



*For Complete Security*

# Terms and Conditions

▶ Basis of Contract

▶ Supply of Services

▶ Customer's Obligations



## **Terms and Conditions of Business – GBSG Ltd/GB Monitoring Ltd/GBSG Guarding Ltd**

**Applies to the provision of goods and / or services by any company within the GB group of companies.**

### **Part A**

**The Customer's attention is particularly drawn to the provisions of clause 12.**

#### **1. INTERPRETATION**

Definitions.

In these Conditions, the following definitions apply:

**"Business Day"** means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

**"Commencement Date"** means has the meaning set out in clause 2.2.

**"Conditions"** means these terms and conditions as amended from time to time in accordance with clause 15.8.

**"Contract"** means the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**"Customer"** means the person or firm who purchases the Goods and/or Services from the Supplier.

**"Deliverables"** means the deliverables set out in the Order.

**"Enabling Equipment"** means the security equipment provided and or installed at the Protected Premises by an entity other than a Group Company to enable the Supplier to provide the Services via the Monitoring System. **"Force Majeure Event"** means has the meaning given to it in clause 15.1.1.

**"Goods"** means the goods (or any part of them) set out in the Order.

**"Goods Specification"** means any specification for the Goods, including any relevant plans or drawings that are agreed in writing by the Customer and the Supplier.

**"Group Company"** means any associated, subsidiary or holding company of the Supplier.

**"Installation"** means following the Supplier explaining to the Customer any operation process in relation to the System, the formal handing over of the System by the Supplier to the Customer.

**"Installation date"** means the date when the System is handed over to the Customer notwithstanding that any work is still to be carried out by your telecommunications provider.

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any

other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"**Licensed Rights**" means any Intellectual Property Rights procured [by a Group Company and installed in either the System, Monitoring Equipment or Monitoring System in order that the Supplier may provide the Services.

"**Maintenance**" means the routine maintenance of the System to be carried out by the Supplier.

"**Maintenance Charge**" means the fee plus VAT (as set out in the Order) and as increased in each year by an amount not to exceed (save where any upgrade or further works have been carried out by the Supplier), the annual rate of inflation to be paid by the Customer to the Supplier for the provision by the Supplier of Maintenance.

"**Monitoring System**" means the system to enable the Supplier to carry out the Services from the Supplier's premises as detailed in the Service Specifications and "**Monitoring Services**" means the obligations of the Supplier set out in the System Specification.

"**Order**" means the Customer's order for the supply of Goods in accordance with the Goods Specification and/or Services, in accordance with the Service Specification, as set out the Customer's purchase order form.

"**Protected Premises**" means the premises at which the System is installed.

"**Services**" means the services, including any Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

"**Service Specification**" means the description or specification for the Services provided in writing by the Supplier to the Customer in relation to the Protected Premises which services are provided by the Supplier using either the System, Enabling Equipment and Monitoring System.

"**Supplier**" means the company providing the Goods and or Services whose details are provided in the letter accompanying these terms and conditions.

"**Supplier Materials**" has the meaning set out in clause 8.1.8.

"**System**" means the System as detailed in the Goods and or Service Specifications.

1.1 Construction. In these Conditions, the following rules apply:

1.1.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.1.2 a reference to a party includes its [personal representatives,] successors or permitted assigns;

1.1.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.1.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.1.5 a reference to **writing** or **written** includes faxes and e-mails.

## **2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These 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.

2.6 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 days from its date of issue.

2.7 The Supplier only agrees to carry out work and provide the Services set out in the Order and no variation of or addition (including any addition or variation arising by virtue of circumstances or procedures specific to the Protected Premise which were not communicated to the Supplier during the survey of the Protected Premises ) to such works and or Services can be accepted by the Supplier unless the said variation or addition is accepted in writing by the Supplier in which case it will be charged for separately. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **3. GOODS**

3.1 Where the Contract provides for the provision of goods by the Supplier, the goods shall be the Goods. To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a

third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.1 shall survive termination of the Contract.

3.2 The Supplier reserves the right to amend the specification of the Goods and or Goods Specification if required by any applicable statutory or regulatory requirements.

3.3 The parts comprising the System are guaranteed by the Supplier for one year from the Installation date for free replacement or repair of parts provided that such replacement or repair was not rendered necessary by the negligence or deliberate act or omissions of the Customer its servants or agents or as a result of burglary, attempted burglary, fire, flood, lightning act of god, riots, civil commotions, strikes or lockouts, accident or mis-use, moisture, paints or distempers.

