

TERMS AND CONDITIONS FOR THE PROVISION OF HARDWARE MAINTENANCE SERVICES

Master terms and conditions dated _____ (“Commencement Date”) between:

Service Express Europe Limited (Company number 02146732) ("Company")	(Company number _____) ("Subcontractor")
Registered Address Franklin Court Priory Business Park Bedford MK44 3JZ	Registered Address _____ _____ _____ _____
Address for Correspondence and Notices Franklin Court Priory Business Park Bedford MK44 3JZ	Address for Correspondence and Notices _____ _____ _____ _____
Company Contact: _____ _____	Subcontractor Contact: _____ _____

IN WITNESS WHEREOF the Parties have executed these Conditions on the date set out above

Signed for and on behalf of	Print Name:
	Position:
	Date:

Signed for and on behalf of Service Express Europe Limited	Print Name:
	Position:
	Date:

1. DEFINITIONS

As used in an Agreement, the following terms shall have the meanings set forth below:

“Affiliates” means in relation to Party, any existing or future person which directly or indirectly controls, is controlled by or is under common control with such Party;

“Agreement” means a contract for the provision of the Services subject to these Conditions including relevant Purchase Orders and (unless the context otherwise requires) includes any additional terms and conditions agreed in writing between the Parties and attached to a relevant Purchase Order;

“Business Day” means a day which is not a Saturday, Sunday or a public holiday in England and Wales or (where different) the location in which the Services are performed;

“Change of Control” means an event triggered by a sale of more than fifty percent (50%) of a Party's voting stock, a sale of substantially all the assets of a Party or a change in a majority of the voting board members of a Party;

“Commencement Date” means the date on which the Conditions shall become effective as set out in the signature page;

“Company” means the (i) entity identified as such in the first page of these Conditions; and (ii) its Affiliates (which may both collectively be referred to as the **“Company Group”**);

‘Conditions’ means the terms and conditions set out in this document;

‘CPIH’ means the general index for measuring consumer prices inflation which is published monthly in the United Kingdom by the Office for National Statistics;

“CRU” or “Customer Replaceable Unit” means a hardware component which can be replaced by a non-technical person from the Company or End User without specialist tools;

“Data Protection Legislation” means (i) EU Regulation 2016/679 (**“GDPR”**), (ii) any national laws and secondary legislation, including the UK Data Protection Act 2018, relating to the Processing of Personal Data, as amended or updated from time to time and (iii) any successor legislation, as amended, consolidated, re-enacted or replaced from time;

“End User” means (i) a separate entity as set out on a Purchase Order and (ii) its Affiliates, (which may collectively also be referred to as the **“End User**

Group”), and recognised by the Parties as a client of the Company, and with which the Subcontractor has no direct contractual or other responsibilities under an Agreement;

“Equipment” means the hardware as set out in a Purchase Order and such additions and changes thereto as shall from time to time be agreed or authorised in accordance with the terms of an Agreement;

“Initial Term” means an initial period of three (3) years from the Commencement Date;

“Party” means either the Subcontractor or the Company and **“Parties”** shall mean both of them;

“Purchase Order” means a separate schedule provided by the Company to which these Conditions apply that includes; (i) the name of any End User; (ii) the Equipment Schedule (including the applicable SLA's and Sites); (iii) the start date for the Services (the **“PO Start Date”**); (iv) the period for delivery of the Services (the **“PO Term”**); (v) the payment frequency; (vi) the Service Charges; and (vii) any special terms for a relevant End User;

“Service Charges” means the charges in respect of each item of Equipment or part of the Services as set out in a Purchase Order payable in advance at the intervals set out in a Purchase Order;

“Service Credit” means a credit against the Service Charges made in accordance with Clause 5 c) for the failure of the Subcontractor to achieve an applicable SLA for an item of Equipment;

“Services” means the services to be provided by the Subcontractor as set out in Clause 4;

“Site(s)” means either (i) the premises at which the Equipment is installed as set out in a Purchase Order; or (ii) where no such premises is set out, the address of the Company and/or End User as set out in a Purchase Order; and

“Wear and Tear” means damage that may naturally and inevitably occur over time during competent use and care with proper maintenance, in line with the original manufacturer's documentation.

For the purposes of the Agreement (i) reference to legislation is, except as otherwise specifically referenced, to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; (ii) reference to a document or provision thereof is to that document or provision as amended, supplemented, replaced or novated; (iii) where the words “include”, “includes”, “including” or “in particular” (or similar derivatives) are used, they are deemed to be followed by the words “without

limitation”; (iv) “will” and “shall” shall be interpreted as expressions of command, not merely expressions of future intent or expectation; (v) use of the singular imports the plural and vice versa; and (vi) headings are for the purposes of reference only and will not in any way limit or affect the interpretation of any of the terms herein and references to any clause or paragraph in any document that forms part of the Agreement refer to the applicable clause or paragraph of that document, unless expressly stated otherwise, and ‘person’ includes any individual, firm, corporation wherever incorporated, trust, joint venture (whether or not having a separate legal existence), partnership, limited liability company, association (whether incorporated or not), or any other entity, or any governmental body or subdivision, agency, or authority.

