

TERMS AND CONDITIONS OF AGREEMENT (BUSINESS CUSTOMERS)

TERMS & CONDITIONS

IT IS AGREED:

1. Definitions

1.1. The following terms used in this Agreement have the following meanings:

Agreement	the Front Sheet and these Terms and Conditions
Assignment Instructions	means [the Company's standard instructions that apply to the performance of the Services, where relevant, by the Security Personnel]
Change of Control	a change in the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company
Commencement Date	the date of execution of the Agreement
Company	Kings Security Systems Limited, a company registered in England and Wales with company with company registration number 01008045 and its registered offices at 4 St Dunstons Technology Park, Bradford, West Yorkshire BD4 7HH trading as Kings Secure Technologies
Company Personnel	any employee of the Company or any self-employed third party contractor engaged by the Company in the provision of the Services
Customer	any organisation or person who enters into this Agreement
Customer's Premises	the address of the Customer as set out on the Front Sheet
Employment Regulations	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended)
Equipment	any burglar alarm, fire alarm or other equipment or device provided by the Company under this Agreement which forms part of the Installation
Extended Term	has the meaning given in clause 2.1
Force Majeure Event	any event affecting the performance by the Company of its obligations under this Agreement arising from or attributed to acts, events, omissions or accidents which are beyond the reasonable control of the Company including any abnormal inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, war, military operations, riot, crowd disorder, vandalism, arson or criminal damage to the installed Equipment, terrorist action, civil commotion, refusal of the police, fire or other authorities to accept notification of the receipt of any alarm signal and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or authority and, in the case of the Customer, any state of the Customer's Premises or location where the Services are provided rendering such sites dangerous or unsafe for the provision of the Services in the reasonable opinion of the Company or Company Personnel
Front Sheet	the Company document which the Customer has signed and which contains the Customer's details and details of what is being provided to the Customer together with any other necessary additional information
Initial Term	as set out on the Front Sheet
Installation	the installation of the Equipment at the Customer's Premises in accordance with this Agreement
Installation Charge	as set out on the Front Sheet
Lone Worker Device	any signaling device the Customer obtains from Lone Worker Solutions
Lone Worker Monitoring	monitoring of Lone Worker Devices
Lone Worker Solutions	Lone Worker Solutions Limited, a company registered in England and Wales with company registration number 06999425 and its registered offices at 2c Crown Business Park, Cowm Top Lane, Rochdale OL11 2PU
Maintenance	maintenance of the Equipment by the Company

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Monitoring	monitoring, as described in clause 8, of any Equipment or other burglar alarm, fire alarm or other equipment or device of the Customer
Monitoring Station	the Company's site from which Monitoring is provided and currently situated at 4 St Dunstons Technology Park, Bradford, West Yorkshire BD4 7HH or at such other premises of which the Company shall notify the Customer from time to time
Month	a calendar month
Security Personnel	Company Personnel allocated to the provision of the Services where the Customer has requested the provision of security personnel
Service Charge	as set out on the Front Sheet
Service Commencement Date	as set out on the Front Sheet
Services	any or all or any combination, as relevant, of the services to be provided by the Company as set out on the Front Sheet
Set Up Costs	if any, as set out on the Front Sheet
Term	the period beginning on the Commencement Date and ending upon termination of this Agreement for whatever reason
Termination Unit	any type of Equipment or other device which receives or transmits electronic alarm signals from the Equipment or other devices via telephone lines, private circuits or direct radio communication
Value of Stock	the maximum likely value of the goods and stock stored on the Customer's Premises (or premises where the Services are to be provided) from time to time
Warranty	any warranty for the Equipment provided by the Company as indicated on the Front Sheet

1. Interpretation

- 1.1. Reference to a clause is to a clause in these Terms and Conditions.
- 1.2. Clause headings are inserted for convenience only and shall not affect the construction or interpretation of these Terms and Conditions.
- 1.3. Where context requires, the singular shall include the plural and vice versa and any gender includes the other gender.
- 1.4. Any reference to any statute or statutory provision will (unless the context otherwise requires) be constructed as a reference to that statutory provision as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.
- 1.5. Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Duration

- 2.1. The Agreement shall commence on the Commencement Date. Unless terminated in accordance with its terms, this Agreement shall continue for the Initial Term and shall automatically extend for one year ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term.

3. Installation

Where Installation is being provided:

- 3.1. Facilities necessary for Installation and receipt of Services
 - 3.1.1. The Customer shall provide to the Company every reasonable facility and assistance which the Company shall require to enable it to carry out the Installation at the Customer's Premises and no goods or objects shall be placed or permitted in such a position or positions so as to obstruct or hinder the Company or its staff in carrying out the Installation. The Customer shall provide any electricity supply necessary for the performance of the Installation.
 - 3.1.2. The Customer shall obtain and maintain all necessary licences, permissions and consents which may be required for the Installation or receipt of the Services before the date on which the Installation of the Equipment is to take place and/or the Services are to start.
- 3.2. Installation of the Equipment by the Company
 - 3.2.1. If a date for the Installation of the Equipment has not been included on the Front Sheet, the Company shall contact the Customer to arrange a mutually suitable time.

