



## GENERAL TERMS AND CONDITIONS

### 1. Interpretation

**1.1** In this agreement the following words shall have the following meaning(s):

**“Access Details”** shall mean the password identity codes numbers or account formulagiven exclusively to the Customer (as defined below) for the purpose of gaining access to elements of the Service (as defined below);

**“Agreement”** shall mean the terms contained in either Option 1 or Option 2 (as defined below), any specific terms contained in the Quotation together with these General Terms and Conditions;

**“Agreement Date”** means the date of the signing of this Agreement by the Customer;

**“Authorised User”** shall mean anyone registered by the Customer (as defined below)with the Company (as defined below) as authorised to use the Service;

**“Commencement Date”** means the date by or on which the Service and or the Equipment (as defined below) is to be supplied to and or commissioned with the Customer;

**“Company”** means Ajisko Limited T/A IMS connect being the party selling the Equipment or its use and or the Service under this Agreement;

**“Confidential Information”** shall mean all information (whether oral or written) designated as such by the disclosing party unless already in the public domain and or unless the receiving party can demonstrate it was already in possession of such information at the time of disclosure;

**“Content”** shall mean information, video graphics, sound, music, photographs, software and any other materials (in whatever form) published or otherwise made available on or via the Internet;

**“Customer”** means the party purchasing the Service and any applicable or relevant Equipment or its use;

**“Customer Equipment”** means all computer hardware, software, cabling, apparatusand facilities made available by the Customer to enable the Company to provide the Service;



**“Customer’s Option”** means either Option 1 or Option 2, whichever they have so elected;

**“Deposit”** means the amount paid by the Customer to the Company to reserve the use of the Equipment and or the use of the Service pending payment of Instalments;

**“Emergency”** shall mean a situation where in the Company’s sole view there has been, is or may be an immediate threat of serious harm or damage to the facilities or property of the Company or property managed or under the control of the Company;

**“Equipment”** means equipment sold, hired, or leased to the Customer or placed by the Company on the Customer’s premises in connection with the provision of the Service;

**“General Terms and Conditions”** means these terms and conditions contained herein;

**“Instalments”** means an amount paid to the Company on a regular or monthly basis (as agreed in the Quotation) as per any hire-purchase, lease or Service agreement entered into by the Customer;

**“Interest”** means interest charged at annual rate of 4% above ECB base rate;

**“Internet Connection”** shall mean the Customer’s connection to the internet which is made available by the Company for the purposes of this Agreement;

**“Lease Payments”** means the payments made under Option 2 on a monthly basis in accordance with the specific terms and conditions of that Option 2;

**“Lease Period”** means the period under Option 2 commencing on the Commencement Date and ending on the Termination Date (as defined below);

**“Monthly Service Cost”** means the amount charged each month by the Company for the provision of the Service;

**“Operational Service Date”** means the date when a Service is first made available to the Customer at a Site or the date when the Customer first starts to use a Service whichever date is the earlier.

**“Option 1”** means the Customer selected the option to Purchase the Equipment;

**“Option 2”** means the Customer selected the option to lease the

Equipment;

**“Parties”** means the Company and the Customer;

**“Payment Date”** means any date on which payment is due to the Company;

**“Payment Period”** means the period of payment for the provision of Service which commences on the Operational Service Date and shall continue for the duration of the term specified in the Customer’s Option and Quotation;

**“Planned Maintenance”** shall mean any work planned in advance to be carried out by the Company or on behalf of the Company, which will cause the availability of the Service to be suspended;

**“Quotation”** means the invitation to the Customer to avail of the Service, including various specific details tailored to the Customer’s needs and requirements;

**“Service”** means the supply provision management and support as appropriate of information technology access and transmission systems as well as related goods (including Equipment if and where relevant) and services;

**“Service Level Agreement”** means the Company’s commitment to the Customer on the delivery of the Service for which the Customer has contracted with the Company;

**“Service Period”** means the period agreed between the Customer and the Company for the provision of the Service and or Equipment as appropriate;

**“Site”** means a property at which the Company agrees to provide the Service and or Equipment as appropriate;

**“Site Regulations”** means the health and safety or other rules and regulations that apply to a Site;

**“Software”** means any software provided to enable the Customer to access or use the Service and or the Equipment as appropriate;

**“Summary”** means the summary in which the Customer sets out details of the Equipment and or Service which it requires;

**“Termination Date”** means the expiration of the Service term as set out in the Quotation which commences on the Operational Service Date.