2. ENGAGEMENT

a) The Subcontractor is engaged to provide the Services related to certain of the Company’s Equipment and/or Equipment of the End Users as detailed on an appropriate equipment schedule (the “**Equipment Schedule**”) and the Company desires to purchase, and the Subcontractor desires to provide, the Services subject to these Conditions and any modifications made in an accepted Purchase Order for a particular End User.

b) On receipt of a proposed Equipment Schedule from the Company, the Subcontractor shall supply a quote (“**Quotation**”) within five (5) Business Days for the provision of Services, or confirm in writing within two (2) Business Days that it does not wish to provide a Quotation. Each Quotation shall specify the proposed Service Charges for each item of Equipment based on the term and payment frequency stated by the Company and include details of any Equipment the Subcontractor cannot provide Services for, stating the reasons for such.

c) For the avoidance of doubt the Service Charges detailed on any Quotation shall be exclusive of any applicable value added tax and/or other sale related taxes.

d) The Services will only be provided by the Subcontractor subject to the provision of a Purchase Order by the Company. Prior to the provision of a valid Purchase Order by the Company, the Subcontractor shall be under no liability for any Services delivered and the Company shall be under no liability for any Service Charges.

3. DURATION

a) The Conditions shall commence on the Commencement Date and shall continue for the Initial

Term, and (subject to early termination in accordance with these Conditions) shall continue thereafter from year to year until terminated by the Subcontractor giving the Company or the Company giving the Subcontractor not less than ninety (90) days prior written notice to expire on the last day of the Initial Term or any subsequent anniversary thereof.

b) Each Purchase Order shall commence on the PO Start Date and shall (subject to early termination in accordance with the Agreement) continue for the PO Term and (unless specified otherwise on the Purchase Order) thereafter from year to year until terminated by the Company giving the Subcontractor not less than thirty (30) days prior written notice to expire on the last day of the PO Term or any date thereafter. In the event of termination of a Purchase Order pursuant to this sub0-clause, a full pro-rata credit shall be issued by the Subcontractor for any Service Charges or other recurring charges paid in advance by the Company.

4. THE SERVICES

During the continuance of an Agreement and each PO Term the Subcontractor shall provide the Company and/or End User (as applicable) with the following support and assistance in respect of the Equipment (the “**Services**”):

a) **Corrective Maintenance:** Upon receipt of notification from the Company or End User (as applicable) that the Equipment has failed or is malfunctioning (an “**Incident**”) the Subcontractor shall promptly (normally within thirty (30) minutes) contact the Company or End User (as applicable) to collect any additional information required, commence diagnostics, and determine whether the Incident can be resolved remotely. Following such initial contact, the Subcontractor shall during the SLA period for the item of Equipment (i) rectify a breakdown or failure of any hardware component(s) of the Equipment causing stoppage of its functions and requiring repair to or replacement before the Equipment can resume working; and/or (ii) repair or replace any hardware component(s) of the Equipment not causing stoppage of its functions but which are identified as a result of a diagnostic check as requiring the Equipment be taken out of use for repair or replacement. Such corrective maintenance shall include supply of loan or replacement items of Equipment.

b) **Remote Monitoring:** Unless specified in a relevant Purchase Order and subject to Clause 10 b), the Subcontractor may use an electronic service agent software (“**ESA**”) to continually remotely monitor the Equipment to ensure it is in good operating condition. The Subcontractor will provide the ESA or configure the ESA provided by the manufacturer of the Equipment

and ensure it is configured to directly contact the Subcontractor for all detected Incidents or impending Incidents for immediate response, with supplementary alerts being sent to the Company where possible. The ESA shall be continually monitored by the Subcontractor and Incidents will be reported promptly to the Company's nominated service control (as notified to the Subcontractor in writing from time to time) with sufficient information and recommendations to permit commencement of any required remedial actions.

c) **Response:** On receipt of an Incident, and unless agreed otherwise with the Company or End User, the Subcontractor undertakes to dispatch a suitably qualified service engineer or (where applicable) a CRU to the relevant Site for corrective maintenance within any Response Time (as defined herein) for the item of Equipment as set out in a Purchase Order.

d) **Fix:** On receipt of an Incident, and unless agreed otherwise with the Company or End User, the Subcontractor undertakes to dispatch a suitably qualified service engineer and any required replacement items to the relevant Site and complete corrective maintenance, allowing the Equipment to resume working, within any Fix Time (as defined herein) for the item of Equipment as set out in a Purchase Order.

e) For the avoidance of doubt where the SLA includes a Fix Time the Subcontractor shall not be subject to any Response Time measurement. In the event: (i) there are any delays outside of the Subcontractor's reasonable control after the suitably qualified service engineer and any required replacement items have arrived at the relevant Site; (ii) replacement of the complete hardware system of which the failed component forms part of is required in order to restore the Equipment to normal operations; and/or (ii) the Company or End User requests that resolution of the Incident be scheduled for a specific date and/or time, the Subcontractor shall not be liable for any Service Credit or measurement in its performance against the Fix Time.

f) Emergency corrective maintenance will be provided as soon as is practicable after receipt of a request by the Company or End User (as applicable), and in any event no longer than the relevant SLA for the relevant item of Equipment.

g) **Reporting:** The Subcontractor will provide monthly reports as agreed with the Company relating to the Services including details of Incidents itemised by End User, and also attend meetings relating to the Services as may be reasonably requested by the Company.

