether owned, hired, leased or otherwise provided by the Customer or any other member of the Customer Group, arising from, relating to or in connection with the performance or non-performance of the Contract; and
    - 8.1.2 personal injury including death of or injury or disease to, any person employed by the Customer or any other member of Customer Group, arising from, relating to or in connection with the performance or non-performance of the Contract; and
    - 8.1.3 subject to any other express provisions of this Contract, 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 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 8.1.3), "**third party**" means any party which is not STR, the Customer or another member of the Customer Group or STR Group.
  - 8.2 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:



- 8.2.1 loss of or damage to property of STR (other than the Equipment) whether owned, hired, leased or otherwise provided by STR arising from, relating to or in connection with the performance or non-performance of the Contract; and
  - 8.2.2 personal injury including death, or injury or disease to, any person employed by STR or any member of STR Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
  - 8.2.3 subject to any other express provisions of this Contract, 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 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 8.2.3, **“third party”** means any party which is not STR, the Customer or another member of the Customer Group or STR Group.
- 8.3 Except as provided by clause 8.2 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 (including any third party property utilised by the Customer or any other member of the Customer Group in conjunction with the Equipment) arising from, relating to or in connection with the performance or non-performance of the Contract.
- 8.4 Except as provided by clause 8.1, STR shall save, indemnify, defend and hold harmless the Customer from and against any claim of whatsoever nature arising from pollution emanating from the Equipment (but excluding any third party property which the Customer or any other member of the Customer Group utilises in conjunction with the Equipment) relating to or in connection with the performance or non-performance of the Contract.
- 8.5 Notwithstanding any provision to the contrary elsewhere in this Contract, the Customer shall save, indemnify, defend and hold harmless STR Group from the Customer Group's own Consequential Loss and STR shall save, indemnify, defend and hold harmless the Customer from the STR Group's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of this Contract.
- 8.6 If either Party becomes aware of any incident likely to give rise to a claim under this clause 8, it shall notify the other and both Parties shall co-operate fully in investigating the incident.
- 8.7 All exclusions and indemnities given under this clause 8, save for those under clause 8.1.3 and clause 8.2.3, 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.

8.8 This clause 8 shall survive the termination of the Contract.

## 9. OBLIGATIONS OF THE CUSTOMER

9.1 The Customer shall during the term of the Contract:

- 9.1.1 subject to clause 7.1, at its expense and at all times during the Rental Period, keep and maintain the Equipment in good and substantial general repair, condition and appearance in order to keep it in as good an operating condition as it was on the commencement date of the Contract (fair wear and tear only accepted);
- 9.1.2 use all Equipment only for the purposes for which it was designed and operate the Equipment in a careful, prudent manner and in accordance with the instructions for use;
- 9.1.3 comply with all laws, regulations, rules or ordinances of lawfully constituted authorities relating to the possession, use, storage and transport of the Equipment;
- 9.1.4 maintain effective control of the Equipment and keep the Equipment in a secure and suitable environment when not in use;
- 9.1.5 ensure that the Equipment is operated only by suitably competent persons, duly instructed on its safe operation in accordance with manufacturer's operating manuals, instructions and safety warnings;
- 9.1.6 obtain any required licenses or other authorisations necessary for the use, registration or handling of a specific piece of equipment or technology, and ensure that it complies fully with all relevant legal requirements. STR reserves the right to request proof of any such authorisations prior to the commencement of the Rental Period;
- 9.1.7 The Customer acknowledges that STR and the Equipment is subject to UK/EU and US Trade Laws and the Customer warrants that it shall comply in all respects with UK/EU and US Trade Laws and any other applicable trade laws and will not cause STR to be subject to punitive measures under any laws. STR shall be under no obligation to supply any Equipment to the Customer under the Contract if STR determines, at its sole discretion, that to do so would breach UK/EU and US Trade Laws or any other applicable trade laws, or cause STR to be subject to punitive measures under any laws.

