SWIFT FIRE AND SAFETY LIMITED

TERMS AND CONDITIONS OF SUPPLY

1.   INTERPRETATION

1.1   The following definitions and rules of interpretation in this clause apply in these Terms.

Additional Services: services agreed to be provided by Swift which are in addition to the Services.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Business Hours: a consecutive period of 60 minutes at any time within Normal Business Hours

Contract: the contract for the supply of Services to the Customer on these Terms.

Confidential Information: all confidential information (however recorded or preserved) disclosed by Swift or its employees, officers, representatives, advisers or subcontractors involved in the provision of the Services, who need to know the confidential information in question (**Representatives**) to the Customer and its Representatives in connection with the Services, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Customer: the customer purchasing Services from Swift as set out in the Proposal.

Default: has the meaning given in clause 0.

Excluded Causes: means:

(a)   a defect in the manufacturer's design of the System or faulty materials or workmanship in the manufacture of the System;

(a)   use of the System with computer equipment or materials not supplied or approved in writing by Swift;

(b)   any maintenance, alteration, modification or adjustment performed by persons other than Swift or its employees or agents;

(c)   the Customer or a third party moving the System;

(d)   the use of the System in breach of these Terms, Swift's instructions or any associated operating manual;

(e)   a failure, interruption or surge in the electrical power or its related infrastructure connected to the System;

(f)   a failure or malfunction in environmental controls (including air conditioning) required for the normal operation of the System, or an error or omission in the correct use of environmental controls by the Customer;

(g)   neglect or misuse of the System;

(h)   any changes to the building/site effecting the operation of the System;

(i)   accidental, environmental, malicious or an act of God causing damage to the System.

Excluded Services: any maintenance, corrective actions or services required to restore a malfunctioning or failed System where the malfunction or failure results from or is caused by any of the Excluded Causes.

Fees: the fees payable by the Customer as set out in the Proposal varied from time to time in accordance with these Terms.

Initial Period: the period of 12 months or such other term set out in the Proposal commencing on the Start Date.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Normal Business Hours: 8.00 am to 5.00 pm GMT on a Business Day.

Proposal: Swift's proposal setting out the nature of the Services to be provided sent via email or as otherwise communicated by Swift to the Customer.

Renewal Period: each successive 12-month period after the Initial Period.

Proposal: the service schedule available on Swift's website.

Services: the services to be provided by Swift as set out in the Proposal.

Site: the location of the System specified in the Proposal and to which the Services are to be provided, or any other location(s) as may be agreed by the parties in writing from time to time.

Start Date: the date specified in the Proposal.

Swift: Swift Fire and Safety Limited incorporated and registered in England and Wales with company number 11953863 whose registered office is at 98 Culley Court, Orton Southgate, Peterborough, England, PE2 6WA.

System: the system(s) and equipment including (but not limited to) fire alarms, emergency lighting, fire extinguishers, nurse call, intruder, CCTV, access control, electrical services, PAT testing, disabled refuge and fire safety signage to be installed, maintained, serviced, tested and/or commissioned by Swift.

Term: the Initial Period together with all Renewal Periods.

Terms: these terms and conditions as amended from time to time and including any special terms agreed between Swift and the Customer in writing or specified in a Purchase Order.

1.2   Clause, Proposal and paragraph headings shall not affect the interpretation of these Terms.

1.3   A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4   The Proposal forms part of the Contract and shall have effect as if set out in full in the body of these Terms. Any reference to these Terms includes the Proposal. If there is any inconsistency, the terms of the Proposal shall prevail.

1.5   A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6   Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.7   A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.8   A reference to writing or written includes e-mail.

2.   SERVICES

2.1   During the Term, Swift shall provide the Services from the Start Date for the System at the Site.

2.2   The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

2.3   The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

2.4   The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill and in accordance with good industry practice.

2.5   If the Services include maintenance, Swift shall:

2.5.1   carry out routine service visits in line with the appropriate code of practice and/or British Standard or relevant standards in its discretion;

2.5.2   shall attend the Site during Normal Business Hours at the frequency stated in the Proposal to perform the Services. For the avoidance of any doubt, any work carried out outside Normal Business Hours will be done at Swift's discretion and charged to the Customer at Swift's then current rates;

2.5.3   provided that the Customer has informed Swift as soon as possible and in any event within 4 Business Hours that the System has a fault or has failed and requires an emergency call-out, Swift shall use all reasonable endeavours to resolve the fault remotely via telephone or alternatively attend at the Site in accordance with the appropriate code of practice and/or British Standard or relevant standards as soon as is reasonably practicable following the Customer's notification and in any event within 8 hours of notification for an electrical system fault and within 5 days of notification for fire extinguisher related faults;

2.5.4   use all reasonable endeavours to repair and/or replace any malfunctioning or failed System remotely or on Site at its absolute discretion. Where this is not reasonably practicable, Swift shall arrange for a further visit to the Site within Normal Business Hours to complete the repair; and

2.5.5   order or provide a quotation to the Customer for any additional equipment necessary to re-instate systems at the earliest opportunity.

