

ONEOCEAN GENERAL TERMS – 1st February 2022

1. Introduction

- 1.1 In these General Terms, capitalised words and phrases shall have the meaning given to them in clause 1.11.
- 1.2 The terms and conditions of the Contract shall apply to the exclusion of all other terms and conditions including any of the Customer's terms and conditions. In the event of any conflict between any of these General Terms, any applicable Additional Terms and the terms of the QSA, the terms of the QSA shall prevail. In the event of any conflict between any of these General Terms, any applicable Additional Terms, the Additional Terms shall prevail. In the event of any conflict between the Privacy Policy and any of these General Terms, these General Terms shall prevail.
- 1.3 As used in these General Terms, the words "include" and "including" shall not have a restrictive meaning.
- 1.4 References in these General Terms to paragraphs, sub-paragraphs and Schedules are references to paragraphs, sub-paragraphs and Schedules to these General Terms (unless the context otherwise requires).
- 1.5 Words importing the singular include the plural and vice versa, words importing a gender shall include all genders and words importing persons shall include unincorporated associations and partnerships and any entity with legal standing.
- 1.6 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.7 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, these General Terms.
- 1.8 Clause and schedule headings do not affect the interpretation of these General Terms.
- 1.9 **Writing** or **written** includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.
- 1.10 The schedules to these General Terms, together with any documents referred to in them, form an integral part of these General Terms and any reference to these General Terms means these General Terms together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the Parties.
- 1.11 In these General Terms, the following words shall have the following meanings:
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| Account: | the bank account of the Company identified in the QSA or such other bank account communicated in writing by the Company to the Customer. |
| Additional Terms: | any terms identified in the QSA that apply to any specific product or service offered by the Company. |
| Affiliate: | in relation to either Party, its parent company or any of its subsidiaries, or all other subsidiaries of its parent company and including, in relation to the Company, the following entities: Regs4ships Ltd, OneOcean Singapore Pte, OneOcean Netherlands, OneOcean Norway, DocMap AS and Marine Position AB. |
| Agent: | any Person appointed in writing by the Company to promote and seek Customers for the Application. |

Applicable Law:	all applicable laws, statutes, regulations (including, without limitation, national, regional, local or municipal laws, regulations or by-laws of any kind whatsoever and requirements, regulations or industry practices applicable), government policies, enactments or instruments which may from time to time be in force and relevant to the rights and obligations under the Contract.
Application:	the software and any associated Content licensed by the Company to the Customer under the Contract from time to time in connection with the provision of the Service, including all Documentation and all New Releases and New Versions, all as identified in the applicable QSA.
Assets:	the Application, the Content, the Products, the Brands and the Tools.
Brand:	any of the following words: 'OneOcean', 'ChartCo', 'FleetManager', 'PassageManager', 'EnviroManager', 'Regs4Ships', 'Regs4Yachts', 'SeaTab' and 'Docmap' and "Brands" shall be construed accordingly.
Business Day:	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Change of Control:	means any person or entity and any other person or entity acting with such person or entity, acquiring an interest (whether over shares, stock or otherwise) carrying in aggregate fifty (50) percent or more of the voting rights in the Customer or obtaining the right to appoint a majority of the board of directors of the Customer.
Company:	OneOcean Group Limited or any Affiliate of OneOcean Group Limited that is a Party to the Contract.
Company Content:	Material proprietary to the Company and supplied by the Company as part of or for use in conjunction with the Application or Product and excluding any Third Party Content.
Company Website:	any of the website currently accessible at www.oneocean.com (through which these General Terms may be viewed) and such other website or websites, all as specified in the QSA by the Company, through which the Customer may register to use or access the Application.
Confidential Information:	information of commercial value, in whatever form or medium, disclosed by the Company (or any of its Affiliates) to the Customer (or any of its Affiliates), including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing and, for clarity, including information relating to any Application or any of its constituent parts and the Source Code relating to any Application or any such parts.

Content:	any or all of the Company Content and the Third Party Content.
Contract:	the contract between the Company and Customer comprising the QSA, these General Terms, any Additional Terms and any other documents or terms expressly incorporated by reference in either of them.
Customer:	the Person named in the QSA with whom or which the Company has contracted to supply any Application or Product.
Customer Content:	Material provided to the Customer and used in conjunction with and required for the operation, provision or delivery of the Application including as set out in the QSA.
Customer Equipment:	means the Customer's own compatible computer system being all such hardware, software and/or communications lines (including any public communication lines) required for the operation, provision or delivery of the Application, including as set out in the QSA.
Cyber Attack:	a hostile act using computer or related networks or systems and intended to disrupt or destroy another's cyber systems, assets or functions.
Data Controller:	shall have the meaning ascribed to it in Data Protection Law.
Data Processor:	shall have the meaning ascribed to it in Data Protection Law.
Data Protection Law:	the following legislation to the extent that it is in force and applicable, and as amended or superseded from time to time: <ul style="list-style-type: none">(i) the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 and other UK laws implementing the GDPR and the Directive on Privacy and Electronic Communications (2002/58/EC);(ii) any other similar national privacy law, regulations, guidance notes and industry or self-regulatory codes in a Territory (or in other territories to the extent applicable to this Contract) relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the UK Information Commissioner or such other regulator with competent authority.
Data Subject:	shall have the meaning ascribed to it in Data Protection Law.
Defect:	an error in the OneOcean Application or Service that causes it to fail to operate substantially in accordance with the relevant QSA or the Documentation.

