



Subscription Agreement Remote Service

This Agreement is made by and between the following parties on [] day of the month of [] [2023]

The undersigned:

1. The private company with limited liability **Flamco B.V.**, with offices at Fort Blauwkapel 1, (1358 DB) Almere, represented herein by [...] (hereinafter “**Flamco**”); and
and
2. [...], with offices at [...], represented herein by [...] (hereinafter the “**Customer**”),

(each a “party ” and collectively the “parties”).

Whereas:

- (A) Flamco has developed a remote service that allows users of its connectable products to monitor these products remotely.
- (B) The Customer would like to make use of the remote service to monitor its connectable products for its business operations.
- (C) Flamco agrees to grant, and the Customer accepts a subscription to deploy the Flamconnect Gateway, access the Flamconnect Remote Service Portal and receive the Remote Service for the duration of this Agreement.
- (D) Parties wish to set out the applicable terms and conditions in this Agreement.

Now therefore the parties have agreed as follows:

1. Definitions and interpretation

1.1 The following terms have the meaning set out below:

- (a) **Administrator Account:** the account made available by Flamco to the Customer to administer its Subscription;
- (b) **Agreement:** the terms and conditions set out, or incorporated by reference, in this agreement, including the Annex;
- (c) **Annex:** a website URL referred to in this Agreement and which forms an integral part of the Agreement;
- (d) **Commencement Date:** the date that Flamco provides in writing together with the Customer’s login credentials;
- (e) **Documentation:** any documentation made available to the Customer by Flamco online which sets out a description and use of the Remote Services and the Flamconnect Remote Service Portal, as may be updated by Flamco from time to time;

- (f) **Export Laws:** the export and sanctions laws, and regulations of the United Kingdom, the United Nations and the United States and any other applicable export laws;
- (g) **Flamconnect Gateway:** a physical modem made available by Flamco to the Customer for the purpose of receiving the Remote Service during the term of this Agreement;
- (h) **Flamconnect Remote Service Portal:** the cloud-based portal for use by the User of the Remote Services;
- (i) **Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or a User (but not Flamco) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time;
- (j) **Intellectual Property Rights:** all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in Know-How, registered trade marks, comparable marks (EU), registered designs (including re-registered UK designs), utility models, unregistered design rights (including continuing unregistered designs and supplementary unregistered designs), unregistered trade marks, goodwill and rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;
- (k) **Know-How:** formulae, algorithms, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;
- (l) **Portal Terms of Use:** the terms and conditions governing the use of the Flamconnect Remote Service Portal as updated from time to time. The current version is available on Annex: <https://flamcogroup.com/ex-en/pageid/landingpage-flamconnect-remote-service> or such other Annex notified by Flamco to the Customer in writing);
- (m) **Product:** one or more connectable products of the Customer with the ability to connect to one or more of the Remote Services specified on Annex: <https://flamcogroup.com/ex-en/pageid/landingpage-flamconnect-remote-service> (as updated from time to time);
- (n) **Remote Service:** the cloud-based remote Subscription service provided by Flamco to the Customer, accessible by the User at the Annex notified to the Customer by Flamco from time to time, as per the subscription type agreed by the parties in writing and in accordance with this Agreement, including any Documentation;
- (o) **Subscription:** the subscription that gives the Customer the right to use the Remote Service as per the selected subscription type and expressly confirmed and agreed in writing between the parties. The

applicable subscription type is detailed on Annex:

<https://flamcogroup.com/ex-en/pageid/landingpage-flamconnect-remote-service>

- (p) **Subscription Fee:** has the meaning given to it in clause 6.1 of this Agreement;
 - (q) **User:** any user of the Remote Service using a subaccount created with the Administrator Account;
 - (r) **Virus:** any thing or device (including any software, code, file, executable or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, platform, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses, ransomware, malware and other similar things or devices;
 - (s) **Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact on the confidentiality, integrity, or availability or applications or data;
- 1.2 Clause, schedule and paragraph headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.6 references to a “person” includes any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality) and that person’s legal and personal representatives, successors and permitted assigns.
- 1.7 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.
- 1.8 References to clauses are to the clauses of this Agreement.
- 1.9 A reference to writing or written includes e-mail.
- 1.10 In the event of a conflict or inconsistency between this document and any Annex, the terms of this Agreement shall prevail unless the Annex deviates from the Agreement explicitly.