2.6   If installation is included as part of the Services:

2.6.1   Swift shall install the System at the Site on the date agreed between the parties in writing;

2.6.2   the Customer shall:

2.6.2.1   provide uninterrupted access during Business Hours;

2.6.2.2   be responsible for preparing the site in readiness for installation;

2.6.2.3   be responsible for moving all furniture and lifting of all carpets where necessary;

2.6.2.4   provide an appropriate supply for all systems being installed;

2.6.2.5 comply with its obligations in clause 6.1 including its notification obligations; and

2.6.2.6 be responsible for the redecoration and/or reinstatement of the Site after installation or the carrying out of any Services.

2.6.3 Swift reserve the right to charge a fee for waiting time and delays out of Swift's control.

2.7 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 90 Business Days from date of issue.

2.8 The Customer acknowledges that:

2.8.1 the System and equipment will only be warranted and guaranteed if the System and equipment is maintained by Swift during the warranty period in accordance with the applicable warranty policy;

2.8.2 Swift's ability to provide Services is contingent on the Customer complying with its obligations in these Terms. Accordingly, Swift shall not be liable to the Customer or any third party for any failure or delay in the Customer failing or delaying in providing such information or complying with its respective obligations; and

2.8.3 any changes to the Services or delays or interruptions caused by the Customer, its officers, employees or agents whilst Swift are carrying out the Services will be chargeable to and payable by the Customer at Swift's then current rates.

2.9 It is the Customer's responsibility to notify Swift immediately of fault, failure or malfunction in the System in writing. Notification may be verbal but is only deemed to be in compliance with this clause if such notification is confirmed in writing within 4 Business Hours of the original notification.

2.10 If Swift provides emergency maintenance resulting from any Excluded Cause or Excluded Services, it shall charge the Customer for the materials used and labour at its current rates.

2.11 Swift shall procure that its personnel shall, while at the Site, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel. Swift shall have no liability to the Customer if such compliance causes Swift to be in breach of its obligations under these Terms.

2.12 Any parts or equipment included in the System (which have not been paid for in full or which do not form part of the Contract) shall remain Swift's property and shall be defined in the System's specification as such. The Customer shall be responsible for insuring such parts and equipment and for their safe keeping.

2.13   Except as expressly stated in these Terms, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.

3.   **EXCLUDED SERVICES AND ADDITIONAL SERVICES**

3.1   Swift is not obliged to perform any Excluded Services or Additional Services but if provided shall be chargeable in addition at its then current rates.

3.2   The following shall be payable in addition to the Fees unless they are caused solely because of an evidenced fault or error caused by Swift:

   3.2.1   replacement and spare parts in respect of the System;

   3.2.2   equipment to replace parts no longer manufactured or available;

   3.2.3   devices and consumables (batteries, remotes, controls, relays and detectors etc.);

   3.2.4   labour and parts arising from Excluded Services; and

   3.2.5   all other exclusions specified in the Proposal.

3.3   Swift shall charge for the following in addition to the Fees:

   3.3.1   all consumable items including batteries, equipment and parts which are not readily available or no longer manufactured; and

   3.3.2   any exclusions outlined/covered in the Proposal or these Terms.

3.4   Where Swift is performing or has performed the Services in circumstances where it is then established that the System has failed, malfunctioned or is non-maintainable, due to any of the Excluded Causes, Swift may charge, and the Customer shall pay additional charges at Swift's then current rates in respect of that work.

3.5   All information provided by Swift (its employees, advisors, representatives and contractors) as part of the Services does not constitute advice and is followed entirely at the Customer's own risk.

4.   **REPLACEMENTS AND SPARE PARTS**

4.1   All spare parts and/or replacements provided by Swift to the Customer shall become part of the System. All parts and components removed from the System by Swift in the course of performing Excluded Services shall no longer constitute part of the System and shall be the property of Swift.