Dispute Resolution Procedure:	the procedure for dealing with disputes under the Contract as set out in clause 16.8 of these General Terms.
Documentation:	the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Company as part of an Application.
Ex Works:	shall have the meaning given in Incoterms 2010.
Fair Use Policy	means the policy published by OneOcean on its public website, which may be revised from time to time at the Companies sole discretion, setting out conditions for the acceptable used of its Services or Applications.
Fee:	any sum or sums due under the Contract to the Company from the Customer under or in respect of any or all of the Application, Products, and Services including any and all packaging and transport costs and “Fees” shall be construed accordingly.
Force Majeure:	any act, event or circumstance beyond the reasonable control of the Party to perform and which results in or causes the failure of that Party to perform any of its obligations under the Contract including any act of God, strikes, lockout or other industrial disturbance, war or threat of war, terrorist act, Cyber Attack, blockade, riot, sabotage, act of vandalism, lightning, fire storm, flood, earthquake, explosion, fault or failure of plant or machinery including, for the avoidance of doubt, any significant computer software and/or hardware failure.
GDPR:	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L119/1, 4.5.2016.
Goods:	any physical or digital product (excluding for the avoidance of doubt any Proprietary Item or Application) supplied or sold by the Company to a Customer separately from and not pertaining to any Application.
GUI:	means in relation to any website and/or computer system, the graphical user interface of such website and/or system consisting of any textual, graphical and design elements created by or for the Company, including the positions of such elements on the screen but excluding the functionality of such website and/or system and the software underlying such textual, graphical and design elements.
Incoterms 2010:	the International Chamber of Commerce (ICC) official rules 2010 for the interpretation of trade terms.
IMO:	International Maritime Organisation.
Intellectual Property Rights (IPR):	means patents, rights to inventions, copyright and related rights, moral rights, trademarks, trade names and domain

names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, performer's 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 (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world including the right to sue for and recover damages for past infringements.

Licence:	the Licence granted to the Customer under the Contract to use the Application.
Licensed Users:	the employees and agents of the Customer identified in the QSA who use the Application.
Mandatory Policies:	the business policies and codes as referred to in the QSA as amended by notification to the Customer from time to time.
Material:	means data, drawings, designs, maps, charts, copy, artwork, photographs, films, music, performances, books, audio materials, information, data, databases, websites, website content, advertising, marketing, publicity and promotional matter and other materials in any media (including GUI and including in tangible or electronic form or otherwise) but excluding any Products and "Materials" shall be construed accordingly.
Material Adverse Change:	any material change in market conditions or Applicable Law such that in the opinion of the Company the provision of any Application or Services is no longer commercially viable.
New Release:	a new release of all or any part of the software forming part of the Application suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.
New Version:	a new version of all or any part of the software forming part of the Application released by the Company after the date of the Contract which provides additional or improved functionality or performance.
Parties:	the Company and the Customer and "Party" shall mean either of them.
Person:	any natural person, partnership, joint venture, corporation, company, trust, firm, association, government, governmental department or agency.
Personal Data:	shall have the meaning ascribed to it in Data Protection Law.
Place of Delivery:	the location agreed between the Company and the Customer to which Products shall be delivered.

Privacy Policy:	the privacy policy published on the OneOcean Website, which may be updates at the Companies sole discretion from time to time and which is deemed to be incorporated by reference into these General Terms.
Processing:	shall have the meaning ascribed to it in Data Protection Law.
Products:	Goods and/or Proprietary Items and “Product” shall be construed accordingly.
Proprietary Item:	any physical or digital product (excluding for the avoidance of doubt any Goods) not having been manufactured by, but supplied or sold by the Company to a Customer in conjunction with, an Application.
QSA:	the letter providing a quotation and terms for the use by the Customer of the relevant Application and any associated Products and Services, incorporating these General Terms and the Privacy Policy, as accepted by the Customer.
Services:	the support and other services (which may include provision of an Application) to be provided by the Company as set out in the QSA.
Site(s):	as such term is defined in the QSA (including any Vessel identified in the QSA).
Source Code:	the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the Customer’s development personnel to understand, develop and maintain that software.
Supplier:	any supplier of Third Party Content.
Support Staff:	those officers, employees, agents or subcontractors of the Company or any of its Affiliates connected with this Contract, including those individuals who perform the Company’s obligations under this Contract.
Third Party Content:	Material proprietary to a third party and used in or in conjunction with the Application or Product and whether or not supplied by the Company.
Tools:	any tools and know-how developed, and methods invented, by the Company in the course of or as a result of carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work.
VAT:	value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.
Vessel:	any vessel owned or operated by the Customer and identified in the QSA or the identity of which has been agreed by the Company in writing.

2. Application

- 2.1 The Application identified in the QSA or provided as part of a Service is for use by the Customer on a non-exclusive basis only. The Customer hereby represents and warrants that it shall not, in respect of any Application, use or deal with the same for any reason not expressly set out in the Contract.
- 2.2 The provisions of the Schedule to these General Terms shall also apply to the Customer's purchase of Products from the Company.
- 2.3 The Company will use all reasonable endeavours to provide the Application as described in the QSA but the Customer hereby acknowledges and agrees that such provision is subject always to the availability of Third Party Content in respect of any such Application which may be withdrawn or cancelled without notice or cancellation at any time and the Company will endeavour to notify the Customer in advance of the same.
- 2.4 The Company shall be entitled to alter the specifications of any Application at its sole discretion and will endeavour to notify the Customer in advance of the same.
- 2.5 The Application may be used only by Licensed Users at the Site(s), except as follows:
- (i) the Application may be used on any replacement for all or any part of the Customer Equipment;
 - (ii) use of the Application may, with the prior written consent of the Company, be extended to additional Licensed Users at additional Sites provided that any appropriate additional Fee is paid to the Company before such use;
 - (iii) if the Customer Equipment becomes inoperable for any reason, the Application may be temporarily used on backup equipment until the Customer Equipment is repaired, and the Customer may use the Application for the purpose of testing whether any such backup equipment is suitable for use while the Customer Equipment is inoperable; and
 - (iv) if any Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Application may be used at an alternative site until the Site is again usable, provided that the Customer gives the Company notice of such alternative site and permits the Company to inspect such alternative site once the Application is again in use at the Site to ensure that no copy of all or any part of the Application remains at the temporary site. If the alternative site is managed by a third party, the third party must have signed a confidentiality undertaking, in terms no less onerous than those set out in clause 11 of these General Terms, addressed to the Company to protect the Company's Confidential Information before the Application is transferred to the alternative site.
- 2.6 The Customer may make such copies of the Application as are reasonably necessary for use in accordance with the Contract and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Application or any part of it.
- 2.7 The Company shall at all times own all copies of all or any part of the Application. For copies recorded on a tangible medium, the Customer shall place on each copy of all or any part of the Application a clearly visible label indicating that the copy is the property of the Company, and reproducing the Company's proprietary rights notice. For electronic copies, the Customer shall ensure that all proprietary notices contained in the Application shall be maintained in such copies and shall display when the software is run, in the same way as in the case of the Application as supplied by the Company. The Customer shall keep all copies of the Application in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.
- 2.8 The Customer may transfer a subscription for an Application from one Vessel to another during the period of the Contract provided always that:

- (i) the Vessel to which the Application is transferred must be identified in the QSA or otherwise identified and agreed in writing by the Company;
- (ii) the Customer notifies the Company in writing in advance of the proposed transfer;
- (iii) the Vessel from which the Application is transferred no longer has access to or use of the transferring Application;
- (iv) the Contract under which the Application has been provided remains in force and the Customer is not in breach of that Contract;
- (v) the period of use on the Vessel to which the Application is transferred shall be the existing period applicable under the Contract; and
- (vi) where a Vessel is scrapped or otherwise taken out of service and the relevant Application is not transferred to another Vessel in accordance with the Contract, the Customer shall remain liable to pay the relevant subscription for the full duration of the Contract.

3. Contract duration

- 3.1 Subject to clauses 3.2 and 3.3 below and unless otherwise provided for in the QSA the Contract shall come into force on the date of signature by the Customer of the QSA (the 'Commencement Date').
- 3.2 Unless otherwise expressly provided for in the Contract, the Contract shall continue unless and until terminated by either Party giving to the other no less than three months' prior written notice to the other expiring on the third anniversary or on any subsequent anniversary after the third anniversary of the Commencement Date.
- 3.3 Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, the Company may at any time terminate the Contract with immediate effect by giving written notice to the Customer if:
 - (i) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default for more than 10 Business Days after being notified in writing to make such payment;
 - (ii) the Customer commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
 - (iii) the Customer repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
 - (iv) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (v) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors, other than for the sole purpose of a scheme for a solvent amalgamation of that Customer with one or more other companies or the solvent reconstruction of that Customer;
 - (vi) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer, other than for the sole purpose of a

scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- (vii) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (viii) the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- (ix) a person becomes entitled to appoint a receiver over the assets of the Customer Party or a receiver is appointed over the assets of the Customer;
- (x) a creditor or encumbrancer of the Customer 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;
- (xi) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 3.3 (iv) to clause 3.3 (x) (inclusive);
- (xii) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (xiii) any warranty or representation given by the Customer in the Contract is found to be untrue; or
- (xiv) the Customer is subject to a Change of Control.

3.4 Notwithstanding any other provision in these General Terms, the Company may terminate the Contract or the provision of any Application with immediate effect and without notice:

- (i) if any communication satellite or satellite ground station, internet service provider (ISP) or any other facility used to provide any Application becomes permanently inoperable;
- (ii) if any Supplier terminates, suspends, withdraws, materially changes or cancels the supply of Material or Proprietary Items to the Company;
- (iii) if the Customer engages in any conduct which is prejudicial to the interests or reputation of the Company or any of its Suppliers; or
- (iv) if having carried out a credit check in respect of the Customer such check reveals information in relation to the Customer such that the Company (acting reasonably) considers that the Customer may be unable to meet its obligations to the Company under the Contract.

3.5 The Company may terminate the Contract in part or in whole upon three months' written notice to the Customer if, in the Company's sole opinion, there has been a Material Adverse Change.

3.6 in the event of termination of the Contract for any reason and subject to clause 3.7 below the Customer shall:

- (i) not be entitled to any compensation from the Company for any loss save (where the Customer is not in default) for that proportion of any Fee paid in advance by the Customer that relates to the period after termination, calculated by reference to a daily rate for the total period of time covered by that prepaid Fee;
- (ii) settle any outstanding invoices immediately;
- (iii) return to the Company or destroy or delete (as the Company shall direct) all or any Content in its possession or control;

- (iv) immediately cease to use or refer to the Brands or any IPR belonging to the Company or any Supplier;
 - (v) have no claim for compensation and, save as otherwise provided for in the Contract, the Parties' obligations to each other shall cease.
- 3.7 In the event of termination of the Contract by the Customer for any reason prior to the third anniversary of the Commencement Date, the Customer shall be immediately liable to pay to the Company the balance of the Fee due for the period ending on the third anniversary of the Commencement Date.
- 3.8 Any termination or expiry of the Contract in whole or in part for any reason shall not affect:
- (i) any accrued rights or liabilities of either Party whether under statute, in contract, tort or otherwise, nor prevent either Party from pursuing other remedies available to it; or
 - (ii) the coming in to force or the continuance in force of any provision of the Contract or any document required by its terms to be entered into, which is expressly intended to come into or continue in force on or after such termination or expiry.

4. Fees and Credit Check

- 4.1 Unless otherwise expressly provided for in the QSA, the Fees shall be kept under review by the Company and may be changed by the Company:
- (i) on an annual basis and the Company shall give the Customer not less than one month's notice in writing expiring on any anniversary of the Commencement Date of any change in the Fees;
 - (ii) at any time upon giving written notice to the Customer upon a Material Adverse Change or an event of Force Majeure;
 - (iii) at any time in accordance with clause 4.7 below; and
 - (iv) at any time where the cost to the Company of any Third Party Content is subject to any increase.
- 4.2 Fees for the relevant Application shall be paid in full in cleared funds without set off, deduction, counterclaim or withholding into the Account by no later than the date falling 20 Business Days after first receipt of an invoice (whether from the Company or the Agent (as the case may be)). Unless otherwise agreed in the QSA, the Customer shall make payment of all sums due to the Company by direct debit or electronic bank transfer to the Account.
- 4.3 The Company will commence invoicing for the Application on the earlier of:
- (i) The date the Application is available for use by the Customer; or
 - (ii) 60 days from the Commencement Date.
- 4.4 The Customer shall pay to the Company or Agent any invoiced costs within 20 Business Days of the presentation to the Customer of the invoice in respect of the installation and maintenance costs of any Application and Proprietary Items.
- 4.5 If any monies due to the Company or any part of the same shall at any time remain unpaid after becoming due and payable then, without prejudice to any other rights that the Company may have, the Company may:
- (i) withdraw any or all of the applicable Application and Services from the Customer until payment of such outstanding sums has been made in full; and/or