**“Termination Event”** means any of the events listed at clause 20.2 and/or clause 20.3;

**“Third Party Information”** means data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) not owned or generated by or on behalf of the Customer during the Customer’s use of the Service;

**“Working Day”** means every day of the week excluding Saturday, Sunday and statutory holidays according to the laws of Ireland;

- 1.2** The headings in this Agreement are inserted only for convenience and shall not affect its interpretation.
- 1.3** Where appropriate words denoting the singular shall include the plural and vice versa.
- 1.4** Reference to any statute or statutory provision includes a reference to the statute or statutory provisions as from time to time amended, extended, or re-enacted.

## **2. DURATION**

- 2.1** This Agreement is effective from the Agreement Date and shall continue for the term agreed by the Parties or until the Termination Date or Termination Event, in accordance with the provisions of this Agreement.
- 2.2** The Company will endeavour to provide the Service and/or supply the Equipment for the Service Period, but all agreed dates are estimates only and the Company accepts no liability for failure to meet such dates.

## **3. OBLIGATION TO PROVIDE GOODS AND SERVICE**

- 3.1** Quotations given by the Company are invitations to treat, not offers and accordingly the Company may have given a Quotation a Customer’s acceptance of the same shall constitute an offer by the Customer and shall not be binding on the Company unless and until such offer has been accepted in writing by the Company.

## **4. PROVISION OF SERVICE**

- 4.1** The Service will be provided in accordance with these General Terms and Conditions of this Agreement and the specific terms contained in the Customer’s Option.

- 4.2** Provision of the Service may depend on a satisfactory survey of the Site, installation of Equipment and subsequent activation of the Service.
- 4.3** The Company will provide the Service with reasonable skill and care.
- 4.4** The Customer accepts that it is technically impracticable for the Company to provide a fault-free Service and accordingly whilst the Company does not undertake to do so the Company will endeavour to remedy any faults in so far as the same may be attributable to any aspect of the Equipment or Service over which the Company has control.
- 4.5** As a result of operational, technical, commercial or other reasons the Company may or may be required to: -
  - 4.5.1** Change the Access Details allocated to the Customer;
  - 4.5.2** Alter or vary the technical specification or any other aspect of the Service;
  - 4.5.3** Carry out Planned Maintenance at any time, upon providing the Company with reasonable notice;
  - 4.5.4** Suspend or in extreme circumstances terminate the Service immediately without notice; or
  - 4.5.5** Give the Customer instructions which it believes are necessary.
- 4.6** The Company will give the Customer as much notice as possible before taking any of the above actions and whenever practicable will agree in advance a time for suspension of the Service to the Customer.
- 4.7** The Company shall have the right to make any changes to the Service which are necessary to comply with any applicable law or safety requirements, or which do not materially affect the nature or quality of the Service and the Company shall notify the Customer in any such event.

## **5. CONNECTION OF EQUIPMENT/ THE SERVICE**

- 5.1** The Company shall install the Equipment at the Site.
- 5.2** The Equipment must be connected and used in accordance with any instructions and any safety or security procedures



applicable to the use of the Equipment, and it must be technically compatible with the Service.

- 5.3** The Customer shall procure that a duly authorised representative of the Customer shall be present at the installation of the Equipment.

## **6. ACCESS AND SITE REGULATIONS**

- 6.1** Anyone acting on the Company's behalf will observe the Customer's reasonable Site Regulations provided that these have been previously advised in writing to the Company. In the event of any conflict between such Site Regulations and these General Terms and Conditions, these General Terms and Conditions shall wherever lawful prevail.

## **7. USE OF SERVICE**

- 7.1** The Service is provided solely for the Customer's own use (including use by the Authorised Users) and the Customer will not share, resell, allow resale or attempt to resell the Service (or any part or facility of it) to any third party unless otherwise expressly agreed with the Company in writing.

- 7.2** The Service must not be used for any unlawful purpose including without limitation anything which constitutes a violation or infringement of the rights of any other person and in the event of breach hereof the Customer shall be responsible for any such misuse of the Service.

- 7.3** The Service must not be used:

**7.3.1** To send, receive, upload, download, use or re-use any information or material which is illegal, fraudulent, offensive, abusive, indecent, defamatory, obscene or menacing or in breach of confidence, copyright, or any other rights; or

**7.3.2** To cause annoyance, inconvenience or needless anxiety; or

**7.3.3** To send or provide unsolicited advertising or allow others to do so which is in any way connected with the transmission of "junk mail", "spam", "chain letter", "pyramid schemes" or the unsolicited mass distribution of email, or with any unethical marketing practices; or

**7.3.4** Other than in accordance with the acceptable usage



policies of any connected networks and generally accepted internet standards.