4.2   Any equipment included in the System but not sold (or paid for by) the Customer shall remain Swift's property and shall be defined in the System's specification.

5. REMOTE MONITORING

5.1 The Customer acknowledges that Swift may sub contract the monitoring of the System to third party monitoring stations as part of the Services. The Customer undertakes to comply with such contracts and any requests of the monitoring station and shall not do anything to cause Swift to be in breach of such contracts. Monitoring contracts may include alarm filtering procedures and/or provisions allowing direct contact with the Customer for the purposes of monitoring the System. Swift cannot accept any liability of whatever nature for losses/costs incurred or suffered by the Customer caused or contributed to by such third parties.

5.2 Swift cannot warrant or guarantee that signals will be received by monitoring stations and/or the emergency services and that the emergency services will attend and/or respond immediately or at all to any alert arising from an intruder, fire or CCTV alarm. Swift shall have no liability to the Customer or to any third party, if a signal is not received, the emergency services fail or are delayed in responding to an alert.

5.3 The Customer shall indemnify and keep Swift indemnified for all costs, losses, claims, damages and liabilities incurred or suffered by Swift as a result of the Customer's breach of this clause, or any action or omission of the Customer which causes or contributes to Swift being in breach of such contracts or any charges imposed on Swift by any third party for alarm signal transmissions or police reference members.

6. CUSTOMER'S OBLIGATIONS

6.1 The Customer shall at all times:

6.1.1 co-operate with Swift in all matters relating to the Services;

6.1.2 ensure that the System is kept under suitable conditions and permit only trained and competent personnel to use it and follow any operating instructions as Swift may give from time to time;

6.1.3 comply with any operating instructions;

6.1.4 prepare the Site for the supply of the Services, including but not limited to ensuring there is an adequate, clean electricity supply to allow the System to operate properly;

6.1.5 obtain any and all necessary licenses, permits and consents that may be required in connection with the System and the Services;

6.1.6 ensure its electrical installations and computer systems are compatible with the System;

6.1.7 notify Swift promptly and in any event within 4 Business Hours if the System is discovered to be operating incorrectly or there is a fault;

6.1.8   permit full and free access to the Site and to the System to Swift, its employees, contractors and agents, and provide them with adequate and safe working space and any telecommunications facilities as are reasonably required to enable Swift to perform the Services including access to appropriate equipment to enable Swift to carry out the Services and/or any installation, failing which Swift shall hire such equipment and charge the cost of the hire to the Customer;

6.1.9   promptly provide Swift with any information it requires in connection with the Services prior to installation or the Services being provided (including but not limited to, the location and existence of any "hidden" cables, pipes, ducts or other similar items) which may affect the Site or the System (or its installation) and ensure that such information is kept up to date and is accurate;

6.1.10   take any steps reasonably necessary to ensure the safety of Swift's personnel when attending the Site;

6.1.11   keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;

6.1.12   promptly notify Swift of any changes to the layout of the Site or decommissioning of the System;

6.1.13   not allow any person other than Swift to maintain, alter, modify or adjust the System;

6.1.14   promptly comply with the instructions of any subcontractor of Swift relating to fault reporting;

6.1.15   not move the System from the Site without the prior written approval of Swift;

6.1.16   only use supplies, materials or equipment supplied or approved by Swift in respect of the System;

6.1.17   be responsible for the costs in redecoration or reinstatement of the Site as a result of installation;

6.1.18   ensure that any safety seals/safety notices are intact before operation, failing which is shall not utilise the System until it has contacted Swift and shall thereafter follow Swift's advice; and

6.1.19   the Customer undertakes and shall keep Swift indemnified against all costs, liabilities, expenses, changes and charges incurred or arising out of the Customer's negligence or failure to comply with this clause 6 or any breach of these Terms.

6.2   If Swift's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Default**):

6.2.1   Swift shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Default, and to rely on the Default to relieve it from the performance of any of its obligations to the extent the Default prevents or delays Swift's performance of any of its obligations;

6.2.2   Swift shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Swift's failure or delay to perform any of its obligations as set out in this clause 0; and

6.2.3   the Customer shall reimburse Swift on written demand for any costs or losses sustained or incurred by Swift arising directly or indirectly from the Default.

7.   FEES

7.1   The Customer shall pay to Swift the Fees in consideration for the Services.

7.2   Additional Services and Excluded Services shall be chargeable in addition to the Fees at Swift's standard rates.

7.3   If Swift is providing monitoring services and the Customer fails to pay the Fees, Swift reserves the right to remove any monitoring equipment it has installed at the Site and/or instruct a disconnection or cancel any monitoring service without liability to the Customer.