5. SERVICE LEVELS AND SERVICE CREDITS

a) The Subcontractor shall perform the Services during the hours of cover and within the response or fix period ("**SLA**") as specified against each item of the Equipment on a Purchase Order. Each SLA specification shall be broken down as follows:

- (1) the hours of cover: (A) Mon-Fri, 09:00-17:30, on Business Days, (B) Mon-Fri, 08:00-19:00, on Business Days, or (D) 24 x 7, 365 days a year, and for the purposes of this sub-clause time is measured locally to the End User; and
- (2) the applicable period for response as described in Clause 4 c) measured from the point at which the Company or End User logged an Incident with the Subcontractor (the "**Response Time**"): (2) two hours, (4) four hours, (6) six hours, or (8) eight hours; or
- (3) the applicable period for fix as described in Clause 4 d) measured from the point at which the Company or End User logged an Incident with the Subcontractor (the "**Fix Time**"): (2) two hours, (4) four hours, (6) six hours, or (8) eight hours.

b) For the avoidance of doubt, where a corrective maintenance action other than the onsite presence of a service engineer is agreed pursuant to Clause 4, the applicable Response Time or Fix Time measure shall not apply to the Services for that Incident.

c) As the sole remedy for failure to achieve a Fix Time SLA, the Subcontractor shall provide a Service Credit to the Company to be used against the next invoice issued by the Subcontractor against any item of Equipment for which the Fix Time is not achieved following complete Equipment failure. The amount of a Service Credit shall be equivalent to eight (8) percent of the annual Service Charge for the item of Equipment that failed. There is no limit to the number of Service Credits that may be paid to the Company in any year of the Agreement. For the avoidance of doubt, Service Credits are not available for any items of Equipment with a Response Time only SLA. In the event the provision of any Service Credits remains outstanding on expiration or termination of the Agreement, the Subcontractor shall pay such Service Credits to the Company via electronic bank transfer within thirty (30) days of such expiration or termination.

6. EXCEPTIONS

a) The Services exclude any maintenance of the Equipment which is necessitated for any cause other than fair Wear and Tear or the Subcontractor's neglect or fault. As such, the Services exclude maintenance required due to:

- (1) fluctuation (outside the manufacturer's written recommendations) or failure of electrical power, air conditioning, humidity control or other environmental conditions;
 - (2) accident (including during transportation), neglect, or misuse of the Equipment by the Company, End User, their employees, agents or any other third party;
 - (3) any fault in any attachments (whether or not supplied by the Subcontractor) which does not form part of the Equipment including to telecommunications equipment;
 - (4) act of God, fire, flood, war, act of violence, or any other similar occurrence leading to partial or complete damage to the Equipment;
 - (5) any attempt by any person other than the Subcontractor's personnel to physically adjust, repair, convert or maintain the Equipment with the exception of installing or removing CRU's;
 - (6) software faults (including faults within the operating system) or viruses;
 - (7) use of the Equipment other than for the purposes for which it was designed; or
 - (8) use of consumables which result in repetitive service calls or abnormal Wear and Tear.
- b) Furthermore the Services do not include:
- (1) service other than at the Site(s) (or such other premises as the Subcontractor shall have approved in writing);
 - (2) repair or replacement of SSD Hardware (as defined herein) where the conditions in Clause 9 b) have not been met;
 - (3) repair or renewal of consumables (as defined by the manufacturer's written documentation) relating to the Equipment including tape media;
 - (4) maintenance or support of the operating system, loading or uninstalling of software, applications or data. or any other software support services;
 - (5) electrical or other environmental work external to the Equipment;
 - (6) maintenance of any attachments (whether or not supplied by the Subcontractor) which do not form part of the Equipment, including un-jamming or fitting of consumable supplies;
 - (7) recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Equipment;

- (8) painting, refurbishing, installation, physical changes to or alteration of the Equipment other than for repair, moving or removal of the Equipment other than for repair.

7. SERVICE CHARGES

a) In consideration of the Services the Company shall pay the undisputed Service Charges periodically in advance and in accordance with the payment terms as set out in a Purchase Order and stated on each correctly rendered invoice (the "**Due Date**").

b) All undisputed Service Charges shall be paid without deduction, set off or prior demand and no payment shall be considered made until it is received by the Subcontractor. For the avoidance of doubt the Company shall not be entitled to a refund in the event that it does not make use of the Services at its disposal.

c) Any undisputed charges payable by the Company hereunder in addition to the Service Charges shall be paid by the Due Date on the Subcontractor's correctly rendered invoice therefore without any deduction or set off.

d) Where the Company disputes an invoice and withholds payment (or part thereof), the nature and detail of the dispute shall be detailed in writing, and the Parties will act promptly and in good faith to resolve the matter. Payment for undisputed items on a disputed invoice shall be made in accordance with the normal payment terms for the invoice.