#### **4. DELIVERY OF GOODS**

4.1 The Supplier shall bring and deliver the Goods to the Protected Premises upon commencing and undertaking work.

#### **5. QUALITY OF GOODS**

5.1 The Supplier warrants that on delivery and for a period of 12 months from the date of delivery ("**Warranty Period**"), the Goods shall:

5.1.1 conform in all material respects with their description and the Goods Specification;

5.1.2 be free from material defects in design, material and workmanship;

5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

5.1.4 be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

5.3.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Save in respect of Goods which the Supplier rents from the Customer, title to the Goods shall not pass to the Customer until:

6.2.1 Installation has taken place;

6.2.2 the Supplier has received payment in full (in cash or cleared funds) for:

6.2.2.1 The Goods; and

6.2.2.2 any other goods (including but not limited to the goods of a third party incorporated in or forming part of the System) that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Supplier's Bailee;

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.12; and

6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may not resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.12, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then,

provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. SUPPLY OF SERVICES

7.1 Where the Contact provides for the provision of services by the Supplier, the services shall be the Services and which Services shall be provided in all material respects.

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

7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier will provide the Services using reasonable care and skill.

## 8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

8.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods and or Service Specification(s) are complete and accurate;

8.1.2 co-operate with the Supplier in all matters relating to the Services;

8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Protected Premises, office accommodation and other facilities as reasonably required by the Supplier to provide, inspect and service the Goods and any Enabling Equipment necessary for it to provide the Services;

8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

8.1.5 advise the Supplier of the existence of, and point out to the Supplier's installation engineer, the location of concealed water, gas, electricity, telephone or other services, wiring or pipes before work commences (and where the Services are being provided, any actual or potential obstructions permanent or temporary to either the System, or Enabling Equipment) which may result in the System or Enabling Equipment not being able to provide data to the Monitoring System. In the absence of such advice, the Supplier accepts no liability for any loss or damage which the Customer may incur in relation to any failure of the System or Enabling Equipment being able to provide data to the Monitoring System and the provisions of paragraphs 12.1 and 12.2 shall apply in such circumstances.

**8.1.6 where the Contract is for the provision of Services, during the term of the Contract, immediately notify the Supplier of any temporary obstructions (such as lorries, buses high sided vehicle or foliage) or any other obstruction in the vicinity of**

**the System or Enabling Equipment which will or may prevent the Supplier being able to provide the Monitoring Services.**

**Take all such reasonable steps to maintain the Protected Premises so as to avoid alarm activation by maintaining adequate lighting, growing foliage and so as to avoid material being wind-blown in or around the Protected Premises**

**In the absence of such advice, the Supplier accepts no liability for any loss or damage which the Customer may incur in relation to any failure of the System or Enabling Equipment being able to provide data to the Monitoring System and the provisions of paragraphs 12.1 and 12.2 shall apply in such circumstances.**

8.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

8.1.8 keep and maintain all materials, equipment, documents and other property of the Supplier ( including property belonging to a third party but provided by the Supplier for the operation of the System) ("**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; and

8.1.9 pay the installation costs, and any appropriate V.A.T., on the Installation date, and upon payment of the said costs and charges and not before the property in the System shall thereafter pass to the Customer. For the avoidance of doubt the Customer is reminded that if payment is made by cheque that the payment is not deemed to be made, neither does the property pass, until the said cheque is cleared through the Supplier's Bank.

8.1.10 where an attendance by the Supplier at the Protected Premises is necessary for whatever reason (apart from routine maintenance visits) the Customer shall pay all the Supplier's charges including travelling expenses and materials on receipt of the invoice in respect of the same.

8.1.11 at its own expense, obtain any and all necessary consents for the installation of the System and ensure that the Supplier, its servants and/or agents, shall have full and uninterrupted access to the Protected Premises at all reasonable time for the purposes of installation, routine maintenance, repairs and removal or renewal of the System and the Customer acknowledges that it may be necessary for some work to be carried out outside normal working hours.

8.1.12 permit any representative or representatives of the National Security Inspectorate and Security Industry Authority to have access to the Protected Premises at any reasonable time for the purposes of inspecting the said System and the Protected Premises.

8.1.13 at its own expense arrange for the provision of all necessary facilities by your telecommunications provider.

8.1.14 If a Monitoring System is provided by the Supplier, the Customer shall pay all the installation, rental and Maintenance Charges.

8.1.15 not allow any person to have access to the System other than an authorised representative of the Supplier and the Customer shall not inspect, test (except the testing



required in the Operating Instructions), adjust, reset, repair, alter or in any way interfere with the System without the written consent of the Supplier nor shall permit any third party to do the same.

8.1.16 inform the Supplier immediately it becomes aware of any defect in the System or Enabling Equipment and shall notify the Supplier within 24 hours of any alarm or false alarm.