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- 3.2.2. If any information or specification provided by the Customer to the Company appears to be incorrect on arrival by the Company at the Customer's Premises, the Company may need to re-evaluate the Installation Charge and provide the Customer with a new quote which will include any additional work or Equipment required. If the Customer does not wish to proceed with the Installation at the re-evaluated cost, the Customer may cancel this Agreement without any obligation or fee due to the Company.
- 3.2.3. In carrying out the work at the Customer's Premises the Company will exercise all reasonable care and skill but is not responsible for the cost of repairing any pre-existing faults or pre-existing damage to the Customer's Premises that are discovered while working on the Installation or for any loss or damage that is not foreseeable.
- 3.2.4. If, after the completion of the Installation, the Customer requires any extensions and/or alterations to the Installation, the Customer should contact the Company and request a quote for such works. Payment for such works will be due in accordance with clause 4.6.
- 3.3. Ownership of the Equipment
- 3.3.1. When the Customer becomes responsible for the Equipment: Once the Installation of the Equipment is complete, the Customer is responsible for the Equipment and all attachments to British Telecom equipment and facilities which form part of the Installation.
- 3.3.2. When the Customer owns Equipment: The Customer shall own the Equipment once the Company has received payment in full for the Installation Charge.
- 3.3.3. If the Customer does not pay the Installation Charge in full as required under the Agreement, then, without limiting any other right or remedy the Company may have, the Company shall be entitled to require the Customer to return the Equipment to the Company, and if the Customer fails to do so within seven days after the Company's request for this return, the Company shall be entitled to enter the Customer's Premises and recover the Equipment.
- 4. Payment of Charges**
- 4.1. Installation Charge: The Installation Charge must be paid in full by the Customer before receipt of any alarm codes or keys required to operate the Equipment as relevant or, in any event, within 30 days of receipt of invoice.
- 4.2. Service Charge: The Customer shall pay the Service Charge either by:
- 4.2.1. monthly direct debit. The Company shall invoice the Customer each month and adjustments shall be made in relation to any alarm response call-out where relevant; or
- 4.2.2. annually in full. If the Customer chooses to pay annually in full, payment in respect of the first twelve Months of the Term shall be made before the Services Commencement Date and payments for each subsequent period of twelve Months shall be due and payable on each anniversary of the Commencement Date in accordance with the Term and the Company shall invoice the Customer at least six weeks in advance of such date.
- 4.3. Alarm response : Unless specified otherwise on the Front Sheet, the Company shall have the right to charge double the fee stated on the Front Sheet relating to any alarm response call-out, where any such service is provided by Security Personnel on a bank or public holiday.
- 4.4. Additional charges: If the Customer requires the Company to carry out repairs to the Installation or Equipment which do not constitute part of the Services or to attend the Customer's Premises where such visit is not scheduled as part of the Services, the Customer may be charged a call out fee or a fee for any repairs which, in the Company's reasonable opinion, are necessary to the Equipment. The Company will notify the Customer of the relevant call out fee before attending the Customer's Premises and provide an estimate for repairs or replacement Equipment for Customer approval before carrying out the repairs or supplying replacement Equipment. Additional charges (even if a Warranty has been provided as noted on the Front Sheet) will be made where:
- Engineer, Technical Support assistance is required where a fault with the Equipment occurs from: a break-in, loss of mains power, lightning, flooding, fire or similar acts of God.
 - Engineer, Technical Support assistance is required where a fault with the Equipment occurs from an accidental error by the Customer or an unauthorised third party.
 - Engineer, Technical Support assistance is required where a fault with the Equipment occurs from a signalling, line fault or other transmission path fault.
 - Engineer, Technical Support assistance is required at the request of the Customer to change user codes, add user codes, provide assistance to the Customer to set/unset or reset the system after initial handover/ demonstration, alarm reports at the request of the Customer.
- 4.5. Additional charges after the end of any Warranty period: If a Warranty has been provided for the Installation or Equipment once the Warranty has expired the Customer will not be covered for the costs of labour or parts during an engineer call out or maintenance inspection where assistance is required to replace parts where a fault occurs from faulty parts not fit for use due to age, obsolescence or general wear and tear. Please note it is mandatory for the Company to replace alarm batteries every five (5) years in accordance with security industry standards.