e) Subject to this sub-clause and only to be effective after expiration of the PO Term for any Purchase Order, the Subcontractor shall be entitled from time to time to increase the Service Charges in relation to a Purchase Order by giving to the Company not less than ninety (90) days prior written notice. Such increase shall not exceed the percentage rate of CPIH at the date of notice being issued by the Subcontractor and no more than one (1) increase in the Service Charges pursuant to this sub-clause is permitted in any twelve (12) month period.

f) Within thirty (30) days of being notified of an increase in Service Charges or other recurring charges pursuant to this Clause 7 (the "**Increase Notice Period**") the Company may give written notice to the Subcontractor to terminate the relevant Purchase Order(s) and receive a full pro-rata credit for any payments made in advance, unless such increase is imposed by legal requirements when the Company shall have no right to terminate. If the Company does not terminate within the Increase Notice Period, the Company shall be deemed to have accepted the increased Service Charges or other recurring charges.

g) The Subcontractor shall be entitled to recover the Service Charges, notwithstanding that performance of the Services may not have taken place. The time of payment of the Service Charges shall be of the essence of the Agreement. Receipts for payment will be issued only upon request.

h) Subject to sub-clause 7 i), any item of Equipment may be removed from the Agreement by the Company at any time during the PO Term by giving the Subcontractor thirty (30) days written notice. A full pro-rata credit against any Service Charges paid in advance, without penalty, will be issued by the Subcontractor for the removed items.

i) If at any time during the PO Term, the net effect of any amendments to a Purchase Order would be to cause the annual value of the Purchase Order to fall below eighty (80) percent of the annual value of the Purchase Order as at the PO Start Date, (the "**Minimum Contract Value**"), the Service Charges will be charged on the basis of the Minimum Contract Value.

j) If the Company fails to make any undisputed payment within thirty (30) days of the Due Date for payment then, without prejudice to any other right or remedy available to the Subcontractor, the Subcontractor shall be entitled to charge the Company interest accrued daily (both before and after any judgement) on the amount unpaid, at the rate of three (3) per cent per annum above the base rate of Barclays Bank plc from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

k) If the Company fails to make any undisputed payment within sixty (60) days of the Due Date for payment then, without prejudice to any other right or remedy available to the Subcontractor, the Subcontractor shall be entitled to cancel the relevant Purchase Order or suspend further performance of the Services until any undisputed payment is made, provided that this sub-clause shall apply only to the failure to pay a material undisputed amount owed.

l) The Service Charges and any additional charges are exclusive of any applicable value added tax, which the Company shall be additionally liable to pay to the Subcontractor.

8. ADDITIONAL CHARGES

a) The Subcontractor shall make an additional charge, to be agreed in writing and in advance with the Company, and in accordance with the Subcontractor's standard scale of charges from time to time in force, for service visits, repairs or replacements made at the request of the Company or End User (as applicable):

- (1) where the Subcontractor repairs or replaces any part of the Equipment which has failed due to a cause other than fair Wear and Tear including those set out in Clause 6 a); or
- (2) by reason of any fault in the Equipment due to causes not covered by the Services including those set out in Clause 6 b);
- (3) which the Subcontractor repeatedly and reasonably finds (having given prior written notice to the Company) are not Incidents and/or hence avoidable, frivolous or not necessary;
- (4) for corrective maintenance of hardware not covered by this Agreement which the Subcontractor agrees to perform and where the Company does not want such hardware added to the Services.

provided always that the Subcontractor shall not be obliged to carry out such works and that any required replacement parts shall be charged in addition to the relevant charges for the service engineer.

9. REPLACEMENT PARTS AND EQUIPMENT

a) The Subcontractor reserves the right to replace the whole of the Equipment or any part or parts thereof which may be found to be faulty or in need of investigation. If identical part or parts are not available as a replacement the Subcontractor will install part or parts of a higher specification and notify the Company at the time of installation provided always that if the permanent replacement Equipment is materially different the Subcontractor reserves the right to increase the Service Charges by the differential in accordance with the Subcontractor's standard charges from time to time and given sufficient prior written notice to the Company, such that the Company may at its discretion invoke replacement of the non-identical Equipment pursuant to sub-clause 9 d).

b) Subject to the terms in this sub-clause b) corrective maintenance for solid state based (flash) hard drives and solid state based (flash) I/O cards ("**SSD Hardware**") is provided as part of the Services. SSD Hardware is not covered by the Services if (i) it has not been explicitly declared by the Company and included as an item in the Purchase Order on a chargeable or non-chargeable basis; and/or (ii) it is considered a consumable as set forth in the manufacturer's documentation. For SSD Hardware requiring replacement that has reached its maximum supported lifetime and/or the maximum usage limits (collectively "**End of Life**") as set forth in the manufacturer's documentation, corrective maintenance may be subject to additional fees at the Subcontractor's sole discretion over and above any Service Charges, subject

to confirmation at the time an Incident is logged. The Subcontractor is under no obligation to replace any End of Life SSD Hardware until any additional fees are approved by the Company in writing. The Subcontractor reserves the right to audit any hardware containing SSD Hardware at a date and time agreed with the Company.

c) If the permanent replacement parts or equipment is not equipment which is identical in all material respects to the Equipment replaced the Subcontractor shall inform the Company in writing and the Company may either accept the replacement parts or request removal pursuant to sub-clause d).

d) Within ten (10) Business Days of being informed of replacement of non-identical equipment the Company or End User shall have the right to request that the replacement equipment or any part or parts thereof be removed and either the Equipment be put back or other equipment materially identical to the Equipment be installed and the Subcontractor shall comply with such request as soon as reasonably possible.

e) The replacement equipment shall become the property of the owner of the Equipment. With the exception of any defective parts containing Company or End User data which may be retained at the Company or End User's discretion, defective parts shall be returned to and become the property of the Subcontractor.

f) Where the Equipment or any part or parts thereof removed become the property of the Subcontractor in accordance with sub-clause e) or as stated elsewhere in the Agreement, the Company warrants that it or the End User (as applicable) shall have free and unencumbered title to such replaced parts or (where the Equipment is leased or charged) that it shall have obtained all necessary consents and authorities to part with possession and give good title to the replaced parts.

g) The provisions of the Agreement shall apply to all replacements and renewals of any part or parts of the Equipment made by the Subcontractor.

h) Subject to the warranty set out herein the Subcontractor reserves the right to supply new, second-hand or reconditioned parts in the performance of its duties

10. COMPANY OBLIGATIONS

a) **Incident Logging:** The Company shall ensure the Subcontractor is informed by notification to the Subcontractor's nominated service control (as notified to the Company in writing from time to time), in a reasonable period of time, of any Equipment failure or

potential failure, and shall as applicable permit or arrange with the End User for the Subcontractor to have the necessary access to the Equipment and use of necessary tools, machines and devices in the Company's or End User's possession. The Company shall maintain or take reasonable efforts to ensure the End User maintains accurate and current logs and records concerning the operation of the Equipment.

b) **ESA Set-Up:** Where applicable the Company shall permit or use reasonable efforts to arrange with the End User to allow installation, configuration and testing of any ESA utilised and/or provided by the Subcontractor. The Company shall also provide or use reasonable efforts to ensure that the End User provides the necessary access rights, connectivity and other required facilities to enable the Subcontractor to remotely detect and resolve Incidents on items of Equipment that support the ESA functionality. The Company will also (where required) be responsible for ensuring its own service control is able to receive any alerts generated by the ESA and forwarded by the Subcontractor.

c) **Use and Care of the Equipment:** During the continuance of an Agreement the Company shall, or as applicable take reasonable measures to ensure any End User shall:

- (1) ensure proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment, the cables and fittings associated therewith and the electricity supply thereto;
- (2) not make any physical modification to, tamper with, wrongfully operate, or repair the Equipment (with the exception of installing or removing CRU's) without the Subcontractor's prior written consent or authorise anyone other than the Subcontractor to carry out any physical adjustments, repairs or maintenance of the Equipment;
- (3) keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer's written operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Equipment;
- (4) ensure that the external surfaces of the Equipment are kept clean and in good condition and carry out any minor non-corrective maintenance from time to time as per manufacturer's written recommendations;

- (5) use on the Equipment only such consumables as recommended by the manufacturer in writing and if such use results in repetitive service calls or abnormal Wear and Tear then the Subcontractor will be entitled to make an additional charge in accordance with Clause 8 for the Services provided as a result;
 - (6) notify the Subcontractor in writing if any of the Equipment is to be moved and or has been moved from Site or if any of the Equipment has been removed from service;
 - (7) not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by the Subcontractor;
 - (8) not use the Equipment other than for the purpose for which it was designed and take reasonable precautions to avoid damage to the Equipment.
- d) **Access to the Equipment:** During the continuance of an Agreement the Company shall, or as applicable take reasonable measures to ensure any End User shall:
- (1) provide the Subcontractor with full and safe access to the Equipment for the purposes of the Agreement;
 - (2) provide adequate working space around the Equipment for the use of the Subcontractor's personnel and shall make available such reasonable facilities as may be agreed from time to time for the storage and safekeeping of test equipment and spare parts;
 - (3) where practicable, provide a suitable vehicle parking facility for use by the Subcontractor's personnel which is free from any legal restrictions and is close to the relevant Site;
 - (4) ensure in the interest of health and safety that the Subcontractor's personnel, while at the relevant Site for the purposes of the Agreement, are at all times accompanied by a member of the Company's or End User's (as applicable) staff familiar with the Site and safety procedures.
- e) **Notification and Information:** During the continuance of the Agreement the Company shall, or as applicable take reasonable measures to ensure any End User shall:
- (1) promptly notify the Subcontractor if the Equipment needs maintenance or is not operating correctly;
- (2) make available to the Subcontractor such programs (including manufacturer supplied recovery media), operating manuals and information as may be necessary to enable the Subcontractor to perform its obligations hereunder and shall, if requested by the Subcontractor, provide staff familiar with the Company's or End User's (as applicable) software and operations, and such staff shall co-operate fully with the Subcontractor's personnel in the diagnosis of any malfunction of the Equipment;
 - (3) provide such telecommunication facilities as are reasonably required by the Subcontractor for testing and diagnostic purposes, including to support operation of any ESA, at the Company's expense;
 - (4) keep full security copies of the Company's or End User's (as applicable) software, programs and computer records and carry out appropriate system management functions in accordance with best computing practice. The master copies of software or programs are not to be released by the Company or End User and the Subcontractor is to be given only copies thereof if it requests such software or programs.