**7.4** The Company's performance obligations under this Agreement shall be solely to the Customer and not to any third party. Accordingly, to the extent not prohibited by law and without prejudice to the general indemnity pursuant to the provisions of clause 17 the Customer agrees to indemnify defend and hold the Company harmless against and from all liabilities and costs (including reasonable legal fees) arising from any and all claims by such third party in connection with the Service regardless of the form of action, whether in contract, tort, warranty, or strict liability arising from the provision of the Service which are brought or threatened against the Company by a third party, including inter alia and not by way of limitation, because:

**7.4.1** The Service has been used such as to be in breach of the provisions of this clause 7; and/or

**7.4.2** The Service is faulty and/or cannot be used by that third party.

**7.5** The Customer shall notify the Company of any claims or proceedings as are described in 7.4 above and keep the Company informed as to the progress of the same.

## **8. CUSTOMER RIGHTS AND OBLIGATIONS**

**8.1** The Customer agrees that time shall be of the essence in respect of the payment of all sums due in accordance with the provisions of the Agreement and in particular in accordance with the terms of the Customer's Option.

**8.2** The Customer shall be responsible for the provision and maintenance of all Customer Equipment and warrants that it performs to its required standards. The Customer agrees and accepts that all Customer Equipment to be used and or relied upon by the Company in the provision of the Service under the Agreement shall be the Customer's responsibility, not that of the Company in the event that it causes delay or increased costs to the Company in the provision of the Service.

**8.3** The Customer must use its best endeavours to prevent any act which could reasonably be expected to result in the Equipment being arrested, confiscated, seized, taken in exercise of any possessory lien and must not do or permit to be done any act or thing which might jeopardise the title, rights and interest of the Company in the Equipment.

**8.4** In any case where the Customer has selected Option 1 or

Option 2, the Customer shall ensure that clear and legible labelling giving notice that the Company is the owner of the Equipment is affixed thereto at all times, until such a time that the title to the Equipment has passed to the Customer as specified in clause 1.3 of Option 1.

**8.5** The Company shall be responsible for configuring the Equipment with the Software and shall ensure that the Equipment complies with all requirements specified by the Customer during the provision of the Service.

**8.6** The Customer undertakes at its own expense:

**8.6.1** To provide suitable secure accommodation for the Company's representatives and to provide all appropriate support or equipment for initial installation and subsequent provision of the Service;

**8.6.2** To complete all preliminary preparation work as required or requested by the Company including the obtaining of all and any necessary wayleaves;

**8.6.3** To permit anyone acting on the Company's behalf to have access to any Site so as to enable the Company to carry out its obligations under this Agreement;

**8.6.4** Not to allow the Equipment to be serviced, repaired, or otherwise interfered with by any third party or any person other than by an authorised representative of the Company;

**8.6.5** To immediately or as soon as possible, inform the Company of any change of name, address and/or telephone number of the Customer;

**8.6.6** Provide at its own expense all electricity supply required for maintenance of the Service and the Equipment.

**8.7** The Customer shall:

**8.7.1** Keep secure all information relating to Authorised Users which it acquires using the Service; and

**8.7.2** Keep personal data or other information subject to the Data Protection Act 1988 to 2003, as amended in accordance with all applicable Data Protection and privacy requirements (of whatever jurisdiction) and not use or disclose such information for any unlawful purpose.



- 8.8** The Customer is solely responsible for evaluating any goods (including software) or services offered by third parties via the internet. The Company will not be a party to and is not responsible for any transactions between the Customer, Authorised Users and third parties.
- 8.9** The Customer is responsible for the acts and omissions or all Authorised Users in connection with the Service and is liable for any failure by any Authorised User to perform and observe these General Terms and Conditions.
- 8.10** The Customer shall observe and comply fully with the laws of copyright and all intellectual property rights pertaining to all Third Party Information in respect of the Customer's use of the Service.
- 8.11** The Company will not be a party to or in any way responsible for any transaction between the Customer or Authorised Users and any third parties using the Service.
- 8.12** If the Customer intends to move its business to another premises, the Customer must immediately notify the company of its intention to do so, or not less than 60 days written notice.