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- 4.6. Any additional charges made in respect of work carried out under clauses 3.2.4, 4.4, 4.5, or 10.9 shall be payable by the Customer within 30 days of receipt of invoice.
- 4.7. By signing the Front Sheet, the Customer authorises the Company to carry out a credit check with a reputable agency at any time during the Term. The Company reserves its rights to amend the payment terms offered to the Customer on the basis of the results of any credit check.
- 4.8. The Customer shall pay all amounts due under the Agreement in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Company to the Customer
- 4.9. VAT: All monies payable at any time under this Agreement by the Customer shall be subject to the additional payment of value added tax at the rate in force at the time the relevant payment is due to the Company.
- 4.10. The Company shall be entitled to increase the Service Charge:
- 4.10.1. if the impact of any legislative change results in an additional cost to the Company in providing the Services or any part of the Services, including changes in law affecting the free movement of workers or the rate of VAT, national insurance or minimum wage payments or direct taxes;
 - 4.10.2. on each anniversary of the Commencement Date, in accordance with the scope and value of the Services that have been provided during the preceding year where this differs in any aspect or there has been an increase in the quantitative value of the Services from that which was agreed most recently in writing by the parties and the Customer shall cooperate in good faith with the Company in relation to any request by the Company for information relating to any increase or potential increase under this clause;
 - 4.10.3. in line with the percentage increase in the Retail Price Index ("RPI") in the preceding twelve Month period, for each subsequent twelve Month period, commencing on any anniversary of the Commencement Date and such increase shall be based on the latest available figure for the percentage increase in the RPI published prior to notification to the Customer of such increase, by giving written notice to the Customer one Month prior to the relevant anniversary of the Commencement Date.
- 4.11. If the Customer does not wish to pay the Service Charge as increased in accordance with clause 4.10 the Customer may terminate this Agreement pursuant to clause 11.1.
- 4.12. Any failure by the Customer to pay any amount owing to the Company by the date such payment is due shall be considered an irremediable material breach for the purposes of clause 11.2.2.
- 4.13. If the Customer fails to make any payment to the Company by the date on which payment is due in accordance with these Terms and Conditions, then without limiting any remedy of the Company under these Terms and Conditions, interest shall be due at the rate of 4% a year above the base lending rate of the Royal Bank of Scotland. Such interest shall accrue on a daily basis from the date the payment is due until payment of the overdue amount, whether before or after judgment.
- 4.14. In the event of excessive false alarms the fire and police authorities may charge the Company for their attendances. The Company reserves the right to pass these costs to the Customer, and the Customer shall pay such costs to the Company within 30 days of receipt of an invoice for the same.

5. Care of Equipment

- 5.1. The Customer shall operate the Equipment with all reasonable care and in a manner designed to preserve it in full proper and efficient working order. Any nameplates or other marks attached to the Equipment shall be left intact and shall not be altered removed or defaced by the Customer and the Customer shall be responsible for any loss or damage to the Installation of any kind, whether or not the Customer has insurance cover, with the exception of any foreseeable loss or damage caused by the Company or its agents.
- 5.2. The Customer shall take all reasonable steps to prevent loss or damage to the Equipment and shall be responsible for insuring the Equipment during the Term in full against loss or damage by fire storm tempest flood riot civil commotion accident impact aircraft or things dropped there from damage caused by structural alterations dampness leakage of water or other fluids including corrosive paints or distempers burglary or any attempt threat or any other insurable risk.

6. Services – General

- 6.1. The Company 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 Company shall notify the Customer in any such event.
- 6.2. The Company warrants to the Customer that the Services will be provided using reasonable skill and care.
- 6.3. The conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

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6.4. The Customer shall inform the Company as soon as reasonably practicable if the Value of Stock increases by more than twenty-five (25)%. Failure to notify the Company of such changes may, subject to clause 13.1, reduce the Company's liability to the Customer in the event of any claim made by the Customer.

7. Maintenance

7.1. Where the Services include Maintenance, the Company shall so far as reasonably possible, maintain the Equipment in accordance with current British and European Standards so as to keep the Equipment in satisfactory working order.

7.2. The Company shall use reasonable endeavours to notify the Customer in advance of when it is going to carry out any Maintenance and to meet any date arranged for performance.

7.3. Where the Company requires access to provide Maintenance, the Customer shall grant:

7.3.1. access to the Company and its employees and representatives to the Customer Premises and the Equipment; and

7.3.2. all such reasonable facilities as the Company shall require,

to enable the Company to carry out its obligations under the Agreement.

8. Monitoring

8.1. If the Company is providing Monitoring as part of the Services, this will include the following activities:

8.1.1. the recording of any alarm signals received at the Monitoring Station from alarm equipment or devices of the Customer;

8.1.2. notifying as soon as reasonably practicable the police or fire authorities following the receipt of any alarm signal from alarm Equipment or devices of the Customer; and

8.1.3. notifying as soon as reasonably practicable the Customer of any fault which appears in any private wire circuit used by the Customer.

8.2. Should any CCTV system of the Customer's which is subject to Monitoring, but which is not subject to Maintenance provided by the Company, generate excessive false alarms, the Company has the right to isolate the offending zone(s) and will report this to the Customer with the recommendation that the CCTV system is investigated by the approved maintainer. Only once the fault has been resolved to the satisfaction of the Company will the Company resume Monitoring of the relevant zone(s).

8.3. The Customer shall notify the Company promptly of any repairs or alterations to the Customer's CCTV system.

8.4. Right of disclosure: The Company shall have the right to disclose to the police force, fire service or other relevant authorities or to any insurance company or any party acting on behalf of such company, details of all records kept by the Company relating to any alarm signals received at any time during the provision of the Services at any Termination Unit or Termination Units in respect of the Customer's Premises.

8.5. An annual report may be provided at the Customer's request. The Customer, acting reasonably, shall define the scope of such annual report when making the request.

9. Lone Worker Monitoring

9.1. If the Company is providing Lone Worker Monitoring as part of the Services, this will include the following activities:

9.1.1. the monitoring of, and response to, signals received from the Customer's Lone Worker Devices;

9.1.2. notification to the Customer, police authorities and other parties as indicated by the Customer of signals received under clause 9.1.1 in accordance with this Agreement; and

9.1.3. response to requests from the Customer as to the location of individuals associated with the Lone Worker Devices ("**Location Requests**"),

and for the avoidance of doubt, the aforementioned provision of Lone Working Monitoring as part of the Services does not include the provision of the Lone Worker Devices or any training in connection with such devices, as such activities will be provided directly by Lone Working Solutions to the Customer.