2. **Set-up of the Remote Service**

- 2.1 Subject to the Customer paying the Subscription Fee and complying with the restrictions and obligations set out in this Agreement, Flamco hereby grants to the Customer a worldwide, non-exclusive, non-transferable right, without the right to grant any sub-licences, to use the Flamconnect Gateway and to permit the Users to use the Flamconnect Remote Service Portal and the Remote Services during the term of this Agreement solely for the Customer's internal business purposes and in the proper course of its business operations, and only to the extent strictly necessary to receive the benefit of the Remote Services.
- 2.2 Flamco will activate the Subscription, make the Flamconnect Gateway available to the Customer and will provide the Customer with log-in data for its Administrator Account.
- 2.3 The Customer is responsible for installing and using the Flamconnect Gateway in accordance with the installation guidelines which accompany the gateway, which shall be notified to the Customer in writing. The Customer is responsible for connecting the Product(s) to the Flamconnect Gateway.
- 2.4 After installation of the Flamconnect Gateway and connection with the Product(s), the Customer can set-up the Remote Service, using the Administrator Account.
- 2.5 The Customer is responsible for obtaining all consents required to install the Flamconnect Gateway and to connect the Product(s), such as possible required consents from the owner and residents of the building.
- 2.6 The Flamconnect Gateway remains Flamco's legal and equitable property at all times. The Customer will use the Flamconnect Gateway with all due care and attention.

3. **Use of the Remote Service**

- 3.1 The Customer may create no more than 5 (five) Users.
- 3.2 The use of the Remote Service is at all times subject to the Portal Terms of Use. Each User has to accept the Portal Terms of Use before he or she has access to the Remote Service.
- 3.3 The Customer is responsible for all use made of the Remote Service via the Administrator Account and by the Users.
- 3.4 The Customer may use the Remote Service for its own business purposes only, and may not give third parties access to the Remote Service.
- 3.5 If the Customer suspects misuse of an account or becomes aware of the fact that log-in data have not been kept secure or confidential, it will inform Flamco immediately and Flamco may disable the account and issue new log-in data.
- 3.6 Based upon reasonable grounds, including but not limited to (suspected) misuse or fraud, Flamco may (i) adapt or limit the functionality of the Flamconnect Remote Service Portal and/or Remote Service, (ii) block access to the Flamconnect Remote Service Portal and/or the Remote Service, (iii) block a certain account or (iv) terminate the Agreement.

- 3.7 The Customer shall not introduce a Virus or Vulnerability, or similar malicious software code in the Flamconnect Remote Service Portal or the Remote Service.
- 3.8 Except for unavailability due to maintenance, Flamco undertakes commercially reasonable efforts to maximize uptime of the Flamconnect Remote Service Portal and the Remote Service.
- 3.9 Flamco at all times may change the Flamconnect Remote Service Portal and the Remote Service (such as adding, amending or deleting functionalities, amending look and feel), provided the Customer remains able to use the Remote Service. Flamco may amend the Portal Terms of Use from time to time. If such amendment has material adverse effect on the Customer, the Customer may terminate the Subscription by giving written notice to Flamco within 8 (eight) working days after being informed by Flamco of such amendment.

4. Use of data

- 4.1 Depending on the type of subscription, the Remote Service enable the Customer to retrieve certain types of data from the Products, such as information on use and performance. The Customer is responsible for the processing of this data and for complying to all legal requirements, especially under applicable data protection laws and regulations. Inter alia this means that the Customer is obliged to comply with any information and consent obligations and to respect data subject rights.
- 4.2 After installation of the Flamconnect Gateway Flamco will receive all data that the Products transmit to the Flamconnect Remote Service Portal, irrespective of the type of subscription of the Customer. Flamco collects and uses these data on its own behalf for the following purposes:
- (a) performance of the Agreement;
 - (b) product development;
 - (c) product support;
 - (d) assessment of warranty and other claims in relation to the Product;
 - (e) marketing (including but not limited to making upsell and cross sell offers).

The Customer irrevocably consents to these uses. Flamco is responsible for the processing of these data and for complying to all applicable legal requirements, especially under data protection law if any data transmitted via the Products is personal data as defined under applicable data protection laws and regulations. Inter alia this means that Flamco is obliged to comply with any information and consent obligations and to respect data subject rights. At first reasonable request of Flamco, the Customer will assist Flamco to comply to any notification obligation, for instance by distributing privacy notices from Flamco within the buildings where the Products are located.