## **9. COMPANY'S RIGHTS AND OBLIGATIONS**

- 9.1** Prior to commencement of the Service, and where necessary for the provision of the Service, the Company shall perform a survey of the Site. Following this, the Company may request the Customer to make modifications to the Site or to the Customer Equipment to make them environmentally and technically compatible with the Service to be provided.
- 9.2** Unless the Company notifies the Customer otherwise, the Company will be responsible for obtaining and providing any Internet Connection needed to provide the Service to the Site.
- 9.3** The Company warrants to the Customer that for as long as no Termination Event occurs, the Company shall not interfere with the quiet enjoyment of the Equipment.
- 9.4** The Company will respond to reported faults in accordance with Service Level Agreement.. The Company may require on site assistance from the Customer to fully diagnose the nature of the fault and confirm where responsibility lies.
- 9.5** For the purposes of providing new connections, updating facilities and general maintenance, scheduled downtime (i.e. suspension of the Service, in whole or in part) may occur from



time to time. The Company will use its reasonable endeavours to schedule maintenance in accordance with the Customer's requirements.

## **10. Internet**

**10.1** The Service shall where applicable, enable access to the internet. Use of the internet is solely at the Customer's and any Authorised User's risk and subject to all applicable laws. The Company has no responsibility for any information, software, services or other materials obtained by the Customer or Authorised User using the internet.

## **11. SECURITY**

**11.1** The Customer is responsible for the security and proper use of all Access Details and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised parties.

**11.2** The Customer must immediately inform the Company if there is any reason to believe that any Access Details have or are likely to become known to someone not authorised to have them or are likely to be used in any unauthorised way.

**11.3** The Company reserves the right (at its sole discretion) to require the Customer to change any or all of the Access Details used by the Customer and its Authorised Users in connection with the Service at any time.

## **12. INTELLECTUAL PROPERTY RIGHTS**

**12.1** The Customer agrees to sign any agreement required by the Company or the owner of the copyright in the Software to protect the owner's interest in that software.

## **13. TERMS OF PAYMENT**

**13.1** The Payment Period for the Service are agreed in the Customer's Option and will be governed by the specific terms contained in Option 1 or Option 2, together with these General Terms and Conditions.

**13.2** The Monthly Service Cost, as specified in the Quotation, is payable by the Customer by direct debit to the Company on the date agreed by the Parties or such date specified in this Agreement.

**13.3** The Company reserves the right, upon not less than 30 calendar days' prior notice, to increase the Monthly Service Cost during a Payment Period and/or any other amounts payable hereunder on the following bases:

**13.3.1** once in each calendar year starting from the first anniversary of this Agreement in line with the percentage increase in the Consumer Price Index issued by the Central Statistics Office; and/or

**13.3.2** from time to time as a result of an increase in costs to which the Company becomes subject in the provision and/or performance of this Agreement.

**13.4** Subject to clause 13.5 all payments, shall be due and payable within 30 days of the date of invoice. The Company may charge Interest and or administration and or collection charges on unpaid amounts.

**13.5** Credit terms are subject to review by the Company from time to time and the Company shall at all times have the right to suspend or vary any credit terms granted. If at any time the Customer should be in default of payment of any sums due to the Company or upon a Termination Event, then all sums (including Interest) due by the Customer under this Agreement shall be payable to the Company.

**13.6** The Customer shall not be entitled to exercise any set off, lien or any other similar right or claim in respect of any sums due and owing to the Company under the Agreement which shall be payable in full.

## **14. COMPANY WARRANTIES**

**14.1** The Company makes no warranty whatsoever in relation to the Service or the Company or the Equipment and its or their operation. Any conditions or warranties (whether express or implied by statute, common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of the same or their fitness for any particular purpose is made known expressly or by implication to the Company is denied.

**14.2** The Customer accepts that the Company does not monitor or exercise control over messages or other data sent over the Service or otherwise available on the internet and that the security of the internet as a communication medium, or as a



medium for purchasing or payment cannot be guaranteed and that the Company shall have no liability in connection therewith.

**14.3** This Agreement for the provision of the Service and or for the sale of Equipment shall not constitute a sale by description or sample.

## **15. CUSTOMER WARRANTIES**

**15.1** The Customer warrants and acknowledges that in entering into this Agreement the Customer is acting in the course of a business and not as a consumer.

## **16. LIMITATION OF LIABILITY**

**16.1** The Parties do not seek to exclude liability for death or personal injury resulting from their negligence. Both Parties will maintain insurance in respect of such liability in the amount of €13 million and agree to produce a copy of the same to the other upon request.