11. COMPANY WARRANTIES

- a) The Company warrants and undertakes to the Subcontractor that it or the End User is the owner of the Equipment and that it has full power and authority to enter into the Agreement and permit the Subcontractor to perform its services on the Equipment.
- b) The Company undertakes to indemnify and hold harmless the Subcontractor against any losses, damages and/or reasonable costs and expenses that the Subcontractor may suffer as a result of a breach by the Company of sub-clause 11 a) above.
- c) The Company warrants to the Subcontractor that it has prior to the making of the Agreement made reasonable efforts to collate and disclose to the Subcontractor all known faults or defects in the Equipment or operating system which existed at or immediately prior to each PO Start Date.
- d) The Company shall indemnify the Subcontractor and keep the Subcontractor fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Company, End User, their employees, agents or subcontractors, or any breach of its warranty at sub-clause 11 c).

12. SUBCONTRACTOR WARRANTIES

a) Subject to sub-clause 12 b) the Subcontractor warrants that it will use reasonable skill and diligence and appropriately qualified and experienced staff in performing the Agreement and that it shall have free and unencumbered title to any replacement parts which will be of satisfactory quality and at least functionally equivalent to the part(s) being replaced. The Subcontractor does not warrant that the Services or any additional services will cause the Equipment to operate without interruption or error.

b) For the avoidance of doubt the warranty in sub-clause 12 a) is given by the Subcontractor subject to the following conditions:

- (1) the Subcontractor shall be under no liability in respect of any defect in the Services arising from any information or instruction supplied by the Company or End User;
- (2) the Subcontractor shall be under no liability in respect of and to the extent of any defect in the Services arises from wilful damage, negligence, abnormal working conditions, failure to follow the Subcontractor's reasonable written instructions, misuse or alteration or repair of the Equipment by the Company or End User without the Subcontractor's approval;
- (3) the Subcontractor shall be under no liability if the undisputed Service Charges have not been paid by the Due Date for payment and the Services have been suspended pursuant to Clause 7 k).

b) Any replacement equipment or parts provided by the Subcontractor as part of the Services are supplied without warranty save for the benefit of such warranty or guarantee as is given by the manufacturer or supplier to the Subcontractor. Subject to Clause 9 a) all replacement equipment and parts shall be included within the scope of the Services at no additional cost in the same manner and subject to the same SLA as per the original equipment and/or parts.

c) The Subcontractor shall indemnify the Company and keep the Company fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Subcontractor, its employees, agents, or subcontractors.

d) Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13. LIABILITIES

a) Where any valid claim in respect of the Services is notified to the Subcontractor in accordance with these Conditions, the Subcontractor shall be entitled to re-perform the Services, in which event the Subcontractor shall have no further liability to the Company in respect of such claim.

b) If there is a complete system outage on an item of Equipment and the Company is not reasonably satisfied with the Subcontractor's ability to repair the Equipment following re-performance of the Services, the Company reserves the right to request at its discretion, that the Subcontractor engage the services of the manufacturer of the affected Equipment in order to repair the parts of the Equipment that has been determined as faulty. Any manufacturer's costs incurred in repairing the Equipment under this sub-clause will be the responsibility of the Subcontractor.

c) The Parties accept that nothing in an Agreement limits or excludes any liability for: (i) fraud or fraudulent misrepresentation (ii) death or personal injury resulting from their negligent acts or omissions in connection with the Agreement; (iii) where the Subcontractor is based in the United Kingdom, the Subcontractor's breach of the obligations implied by, as applicable, Section 12 of the Sale of Goods Act 1979, Section 2 of the Supply of Goods and Services Act 1982 or Section 8 of the Supply of Goods (Implied Terms Act) 1973; or (iv) any liability which cannot by applicable law be limited or excluded

d) Subject to sub-clause c) the liability of the Subcontractor under the Agreement in respect of each event or series of connected events shall not exceed two hundred percent (200%) of the aggregate annualised value of all the then current Purchase Orders placed with the Subcontractor by the Company. If a number of events give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

e) The Subcontractor shall not be liable for any loss or damage sustained or incurred by the Company or any third party (including any loss of use of the Equipment or loss of or spoiling of the Company's or End User's (as applicable) software, programs or data) resulting from any breakdown of or, fault in the Equipment except to the extent such breakdown or fault is caused by any omission or negligence on behalf of the Subcontractor.

f) The Subcontractor shall not be liable to the Company for any loss arising out of any failure by the Company or End User to keep full and up-to-date security copies of the software, programs or data it uses, in accordance with best computing practice.

g) Subject to having made commercially reasonable efforts to mitigate such delay, the Subcontractor shall not be liable for any delay in performing its obligations hereunder if any recommended spare parts become obsolete, and the Subcontractor shall be entitled to remove any impacted Equipment from the Agreement in accordance with Clause 18 b).

h) Subject to sub-clause c), neither Party shall be liable to the other for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever (including loss or damage suffered as a result of an action brought by a third party) even if such loss was reasonably foreseeable and/or it had been advised of the possibility of incurring the same.