- 4.3 The parties are aware that processing of certain data may be subject to data subject's consent and/or should be stopped at request of a data subject. The mere fact that certain data may no longer be processed is not deemed to be a breach by Flamco of this Agreement and does not entitle either party to terminate the Agreement and/or to claim damages.

5. **Service Desk**

- 5.1 In case the Remote Service does not work properly or in case the Customer has questions relating to the Remote Service, the Customer may contact Flamco's service desk.
- 5.2 The service desk may only be contacted by the Customer's administrator or employees with similar knowledge and experience.
- 5.3 The service desk will be available during weekdays, excluding public holidays in the Netherlands, from 08.00-17.00 hours CET.
- 5.4 Flamco shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- planned maintenance carried out during the maintenance window of 10:00 pm to 5:00 am CET; and
 - unscheduled maintenance performed outside the hours of 9:00 am – 5:00 pm CET, provided that Flamco has used reasonable endeavours to give the Customer at least two (2) days notice in advance.

6. **Fees**

- 6.1 The Customer shall pay Flamco the monthly Subscription Fee as mutually agreed by the parties in writing.
- 6.2 During the term of this Agreement, Flamco will invoice the Subscription Fees in advance, on a monthly basis. These invoices have to be paid within 30 (thirty) days after the date of the invoice.
- 6.3 The Subscription Fee will be fixed for the period of 1 (one) year. After the aforementioned 1 (one) year period, Flamco may amend the monthly Subscription Fee at any time by giving written notice to the Customer, at least 2 (two) months before the effective date of the change. An amendment of the Subscription Fee entitles the Customer to terminate the Agreement in accordance with clause 3.9.
- 6.4 Early termination of a Subscription does not entitle the Customer to any refund from Flamco whatsoever. In deviation of the foregoing the Customer is entitled to a pro rata repayment of paid fees if it terminates the Agreement pursuant to clause 3.9.
- 6.5 Flamco has the right to block the access of the Customer to the Remote Service in case the Customer fails to pay the applicable fee in time.
- 6.6 Flamco will be entitled to charge the Customer interest on that sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date until the date of payment in full (whether before or after judgment), such interest to accrue on a daily basis.

7. **Warranties**

- 7.1 Except as to any express warranty contained herein, the Flamconnect Gateway, the Flamconnect Remote Service Portal and the Remote Service are provided "as is" and Flamco makes no conditions, warranties or representations of any kind with regard to the Flamconnect Gateway, the Flamconnect Remote Service Portal and the Remote Service, including without limitation, any implied warranties of satisfactory quality, uptime, merchantability, fitness for a particular purpose, title and non- infringement, all of which

are, to the extent permissible by law, hereby expressly excluded. Flamco does not warrant that the results of use or that the Flamconnect Gateway, the Flamconnect Remote Service Portal and the Remote Service are free from Vulnerabilities and Viruses or will comply with any Heightened Cybersecurity Requirements or that their use will be uninterrupted.

- 7.2 Flamco will use commercially reasonable efforts to secure the Remote Service and its contents from unauthorised access and alteration, but cannot guarantee that no unauthorised access or alteration will take place.
- 7.3 The Customer will use the Remote Service for its own account and risk. Flamco does not warrant that the information gathered through the Remote Service is correct and may be relied upon.
- 7.4 Flamco is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Remote Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.5 This Agreement shall not prevent Flamco from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

8. **Limitations of liability**

- 8.1 Subject to clause 8.4, Flamco shall not be liable to the Customer or be deemed to be in breach of this Agreement due to any cause beyond Flamco's reasonable control.
- 8.2 Subject to clause 8.4, Flamco's total aggregate liability whatsoever, in contract, tort (including negligence or breach of statutory duty), or howsoever otherwise arising (including under any indemnity) in connection with the performance, non-performance or contemplated performance of this Agreement and for all breaches and any and all losses, shall not exceed, in the aggregate, twice the Subscription Fee paid by the Customer to Flamco for the year in which the event giving rise to liability took place, or to EUR 50,000 (fifty thousand), whichever amount is the lower.
- 8.3 Subject to clause 8.4, in no event shall Flamco be liable to the Customer for any:
- (a) loss of profit (whether direct, indirect or consequential);
 - (b) loss or damage (whether for loss of profit, loss of business, loss of opportunity, missed savings, depletion of goodwill, recall, dismantling or otherwise); and/or
 - (c) costs, expenses or other claims for consequential compensation.
- 8.4 Nothing in this Agreement excludes the liability of a party:
- (a) for death or personal injury resulting from negligence by operation of Section 2(1) Unfair Contract Terms Act 1977; or

for its fraud or fraudulent misrepresentation fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or