**16.2** The Company is not liable to the Customer or any third party in contract, tort (including negligence) or otherwise for any financial loss whatsoever (including without limitation loss of profits or anticipated savings) or for any indirect or consequential loss or damage whatsoever however arising out of or in relation to the Equipment or the use of the Service or the Equipment or any failure, interruption or error or default by the Company in the provision thereof or otherwise in connection with this Agreement.

**16.3** Subject to paragraph 16.1, the Company's liability to the Customer in contract, tort (including negligence) or otherwise in relation to this Agreement is limited to the total charges paid or payable to the Company by the Customer in the preceding twelve months in which such liability arose.

**16.4** The Company shall implement reasonable precautions to prevent any unauthorised access by third parties to any part of the network used to provide the Service to the Customer, but the Company shall not be liable for any loss or damage sustained by the Customer in the event of any unauthorised access in spite of the Company's reasonable precautions.

**16.5** The Company shall have no liability of any kind in respect of:

**16.5.1** the content of and or any other material on the internet



which can be accessed using the Service nor is the Company responsible in any way for any goods (including software) or services provided by third parties advertised, sold or otherwise accessed by means of the Service or on the internet; and

**16.5.2** any unauthorised access through the Service to the Customer's IT network, computer system and or devices connected thereto and in this respect the Customer acknowledges that any material and/or data downloaded or otherwise obtained through the use of the Service is at the Customer's risk and the Customer is solely responsible for any consequences thereof including any damage to the Customer or its Authorised User's IT network, computer system and or connected devices and or loss or corruption of data resulting therefrom.

**16.6** The Company is not liable to the Customer either in contract, tort (including negligence) otherwise for the acts or omissions of other providers of telecommunications or internet services (including domain name registration authorities) or for faults in their equipment or services.

**16.7** Each provision of this clause 16 operates separately and if any part is held to be unreasonable or inapplicable in any circumstances the other parts shall continue to apply.

## **17. INDEMNITY**

**17.1** The Customer shall at all times keep the Company indemnified and hold the Company harmless against any claims for loss, damage, cost, expenses, injury or death to third parties howsoever arising (directly or indirectly) out of or in connection with the negligence, breach of duty of care, breach of any of these General Terms and Conditions, the Agreement or any act or omission of the Customer in relation to the use of the Service or the Equipment hereunder.

## **18. FORCE MAJUERE**

**18.1** Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement (other than the payment obligation) to the extent such delay or failure is caused by: fire, flood, lightning, explosion, war, strike, embargo, labour dispute, government requirement, civil or military authority, act of God or nature, inability to secure materials or transportation facilities, actor omission of carriers or suppliers, acts or failure to act of any governmental or other competent authority, or any



other causes beyond its reasonable control, whether or not similar to the foregoing; provided, however, that the Customer by reason of such cause shall not be relieved of its obligation to make any required payments that are due to the Company. Each party shall endeavour to give the other reasonable notice of any such delay.

**18.2** Without prejudice to Clause 18.1, the Company will have no liability to the Customer for failure to provide a Service where:-

**18.2.1** a third party refuses to or delays in the supply of goods or services either to the Company or to the Customer; or

**18.2.2** the Company is prevented by restrictions of a legal or regulatory nature from supplying any part and or the entirety of the Service.

## **19. SUSPENSION OF SERVICE**

**19.1** Except in the case of emergency (where suspension or disconnection may be implemented immediately by the Company without notice to the Customer) if the Customer is in breach of any of these General Terms and Conditions or this Agreement and the Customer having been notified of such breach in writing has failed to remedy that breach within fourteen (14) calendar days of the date on which the Company sends such notification the Company may summarily suspend the Service.

**19.2** Where the Company has suspended the Service, it shall only re-establish the Service when the Customer remedies all breaches to the Company's satisfaction. Any such reconnection shall require the payment of such re-connection fee/or administration charges as the Company may require.

**19.3** Any suspension of the Service for breach of these General Terms and Conditions or the terms of the Customer's Option, shall not exclude the Company's right to terminate this Agreement.

## **20. TERMINATION**

**20.1** Subject to the terms of the Customer's Option and after any applicable Payment Period has been completed, either party may terminate the Service provided under this Agreement upon 60 days' written notice to the other party and any such termination shall be effective on the expiry of such notice

period.