9.2. Where an alert signal is received from a Lone Worker Device ("**Alert**"), the Company shall:

9.2.1. use reasonable endeavours to respond to an Alert within three (3) minutes of receiving an Alert in accordance with the procedures notified to the Company under clause 9.3; and

9.2.2. contact the police by means of a call to the 999 call system or to the relevant police force if the Lone Worker Device has a unique reference number registered with the police authorities;

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- 9.3. The Customer must advise the Company of the escalation procedures to be followed upon receipt by the Company of an Alert. The Customer is responsible for ensuring all individuals who have a role in such procedures are aware of their roles and responsibilities and the actions that have to be taken in the event of being contacted by the Company following receipt of an Alert.
- 9.4. The Customer is responsible for its compliance with all law that applies to its receipt and use of the Lone Worker Monitoring. The Company shall be not provide the Lone Worker Monitoring in respect of individuals who have not been made aware that their location is to be monitored and provided the necessary consent. The Customer shall obtain consent from all individuals who are equipped with a Lone Worker Device and who are to be located and monitored under the Lone Worker Monitoring and shall provide a copy of such consent upon request from the Company.
- 9.5. The Company shall not review Location Requests on a case-by-case basis to ensure that those making Location Requests have the right to do so in relation to the individual and Lone Worker Device concerned. Therefore, the Company has no control over the quality, safety or legality of either the Location Requests made, nor the truth or accuracy of the results provided by the Company further to a Location Request. Where the Customer or any of its employees or agents submit a Location Request and it comes to the attention of the Company that no consent has been obtained in relation to the individual associated with the relevant Lone Worker Device, this will be considered an irremediable breach for the purposes of clause 11.2.1 and, where the Company does not terminate the Agreement, the Company reserves the right to refuse any further location requests from the relevant Customer employee or agent.
- 9.6. The Customer acknowledges that:
- 9.6.1. the location of the individual associated with the relevant Lone Worker Device will be used in the delivery of the Lone Worker Monitoring and such location will be used to provide map or text location information to the Customer or its employees or agents as relevant to enable the location of the Lone Worker Device;
 - 9.6.2. the location of the individual associated with a Lone Worker Device will be issued when a Location Request is received;
 - 9.6.3. the Company shall use reasonable endeavours to provide the Lone Worker Monitoring to you but our ability to do so may be affected by circumstances beyond the Company's control including the capability or failure of the Lone Worker Device, the capacity and availability of the relevant communications network and the number of individuals using such network, geographic or atmospheric conditions or maintenance requirements;
 - 9.6.4. the provision of Lone Worker Monitoring by the Company does not guarantee the safety or security of individuals using Lone Worker Devices and, subject to clause 13.1, the Company shall not be responsible or liable for death, personal injury or damage to property in relation to use of the Lone Worker Devices or provision of the Lone Worker Monitoring;
 - 9.6.5. the Company provides no guarantees or warranties in relation to the quality of the Lone Worker Devices or any third party devices or communication network services (including signal availability and call quality of an independent communications provider) and it is the Customer's responsibility to ensure mobile coverage is available in the areas in which the Lone Worker Monitoring is to be provided;
 - 9.6.6. the Company provides no guarantees or warranties that the Lone Worker Monitoring will be free from faults or interruptions and the Customer accepts that factors such as network congestion, maintenance, geographic factors, obstructions or interference can mean that Lone Worker Monitoring cannot be provided in certain areas at certain times or at all; and
 - 9.6.7. the Company provides no guarantees or warranties in relation to the security or accuracy of any information sent or received (if applicable) using the Lone Worker Devices.
- 9.7. Global Positioning System ("GPS"): If any of the Customer's Lone Worker Devices rely on Global Positioning System ("GPS") for operation, the Customer acknowledges the limitations to use of GPS which is a system of satellites and receiving device/service used to compute position on the planet earth. The Customer's Lone Worker Device may contain a component that allows its location to be tracked by GPS within limits. These limits will vary according to a number of factors, including but not limited to physical location (e.g. the GPS system will not locate the Lone Worker Device if it is within a building or otherwise has its signal interrupted). Neither GPS nor the tracking platform are operated by the Company and the Company accepts no liability in relation to the operation of GPS or the tracking platform nor any responsibility should one or both fail to operate correctly for any reason.
- 9.8. The Customer must provide the Company with the details of three individuals who will be available for contact by SMS messaging 24 hours a day, 7 days a week ("**Key Contacts**"). The Company will contact the Key Contacts in the event of the Lone Worker Monitoring becoming unavailable due to technical issues. Once the technical issues are resolved, the Company shall notify all Key Contacts.
- 9.9. The Customer shall adhere, and shall ensure that its employees adhere, to reasonable usage of the Lone Worker Monitoring service. If, in the reasonable opinion of the Company, there is misuse by the Customer on a regular basis, we will notify you of such misuse. In the event of such notification:
- 9.9.1. it is the Customer's responsibility to provide support and training to its employees to ensure reasonable usage; and
 - 9.9.2. the Company may charge a misuse activation fee of £15 (plus VAT) for each false activation following the notification.