8.1.17 is responsible for any nuisance (as defined under the Control of Pollution Act 1974) caused by the alarm Call and the Supplier accepts no responsibility whatsoever in respect thereof.

8.1.18 permit the Supplier to affix on the System in such a way as not to cause inconvenience or nuisance to the Customer such plates or other marks indicating that the System has been installed by the Supplier as the Supplier may think fit and the Customer shall allow such plates or marks to remain as affixed and will not obliterate deface or cover up the same.

8.1.19 The design of any security system (including but not limited to the System) is not fool proof and is susceptible to sabotage. It is the Customer's responsibility to carryout regular checks on the System (and or Enabling Equipment as the case may be) for both security protection and health and safety as detailed in the handbook of GBSG Ltd or the provider of the Enabling Equipment. **In addition, it is the Customer's responsibility to review the security requirements of the Protected Premises on a regular basis and at least every 6 months or when changes are made to the site operation, layout, or nature of the business carried on at the Protected Premises.**

**8.1.20 It is the Customer's responsibility to ensure that the Goods and Services Specifications of the System meets the requirements of its/ his insurers.**

8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (including but not limited to a breach of paragraph 8.1.5 and or 8.1.6) ("**Customer Default**"):

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

8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 1; and

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

## **9. CHARGES AND PAYMENT**

9.1 The Goods are exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 The charges for Services shall be on a time and materials basis:

9.2.1 the charges shall be calculated in accordance with the Supplier's quotation;

9.2.2 the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

9.2.3 the Supplier shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and

9.2.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

9.3.1 increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12-month period. The Supplier will give the Customer written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer; and

9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

9.3.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

9.3.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

9.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 Charge the Customer for costs incurred by the Supplier's representatives in attending and/or waiting at the Protected Premises for access to the System other than if such delay is the result of any act or omission of the Supplier's representatives.

9.5 In respect of **Goods**, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of **Services**, the Supplier shall invoice the Customer on monthly in arrears.

9.6 The Customer shall pay each invoice submitted by the Supplier:

9.6.1 within 30 days of the date of the invoice; and

9.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.8 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier within 30 days of the date of any invoice ("**Due Date**"), the Supplier shall have the right to charge interest on the overdue amount at the rate of 20 per cent per annum above the then current base rate of Lloyd's Bank Plc accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

9.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9.10 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment by the Due Date the Supplier shall be entitled to immediately cease to provide the Services and or to enter the Protected Premises to take possession of any Goods in respect of which payment has not been received by the Supplier and to do all such things as are necessary to protect the Intellectual Property Rights, including but not limited to disabling the Goods or Enabling Equipment.

## 10. **INTELLECTUAL PROPERTY RIGHTS**

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

10.2 The Customer acknowledges that, in respect of any Licensed Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer. When such rights are granted to the Supplier (or any Group Company) such Licensed Rights shall constitute for the purpose of these Conditions, part of the Intellectual Property Rights

10.3 All Supplier Materials are the exclusive property of the Supplier.

## 11. **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 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 11 shall survive termination of the Contract.

## **12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

**12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:**

**12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;**

**12.1.2 fraud or fraudulent misrepresentation;**

**12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);**

**12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);**

**12.1.5 defective products under the Consumer Protection Act 1987**

**12.2 Subject to clause 12.1:**

**12.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and**

**12.2.2 The Company has no special knowledge of the nature or value of the contents of the Protected Premises or of the nature or the risks to which the Protected Premises and/or its contents will from time to time be exposed but the Customer does and therefore the Supplier must limit its liability to the Customer as set out below. The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5 million per claim. Therefore, the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £ 5 million and the Customer is responsible for making its own arrangements for the insurance of any excess loss**

**12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.**

**12.4 In so far as the Customer is a consumer, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, not excluded from the Contract.**

**12.5** The Supplier shall not be liable to the cost of any re-decoration or reinstatement or for damage to or the cost of relaying floor coverings or for any breakages or other damage arising from the installation, alteration, maintenance or repair of the System or any part thereof unless the same arises from the negligence of the Supplier, its servants or agents.

**12.6** The Subscriber acknowledges that the System, may be neutralised, circumvented or otherwise rendered ineffective and if such eventuality occurs, for the avoidance of doubt, in respect of any loss or damage incurred as a result by the Customer, the provisions of paragraph 12.1 and 12.2 shall apply.

**12.7** The Supplier accepts no liability in respect of any loss or damage sustained by the Customer arising from the failure of the System as a result of damage to the System or Enabling Equipment arising directly or indirectly from any act of god including lightening, criminal damage, riot or commotion or any other unauthorised entry causing the System to fail to operate or to operate incorrectly or as a result of any inadequacy in the design, or construction of the Goods or Enabling Equipment .