- 9.1.8 ensure that no unauthorised transfers or diversions of the Equipment occurs. In the event that the Customer intends to export Equipment from the jurisdiction(s) to which that Equipment was delivered by STR pursuant to the Contract to any other jurisdiction, the Customer shall be responsible for obtaining any necessary export licence(s) from the relevant authorities. The Customer specifically agrees to determine whether a UK export licence is required and to obtain any required licence(s) prior to exporting.
- 9.1.9 The Customer undertakes to perform adequate due diligence in order to determine whether the export of Equipment by the Customer would result in the breach of UK/EU and US Trade Laws (whether by the Customer or by STR) or would cause STR to be subject to punitive measures under any laws and shall not export the Equipment if it determines that such a breach would occur or such punitive measures could be imposed.
- 9.1.10 if the Equipment is being transferred to countries where any regulatory authority requires details of the intended use of the Equipment, the Customer shall upon request, provide STR with an “End User Statement”;
- 9.1.11 not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon the Equipment or any warnings or documentation thereon;
- 9.1.12 not copy or reproduce in any way or manner the Equipment or any part or component of the Equipment;
- 9.1.13 not perform, or allow any person to perform, any work in or upon or make modifications, changes, alterations or repairs to the Equipment other than routine daily maintenance;
- 9.1.14 allow STR or its representatives to inspect the Equipment at all reasonable times and for such purpose to enter upon the site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspections;
- 9.1.15 keep the Equipment free from any liens, claims, charges and encumbrances during the Rental Period;
- 9.1.16 keep STR fully informed of all material matters relating to the Equipment and promptly notify STR if equipment is damaged, lost or not functioning;
- 9.1.17 deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as STR requires, or if necessary allow STR or its representatives access to the site or any premises where the Equipment is located for the purpose of removing the Equipment. The Customer shall pack the Equipment utilising the standard packaging materials, where applicable; and

- 9.1.18 not do or permit to be done anything which could invalidate the insurances referred to in clause 10.

## **10. INSURANCE**

- 10.1 During the Rental Period and the Risk Period, the Customer shall, at its own expense, provide and maintain the following insurances:
- 10.1.1 insurance of the Equipment against loss by all risks of physical loss or damage by fire, theft or accident, in an amount equal to the full replacement value;
- 10.1.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as STR may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and howsoever arising in connection with the Equipment; and
- 10.1.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such insurance as STR may from time to time consider reasonably necessary and advise to the Customer.
- 10.2 All insurance policies procured by the Customer shall be endorsed to provide STR with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon STR's request name STR on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 10.3 The Customer shall give immediate written notice to STR in the event of any breakdown, loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.
- 10.4 The Customer shall, upon request of STR, provide STR with certificates of insurances evidencing the coverage required at clause 10.1. If the Customer fails to place or maintain insurances or provide satisfactory evidence thereof, STR may refuse to provide the Equipment. If the Customer is self-insured, it shall furnish, upon request, written evidence of such fact to the satisfaction of STR. The provision of any insurance required herein does not relieve the Customer of any responsibilities or obligations outlined in the Contract or for which the Customer may be liable by law or otherwise.

## **11. PAYMENT TERMS**

- 11.1 STR shall invoice the Customer for the Rental Payment(s) in accordance with the Order.

- 11.2 The Customer shall make payment of all invoices due in respect of the Contract within thirty (30) days of the date on the invoice received from STR, unless credit terms are made available to the Customer by STR.
- 11.3 The final invoice amount will be based on the actual return date of the Equipment. If the Equipment is returned later than the return date specified in the Order, the Customer will be charged at the daily rate set out in the Order until the Equipment has been returned to STR.
- 11.4 If the Customer fails to make any payment due to STR under the Contract by the due date for payment, then, without limiting STR's remedies under clauses 13 and 14, the Customer shall pay interest on the overdue amount at the rate of 5% 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.
- 11.5 For any Rental Period exceeding thirty (30) days, STR shall be entitled to invoice the Customer in arrears, at the end of each complete month.
- 11.6 Upon return of the Equipment the final invoice will be prepared and submitted and will represent the outstanding charges for the total Rental Period, as well as any additional charges incurred pursuant to clauses 6 and 12.
- 11.7 All amounts due to STR under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding.
- 11.8 Subject to clause 12, any dismantling, packaging, transportation and/or shipping charges not included in the Contract, shall be borne by the Customer.

## **12. ADDITIONAL CHARGES**

- 12.1 In addition to the Rental Payment(s) specified in the Order, STR has the right to apply additional charges:
- 12.1.1 if the Equipment is damaged and on return it can be repaired, for loss of rental income during the period the Equipment is being repaired, provided such additional charges shall cease when the Equipment is returned to full working order;
- 12.1.2 if the Equipment is damaged and on return it can be repaired, STR will assess the equipment on return and issue Customer with a Technical Report highlighting costs of the repairs to be conducted to return the equipment to full working order.
- 12.1.3 if the Equipment is damaged and on return it cannot be repaired (i.e. it is written off) or the Equipment is lost or stolen, for the full replacement value

of the Equipment and for loss of rental income during the period from the date the Equipment is damaged, lost or stolen to the date STR receives an amount equal to full replacement value of the Equipment;

12.1.4 for cost of outward or return delivery and/or collection of the Equipment, including any restocking, dismantling, packaging, transportation and shipping charges; and

12.1.5 for the replacement cost of STR's packaging materials if such materials are not returned to STR at the end of the Rental Period or on earlier termination of the Contract.