- (ii) exercise its statutory right to enforce interest under the Late Payment of Commercial Debts (Interest) Act 1998 which shall be applicable to the payments due to the Company under the Contract and the Customer shall pay the interest immediately on demand.
- 4.6 The Fees shown in the QSA are Ex Works and exclude:
 - (i) VAT or any equivalent sales tax in any jurisdiction (if applicable); and
 - (ii) the cost of any necessary export licences, insurance, packing, transport and freight; all of which shall be for the account of the Customer.
- 4.7 The Customer shall pay all invoices in the same currency in which the relevant invoice is raised by the Company. Failure to do so shall result in any exchange rate loss incurred by the Company being recharged to the Customer together with an additional £100 administration charge for each incorrect payment.
- 4.8 If, for whatever reason (including any change in any Applicable Law or any change in cost due to foreign exchange fluctuations), the cost to the Company of any Third Party Content or Services purchased overseas is more than the cost anticipated at the date when such obligations to the Customer were incurred by the Company, the Company will charge the Customer at the rate of currency exchange which is in operation at the date such overseas purchase is actually made. The rate of currency exchange in operation at that date is deemed to be the closing mid-point rate in London for the day as subsequently quoted in the next published edition of The Financial Times.
- 4.9 In respect of any payment due to the Company the Customer shall be responsible for all bank charges so that the Company is paid in full without any deduction of such charges.
- 4.10 If the Company visits the Site at the Customer's request to investigate any failure of Application, which proves in the Company's reasonable opinion not to have been caused by a Defect, the Company may charge the Customer for the time spent on such visit on a time-and-materials basis at its standard rates then in force.

5. Customer Obligations and Warranties

- 5.1 The Customer shall at all times and at its own expense be entirely responsible for:
 - (i) ensuring the accuracy of any order made by it under the Contract and that Customer Equipment and Customer Content is compatible in all respects for the purpose of the Customer's installation and use of the relevant Application and Product;
 - (ii) obtaining any necessary import licences, certificates of origin or other requisite documents, and paying all applicable customs, duties and taxes in respect of the importation and use of any Application or Product;
 - (iii) complying with all Applicable Law affecting or applying to the use of any Application or Product;
 - (iv) the cost of installing the Application and Proprietary Items including all New Releases and New Versions;
 - (v) all Site work necessary to enable the proper installation of the Application and Proprietary Items;
 - (vi) the provision and proper maintenance of suitable accommodation for, and proper maintenance of cables, batteries, the electrical supply and other fittings associated with, the Products;

- (vii) the cost to the Company of modifying the Products to comply with any changes in national or international regulations governing the specification of the Products;
 - (viii) the provision of a suitable internet or email communication system, and where required (if not provided by the Company), personal computer and printer and any other ancillary equipment not provided under the Contract;
 - (ix) provision of all personal computer and printer consumables such as disks, tracing paper and ink;
 - (x) the communication costs of accessing the Support and any Content comprised in the Application; and
 - (xii) the cost of all telephone, internet and other mean of communication necessary to access the Application.
 - (xiii) complying with the Company's [Fair Use Policy](#).
- 5.2. The Customer shall notify the Company of any errors in supply or transmission of the relevant Application within 5 Business Days of the first date of installation at the applicable Site of the relevant Application (as the case may be). The Company accepts no liability in respect of such supply or transmission where the Customer fails to notify the Company in accordance with this sub-clause.
- 5.3 The Customer hereby warrants and represents that:
- (i) it shall not copy, sell or otherwise distribute the Application or the Content or the Product for any purpose whatsoever;
 - (ii) it shall not in respect of the Application or any Content or any Product modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act restricted by copyright or other IPR;
 - (iii) it shall not re-brand, re-package or otherwise pass off any of the Application or the Content or the Product as anything other than those of the Company or its Suppliers;
 - (iv) it shall not combine or bundle any of the Application or the Content with, or tie their sale to the sale of, any other product or service without the Company's prior written consent;
 - (v) it shall not include, post, upload or otherwise introduce into the Application or the Content any products, material or other item which is obscene, misleading, inaccurate, illegal, in breach of any IPR or damaging to data, software or the performance of it;
 - (vi) it shall not sub-license, rent, lend, assign or transfer in any other way the Contract, the Application or the Content or any Product to any person without the prior written consent of the Company;
 - (viii) it shall not give access to the Application through any network of computers to users who are not Licensed Users.
 - (ix) it shall install all New Releases made available in respect of any Application in accordance with the instructions of the Company (as the case may be) from time to time [and in the event of any failure by the Customer to do so the provisions of clause 5.4 of these General Terms shall apply];
 - (x) the Customer Content and the Customer Equipment shall each at all times and in all respects be compatible with and capable of operating the Application purchased by the Customer;
 - (xi) it shall not use transfer, distribute or dispose of any Content in any manner that might compete directly or indirectly with any Application;

- (xii) at any time none of the Application and the Content is, may or shall be treated or relied upon or construed in any respect as advice or recommendation and should not be relied upon in making any specific personal or business decision or as being legal or other professional advice;
- (xiii) subject to the terms of this clause 5.3, it may retrieve and display Content on a computer screen, print individual pages on paper (but not photocopy them) and store such pages in electronic form;
- (xiv) if it is a single user Customer subscriber it shall not transmit or store any Content on any computer connected to a network or connected to a server or connected to any other server or an intranet or similar system or connected to any other storage device;
- (xv) if it is a multi-user Customer subscriber it shall not transmit or store any Content on to an intranet or other similar system, it being understood for the avoidance of doubt that multi user subscriptions are restricted to linked computers on a closed network;
- (xvi) it will comply with the Company's [Fair Use Policy](#).