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- 9.10. If the Customer is for any reason, through no fault of the Company, unable to use any Lone Worker Device or any other services, including communication network services, the Customer receives which enable the functioning of the Lone Worker Device, this will not affect the continuation of this Agreement which will continue in force until it is terminated in accordance with clause 11.
- 9.11. The Customer shall not use or permit any other person to make use of the Lone Worker Monitoring services:
- 9.11.1. fraudulently, in connection with a criminal offence, in breach of any applicable law or statutory duty;
 - 9.11.2. for any unlawful or improper purpose;
 - 9.11.3. to send any communications where are offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax; or
 - 9.11.4. to cause annoyance, inconvenience or needless anxiety, as set out in the Communications Act 2003.
- 10. Security Personnel**
- 10.1. Instructions: The Customer shall ensure that any instructions or directions given to the Company or Company Personnel by the Customer, its officers, employees, agents and contractors are given with the appropriate authority.
- 10.2. Information: The Customer shall promptly provide the Company upon request with any information which the Company reasonably requires in order to provide the Security Personnel and for the Security Personnel to perform their duties and shall:
- 10.2.1. ensure all such information provided is true, complete, accurate and sufficient for the purpose for which it was requested;
 - 10.2.2. promptly inform the Company of any changes to such information; and
 - 10.2.3. confirm the accuracy of any such information upon the reasonable request of the Company.
- 10.3. Access and facilities: The Customer shall provide to the Company and the Security Personnel:
- 10.3.1. access to the Customer's Premises or such other premises where the Services are to be performed;
 - 10.3.2. all facilities and assistance as reasonably required for the performance of the Services including office facilities with a telephone and power supply for use by Security Personnel; and
 - 10.3.3. details of all health and safety requirements that apply at the Customer's Premises or the premises where Security Personnel will be or may be in attendance and details of any changes to such requirements as soon as reasonably practicable after such changes are made.
- 10.4. The Customer shall be responsible for providing contact details of the relevant Security Personnel to the company or person who monitors the Customer's burglar alarms, fire alarms or any other equipment or device as relevant.
- 10.5. The Customer acknowledges and accepts that:
- 10.5.1. while the Company will use best endeavours to comply with all response times set out in the Agreement or otherwise notified to the Customer, such response times may differ from time to time; and
 - 10.5.2. any delays or interruptions in providing an emergency response to the Customer as part of the Services will not be considered a breach of this Agreement where such delay or interruption is caused by the provision of simultaneous emergency responses to other customers or any call-out is interrupted by a call-out from another customer to which the relevant member of the Security Personnel must respond.
- 10.6. The Customer shall promptly notify the Company, as soon as the Customer becomes aware, of any wrongful, negligent, criminal or dishonest act or omission of any Security Personnel committed during the provision of the Services.
- 10.7. The Company shall comply, and shall ensure that all Security Personnel comply as relevant, with the Assignment Instructions in the provision of the Services. The Company shall provide the Customer with a copy of the Assignment Instructions and any updated versions of the same issued by the Company.
- 10.8. Upon termination of this Agreement, the Company shall return to the Customer any keys or other property of the Customer which has been supplied to the Company or Company Personnel in connection with the Services.
- 10.9. Upon reasonable notice, the Customer may request additional occasional or temporary additions to the Security Personnel which, if the Company is able and agrees to provide such additional personnel, will be invoiced to the Customer who shall pay such invoice in accordance with clause 4.6. If, in the reasonable opinion of the Company, such additional requests constitute a regular service or are outside the scope or working hours agreed with the Company at the Commencement Date, the Company shall have the right to vary the Agreement in accordance with clause 17.4.
- 10.10. Excluded services: The Company and Company Personnel may refuse to perform any additional services requested by the Customer where, in their opinion, such services are not services for which they are adequately trained or qualified to perform or do not fall within the category of services they are employed to provide, or are illegal, immoral or offensive.