- (b) for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

8.5 The Customer will defend, indemnify and hold harmless Flamco against claims, actions, proceedings, losses, damages, liabilities, expenses and costs (including without limitation court costs and reasonable legal fees), arising out of or in connection with the Customer's use of the Flamconnect Remote Service Portal, Remote Services and the Customer's breach of clauses 2.5 or 3.3.

8.6 The parties agree that they have negotiated this Agreement and the allocation of risk in this clause 8 is a fair and equitable position.

9. **Proprietary rights**

9.1 The Customer acknowledges and agrees that Flamco (and Flamco's third party licensors) owns all title to and all Intellectual Property Rights in the Flamconnect Remote Service Portal and the Remote Services. Except as expressly stated herein, this Agreement does not grant to the Customer any rights to, under or in, any Intellectual Property Rights or sub-licencing rights in respect of the Flamconnect Remote Service Portal and the Remote Services.

9.2 Flamco warrants that it has all the rights in relation to the Flamconnect Remote Service Portal and the Remote Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

9.3 The Customer shall promptly notify Flamco in the event that it becomes aware of any unauthorised use of the Flamconnect Remote Service Portal or the Remote Service or any actual or suspected or potential infringement of any of Flamco's Intellectual Property Rights.

9.4 To the extent legally permitted, the Customer also hereby waives and agrees never to assert any and all Moral Rights (as defined below) that it may have in or with respect to any Intellectual Property of Flamco. "Moral Rights" in this regards means any rights to claim authorship / ownership over Intellectual Property of Flamco or to object to or prevent the utilization of any Intellectual Property owned by Flamco, or to withdraw from circulation or control the publication or distribution of any Intellectual Property owned by Flamco, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is expressly designated.

10. **Data Protection**

In the event that the data processed by Flamco on the Customer's behalf on the terms proposed by Flamco qualifies as personal data, the parties will enter into a separate data processing agreement.

11. **Confidentiality**

11.1 Notwithstanding clause 4, the parties reciprocally undertake to treat all information and data of which the parties take note in the performance of this Agreement as confidential. The parties undertake not to disclose such information and data to third parties without written consent from the other party, other than

necessary in the performance of this Agreement. The duty of confidentiality applies for the term of this Agreement and a period of 3 (three) years thereafter.

11.2 The parties will require their subordinates who are charged with the performance of this Agreement to comply with a comparable confidentiality obligation.

11.3 The confidentiality obligation as laid down in this clause does not apply to information and data:

(a) that are public and/or known without the disclosure being the result of an unauthorized act by the disclosing party; or

(b) regarding which disclosure is required on the basis of any statutory provision or regulation, a request from a regulator, or within the context of legal proceedings, all subject, if reasonably possible, to the prior written notification to the other party and to consultation in good faith regarding the contents of the disclosure.

11.4 At the discretion of the party from whom the information originates, in the event this Agreement is terminated the other party must destroy the information it received from the other party during the performance of this Agreement, including copies made by the receiving party and digital or other documents produced on the basis of this information, or return such to the other party, without prejudice to the parties' right to retain information in so far as necessary in compliance with a statutory obligation or a regulation.

12. Term and termination

12.1 This Agreement enters into force on the Commencement Date and is concluded for 1 (one) year (“**Initial Term**”). After the Initial Term, the Agreement will be automatically and continuously extended for periods of 1 (one) year (“**Renewal Term**”), unless:

(a) the Agreement is terminated in writing by one of the parties at the end of the Initial Term or any Renewal Term, subject to a notification period of at least 3 (three) months; or

(b) this Agreement is otherwise terminated in accordance with the provisions of this Agreement.