**12.8** [The Supplier accepts no liability in respect of any loss or damage sustained by the Customer arising from the failure of the Monitoring System as a result of damage to the Monitoring System arising directly or indirectly from any act of god including lightening, criminal damage, riot or commotion or any other unauthorised entry causing the Monitoring System to fail to operate or to operate incorrectly or as a result of any inadequacy in the design, or construction of the Monitoring System.]

**12.9** The design of any security system is not fool proof and is susceptible to sabotage. It is the Customer's responsibility to carryout regular checks on the System for both security protection and health and safety as detailed in the handbook of GBSG Ltd. In addition, it is the Customer's responsibility to review the security requirements of the Protected Premises on a regular basis and at least every 6 months or when changes are made to the site operation, layout, or nature of the business carried on at the Protected Premises. GBSG Ltd will not be liable for any losses as a result of not follow correct procedures.

**12.10** This clause 12 shall survive termination of the Contract.

### **13. TERMINATION**

**13.1** Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

**13.1.1** the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;

13.1.2 the other party 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (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 the foregoing apply;

13.1.3 the other party 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 [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

13.1.4 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 other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

13.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

13.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

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 other party (being a company);

13.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.1.9 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 other party;

13.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.2 to clause 13.1.9 (inclusive);

13.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

13.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:

13.2.1 by giving the Customer 3 months' written notice;

**13.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.**

13.3 The Customer may terminate the Contract by giving the Supplier not less than 3 months' written notice.

13.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:

13.4.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or

13.4.2 the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

#### 14. **CONSEQUENCES OF TERMINATION**

14.1 On termination of the Contract for any reason:

14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

14.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

14.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, 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; and

14.1.4 the Supplier shall be entitled and the Customer shall permit, the Supplier to enter the Protected Premises to take possession of any Goods or Enabling Equipment in respect of which payment has not been received by the Supplier and to do all such things as are necessary to protect the Intellectual Property Rights, including but not limited to disabling the Goods or Enabling Equipment and or to immediately cease to provide the Services

14.1.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### 15. **GENERAL**

15.1 Force majeure:

15.1.1 For the purposes of this Contract, "**Force Majeure**" Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.1.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15.1.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15.2 Assignment and subcontracting:

15.2.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

15.2.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.3 Notices:

15.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

15.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission.

15.3.3 This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

15.4 Waiver and cumulative remedies:

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

15.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

15.5 Severance:

15.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall,



to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

15.9 Governing law and jurisdiction: This 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, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**Part B – In addition to the terms and conditions set out in part A above (as varied by the terms and conditions in this part B), the following terms and conditions in this part B shall apply where the Supplier maintains or monitors the System.**

16. Unless otherwise provided in any quotation provided by the Supplier, for a period of three years from the commencement date and thereafter the Supplier shall annually carry out the Maintenance and/or Monitoring until determined by three months' written notice given by either party to the other.

17. The Supplier shall carry out Maintenance in accordance with the requirements of the relevant current European standards and shall provide emergency service as laid down by the relevant current European standards.

18. The Supplier shall use reasonable endeavours to promptly carry out such necessary repairs and replacements which are deemed necessary by the Supplier after being requested so to do by the Customer.

19. The Customer shall pay the first year's Maintenance and/or Monitoring Charge, and any appropriate V.A.T., on the commencement date.

20. The Customer shall pay the Maintenance and/or Monitoring Charge each year in advance on the anniversary of the installation date

#### **PART C –**

**IN addition to the terms and conditions set out in parts A and B above (as varied by the terms and conditions in this part C), the following terms and conditions shall apply where the Supplier has altered and or re installed or maintains a system either**

**designed, provided, installed or maintained by a third party at the Protected Premises prior to the Commencement Date.**

**YOUR ATTENTION IS PARTICULARLY DRAWN TO CONDITION 22 BELOW.**

21. Condition 5.1 shall only apply to goods supplied, designed and or installed by the Supplier and not to goods supplied, designed and or installed by any other person prior to the Commencement Date at the Protected Premises.

22. **The following Condition [12.9] [12.10] shall also apply.**

“12.9 [12.10] The Supplier shall under no circumstances be liable to the Customer either in contract, tort (including negligence), breach of statutory duty or otherwise for any loss or damage arising out of any act, omission or fault (of any description) in the equipment or service provided by any manufacturer, designer or installer of a security system in the Protected Premises provided prior to the Commencement Date by a company other than a Group Company and in respect of which the Supplier has agreed to provide the Goods and or the Services pursuant to the Contract” and the existing condition 12.9 [12.10] shall be renumbered 12.10 [12.11].