5.4 In the event that the Customer fails to install any New Releases or New Versions in accordance with the relevant instructions (including as to timing) of the Company from time to time, the Company reserves the right at any time to withdraw Services from and to suspend the supply of any Content to the Customer.

6. Company Obligations and Warranties

6.1 In the case of an Application, the Company will provide a full replacement warranty during the period of use paid for under the Contract, subject to the terms of the Contract and provided that such Application has always been used and operated in accordance with the Company's instructions.

6.2 Attendance on-board any Vessel or at any other site, premises or facility operated by the Customer and associated labour is expressly excluded from any warranty offered by the Company.

6.3 The above warranties are given by the Company subject always to the following conditions and other provisions of this clause 6:

- (i) the Application shall at all times be installed in accordance with the Company's work practices and written guidelines and onto Customer Equipment that meets the Company's minimum specification;
- (ii) all New Releases and and New Versions made available in respect of any Application shall at all times be installed by the Customer in accordance with the relevant instructions (including as to timing) of the Company from time to time;
- (iii) the Customer shall pay all Fees due to the Company in accordance with the terms of the Contract and is not in breach of any other terms of the Contract.

6.4 Except as expressly provided in the Contract, no representation, warranty or condition, express or implied statutory or otherwise is given by the Company and all such representations warranties and conditions are excluded except to the extent that this exclusion is prohibited by law.

7. IPR

7.1 As between the Company (on the one part) and the Customer and its Affiliates (on the other part), the IPR in any and all of the Assets is and shall remain the property of the Company. The Customer acquires no rights in or to any of the same other than those expressly granted under

the Contract and the Company reserves the right to grant a licence to use any of the same to any other Party.

- 7.2 The Customer shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the Company may consider necessary or desirable to perfect the right, title and interest of the Company in and to the IPR in any or all of the Assets.
- 7.3 The Customer shall take all steps that the Company requires to prevent any infringement of the Company's Intellectual Property Rights in any and all of the Assets and shall promptly report to the Company any such infringement that comes to its attention. In particular, the Customer shall:
- (i) ensure that each Licensed User, before starting to use any of the Assets, is made aware that each of the Assets is proprietary to the Company and that it may only be used and copied in accordance with the Contract;
 - (ii) implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Application or the Content;
 - (iii) not permit third parties to have access to any of the Assets without the prior written consent of the Company, who may require that such third party executes a written confidentiality agreement before being given access to the same.
- 7.5 The Customer shall take all steps as the Company shall require to assist the Company in maintaining the validity and enforceability of any and all IPR in the Application, Brands and the Company Content.
- 7.6 To the extent that any Third party Content is licensed by the Company from third parties (including the IMO) for use by the Customer in conjunction with the Application, no such Third Party Content may be reproduced without the prior written consent of the Company.
- 7.7 The Customer shall be be entitled to use any Brand other than in the course of its use of the Application for the limited purpose of describing the Products or Services identified by that Brand, and then only in accordance with the Contract.

8. Indemnity and Liability

- 8.1 Subject to clauses 8.2 to 8.6 inclusive, the Company shall have no responsibility for any loss, liability or damage caused by any Application or Content or Products. The Company makes no warranty or representation, either express or implied including the implied warranties of merchantability and fitness for a particular purpose, with respect to any Application or Content or Products. Furthermore, the Company neither warrants nor represents that any Application or Content or Products will meet the Customer's requirements or that its operation will be uninterrupted or error free. Each of the Application, the Content and the Products is provided **"AS IS"** and the Customer assumes the entire risk when using the same.
- 8.2 Except as expressly provided in the Contract and to the fullest extent permitted by Applicable Law:
- (i) the Customer shall be solely responsible, as against the Company, for any opinions, recommendations, forecasts or other conclusions made or actions taken by the Customer, any of its Affiliates any client of the Customer or any other third party based (wholly or in part) on the results obtained from the use of the Application or the Services or the Content or the Products by the Customer;
 - (ii) the Company shall have no liability for any damage caused by errors or omissions in any Customer Equipment, Customer Content or any information or instructions provided to the Company by the Customer or any of the Customer's Affiliates in connection with the Contract; and

- (iii) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from this Contract.
- 8.3 Neither Party excludes or limits liability to the other Party for:
- (i) fraud or fraudulent misrepresentation;
 - (ii) death or personal injury caused by negligence;
 - (iii) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (iv) any matter for which it would be unlawful for the parties to exclude liability.
- 8.4 Subject to clause 8.3, the Company shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (i) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - (ii) any loss or corruption (whether direct or indirect) of data or information;
 - (iii) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - (iv) any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 8.5 Clause 8.4 shall not prevent claims, which fall within the scope of clause 8.6, for:
- (i) direct financial loss that are not excluded under any of the categories set out in clause 8.4 (i) to clause 8.4 (iv); or
 - (ii) tangible property or physical damage.
- 8.6 Subject to clause 8.3, the Company's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or any collateral contract shall be limited to the Fee paid for the Application and the Services during the 12 months preceding the date on which the claim arose or, if the claim arose during any period before 12 months had elapsed from the Commencement Date, during that shorter period.
- 8.7 The Parties acknowledge and agree that any dates quoted for delivery of the Application, the Proprietary Items or the Goods or the Services are approximate only, and that the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Application, the Proprietary Items or the Goods or the Services that is caused by an event, circumstance or cause of Force Majeure or the Customer's failure to provide the Company with adequate delivery instructions.
- 8.8 The Customer shall be liable to the Company under this Contract as a principal whether or not the Customer purports to enter into this Contract as an agent. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 8.9 No action may be commenced against the Company by the Customer (whether in contract, tort or otherwise, whether based upon the negligence of the Company or its Affiliates and irrespective of the form and forum) arising out of or in connection with the Contract more than twenty four (24) months after the Customer first became aware, or with the exercise of reasonable diligence and enquiry ought reasonably to have become aware, of the facts constituting that cause of action.