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- 10.11. No solicitation: Except in respect of any transfer of staff pursuant to clause 10.12, the Customer shall not directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Company, any Security Personnel at any time during the Term or for a further period of six (6) months after the expiry or termination of this Agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the Security Personnel. In the event that any approach is made in breach of this clause 10.11, the Customer shall be liable to the Company for a fee to the value of 35% of the relevant individual's gross annual salary ("Agency Fee"). The Agency Fee shall be payable within seven (7) working days of the commencement of employment by the relevant individual with the Customer.
- 10.12. If the Employment Regulations apply at the start or upon expiry or termination of this Agreement, the provisions of the Employment Schedule (below) shall apply.
- 11. Termination**
- 11.1. Either party may terminate the Agreement by giving three months' written notice:
- 11.1.1. to the other party prior to the anniversary of the Commencement Date which falls at the end of the Initial Period or prior to any anniversary of the Commencement Date after the Initial Period; or
 - 11.1.2. in the case of the Customer, where the Customer wishes to terminate the Agreement further to any increase in the Service Charge notified to it, to the Company within two months of notification of the relevant increase.
- 11.2. Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 11.2.1. the other party commits a material breach of any term of this Agreement which is not capable of remedy; or
 - 11.2.2. the other party commits a material breach of its obligations under this Agreement which is capable of remedy but which is not remedied within a period of sixty (60) days following receipt of written notice to do so.
- 11.3. The Company may terminate this Agreement with immediate effect if
- 11.3.1. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - 11.3.2. the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.3.3. the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or
 - 11.3.4. the Customer undergoes a Change of Control.
- 11.4. In the event of termination of the Agreement by the Customer under clause 11.1.2:
- 11.4.1. the Customer shall be liable for payment of the Service Charge (not including any price increases imposed by the Company under clause 4.10) due for such three month notice period; and
 - 11.4.2. notwithstanding payment of the Service Charge pursuant to clause 11.4.1, the Customer shall remain liable for the full amount of any Set Up Costs which remain unpaid at the date of termination. The Company shall be entitled to issue an invoice for any Set Up Costs due in accordance with this clause on termination and the Customer shall immediately pay this invoice, together with any of the Company's outstanding unpaid invoices and interest.
- 11.5. In the event of termination of the Agreement by the Company under clauses 11.2 or 11.3, the Customer shall remain liable for the full amount of any Set Up Costs which remain unpaid at the date of termination. The Company shall be entitled to issue an invoice for any Set Up Costs due in accordance with this clause on termination and the Customer shall immediately pay this invoice, together with any of the Company's outstanding unpaid invoices and interest.
- 11.6. In the event of termination of the Agreement by either party under this clause 11, the Customer shall become liable for any contract(s) procured by the Company on behalf of the Customer **as set out on the Front Sheet**, and the Customer shall:
- 11.6.1. on or before the date of termination of the Agreement, procure, at its own expense, the formal transfer of such contract(s) referred to in this clause 11.6, so that the Customer becomes a party to such contract(s) in place of the Company;
 - 11.6.2. if such contract(s) cannot be transferred in accordance with clause 11.6.1, pay to the Company all the costs incurred in respect of the termination of such contract(s) within 30 days of receipt of any relevant invoice from the Company; or
 - 11.6.3. if such contract(s) cannot be transferred in accordance with clause 11.6.1 or terminated pursuant to clause 11.6.2, the Customer shall indemnify the Company against all amounts due under the contract(s) from the date of termination of the Agreement onwards.

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11.7. Termination of the Agreement shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

11.8. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12. Right of the Company to Withdraw Services

12.1. The Company is entitled to withdraw or to suspend the provision of, or any part of, the Services provided under this Agreement if the police or fire authorities refuse to respond to any alarm condition or refuse to provide their services in respect of the Customer's Premises.

13. Liability

13.1. Nothing in this Agreement shall limit or exclude the Company's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable), for fraud or fraudulent misrepresentation or for any other matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

13.2. Subject to clause 13.1:

13.2.1. the Company shall not 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 Agreement;

13.2.2. where the Services include the provision of Security Personnel, the Company's total liability for direct physical damage or loss of any property of the Customer or any property of a third party for which the Customer is responsible caused by or resulting from the acts or omissions of the Company or Company Personnel in relation to the Company's obligations under this Agreement or under law shall be limited to £250,000 (two hundred and fifty thousand pounds) per event or series of related events and the Customer acknowledges that this is a fair and reasonable limitation of the Company's liability taking into account the Service Charge;

13.2.3. subject to clauses 13.2.1 and 13.3.1 and save where clause 13.2.2 applies, the Company's total liability to the Customer in respect of any one claim or series of linked claims arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the greater of (a) the sum charges paid under the Agreement in the 12 months immediately preceding the relevant claim or (b) £100,000 (one hundred thousand pounds); and

13.2.4. the Company shall not be liable to the Customer where such liability has arisen due to incorrect instructions or information provided by the Customer to the Company.

13.3. Where the Services include the provision of Security Personnel:

13.3.1. without prejudice to any liability of the Company in relation to breach of this Agreement, the Company shall not be liable for any burglary, theft, arson or wilful damage or similar action by any member of the Company Personnel, unless such act or omission could have been reasonably prevented by the Company; and

13.3.2. the Customer shall indemnify and keep indemnified the Company against any liability of the Company for personal injury or death suffered by any Company Personnel caused by any negligence of the Customer, its officers, employees, agents or contractors, or any breach by the Customer of any of its obligations under this Agreement or law or otherwise occurring in the course of the performance of the Security Service or the Alarm Response Service by any Company Personnel except in each case to the extent due to the contributory negligence of such individual.

13.4. This clause 13 shall survive termination of the Agreement.

14. Warranty

14.1. The Company shall not be liable under any Warranty if:

14.1.1. the Customer makes any further use of the Equipment after this Agreement has expired or been terminated by either party;

14.1.2. the defect arises because the Customer misused the Equipment and/or failed to follow the Company's verbal or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment;

14.1.3. the Customer, or a third party requested to do so by the Customer, alters or repairs the Equipment or the Installation without the written consent of the Company;

14.1.4. the Customer does not comply with any other warranty enclosed with the Equipment;

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

14.1.6. the Equipment differs from its description as a result of changes made to ensure it complies with applicable statutory or regulatory requirements.

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15. Force Majeure

- 15.1. If by reason of a Force Majeure Event, the Company is or anticipates that it will be prevented or hindered from fulfilling the substance of its obligations under this Agreement, then the Company shall notify the Customer immediately and the Customer shall be entitled if such Force Majeure Event subsists for a period of one (1) Month, to cancel or suspend this Agreement by giving notice in writing to the Company.
- 15.2. In the event of cancellation or suspension pursuant to clause 15.1, the Company shall be under no liability to the Customer or its sub-contractors for any loss which they may sustain in consequence of any such cancellation or suspension. The Customer shall in the event of such cancellation be under no liability to the Company in respect of its future obligations under this Agreement and in the event of suspension of this Agreement shall be relieved of such obligations for the period of such suspension including the payment of any part of the Service Charge due during the period of suspension (but without prejudice to any rights of either party against the other in respect of any claim accrued to the date of the commencement of such cancellation or suspension).
- 15.3. In the event of cancellation of this Agreement pursuant to clause 15.1, the Company shall repay to the Customer any part of the Service Charge paid in respect of any period or periods affected by such cancellation or suspension apportioned on a basis which shall be fairly and reasonably attributable to the relevant cancellation or suspension.

16. Use of personal data

- 16.1. Where the Company processes personal data on behalf of the Customer – for example, where Monitoring is included in the Services – the Data Protection Schedule (below) shall apply.

17. General

- 17.1. Assignment and other dealings. The Customer shall not assign, transfer, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of the Company.
- 17.2. Sub-contracting. The Company may subcontract any of its obligations under the Agreement, but, for the avoidance of doubt, no such subcontracting arrangement shall release the Company from any of its obligations under the Agreement and the Company shall remain fully responsible to the Customer for the proper and complete discharge of all such obligations.
- 17.3. 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, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party’s obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party’s confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 17.3 shall survive termination of the Agreement.
- 17.4. Variation. The Company may update or amend these Terms and Conditions from time to time by giving written notice to the Customer. Such updates or amendments will not allow the Company to perform the Installation or provide the Services in a way that is substantially different to what was reasonably expected by the Customer at the Commencement Date, unless otherwise agreed by the parties in writing.
- 17.5. Waiver. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6. Severance. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- 17.7. Notices. Notice given under the Agreement shall be in writing, addressed to the recipient party at its registered office or such other address as that party may have specified to the other party in writing sent to the address and shall be delivered either personally, by courier, or by recorded delivery. A notice is deemed to have been received on signature of a delivery receipt by an individual at the correct address for notices.
- 17.8. Third party rights. The Agreement does not create any rights or benefits enforceable by any person not a party to it (within the meaning of The Contracts (Rights of Third Parties) Act 1999).
- 17.9. Governing law and jurisdiction. The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

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Data Protection Schedule

- 1.1 In this schedule:
- “**Controller**” means a “data controller” for the purposes of the DPA and a “controller” for the purposes of the GDPR (as such legislation is applicable);
 - “**Data Protection Legislation**” shall mean the DPA, or, from the date it comes into force in the UK, the GDPR (as applicable) and any other laws relating to the protection of personal data and the privacy of individuals;
 - “**Data Subject**” has the same meaning as in the Data Protection Legislation;
 - “**DPA**” means the UK Data Protection Act 1998;
 - “**GDPR**” means the General Data Protection Regulation (EU) 2016/679;
 - “**Personal Data**” means “personal data” (as defined in the Data Protection Legislation) that are Processed under the agreement;
 - “**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;
 - “**Processing**” has the same meaning as in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly; and
 - “**Processor**” means a “data processor” for the purposes of the DPA and a “processor” for the purposes of the GDPR (as such legislation is applicable).
- 1.2 The parties acknowledge that the Company is a Processor acting on behalf of the Customer and that, for the purposes of this Agreement:
- 1.2.1 the type of Personal Data and categories of Data Subjects are included on the Front Sheet; and
 - 1.2.2 the nature/purpose of the Processing is to enable the Company to carry out its duties under this Agreement (which form the subject matter of the Processing) and the duration of the Processing shall be the term of this Agreement.
- 1.3 Each party shall comply with their respective obligations under the Data Protection Legislation and the Company shall, in particular:
- 1.3.1 Process the Personal Data only to the extent, and in such manner, as is necessary for the purpose of carry out its duties under this Agreement and in accordance with the Customer’s written instructions and this schedule;
 - 1.3.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
 - 1.3.3 not transfer the Personal Data outside of the European Economic Area without the prior written consent of the Customer;
 - 1.3.4 ensure that any employees or other persons authorised to process the Personal Data are subject to appropriate obligations of confidentiality;
 - 1.3.5 not engage any third party to carry out its Processing obligations under this Agreement without obtaining the prior written authorisation of the Customer and, where such authorisation is given, procuring by way of a written contract that such third party will, at all times during the engagement, be subject to data Processing obligations equivalent to those set out in this schedule. The Customer hereby authorises the Company to engage Mercury Security Management Limited, UK Monitoring Limited and any affiliated Kings Solutions Group company to Process the Personal Data to provide software support services;
 - 1.3.6 notify the Customer, as soon as reasonably practicable, about any request or complaint received from Data Subjects without responding to that request (unless authorised to do so by the Customer) and assist the Customer by technical and organisational measures, insofar as possible, for the fulfilment of the Customer’s obligations in respect of such requests and complaints;
 - 1.3.7 on request by the Customer and taking into account the nature of the Processing and the information available to the Company, assist the Customer in ensuring compliance with its obligations under the GDPR (where applicable) with respect to:
 - (i) implementing appropriate technical and organisational measures in accordance with Article 32 of the GDPR;
 - (ii) where relevant, notifying any Personal Data Breach to the Information Commissioner’s Office (or any replacement body) and/or communicating such Personal Data Breach to the Data Subject in accordance with Articles 33 and 34 of the GDPR; and
 - (iii) where necessary, carrying out and/or reviewing and, if applicable, consulting with the relevant supervisory authority with respect to data protection impact assessments in accordance with Articles 35 and 36 of the GDPR;

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- 1.3.8 on request by the Customer, make available all information necessary to demonstrate the Company's compliance with this schedule and otherwise permit, and contribute to, audits carried out by the Customer (or its authorised representative); and
- 1.3.9 on termination or expiry of this agreement, destroy or return to the Customer (as the Customer directs) all Personal Data and delete all existing copies of such Personal Data except to the extent the Company is required to retain a copy of the Personal Data by law.