**20.2** Without prejudice to the Company's other rights the Company shall be entitled to terminate the Agreement forthwith in the event that:

**20.2.1** the Customer fails to pay any sum due to the Company in accordance with the terms of payment as set out in this Agreement;

**20.2.2** the Customer is in material breach of any terms of the Agreement;

**20.2.3** where the Company at its sole discretion opts to treat any such material breach as remediable but the Customer fails to comply with any reasonable conditions specified by the Company in relation to the use of the Service and/or such breach is capable of remedy and the Customer has failed to remedy same within 14 calendar days of a request so to do;

**20.2.4** the Company is obliged to comply with an order, instruction or request of Government or other competent authority; or

**20.2.5** the Company finds itself to have an irreconcilable dispute with any third party upon whom provision of the Service depends.

**20.3** It is hereby agreed that the Company shall also be entitled to terminate the Agreement forthwith in the event that:

**20.3.1** The Customer takes any steps or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

**20.3.2** the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

**20.3.3** the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy;

**20.3.4** in the event of a transfer (or a purported transfer) of this

Agreement in breach of clause 24.1; or

**20.3.5** the Company has a reasonable apprehension that any of the events described above may occur, **PROVIDED THAT** in all such circumstances the Company shall have the alternative option at its discretion to require the Customer within such period as the Company may specify, to do such things or take such steps and furnish satisfactory proof to the Company that such event has been cured, or never occurred, to have ceased to exist as the case may be.

**20.4** In any case described in sub-clauses 20.2 and 20.3 the Company shall have the right to collect any unpaid sums due in respect of the unexpired Payment Period.

## 21. DISPUTES

**21.1** The Parties shall endeavour to resolve any disputes between them informally as expeditiously as possible. In the event that this appears not to be possible, the Party who considers himself aggrieved shall serve on the other party a notice setting out a brief summary of his grievance ("**a Dispute Notice**"). Following service of a Dispute Notice, the following provisions shall apply.

**21.2** The Parties shall take serious and bona fide steps to endeavour to resolve the dispute by whatever means they may agree within seven days of service of the Dispute Notice. If, after that time, the dispute remains unresolved, it shall be open to either Party to refer the dispute to adjudication, in which case the rules set forth in the Schedule hereto shall apply, mutatis mutandis. The adjudicator shall be a barrister practising as such in Ireland agreed by the Parties or, in default of agreement, a barrister nominated by the Chairman for the time being of the Bar Council of Ireland.

**21.3** The Parties hereto agree to waive, surrender and not pursue any right of appeal from the adjudicator's decision.

## 22. GENERAL

**22.1** If any provision of this Agreement is held to be unenforceable, illegal or void in whole or in part the remaining provisions (and valid portions thereof) of the Agreement shall remain in force and effect and shall be read and construed such as to produce the same result and effect in so far as the same can fairly and justly be so read.



**22.2** Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties or constitute one party the agent of the other for any purpose whatsoever.

**22.3** The Parties acknowledge and agree that: -

**22.3.1** they have not been induced to enter into this Agreement by any representation, warranty not expressly incorporated into it; and

**22.3.2** in connection with this Agreement their only rights and remedies in relation to any representation, warranty or other assurance shall be for breach of this Agreement and that all other rights are excluded, except in the case of fraud.

## **23. ENTIRE AGREEMENT, VARIATION AND WAIVER**

**23.1** This Agreement represents the entire understanding of the Parties and supersedes all other written and oral agreements relating to its subject matter and cannot be modified except in writing.

**23.2** No variation of this Agreement shall be effective unless it is in writing and executed by all of the parties to it.

**23.3** Failure, omission, delay or waiver by the Company to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right or any other right on any later occasion.

## **24. ASSIGNMENT**

**24.1** This Agreement is personal to the Customer who/which may not assign or transfer any of the rights or obligations under this Agreement, save that the Customer may assign and/or transfer the whole (and not part) of this Agreement with the prior written consent of the Company, which consent shall be granted at the sole discretion of the Company and may be granted subject to conditions.

**24.2** The Company may assign all of its rights and obligations under this Agreement provided that the assignee undertakes to be bound by and perform the obligations of the Company under this Agreement. For this purpose the Customer hereby appoints the Company as its attorney for the purposes of novating this Agreement to the assignee.

**24.3** The Company also reserves the right to sub-contract the provision of Service (or part thereof) to another person without requiring the Customer's consent provided that the Company's obligations to the Customer remain vested with the Company.

## **25. NOTICES**

**25.1** Notices given under this Agreement (including invoices sent by the Company to the Customer) must be in writing and may be delivered by e-mail, facsimile, by hand or sent by post to the Parties' respective address and in each case delivery shall be deemed to have taken place within 7 working days of despatch provided that earlier delivery shall be deemed to have occurred where confirmation of receipt is given in writing by the receiving Party.