- 8.10 Notwithstanding anything else to the contrary in this Agreement, the Customer shall indemnify and keep indemnified the Company and its Affiliates from and against any and all claims, damages, costs and expenses (including claims settled by the Company at its discretion but after prior discussion with the Customer) arising from any of the following:
- (i) the negligence of the Customer or any of its Affiliates;
 - (ii) the performance or non-performance by the Customer or any of its Affiliates of the Customer's or the Affiliate's obligations under the Contract;
 - (iii) any breach by the Customer or any of its Affiliates of the Customer's or the Affiliate's warranties or representations under the Contract;
 - (iv) any use by the Customer or any of its Affiliates of the Customer Content or the Third Party Content;
 - (iv) the Customer's or any of its Affiliate's failure to install any Software upgrade as made available to the Customer and as requested by the Company or its Affiliates from time to time;
 - (v) the non-performance or failure or inoperability of any Customer Equipment or Customer Content;
 - (vi) the inaccuracy of, or any error in, or any fault in, any Customer Materials or Customer Equipment or Customer Content or any Third Party Content;
 - (vii) any use of any Application by any third party not authorised by the Company.
- 8.11 The Customer agrees that, in the event of any breach by the Company of the Contract, the Customer's only remedy shall be an action at law for damages, if any, actually suffered and in no event shall the Customer be entitled to receive injunctive or other equitable relief or to enjoin or restrain or otherwise interfere with the Company's Products or Services.

9. Insurance

- 9.1 The Customer shall effect and maintain at all times with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Customer in connection with all of its activities relating to the Contract including death or personal injury, loss of or damage to property or any financial or other loss.
- 9.2 The terms of any insurance or the amount of cover shall not relieve the Customer of any liabilities under the Contract. It shall be the responsibility of the Customer to maintain at all times insurance cover sufficient and adequate to enable the Customer to satisfy any liability referred to in clause 8 above.

10. Data

- 10.1 In providing any Application and associated Content to the Customer, it is understood and agreed by the Customer that the use of the same by the Customer or its Affiliates generates Material (including data) in a form that does not, on its own, permit direct association with any specific individual. The Customer hereby agrees that the Company may in its absolute discretion collect, use, transfer, and disclose any such non-personal Material (including data) for any purpose including the development and enhancement of the Company's products and services. Further, the Customer agrees that the Company may, in connection with the Customer's licence to use the Application or in the provision of the Services, use or store or monitor the location of the use of the Customer's IP address or addresses for security purposes or to alert the Company to unauthorised data access.

10.2 All Content provided as part of any Application is Confidential Information which cannot be sub-licensed or copied or re-distributed without the express written permission of the Company.

10.3 Personal Data

- (i) The Customer and the Company each warrant that they will comply with their respective obligations under Data Protection Laws.
- (ii) The Customer warrants and represents that all instructions provided to the Company in relation to the Processing of Personal Data as part of the Services are lawful and that such instructions shall as a minimum include:
 - (a) The nature and purpose of the Processing of the Personal Data;
 - (b) The types of Personal Data to be Processed; and
 - (c) The categories of Data Subjects to whom the Personal Data relates.
- (iii) The Customer acknowledges that as Data Controller it is solely responsible for determining the lawful basis of Processing upon which it shall rely in providing instructions to the Company to process Personal Data.
- (iv) Where the Company processes Personal Data supplied by the Customer and/or collected by Company as part of the Services, the Company shall:
 - (a) process such Personal Data as a Data Processor;
 - (b) process such Personal Data:
 - (i) only to the extent necessary for the provision of the Services as required by this Contract during the Term (the "Scope of Processing");
 - (ii) only in accordance with the Customer's documented instructions;
 - (c) assist the Customer in providing Data Subject access and allowing Data Subjects to exercise their rights under the GDPR;
 - (d) take all security measures required in accordance with Data Protection Laws (including where relevant, Article 32 GDPR), and at the request of the Customer provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the Personal Data against unauthorised or unlawful Processing and accidental loss; and
 - (e) detect and report Personal Data breaches without undue delay.
 - (f) inform the Customer where it believes that the Customer's instructions for Processing would cause a breach of Data Protection Laws;
 - (g) assist the Customer in conducting privacy impact assessments where required under Data Protection Laws (subject to the payment of the Company's reasonable costs in connection with any such assessment provided such costs are approved in advance);
 - (h) upon the Customer's reasonable request, at a minimum of 14 days' notice, provide the Customer with any documentation or records (which may be redacted to remove confidential commercial information) which will enable the Customer to verify and monitor the Company's compliance with its obligations under GDPR Article 28 in respect of Data Processing Services provided to the Customer. Where, in the reasonable opinion of the Customer, such documentation is not sufficient in order to meet the obligations of Article 28 of the GDPR, the Customer will be entitled, upon reasonable prior written notice to the Company and upon reasonable grounds, to conduct an on-site audit of the Company's premises used in connection with the

Services, solely to confirm the Company's compliance with its data protection and security obligations under this Contract;

- (i) promptly, upon request at any time from the Customer, amend, correct, transfer and/or delete Personal Data and/or block Personal Data from further processing and/or use, provided that, promptly upon notification by the Company to the Customer that a request is manifestly unfounded or excessive (including because of their repetitive character), the Parties shall enter into discussions in good faith with a view to agreeing on an alternative course of action, which may include:
 - (i) the Company charging a reasonable fee to carry out the request taking into account the administrative costs of providing the information or communication or taking the action requested; or
 - (ii) the withdrawal of the Customer's request;
- (j) on completion or early termination for whatever reason of the Services return or (at the Customer's direction) destroy all Personal Data according to industry data destruction standards and provide written confirmation of such destruction once complete (the Company may retain a copy of the relevant Personal Data only to the extent it is obliged to do so by any applicable law or regulation);
- (k) not use any sub-processor without the Customer's prior written consent, it being acknowledged that sub-contractors and Affiliates of Company are hereby approved. Where the Customer gives its consent to sub-processing, the Company shall ensure that it puts in place a written contract with any Sub-Processor which contains obligations on that Sub-Processor equivalent to those in this paragraph 10 and shall ensure that the Sub-Processor complies with those obligations;
- (l) any transfer of Personal Data outside the European Economic Area (EEA) shall, unless otherwise agreed between the Company and the Customer, be subject to undertakings from the Party or Parties processing such Personal data outside the EEA that such Personal Data will be processed in accordance with standards that would otherwise have applied had such Personal data been subject to the Data Protection Laws applicable in the EEA; further Contract between the Company and the Customer;
- (m) assist the Customer to comply with any applicable obligations under Data Protection Laws (subject to the payment of the Company's reasonable costs in connection with any such assistance provided such costs are approved in advance); and
- (n) exercise reasonable care in the selection of its employees and contractors who will have access to such Personal Data and ensure that they have undergone adequate training in the care, protection and handling of Personal Data and are aware of their and the Company's responsibilities in relation to the Processing of Personal Data under this Contract and Data Protection Laws and will treat such personal data as confidential information.