Employment Schedule

1.1 In this schedule:

"Disclosure Letter" means the letter provided by the Customer to the Company no less than 28 days prior to the event under which individuals will transfer from the Customer or the Previous Supplier to the Company and which sets out the Employment Liability Information;

"Employee Liabilities" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation of a claim related to employment including in relation to the following:

- (i) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (ii) unfair, wrongful or constructive dismissal compensation;
- (iii) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (iv) compensation for less favourable treatment of part-time workers or fixed term employees;
- (v) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (v) employment claims whether in tort, contract or statute or otherwise;
- (vi) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; and
- (vii) any failure to comply with the Employment Regulations, including any claim made in respect of any act or omission of the Previous Supplier and/or Replacement Supplier to comply with their obligations under regulation 13, 14 and 15 of the Employment Regulations;

"Employment Liability Information" means in relation to those employees who will transfer to the Company on the Commencement Date or the Services Commencement Date:

- (i) the identity and age of the employee;
- (ii) those particulars of employment that an employer is obliged to give the employee under section 1 of the Employment Rights Act 1996;
- (iii) information about any disciplinary procedure taken against the employee and any grievances raised by the employee within the previous two years, where a Code Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied;
- (iv) information about any court or tribunal case, claim or action either brought by the employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against the Company arising out of the employee's employment with the Customer;
- (v) information about any collective agreement which will have effect after the date that the employee transfers to the Customer under this Agreement in relation to the employee pursuant to regulation 5(a) of the Employment Regulations.

"Previous Supplier" means the third party service provided which previously provided services to the Customer in relation to which there has been a transfer to the Company for the purposes of the Employment Regulations, and where the Customer provided those services for its own account, the Customer will be the Previous Supplier;

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“Relevant Transfer” means a transfer of employment to which the Employment Regulations applies;

“Replacement Supplier” means any third party service provider appointed by the Customer from time to time to provide services which are the same as or substantially similar to the Services or any part of the Services and which the Customer receives in substitution for the Services or any part of the Services following the expiry or termination of this Agreement where those services are provided by the Customer internally and/or by any third party, and where the Customer is providing those services for its own account, the Customer will be the Replacement Supplier;

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Company to a Replacement Supplier and/or from a Previous Supplier to the Company (as applicable);

“Service Transfer Date” means the date of a Service Transfer;

“Transferring Employees” means those employees of the Customer and /or Previous Supplier to whom the Employment Regulations will apply on the Commencement Date and/or the Security Services Commencement Date;

“Transferring Supplier Employees” means those employees of the Company to whom the Employment Regulations will apply on the Service Transfer Date.

- 1.2 The Customer and Company agree that the commencement of the provision of the Services or any part of the Services is likely to amount to a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer shall indemnify in full the Company against all and any Employee Liabilities incurred prior to the Commencement Date or the Services Commencement Date (as relevant) in relation to any Transferring Employees upon the Commencement Date and/or the Services Commencement Date.
- 1.3 The Company and Customer acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of the termination of this Agreement or otherwise) resulting in the Services (or any part of the Services) being undertaken by a Replacement Supplier. Such change in the identity in the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and Company further agree that, as a result of the operation of the Employment Regulations, where a transfer occurs, the contracts of employment between the Company and the Transferring Supplier Employees will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and each such Transferring Supplier. As a result, the Customer shall indemnify (and shall procure that the Replacement Supplier shall indemnify) in full the Company against all and any Employee Liabilities incurred after the expiry or termination of this Agreement in relation to the Transferring Supplier Employees from the Company to a Replacement Supplier pursuant to or by virtue of the Employment Regulations upon expiry or termination of this Agreement.
- 1.4 In the event that there is no Relevant Transfer to a Replacement Supplier following termination of this Agreement for any reason, the Customer shall indemnify in full the Company in respect of all redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments in relation to any Transferring Employees following the termination of this Agreement for any reason for a period of 12 months following termination.
- 1.5 The Customer warrants that all information provided to the Company in the Disclosure Letter is true and accurate and that there are no other matters or details or information whatsoever of the same or similar nature to the Employment Liability Information which have occurred since the date of the Disclosure Letter and of which the Customer has failed to inform the Company and the Customer shall indemnify the Company in full for any Employment Liabilities incurred by the Company in relation to breach of this paragraph 1.5.
- 1.6 On both commencement and termination of this Agreement (for whatever reason), the parties agree that they will comply with their obligations under the Employment Regulations in relation to any Transferring Employees and / or Transferring Supplier Employees and, in the case of the Customer, the Customer will procure that the Previous Supplier and /or Replacement Supplier (as applicable) will comply with their obligations under the Employment Regulations in respect to the period up to (and including) the Service Transfer Date and shall perform and discharge all obligations in respect of any Transferring Employees and/or Transferring Supplier Employees (as applicable) arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the parties.