7.4   The Fees are exclusive of all expenses which shall be chargeable to the Customer.

7.5   Swift reserves the right to request a deposit of up to 50% of the Fees in consideration for any Services amounting to Fees greater than £10,000.

7.6   Unless otherwise specified in the Proposal, the Customer shall pay the Fees in full to Swift, within 30 days of the date of Swift's invoice.

7.7   If the Customer fails to pay the Fees on the due date for payment, Swift may, without prejudicing any of its other rights and remedies:

7.7.1   Charge an administration fee of £20; and

7.7.2   charge interest at an annual rate of 4% above the base rate of Barclays Bank Plc, calculated on a daily basis in respect of any sum which is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by Swift of the full amount, whether before or after judgment. Nothing in this clause 7.7 shall prejudice or prevent Swift from claiming interest at the statutory interest rate set out in the Late Payment of Commercial Debts (Interest) Act 1998; and/or

7.7.3   suspend the Services without liability to the Customer.

7.8   The Fees exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

7.9   Swift may, at any time after the first anniversary of the Start Date, increase the Fees upon a pricing review which shall be conducted on each anniversary of the Term.

7.10   The Proposal shall be calculated in 15-minute blocks and any fee shall be apportioned accordingly.

7.11   For the avoidance of doubt, the Fees do not include the cost of re-decoration, making good, re-instatement or removal of obstructions which is required, during the course of or after completion of the Services (including any installation) which shall be the Customer's responsibility.

8.   INTELLECTUAL PROPERTY RIGHTS

8.1   All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Swift.

8.2   The Supplier grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

8.3   The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 8.2.

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

9.   LIMITATION OF LIABILITY

9.1   The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000. The limits and exclusions in this clause reflect the insurance cover Swift has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

9.2   Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

9.2.1   death or personal injury caused by negligence;

9.2.2   fraud or fraudulent misrepresentation; and

9.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.3 Subject to clause 9.2, Swift's total liability to the Customer shall not exceed £50,000. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

9.4 This clause sets out specific heads of excluded loss and exceptions from them:

9.4.1 Subject to clause 9.2, the types of loss listed in clause 9.4.2 are wholly excluded by the parties.

9.4.2 The following types of loss are wholly excluded:

9.4.2.1 Loss of profits;

9.4.2.2 Loss of sales or business;

9.4.2.3 Loss of agreements or contracts;

9.4.2.4 Loss of anticipated savings;

9.4.2.5 Loss of use or corruption of software, data or information;

9.4.2.6 Loss of or damage to goodwill; and

9.4.2.7 Indirect or consequential loss.

9.5 The Supplier has given commitments as to compliance of the Services with relevant specifications detailed in the Proposal. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.6 Unless the Customer notifies Swift that it intends to make a claim in respect of an event within the notice period, Swift shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

9.7 The Customer acknowledges that Swift do not know the value of the Customer's assets therefore, it has recommended that the Customer takes out and maintain appropriate insurance policies in respect of loss or damage to its assets. Failure to do so is the Customer's risk.

9.8 Swift shall have no liability to the Customer for:

9.8.1 the suitability of the System for any purpose whether such purpose was made known to Swift or not; and

9.8.2   any liability for costs arising from the Excluded Causes.

9.9   The Fees do not reflect the value of the risks monitored at the Site. The Services are designed to minimise the risk to the Customer. Swift does not give any guarantee or warranty or make any representation that the Services and/or the System will work accurately or correctly at all times. It is not Swift's responsibility to insure the premises and the contents of the premises which shall be the Customer's responsibility.

9.10   Swift shall not be liable for any loss or damage suffered by the Customer, or any end user, arising from any defect, or malfunction of the Customer's, end user's or any third party's equipment, telephone lines, or any other signalling methods used to transmit signals from the premises to any monitoring station.

9.11   Swift shall not be liable for any loss or damage suffered by the Customer or any end user, during an alarm response call out and/or or whilst waiting for the relevant emergency service to arrive at in response to a confirmed alarm activation.

9.12   This clause 9 shall survive termination of the Contract howsoever arising.

10.   CONFIDENTIALITY

10.1   The Customer undertakes that it shall not at any time disclose to any person any Confidential Information of Swift except as permitted by clause 10.2.