11. Confidentiality and Publicity

11.1 The Customer undertakes not to use the Confidential Information otherwise than in the exercise and performance of its rights and obligations under this agreement (**Permitted Purposes**).

11.2 In relation to the Confidential Information:

- (i) the Customer shall treat as confidential all Confidential Information of the Company contained or embodied in the Application or the Content or the Documentation, or otherwise supplied to the Customer during the performance of this agreement;

- (ii) the Customer shall not, without the prior written consent of the Company, divulge any part of the Company's Confidential Information to any person other than employees of the Customer [or any of its Affiliates] who need to know it for the Permitted Purposes; and
 - (iii) the Customer undertakes to ensure that the persons mentioned in clause 11.2.(ii) are made aware, before the disclosure of any part of the Company's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to clause 11.2.(ii) (which the Customer shall ensure is adhered to).
- 11.3 The restrictions imposed by clause 11.1 and clause 11.2 shall not apply to the disclosure of any Confidential Information which:
- (i) is now in or hereafter comes into the public domain otherwise than as a result of a breach of this clause 11;
 - (ii) before any negotiations or discussions leading to this agreement was already known by the the Customer and was obtained or acquired in circumstances under which the Customer was not bound by any form of confidentiality obligation; or
 - (iii) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the Customer to limit disclosure to such authorised person to the extent necessary).
- 11.4 The Customer shall notify the Company if any of its staff connected with the provision or receipt of any Application becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the Company in connection with any enforcement proceedings which that the Company may elect to bring against any person.
- 11.5 Nothing in this agreement shall prevent the Company from using any Tools, knowledge of which is contained in the unaided memory of the Company's personnel or those of its Affiliates, developed or disclosed under the Contract, provided that in doing so the Company does not breach any Intellectual Property Rights of the other Party or any of its Affiliates. An individual's memory is only "unaided" with respect to any information if the individual has not retained a copy of the information and has not intentionally memorised that information other than as required to perform its obligations under the Contract.
- 11.6 No Party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction or as permitted in accordance with clause 11.7.
- 11.7 The Company may name the Customer as a Customer of the Company in a general promotional context and use the Customer's name in publicity, advertising releases, show reels and other material prepared by or on behalf of the Company which makes reference to Customer as a specific user of any Application.
- 11.8 This clause 11 shall remain in full force and effect, despite any termination of the Contract.

12. Anticorruption Compliance

The Customer shall comply with the Company's Customer & Supplier Code of Conduct which may be revised from time to time at the companies sole discretion, and which is available on the OnOcean website.

13. Third Party Rights

No person other than a Party to the Contract and any Affiliate of the Company shall have any rights to enforce any term of this Contract.

14. Force Majeure

The Company shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the Company shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for [180] days, the Customer may terminate this Contract by giving [30] days' written notice to the Company.

15. Survival

Without prejudice to clause 3.8 above, the following provisions of these General Terms shall survive the expiry or termination of the Contract: Clause 5 – Customer Obligations and Warranties; Clause 7 – IPR; Clause 8 – Indemnity and Liability; Clause 9 – Insurance; Clause 10.1 – Data; Clause 11 – Confidentiality and Publicity; Clause 13; Clause 15; Clause 16.

16. General

16.1 Assignment and other dealings.

- (i) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer shall provide all such reasonable cooperation and execute any relevant documentation as may be necessary to formalise such arrangements.
- (ii) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

16.2 **Variation.** Neither these Terms and Conditions nor any other part of the Contract shall in any way be varied or amended except by prior written notice by the Company of no less than three (3) months. Such written notice may take the form of the publication of updated Terms and Conditions to the Company's website and an accompanying email sent from the Company to the Customer informing them of the publication.

16.3 Notices.

- (i) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.
- (ii) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.3 (i); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission providing successful transmission was confirmed and the sender did not

receive any automated response indicating the address was out of service or the intended recipient was not immediately available.

- (iii) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.4 **Entire Agreement.**

- (i) The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (ii) Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the products and services referred to in them. They shall not form part of the Contract nor have any contractual force. Each Party acknowledges that in entering into the Contract (and any other document to be entered into pursuant to it) it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to the Contract or not) that is not set out in the Contract or the documents referred to in it. The only remedy available to any Party in respect of any representation, warranty, collateral contract or other assurance that is set out in the Contract (or any document referred to in it) is for breach of contract under the terms of the Contract.

16.5 **Waiver.** No failure or delay or omission by the Company to exercise any right or power under the Contract shall impair any such right or power or be construed as a waiver. No change or waiver of any provision of the Contract is valid unless by Contract in writing by the Company, save only that the Company may vary the Data Application specifications without the consent of a Customer. No waiver of any right under the Contract by the Company shall be taken to constitute a subsequent waiver of that right, or of any other right under the Contract.

16.6 **Authority.** The Contract must be signed by an authorised officer of the Parties. No employee, agent, or representative of either Party has authority to bind such Party by any oral representation or warranty.

16.7 **Severance.** If any provision of the Contract is held to be invalid or unenforceable, such a provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed to be excluded from the Contract but without invalidating any of the remaining provisions of the Contract. The Parties shall use all reasonable endeavours to replace the invalid or unenforceable provision by a valid provision, the effect of which is as close as possible to the intended effect of the provision so excluded.