## **26. JURISDICTION AND LAW**

**26.1** This Agreement shall be subject to the laws of Ireland and to the exclusive jurisdiction of the Irish courts.

## THE SCHEDULE ABOVE REFERRED TO

### Private Adjudication of Disputes

1. — (1) Any party to a contract (the “referring party”) may give written notice (the “notice of adjudication”) of his intention to refer any dispute arising under the contract, to adjudication.
- (2) The notice of adjudication shall be given to every other party to the contract.
- (3) The notice of adjudication shall set out briefly—
- (a) the nature and a brief description of the dispute and of the parties involved,
  - (b) details of where and when the dispute has arisen,
  - (c) the nature of the redress which is sought, and
  - (d) the names and addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices).
2. — (1) Following the giving of a notice of adjudication and subject to any agreement between the parties to the dispute as to who shall act as adjudicator—
- (a) the referring party shall request the person (if any) specified in the contract to act as adjudicator, or
  - (b) if no person is named in the contract or the person named has already indicated that he is unwilling or unable to act, and the contract provides for a specified nominating body to select a person, the referring party shall request the nominating body named in the contract to select a person to act as adjudicator, or
  - (c) where neither paragraph (a) nor (b) above applies, or where the person referred to in
    - (a) has already indicated that he is unwilling or unable to act and (b) does not apply, the referring party shall request an adjudicator nominating body to select a person to act as adjudicator.
- (2) A person requested to act as adjudicator in accordance with the provisions of paragraph (1) shall indicate whether or not he is willing to act within two days of receiving the request.

(3) In this paragraph, and in paragraphs 5 and 6 below, an “adjudicator nominating body” shall mean a body (not being a natural person and not being a party to the dispute) which holds itself out publicly as a body which will select an adjudicator when requested to do so by a referring party.

3. — The request referred to in paragraphs 2, 5 and 6 shall be accompanied by a copy of the notice of adjudication.

4. — Any person requested or selected to act as adjudicator in accordance with paragraphs 2, 5 or 6 shall be a natural person acting in his personal capacity. A person requested or selected to act as an adjudicator shall not be an employee of any of the parties to the dispute and shall declare any interest, financial or otherwise, in any matter relating to the dispute.

5. — (1) The nominating body referred to in paragraphs 2(1)(b) and 6(1)(b) or the adjudicator nominating body referred to in paragraphs 2(1)(c), 5(2)(b) and 6(1)(c) must communicate the selection of an adjudicator to the referring party within five days of receiving a request to do so.

(2) Where the nominating body or the adjudicator nominating body fails to comply with paragraph (1), the referring party may—

- (a) agree with the other party to the dispute to request a specified person to act as adjudicator, or
- (b) request any other adjudicator nominating body to select a person to act as adjudicator.

(3) The person requested to act as adjudicator in accordance with the provisions of paragraphs (1) or (2) shall indicate whether or not he is willing to act within two days of receiving the request.

6. — (1) Where an adjudicator who is named in the contract indicates to the parties that he is unable or unwilling to act, or where he fails to respond in accordance with paragraph 2(2), the referring party may—

- (a) request another person (if any) specified in the contract to act as adjudicator, or
- (b) request the nominating body (if any) referred to in the contract to select a person to act as adjudicator, or
- (c) request any other adjudicator nominating body to select a person to act as adjudicator.

(2) The person requested to act in accordance with the provisions of paragraph (1) shall indicate whether or not he is willing to act within two days of receiving the request.

7. — (1) Where an adjudicator has been selected in accordance with paragraphs 2, 5 or 6, the referring party shall, not later than seven days from the date of the notice of adjudication, refer the dispute in writing (the “referral notice”) to the adjudicator.

(2) A referral notice shall be accompanied by copies of, or relevant extracts from, the contract and such other documents as the referring party intends to rely upon.

(3) The referring party shall, at the same time as he sends to the adjudicator the documents referred to in paragraphs (1) and (2), send copies of those documents to every other party to the dispute.

8. — (1) The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on more than one dispute under the same contract.

(2) The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on related disputes under different contracts, whether or not one or more of those parties is a party to those disputes.

(3) All the parties in paragraphs (1) and (2) respectively may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these disputes.

(4) Where an adjudicator ceases to act because a dispute is to be adjudicated on by another person in terms of this paragraph, that adjudicator’s fees and expenses shall be determined in accordance with paragraph 25.

9. — (1) An adjudicator may resign at any time on giving notice in writing to the parties to the dispute.