12.2 STR shall invoice the Customer for any Additional Charges in accordance with clauses 11 and 16 (and any other applicable taxes) shall be applied to any Additional Charges.

## **13. TERMINATION**

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

13.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than five (5) Business Days after being notified by STR to make such payment; or

13.1.2 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 to do so; or

13.1.3 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

13.1.4 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

13.1.5 a petition is filed, a notice is given or an order is made which places the Customer into sequestration or bankruptcy; or

13.1.6 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

- 13.1.7 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
- 13.1.8 the holder of a floating charge over the assets of the Customer has become entitled to appoint or has appointed a receiver; or
- 13.1.9 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 13.1.10 any event analogous to clauses 13.1.3 to 13.1.8 inclusive, occurs in relation to any other legal jurisdiction;
- 13.1.11 the Customer breaches, or STR has reason to believe the Customer has breached, any provision of clause 16.6; or
- 13.1.12 in accordance with Clause 15.4, where any force majeure event has subsisted for a period of fourteen (14) days.

## **14. CONSEQUENCES OF TERMINATION**

- 14.1 Upon termination of the Contract, however caused:
  - 14.1.1 STR's consent to the Customer's possession of the Equipment shall terminate and STR may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the site or any premises at which the Equipment is located; and
  - 14.1.2 the Customer shall pay to STR on demand:
    - (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).
- 14.2 Upon termination of the Contract pursuant to clause 13.1 or any repudiation of the Contract by the Customer which is accepted by STR, without prejudice to any other rights or remedies of STR, the Customer shall pay to STR on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Rental Period.
- 14.3 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.

14.4 This clause 14 shall survive the termination of the Contract.

## 15. FORCE MAJEURE

15.1 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.

15.2 Following notification of a Force Majeure in accordance with clause 15.1, 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.

15.3 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.

15.4 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.

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

## 16. TAXES

16.1 On or prior to the date on which the Equipment is delivered to or collected by the Customer the Customer shall provide STR with a Written Declaration confirming the



final location(s) of the Equipment such that STR can determine if VAT/Sales Tax/GST is chargeable and payable in connection with the rental of the Equipment. 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 VAT/Sales Tax/GST shall be deemed chargeable and payable on the rental of the Equipment and any invoice from STR shall include the VAT/Sales Tax/GST payable.

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

**16.3** 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 the local tax authority that VAT/Sales Tax/GST is chargeable on the rental of the Equipment and/or any failure by STR to charge VAT/Sales Tax/GST on the rental of the Equipment.

**16.4 Indirect Tax and Withholding Commercial Agreement**

All prices quoted by STR are exclusive of indirect taxes such as VAT & GST and exclude any local withholding taxes that may be applicable. It is the Customer's responsibility to advise STR the location where the assets are being utilised and any applicable taxes arising from use in that location. STR will include the applicable indirect taxes on the amounts invoiced to the Customer.

Where the Customer is required by law to withhold taxes from the amounts paid to STR, the Customer shall inform STR of the percentage to be deducted. STR will apply a standard grossing up calculation to adjust the quoted STR rates to a grossed-up rate that allows for the application of the relevant withholding tax. The Grossing-Up calculation methodology is shown below. The Customer will reflect the grossed-up rates in the purchase order issued to STR. STR will invoice the Customer at the grossed-up rates. When the Customer pays the grossed up invoice, they will pay STR less the applicable withholding tax and advise STR of the amount of withholding tax applied.

It is the Customer responsibility to provide certificates of withholding tax payments to STR.

**Grossing up calculation**

Example – Normal selling rate of 200 per day suffering a 10% WHT. Grossed up selling rate calculated as  $200 / (100\% - 10\%) = 222.22$

**17. GENERAL**

## 17.1 Assignment and other dealings

- 17.1.1 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.
- 17.1.2 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.

## 17.2 Notices

- 17.2.1 Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2.1; 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.
- 17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 17.3 Severance

- 17.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.3.2 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.

#### 17.4 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.

#### 17.5 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.

#### 17.6 Business Ethics

##### 17.6.1 THE CUSTOMER SHALL:

- 17.6.1.1 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**");
- 17.6.1.2 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;
- 17.6.1.3 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;
- 17.6.1.4 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
- 17.6.1.5 if required to do so by STR, certify to STR in writing signed by an officer of the Customer, compliance with this clause 16.6 by the Customer and all persons associated with it pursuant to clause

17.6.2 below. The Customer shall provide such supporting evidence of compliance as STR may reasonably request.

17.6.2 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 17.6 (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.

17.6.3 For the purpose of this clause 17.6, 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 17.6.3 a person "associated" with the Customer includes but is not limited to any subcontractor of the Customer.

## 17.7 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 17.7 shall survive termination of the Contract.

## 17.8 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).