14. CONFIDENTIALITY

Each Party shall treat as confidential all information obtained from the other pursuant to these Conditions and any Agreement and shall not divulge such information to any person (except to such Party's own employees and then only to those employees who need to know the same) without the other Party's prior written consent provided that this Clause 14 shall not extend to information which was rightfully in the possession of such Party prior to the Commencement Date or the commencement of negotiations leading to any Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 14) or which is trivial or obvious. Each Party shall ensure that its employees are aware of and comply with the provisions of this Clause 14.

15. DATA PROTECTION

a) Both Parties shall comply with the Data Protection Legislation in so far as it is relevant in respect of the provision and use of the Services. For the purposes of the Agreement, the terms Data Controller, Data Processor, Personal Data, Process and Processing shall be as defined in the Data Protection Legislation.

b) The Parties acknowledge that the Company is a Data Controller, and that the Subcontractor is not considered a Data Processor in providing the Services. The Subcontractor further acknowledges that it has not been given any remit by the Company to make any attempt to access any data on the Equipment and confirms that it shall not do so. In the event the Subcontractor is deemed or required to Process Personal Data as defined in the Data Protection Legislation, the Subcontractor agrees to enter into a separate Data Processing Agreement in addition to these Conditions and shall only process Personal Data in accordance with such Data Processing Agreement.

c) The Parties further acknowledge that it may be necessary to exchange Personal Data relating to their respective employees, workers, agents, representatives, subcontractors, and/or the End User(s) in order to receive the benefit of or deliver the Services (as applicable). Where a Party receives any such Personal Data from the other Party it does so as Data Controller and shall ensure that it fully complies with the Data Protection Legislation.

16. SUBCONTRACTING

Subject only to the prior written approval of the Company, the Subcontractor may subcontract any of its obligations under this Agreement providing (i) the subcontractor is qualified to deliver the subcontracted services in accordance with good industry practice; and (ii) the Subcontractor shall be and shall remain responsible and liable for all its obligations pursuant to this Agreement and for all acts and omissions of its subcontractors.

17. NON-SOLICITATION

a) During the duration of these Conditions and for twelve (12) months thereafter, neither Party may solicit, directly or indirectly, any employee of the other Party who was involved in the provision or receipt of the Services. This Clause 17 shall not restrict a Party from hiring employees of the other Party who apply unsolicited in response to a general advertising or recruitment campaign; and

b) During the PO Term, any extension thereof, and for twelve (12) months thereafter, unless the relevant End User(s) were already a contracted client of the Subcontractor prior to the Agreement, the Subcontractor shall only have direct communication with the relevant End User(s) to the extent required and agreed with the Company in order to meet contractual obligations relating to a Purchase Order. For the avoidance of doubt excluded communications include any form of direct or indirect sales solicitation and marketing activities (except as a result of running an advertising campaign open to all comers and not specifically targeted at any specific End Users).

18. TERMINATION

a) If in its reasonable opinion considering factors such as (but not limited to) Incident rates and current industry standards the Subcontractor considers that all or part of the Equipment needs reconditioning it will notify the Company in writing and where practical provide a quotation for reconditioned replacement Equipment of identical or higher specification. If the Company does not accept the quotation to recondition the Equipment within sixty (60) days of receipt thereof the Subcontractor may by not less than thirty (30) days

prior written notice cancel that part of the Agreement insofar as it relates to the Equipment which requires reconditioning.

b) If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is destroyed or damaged beyond economic repair otherwise than through the Subcontractor's fault (as to whether either of which events has occurred the Subcontractor's decision shall be final and binding on the Company) the Subcontractor reserves the right, by giving not less than thirty (30) days written notice to the Company, to cancel that part of the Purchase Order insofar as it relates to the whole or any part of the Equipment which can no longer be maintained, in which case the Subcontractor's sole liability shall be to repay to the Company a fair proportion in accordance with sub-clause 18 c) of the Service Charges which have been paid in advance by the Company.

c) On termination of a Purchase Order or part thereof in accordance with the provisions of sub-clauses 18 a) and b) the Company shall be entitled to reimbursement of a pro-rata part of the Service Charges paid in advance calculated on a time basis and item by item basis.

d) Notwithstanding anything else contained herein, any Agreement and all Purchase Orders may be terminated by either Party forthwith on giving notice in writing to the other Party if the other Party:

- (1) commits any material breach of any term of an Agreement and (in the case of a breach capable of being remedied) shall have failed, within thirty (30) days after the receipt of a request in writing from the other Party so to do, to remedy the material breach (such request to contain a warning of such Party's intention to terminate). For the avoidance of doubt, and subject to Clause 7 k) the failure by the Company to pay any material amount of any undisputed sums due under this Agreement shall be considered a breach of a material obligation; or
- (2) shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect, or if the other Party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

e) Notwithstanding anything else contained herein, any Agreement and all Purchase Orders may be terminated immediately by the Company forthwith on giving notice in writing to the Subcontractor;

- (1) if there is a Change of Control of the Subcontractor where the person, firm or company taking control of the Subcontractor is a direct competitor of the Company; or
- (2) if the Subcontractor declares a Force Majeure event and is unable to cure the root cause of the Force Majeure declaration within ten (10) days. The Company may then acquire an alternate service in replacement of the Services, without penalty. For the avoidance of doubt the Company shall also be entitled to a pro rata refund of any Service Charges paid in advance.

f) For the avoidance of doubt a breach of Party's obligations under Clauses 20 and 21 shall be deemed a material breach not capable of remedy and the non-breaching Party may terminate the Conditions and all Purchase Orders in writing with immediate effect without penalty, and in the event of such breach by the Subcontractor a full pro-rata credit shall be issued by the Subcontractor for any Service Charges or other recurring charges paid in advance by the Company.

g) Any termination of the Conditions or an Agreement howsoever occasioned shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

h) For the avoidance of doubt the expiration of these Conditions at the end of the Term or termination in accordance with Clause 3 a) shall not affect any unexpired Purchase Orders and both parties shall continue to meet their respective obligations in accordance with the terms of any Agreement(s) until completion of the relevant PO Term or termination by a party in accordance with these Conditions or those of the Purchase Order.

19. FORCE MAJEURE

a) Neither Party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including acts of God, riots, pandemics, war or armed conflict, acts of terrorism, acts of government authorities, fire, flood, hurricane, tornado, or earthquake, or disaster, force majeure declaration of suppliers, strikes, lockout or other form of industrial action (other than of its own employees), wrecks or delays in transportation, embargoes, container shortages, inability to obtain

supplies and raw materials requirements or regulations of any civil or military authority.

b) Each of the Parties hereto agrees to give notice forthwith in writing to the other upon becoming aware of an event of force majeure and such notice shall contain details of the circumstances giving rise to the event of force majeure. The Party affected by the force majeure event shall use reasonable endeavours to mitigate any effects of the force majeure event.

20. ANTI-BRIBERY

a) Both parties agree to comply with all applicable laws, regulations, legally binding codes and sanctions relating to anti-bribery and anti-corruption ("**Anti-Bribery Law**").

b) In the event that a Party is found not to comply with Anti-Bribery Law or has reasonable grounds for suspecting the other Party of not being in compliance, it shall as soon as reasonably practicable, notify the other Party in writing of the particulars of such non-compliance and/or suspicions.

21. MODERN SLAVERY

a) Both Parties shall comply with all applicable laws, statutes, regulations legally binding codes and sanctions relating to modern slavery and human trafficking (the "**Slavery Rules**") and the Subcontractor shall comply with any reasonable written request received from the Company for the purposes of any annual reporting requirements under the Slavery Rules.

b) In the event that a Party is found not to comply with the Slavery Rules or has reasonable grounds for suspecting the other Party of not being in compliance, it shall as soon as reasonably practicable, notify the other Party in writing of the particulars of such non-compliance and/or suspicions.

22. NOTICES

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in a Purchase Order or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 22. Any such notice shall be deemed to have been served if by hand when delivered, if by first class post forty eight (48) hours after posting.

23. GENERAL

a) This Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement and supersedes all prior arrangements or understandings, whether oral or written, between the Parties relating to the subject matter hereof.

b) The Parties acknowledge that they have entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, neither Party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

c) The Subcontractor's employees or agents are not authorised to make any representations concerning the Services unless confirmed in writing

d) Neither Party shall assign the Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

e) No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by the a Party of any breach of the Agreement by the other Party shall be considered as a waiver of any subsequent breach of the same or any other provision.

f) Where the Subcontractor is a member of a group of companies the Subcontractor may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Subcontractor.

g) The Subcontractor shall provide, and the Company shall accept the Services subject to the terms of the Agreement, which shall govern the Services to the exclusion of any other terms and conditions.

h) The Company shall within fifteen (15) Business Days from a request by the Subcontractor provide the applicable Purchase Order relevant to the Services to be included on any invoice submitted by the Subcontractor.

i) No variation to the Conditions or the Agreement shall be binding unless agreed in writing between the authorised representatives of the Company and the Subcontractor.

j) The Parties acknowledge that no rights or benefits are expressly conferred upon or implied as conferred upon any other person or third party under the Agreement, however, the Subcontractor acknowledges that this Agreement and the Services are for the benefit of the members of the Company Group and agrees that each member of the Company Group shall be entitled to enforce the terms of this Agreement in its own right.

k) Notwithstanding that the whole or any part of any provision of the Agreement may prove to be illegal or unenforceable the other provisions of the Conditions and the remainder of the provision in question shall remain in full force and effect.

l) The Agreement shall be governed by the laws of England and Wales, and the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.