(2) An adjudicator must resign where the dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.

(3) Where an adjudicator ceases to act under paragraph 9(1)—

(a) the referring party may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and

(b) if requested by the new adjudicator and insofar as it is reasonably practicable, the parties shall supply him with copies of all documents which they had made available to the previous adjudicator.

(4) Where an adjudicator resigns in the circumstances referred to in paragraph (2), or where a dispute varies significantly from the dispute referred to him in the referral notice and for that reason he is not competent to decide it, the adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him. The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.

10.— Where any party to the dispute objects to the appointment of a particular person as adjudicator, that objection shall not invalidate the adjudicator's appointment nor any decision he may reach in accordance with paragraph 20.

11.— (1) The parties to a dispute may at any time agree to revoke the appointment of the adjudicator. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him. The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.

(2) Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the parties shall not be liable to pay the adjudicator's fees and expenses.

### **Powers of the adjudicator**

12. — The adjudicator shall—

- (a) act impartially in carrying out his duties and shall do so in accordance with any relevant terms of the contract and shall reach his decision in accordance with the applicable law in relation to the contract; and
- (b) avoid incurring unnecessary expense.

13. — The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the dispute, and shall decide on the procedure to be followed in the adjudication. In particular he may request any party to the contract to supply him with such documents as he may reasonably require including, if he so directs, any written statement from any party to the contract supporting or supplementing the referral notice and any other documents given under paragraph 7(2).

14. — The parties shall comply with any request or direction of the adjudicator in relation to the adjudication.

15. — If, without showing sufficient cause, a party fails to comply with any

request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may—

- (a) continue the adjudication in the absence of that party or of the document or written statement requested,
- (b) draw such inferences from that failure to comply as circumstances may, in the adjudicator's opinion, be justified, and
- (c) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed.

16. — (1) Subject to any agreement between the parties to the contrary, and to the terms of paragraph

(2) below, any party to the dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.

(3) Where the adjudicator is considering oral evidence or representations, a party to the dispute may not be represented by more than one person, unless the adjudicator gives directions to the contrary.

17. — The adjudicator shall consider any relevant information submitted to him by any of the parties to the dispute and shall make available to them any information to be taken into account in reaching his decision.

18. — The adjudicator and any party to the dispute shall not disclose to any other person any information or document provided to him in connection with the adjudication which the party supplying it has indicated is to be treated as confidential, except to the extent that it is necessary for the purposes of, or in connection with, the adjudication.

19. — (1) The adjudicator shall reach his decision not later than seven days after the date of the referral notice mentioned in paragraph 7(1).

(2) Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph (1)

- (a) any of the parties to the dispute may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and
- (b) if requested by the new adjudicator and insofar as it is reasonably practicable, the parties shall supply him with copies

of all documents which they had made available to the previous adjudicator.

(3) As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the parties to the contract.

### **Adjudicator's decision**

20.— The adjudicator shall decide the matters in dispute. He may take into account any other matters which the parties to the dispute agree should be within the scope of the adjudication or which are matters under the contract which he considers are necessarily connected with the dispute. In particular, he may—

- (a) open up, revise and review any decision taken or any certificate given by any person referred to in the contract unless the contract states that the decision or certificate is final and conclusive,
- (b) decide that any of the parties to the dispute is liable to make a payment under the contract (whether in sterling or some other currency) and, subject to section 111(4) of the Act, when that payment is due and the final date for payment,
- (c) having regard to any term of the contract relating to the payment of interest decide the circumstances in which, and the rates at which, and the periods for which simple or compound rates of interest shall be paid.

21. — In the absence of any directions by the adjudicator relating to the time for performance of his decision, the parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the parties in accordance with this paragraph.

22. — If requested by one of the parties to the dispute, the adjudicator shall provide reasons for his decision.

### **Effects of the decision**

23. — (1) In his decision, the adjudicator may, if he thinks fit, order any of the parties to comply peremptorily with his decision or any part of it.

(2) The decision of the adjudicator shall be binding on the parties, and they shall comply with it until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement between the parties.



## **Enforcement of peremptory orders of adjudicator**

24. — (1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the adjudicator.

(2) An application for an order under this section may be made—

- (a) by the adjudicator (upon notice to the parties),
- (b) by a party to the adjudication proceedings with the permission of the adjudicator (and upon notice to the other parties), or

(3) No order shall be made under this section unless the court is satisfied that the person to whom the adjudicator's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

25. — The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him. The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.

26. — The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator shall be similarly protected from liability.