10.2   The Customer may disclose Swift's Confidential Information:

10.2.1   to its Representatives who need to know such information for the purposes of exercising its rights or carrying out its obligations under or in connection with the Contract. The Customer shall ensure that its Representatives to whom it discloses Swift's Confidential Information comply with this clause 2; and

10.2.2   as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3   The Customer shall not use Swift's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.   TERM AND TERMINATION

11.1   The Contract shall commence on the earlier of the Start Date or any act consistent with providing Services and shall remain in force for the Initial Period, unless terminated earlier in accordance with clause 0. The Contract shall automatically be extended for successive periods of 12 months (**Renewal Period**) at the end of the Initial Period and on the expiry of each subsequent Renewal Period, unless and until either party serves a written termination notice not later than six months before the end of the Initial Period (or the relevant Renewal Period as the case may be).

11.2   If the Customer purports to terminate the Contract in breach of these terms, Swift shall be entitled to charge the Customer for all upfront costs, expenses and liabilities reasonably incurred in relation to the Contract up until the termination.

11.3   Without prejudice to any of its rights or remedies, Swift may terminate with immediate effect by giving written notice to the Customer if:

11.3.1   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;

11.3.2   the Customer (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of clause 11.3.1 to clause 11.3.2 apply,

11.3.3   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 that other party other than for the sole purpose of a scheme for a solvent amalgamation or reconstruction of the Customer;

11.3.4   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 other party;

11.3.5   a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the Customer;

11.3.6   a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the Customer's assets and that attachment or process is not discharged within 14 days; or

11.3.7   the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

11.3.8   fails to pay any amount due on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;

11.3.9   commits a material breach of these Terms and (if that breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or

11.3.10   there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

11.4 Notwithstanding clause 11.3, the Customer shall bear the costs of any prepaid product or service arranged by Swift and Swift reserves the right to invoice the Customer accordingly.

11.5 Any clause that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11.6 Termination for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

11.7 On termination each party shall as soon as reasonably practicable:

11.7.1 return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping; and

11.7.2 the Customer shall immediately pay any outstanding amounts owed to Swift for Services provided but not yet billed, Swift shall render an invoice which shall be payable immediately by the Customer in full.

11.8 Notwithstanding the obligations in this clause 11, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under clause 11.7, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. Clause 10 shall continue to apply to any retained documents and materials, subject to this clause 11.

11.9 If the Contract is terminated before the end of the Initial Period, the Customer shall pay to Swift the full balance of the Fees as if the Contract had continued to the end of the Initial Period to cover Swift's administrative costs incurred in providing the Services.

12. GENERAL

12.1 <u>Force majeure</u>

12.1.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations if that delay or failure results from events, circumstances or causes beyond its reasonable control. In these circumstances the affected party shall be entitled to a reasonable extension of the time for performing its obligations.

12.1.2 If the force majeure event lasts for more than a four-week corrective period, Swift may terminate with immediate effect without liability.

12.2   Assignment

12.2.1   The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under these Terms without Swift's prior written consent.

12.2.2   Swift may assign, transfer, charge, subcontract or deal in any manner with its rights and obligations under these Terms.

12.3   Waiver

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.4   Non solicitation

The Customer shall not, without Swift's prior written consent, at any time from the date of these Terms to the expiry of 24 months after the completion of the Services or termination or expiry of the Contract (whichever is later), solicit or entice away from Swift or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Swift in the provision of the Services. Any consent given by Swift in accordance with this clause shall be subject to the Customer paying to Swift a sum equivalent to 20% of the then current annual remuneration of that employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

12.5   Notice

12.5.1   Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next-working-day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business.

12.5.2   Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address at 9.00 am on the next Business Day after transmission, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

12.5.3   This clause 12.5 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

12.6   Entire agreement

12.6.1   These Terms and the Proposal constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

12.6.2   The Customer acknowledges and agrees that:

12.6.3   in entering into the Contract, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these Terms; and

12.6.4   its only liability in respect of those representations and warranties that are set out in these Terms (whether made innocently or negligently) shall be for breach of contract.

12.7   Variation

No variation of these Terms shall be effective unless it is in writing and signed by Swift.

12.8   Severance

12.8.1   If any court or competent authority finds that any provision of these Terms (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions shall not be affected.

12.8.2   If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

12.9   No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

12.10   Third-party rights

No person other than a party to the Contract shall have any rights to enforce any term of the Contract.

12.11   Governing law and jurisdiction

12.11.1   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 the law of England and Wales.

12.11.2   The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).