16.8 **Disputes.**

- (i) If any claim or dispute arises under or in connection with this Contract, the Parties will attempt to settle such claim or dispute by negotiation in accordance with the procedure set out in this clause 16.8.
- (ii) Either Party may serve upon the other written notice referring a dispute arising under this Contract for resolution in accordance with this clause 16. The notice shall identify the First and Second Level Managers for the purpose of clauses 16.8 (iii) and (iv) and 16.14 and the Party receiving notice shall notify the serving Party of its First and Second Level Managers within five (5) Business Days of such notice.
- (iii) The First Level Managers of each Party shall meet in good faith within ten (10) Business Days of the notice referred to in clause 16.8 (ii) to resolve the dispute.
- (iv) If within five (5) Business Days of the meeting referred to in Clause 16.8 (iii), the First Level Managers of the Parties are not able to resolve the dispute or if the meeting referred to in Clause 16.8 (iii) did not take place for any reason, either Party may refer the dispute to the

Second Level Managers by providing the other Party with written notice to that effect, and the Second Level Managers will meet within five (5) Business Days and attempt in good faith to resolve the dispute.

- (v) Nothing in this clause 16 shall prevent a Party from applying to any court of competent jurisdiction for injunctive or other urgent relief to protect its legitimate interests.
- (vi) Unless otherwise agreed, the Parties shall fulfil their respective obligations under this Contract insofar as possible regardless of any dispute which is proceeding under the dispute resolution processes described in this clause 16.8.

16.9 **Governing Law and Jurisdiction.** The formation, existence, construction and performance, validity and all aspects of the Contract shall be governed by English law and the Parties submit to the non-exclusive jurisdiction of the English Courts.

Schedule 1

Products

1. Interpretation

1.1 Unless otherwise expressly defined in this Schedule, the capitalised terms referred to in this Schedule shall have the meanings given to them in the Contract of which this Schedule forms part.

2. Basis of contract

2.1 The terms and conditions of this Schedule apply in conjunction with the General Terms (of which this Schedule forms part) to the supply of Products to the Customer.

2.2 The Customer's signature of the QSA constitutes a binding acceptance by the Customer of the Products offered by the Company in the QSA ("Order"). The Customer is responsible for ensuring that the terms of the Order are complete and accurate in all respects.

3. Products

3.1 The Products are as described in the QSA.

3.2 The Company reserves the right at any time to amend any specification applying to any Product if required by any applicable statutory or regulatory requirements or by the manufacturer or producer of said product.

4. Delivery

4.1 The Company shall ensure that each delivery of the Products is accompanied by a delivery note that shows all relevant Company reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered.

4.2 The Company shall deliver the Products to the location set out in the Order or such other location as the parties may agree in writing (Delivery Location), at any time after the Company notifies the Customer that the Products are ready for delivery.

4.3 Delivery is completed on the completion of unloading of the Products at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

4.5 The Company shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

4.6 If the Customer fails to accept delivery of the Products within five Business Days of the Company notifying the Customer that the Products are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:

- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which the Company notified the Customer that the Products were ready; and

- (b) the Company shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which the Company notified the Customer that the Products were ready for delivery the Customer has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Products.
- 5. **Title and risk**
- 5.1 The risk in the Products shall pass to the Customer on completion of delivery.
- 5.2 Title to the Products shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Products and all other sums which are or become due from the Customer to the Company, in which case title to the Products shall pass at the time of payment.
- 5.3 Until title to the Products has passed to the Customer, the Customer shall:
 - (a) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as the Company's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Company immediately if it becomes subject to any of the events listed in clauses 3.3 (iv) to 3.3 (xii) inclusive of the General Terms; and
 - (e) give the Company such information relating to the Products as the Company may require from time to time.
- 5.4 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clauses 3.3 (iv) to 3.3 (xii) inclusive of the General Terms, then, without limiting any other right or remedy the Company may have, the Company may at any time
 - (a) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.
- 5.5 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.
- 5.6 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 5 shall remain in effect.
- 5.7 Without prejudice to clause 5.1, by separate agreement not being part of these terms and conditions, the Company may on request procure carriage or freight and insurance on the Customer's behalf at the Customer's expense.
- 6. **Price and payment**
- 6.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery.
- 6.2 The Customer shall pay the Company the amount shown as due for the Products in the Order, in full and in cleared funds by no later than the date falling ten Business Days after the date of the Order. Payment shall be made to the bank account nominated in writing by the Company in the Order. Time for payment is of the essence.

7. **Warranty**

- 7.1 In the case of Products sold to the Customer by the Company, the Company will provide a full replacement warranty for a period of six months from the completion of Delivery in accordance with clause 4.3 of this Schedule, subject to the terms of the Contract and provided that such items have always been installed, used and operated in accordance with the Company's and the manufacturer's instructions. This warranty shall not apply to any Products lost or mislaid by the Customer.
- 7.2 All Products in respect of which a warranty claim is made shall be returned by the Customer at the Customer's sole risk and cost to the Company, for repair or replacement as determined by the Company in its sole discretion. Replacement Products shall be returned to the Customer freight paid by the Company.
- 7.3 The Customer shall not at any time attempt to repair or tamper with the Products or allow any third party to do so.
- 7.4 The Company shall be under no liability and the warranty contained in this clause 7 shall not apply:
- (a) in respect of any defect in the Products arising from any drawings, designs or specifications provided by the Customer;
 - (b) in respect of any defect arising from wear and tear, wilful damage, negligence, neglect, abnormal working conditions, incorrect operation, misuse or alteration or tampering or repair of the Products without the Company's prior written approval.
- 7.5 Before returning any Product to the Company, a Customer must first contact The Company's Support for approval prior to the despatch of the Product concerned. At the Customer's option the Company may arrange for an engineer to visit the installation site. In such cases the Customer shall pay the engineer's transportation, accommodation and living expenses, and pay the engineer's time at the then current rates.