12.2 Notwithstanding any other provisions of this Agreement, each of the parties is entitled to terminate this Agreement in part or in full, if:

(a) a party:

12.2.a.1 commits a material breach of this Agreement which cannot be remedied;
or

12.2.a.2 commits a material breach of this Agreement which can be remedied but fails to remedy that breach within 30 (thirty) days of a written notice setting out the breach and requiring it to be remedied being given by the other party,

in which case the other party may terminate this Agreement immediately on written notice to that effect to the party in breach provided that the notice to terminate is given within 6 (six) months from the date of the material breach occurring or the party terminating this Agreement becoming aware of it, whichever is the later;

- (b) a party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) a party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- (d) a party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of a party other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- (f) 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 a party (being a company, partnership or limited liability partnership);
- (g) the holder of a qualifying floating charge over the assets of a party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of a party or a receiver is appointed over the assets of a party;
- (i) a creditor or encumbrancer of the a party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of a party's assets and such attachment or process is not discharged within 14 (fourteen) days; or
- (j) any event occurs, or proceeding is taken, concerning a party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(b) to clause 12.2(i) (inclusive).

13. **Consequences of termination**

- 13.1 Within 1 (one) month after the termination date of the Agreement the Customer will at its own costs return the Flamconnect Gateway to Flamco. In the event the Customer fails to comply within the stipulated

deadline with the demand as set forth in this clause 13.1, (calculated based on the cost of a new version) Flamco is entitled to charge the Customer the price of the Flamconnect Gateway.

- 13.2 At termination of the Agreement (i) Flamco will block the Customer's access to the Flamconnect Remote Service Portal and/or the Remote Service, (ii) the Subscription stops immediately and (iii) the Customer may no longer use the Remote Service.

14. **General provisions**

- 14.1 Flamco shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Flamco or any third party), failure of a utility service or transport or telecommunications network, acts of God, acts of war or of a nation state, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or other natural disaster, default of suppliers or sub-contractors, epidemic or pandemic, provided that the Customer is notified of such an event and its expected duration.
- 14.2 The Customer agrees to fully comply with the Export Laws and to ensure that the Customer's data and the Customer's use of the Flamconnect Gateway, Flamconnect Remote Service Portal and the Remote Service (and any direct product thereof), are not: exported, directly or indirectly, in violation of this Agreement or Export Laws; or used for any purposes prohibited by the Export Laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology. The Customer undertakes, if requested by Flamco, to provide Flamco with such reasonable assistance, to enable Flamco to validate the Customer's compliance with its obligations under this clause 14.2.
- 14.3 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.
- 14.4 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first working day (which is not a weekend or a bank holiday) following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 14.5 This Agreement 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.
- 14.6 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

- 14.7 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 14.8 Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.
- 14.9 Except for the Portal Terms of Use, no general terms and conditions of either party shall be applicable to this Agreement. The signing or (tacit) acceptance of any documents to which such conditions have been declared applicable, shall not be deemed to imply acceptance thereof.
- 14.10 The invalidity, illegality or unenforceability of any provision or part-provision of this Agreement does not prejudice the validity of the other provisions of this Agreement.
- 14.11 If a provision is deemed to be invalid under clause 14.10, the parties will negotiate in good faith to agree a replacement provisions or part-provision that is not invalid, illegal or unenforceable and that, to the greatest extent possible, achieves the intended commercial result of the invalid provision.
- 14.12 The Customer shall not be entitled to assign transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement or any part thereof without Flamco's prior written consent.
- 14.13 Flamco may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement or any part thereof to its affiliates without the consent of the Customer.
- 14.14 No variation of this Agreement shall be effective unless it is in writing and signed by an authorised representative of each of the parties.
- 14.15 No failure or delay by a party to exercise any right or remedy provided under this 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.
- 14.16 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.17 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.18 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14.19 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

14.20 Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed “wet-ink” counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the Agreement thus made, each party shall on request provide the other with the “wet ink” hard copy original of their counterpart.

14.21 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

14.22 Flamco shall be entitled to set off, deduct, or withhold any payment to the Customer as a counter-claim for any payment this is payable by the Customer to Flamco under this Agreement.

15. Applicable law and arbitration

16. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

17. Each party irrevocably agrees that any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration will be London, England.

IN WITNESS WHEREOF this Agreement has been signed by the authorised representative of each of the parties on the day and year first written above.

Flamco B.V.

[...]

By:
Place:
Date:

By:
Place:
Date: