

## TERMS AND CONDITIONS FOR THE PROVISION OF DISASTER RECOVERY SERVICES

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### 1. **DEFINITIONS**

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

**'Additional Services'** means any goods or services provided by the Company to the Customer and/or End User other than the Services;

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

**"Agreement"** means the contract for the provision of the Services pursuant to these Conditions including the Schedule, Supplementary Terms and (unless the context otherwise requires) includes any additional terms and conditions agreed in writing between the Parties and attached to the Schedule;

**'Business Day'** means a day which is not a Saturday, Sunday or a public holiday in England and Wales, or the country or countries in which the Services are performed;

**"Commencement Date"** means the date on which the Agreement shall become effective as set out in the Schedule, or where no such date is specified, the date of signing of the Schedule by the Customer;

**"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;

**"Customer"** means the (i) Customer as named in the Schedule; and (ii) its Affiliates (which may collectively also be referred to as the **"Customer Group"**);

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

**"End User"** means either (i) a separate entity set out on the Schedule and recognised by the Parties as a client of the Customer, and with which the Company has no direct contractual or other responsibilities under this

Agreement; or (ii) where no separate entity is set out on the Schedule, the Personnel of the Customer which may utilise the Equipment and/or Services from time to time;

**"Equipment"** means the Customer and/or End User (as applicable) hardware to be temporarily replaced by the provision of the Services following an Invocation.

**"Good Industry Practice"** means, in relation to any activity or requirement relevant to this Agreement, the exercise of that degree of skill, care diligence, prudence and foresight and using the practices, processes, procedures and guidelines which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of such activity or requirement under the same or similar circumstances and conditions in the United Kingdom;

**"Image Recovery"** means recovery from server image copies collected and stored by the Company on behalf of the Customer and/or End User as part of the Services;

**"Initial Term"** means the initial duration of the Agreement as set out in the Schedule;

**"Invocation"** means a request for provision of the Services from time to time if, in the opinion of the Customer or End User, the Equipment becomes inoperable and incapable of repair under normal maintenance conditions in a reasonable period of time;

**"Invocation Period"** means the period as set out in Clause 3 (or otherwise stated on the Schedule) during which the Replacement Equipment will be made available to the Customer and/or End User following an Invocation without any additional charges;

**"ISO 27001"** means the ISO/IEC 27001:2013 Information Security Management System (ISMS) standard published in September 2013 by the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (as amended, consolidated, re-enacted or replaced from time to time);

**"Manufacturer"** means the manufacturer of an item of hardware comprising the Equipment;

**"Nominated Address"** means a site to which the Customer or End User could elect the Replacement Equipment be delivered to following an Invocation, as set out in the Schedule(s);

**“Normal Working Hours”** means the hours of 09:00 – 17:30 on a Business Day in the United Kingdom;

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

**“Period Discount”** means the discount offered to the Customer by the Company for entering into the Agreement as set out in the Schedule;

**“Personnel”** means officers, directors, employees, workers, and agents (including any persons hired as consultants or contract staff) engaged in the use and/or provision of the Services (or part thereof);

**“Recovery Centre”** means the Company’s data centre premises at Service Express Europe, Caxton Court, Caxton Road, Elms Farm Industrial Estate, Bedford, MK41 0HT

**“Recovery Procedure”** means the collective generic and Customer specific procedures for recovering the Customer software and data including on to the Replacement Equipment;

**“Recovery Test”** means a scheduled test of the Replacement Equipment and other Services at the Recovery Centre;

**“Replacement Equipment”** means the Company’s hardware equivalent to or greater than the specification set out in the Schedule and used in the provision of the Services;

**“Schedule”** means the separate schedule or statement of work to which these Conditions apply to include details such as the Commencement Date, Replacement Equipment specification, Initial Term, Service Charges, and Nominated Addresses (if any);

**“Service Charges”** means the charge(s) for the Services as set out in the Schedule and payable in advance at the intervals set out in the Schedule;

**“Services”** means the services to be provided by the Company as set out herein including the Supplementary Terms; and

**“Supplementary Terms”** means the Appendix 1 attached hereto providing additional provisions in relation to an Invocation of the Services: 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 Manufacturer’s documentation.

a) 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 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. In the event of any inconsistency between the Conditions, Supplementary Terms, and the Schedule then the following order of priority shall prevail; (i) the Schedule; (ii) the Supplementary Terms; and (iii) these Conditions.

## **2. DURATION**

The Agreement shall commence on the Commencement Date and shall (subject to early termination in accordance with this Agreement) continue for the Initial Term and (unless specified otherwise on the Schedule) thereafter from year to year until terminated by the Company giving the Customer or the Customer giving the Company not less than ninety (90) days prior written notice to expire on the last day of the Initial Term or any subsequent anniversary thereof.

## **3. THE SERVICES**

a) During the continuance of the Agreement the Company shall provide the Customer and/or End User (as applicable) with the Services following an Invocation (including Replacement Equipment where specified in the Schedule).

b) **Invocation:** To initiate use of the Services in the event of failure of the Equipment, the Customer or End User (as applicable) notification must be made to the Company’s nominated service control (as notified to the Customer in writing from time to time). Each logged Invocation will be promptly passed to the Company’s team of specialists (the **“Disaster Recovery Team”**) who will identify and ready the appropriate Recovery Procedures and establish initial contact with the Customer or End User (as applicable) as a matter of

urgency, and in any event no longer than one (1) hour after the Invocation is logged with the Company.

c) **Invocation Period:** Under the Agreement the Company will provide Replacement Equipment and/or Workplace Recovery (as specified on the Schedule) for a period of up to sixty (60) days per Invocation (the "**Invocation Period**") unless specified otherwise in the Schedule.

d) **Workplace Recovery:** If specified on the Schedule, a number of workplace positions will be made available to the Customer and/or End User (as applicable) by the Disaster Recovery Team ("**Workplace Recovery**"). Each position will consist of a chair, desk, desktop computer and telephone. Shared use of faxes, photocopiers and printers will be available. Workplace Recovery positions are only available at the Recovery Centre or subcontractor location(s) as specified in the Schedule (the "**Workplace Centre**"). Workplace Recovery does not include the provision of any Replacement Equipment.

e) **Images:** The Customer acknowledges that the provision of Image Recovery (where specified on the Schedule as part of the Services) is contingent upon the Customer permitting the Company to complete collection of server images. Collection of server images is required prior to any Invocation or Recovery Test. The Company will arrange for collection of the images within Normal Working Hours unless otherwise specified in the Schedule. To complete collection of server images the Company will require a small software agent to be loaded on to each of the Customer's or End User's (as applicable) Intel servers to enable images of a moment in time to be taken. The software agent will be removed following collection of required images. The Company will retain the collected image(s) on a secure storage platform at the Recovery Centre.

f) **Testing:** The Customer and/or End User (as applicable) shall be entitled to undertake a Recovery Test subject to the number of days per annum as specified in the Schedule. The procedure for requesting a Recovery Test is described in the Supplementary Terms. The Company shall be entitled to postpone or cancel any a Recovery Test if the Replacement Equipment is needed by another customer Invocation. Any such Recovery Test so cancelled by the Company can be rescheduled at no additional cost. Termination of an active Recovery Test at the Customer's or End User's request will result in loss of allocation. The company reserves the right to levy a cancellation fee as stated on the relevant booking form if a scheduled Recovery Test is cancelled by the Customer with less than ten (10 Business Days notice or the Customer fails to attend a scheduled Recovery Test. If additional

testing is required to offset a cancellation by the Customer or End User, it can be purchased at a cost of £500 per day.

g) **Required Changes:** Subject to the Customer's written permission, not be unreasonably withheld or delayed, the Company reserves the right to make any reasonable changes in the specification of the Services as required to comply with any applicable health and safety or statutory requirements or which do not materially affect the nature, quality or performance of the Services.

#### **4. SERVICE LEVELS**

a) On receipt of a request for Invocation, and unless agreed otherwise with the Customer or End User, the Company undertakes to make the Replacement Equipment and other Services available as set out below:

- (1) Where recovery of the Customer or End User environment is to be performed at the Recovery Centre the Company will make the Disaster Recovery Team and Replacement Equipment available to the Customer and/or End User (as applicable) within four (4) hours of an Invocation being logged;
- (2) Where recovery of the Customer or End User environment is to be performed at a Nominated Address as specified in the Schedule (and not the Recovery Centre), the Disaster Recovery Team and Replacement Equipment will be dispatched from the Recovery Centre within four (4) hours of an Invocation being logged;
- (3) Any positions for Workplace Recovery will be made available to the Customer and/or End User (as applicable) at the applicable Workplace Centre within four (4) hours of an Invocation being logged ("**Workplace Recovery**").

b) During an Invocation Period, the Replacement Equipment will be covered by a Company provided hardware maintenance with a 24x7x365 cover level and four (4) hour response. The Company reserves the right to provide Replacement Equipment that is equivalent to or greater than the specification set out in the Schedule.

#### **5. EXCEPTIONS**

The Services do not include any maintenance of the Replacement Equipment which is necessitated for any cause other than fair Wear and Tear or the Company's neglect or fault unless otherwise agreed between the Company and the Customer as Additional Services pursuant to Clause 7.

## 6. SERVICE CHARGES

a) In consideration of the Services the Customer shall pay the undisputed Service Charges periodically in advance and in accordance with the payment terms as set out in the Schedule 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 Company. For the avoidance of doubt the Customer shall not be entitled to a refund in the event that it does not make use of the Services at its disposal.

c) The Services shall be available in return for payment of the Service Charges and shall be provided without additional charge for each Invocation Period. If an Invocation Period needs to be extended by the Customer, additional days can be purchased at a cost of £500 per day.

d) Where the Customer 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 Initial Term, the Company shall be entitled from time to time to increase the Service Charges by giving to the Customer 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 Company 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) The Company 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.

g) Subject to sub-clause h), any item of Equipment may be removed from the Agreement by the Customer at any time during the term of the Agreement by giving the Company ninety (90) days written notice. A full pro-rata credit against any Service Charges paid in advance, without penalty, will be issued unless the Agreement is subject to a Period Discount. Where a Period Discount applies to the Agreement, the value of the Period Discount already received up to the end of the notice period will be deducted from the pro-rata credit.

h) If at any time during the term of the Agreement the net effect of any amendments to this Agreement would be to cause the annual value of the Service Charges to fall below eighty (80) percent of the annual value of the Service Charges as at the Commencement Date (the “**Minimum Contract Value**”), the Service Charges will be charged on the basis of the Minimum Contract Value.

i) If the Customer 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 Company, the Company shall be entitled to suspend any further performance of the Services and charge the Customer 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).

j) If the Customer 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 Company, the Customer shall be deemed in material breach of the Agreement and the Company shall have termination rights in accordance with Clause 17 a) (1), provided that this sub-clause shall apply only to the failure to pay a material undisputed amount owed.

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

## 7. ADDITIONAL CHARGES

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

- (1) where the Company repairs or replaces any part of the Replacement Equipment which has failed due to a cause other than fair Wear and Tear or is due to the Customer’s or End User’s neglect or fault; or
- (2) provides technical assistance following recovery of the Customer software and data, including for software faults, other than for the Recovery Support (as defined in the Supplementary Terms);
- (3) which the Company repeatedly and reasonably finds (having given prior written notice to the

Customer or End User) are not related to the Services, avoidable, frivolous or not necessary,

provided always that it 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.

## **8. REPLACEMENT EQUIPMENT**

a) The Replacement Equipment shall at all times remain the sole and exclusive property of the Company and subject to sub-clause d) neither the Customer nor End User shall have any right or interest therein except for quiet possession and the right to use the same upon in accordance with the Agreement.

b) The Company shall maintain the Replacement Equipment in good working order and condition and if it shall fail or breakdown, shall restore the Replacement Equipment to its proper operating condition as soon as reasonably possible but without any undue delay.

c) The Company reserves the right during an Invocation or Recovery Test of the Services to replace the whole of the Replacement Equipment or any part or parts thereof which may be found to be faulty or in need of investigation. If identical hardware is not available for the replacement the Company will install replacement hardware of a higher specification.

d) During an Invocation Period the Customer may directly purchase from the Company any or all parts of the Replacement Equipment, the price of such being the reasonable market price as agreed in writing between the Parties.

## **9. CUSTOMER OBLIGATIONS**

a) The Customer acknowledges that it is responsible for ensuring the suitability of the Services in respect of any applicable regulations and laws that apply to the Customer and/or End User (as applicable) including the responsibilities of company directors under the UK Companies Act 2006 (as amended, consolidated, re-enacted, or replaced from time to time).

b) The Customer shall be responsible for: (i) informing the Company of any changes in the Equipment or its specifications that may require changes to the Replacement Equipment provided on Invocation; and (ii) providing the Company with any other reasonably requested information (including ensuring the accuracy of such information) within a sufficient time to enable the Company to perform the Agreement in accordance with its terms.

c) The Customer is responsible for the availability and integrity of security copies of the Customer's or End User's (as applicable) data, software, programs, and

computer records in accordance with best computing practice. All system and application security and password controls are a Customer responsibility, including the resolution of any issues relating to the operation of application software linked to hardware serial numbers.

d) The Customer shall ensure that all operating software used on the Equipment is subject to a maintenance and support contract with the applicable vendor(s) which allows escalation of any issues identified by the Customer or the Company during recovery on to the Replacement Equipment following an Invocation.

e) **Use and Care of the Replacement Equipment:** Whilst any Replacement Equipment is in the possession or under the control of the Customer and/or End User, the Customer shall, or as applicable take reasonable measures to ensure any End User shall:

- (1) except where the Replacement Equipment is installed on the Company's premises, ensure proper environmental conditions are maintained for the Replacement Equipment and maintain in good condition the accommodation of the Replacement Equipment, the cables and fittings associated therewith and the electricity supply thereto, including compliance with appropriate health and safety regulations;
- (2) not make any physical modification to, tamper with, wrongfully operate, or repair the Replacement Equipment without the Company's prior written consent or authorise anyone other than the Company to carry out any physical adjustments, repairs or maintenance of the Replacement Equipment;
- (3) except where the Replacement Equipment is installed on the Company's premises, keep and operate the Equipment in a proper and prudent manner in accordance with the Manufacturer's operating instructions and ensure that only competent trained Personnel (or persons under their supervision) are allowed to operate the Equipment;
- (4) use on the Replacement 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 Company will be entitled to make an additional charge in accordance with Clause 7 for any repairs or services provided as a result.
- (5) not remove the Replacement Equipment from a relevant Nominated Address and notify the Company in writing if any of the Replacement



Equipment needs to be moved or if any of the Replacement Equipment has been removed from service;

- (6) not use in conjunction with the Replacement Equipment any accessory, attachment or additional equipment other than that supplied by or approved in writing by the Company without the Company's prior written consent;
- (7) provide at the Customer's or End User's expense such local network and other telecommunication facilities as are reasonably required by the Company for installing the Replacement Equipment, testing and diagnostic purposes;
- (8) only use the Replacement Equipment for the purpose for which it was designed and keep proper back up of data on at least a daily basis. The quality and integrity of the data is entirely the Customer's and/or End User's (as applicable) responsibility;

f) **Access to the Replacement Equipment:** Whilst the Replacement Equipment is in the possession or under the control of the Customer and/or End User, the Customer shall, or as applicable take reasonable measures to ensure any End User shall:

- (1) provide the Company with full and safe access to the Replacement Equipment for the purposes of the Agreement;
- (2) except where the Replacement Equipment is installed on the Company's premises, provide adequate working space around the Replacement Equipment for the use of the Company's personnel and shall make available such facilities as may be reasonably requested from time to time by the Company for the storage and safekeeping of test equipment and spare parts;
- (3) except where the Replacement Equipment is installed on the Company's premises, where practicable provide a suitable vehicle parking facility for use by the Company's Personnel which is free from any legal restrictions and is close to any relevant Nominated Address;
- (4) ensure in the interest of health and safety that the Company's Personnel, while at any relevant Nominated Address, are at all times accompanied by a member of the Customer's or End User's (as applicable) Personnel familiar with the location and safety procedures.

g) Whilst any Replacement Equipment is in the possession or control of the Customer and/or End User,

other than when it is being used at the Company's premises, the Replacement Equipment shall be at the Customer's risk, and it shall be responsible for insuring or ensuring the End User insures the same against all normal risks.

h) The Customer shall ensure the Company has access to the Customer and/or End User premises (as applicable) to enable any Replacement Equipment to be removed without any delay and shall give such access, if so required by the Company, at any time on any day of the week including Sundays and public holidays, subject to reasonable notice. Prior to removal of the Replacement Equipment the Customer shall be responsible for the removal of all software and data.

#### **10. CUSTOMER WARRANTIES**

a) The Customer warrants to the Company that the Equipment is fully operational at the Commencement Date and the Equipment is subject to and the Customer or End User (as applicable) will maintain a hardware maintenance agreement with an appropriately qualified and skilled provider.

b) The Customer warrants: (i) that the Customer's and/or End User's data (as applicable) will not contain anything obscene, offensive, or defamatory; and (ii) it has made commercially reasonable efforts to obtain confirmation from the End User (where not the Customer) that it is registered for the purposes of the Data Protection Legislation (where required) and that it will comply with the provisions of the Data Protection Legislation.

c) The Customer undertakes to indemnify and hold harmless the Company against any losses, damages and/or reasonable costs and expenses that the Company may suffer as a result of a breach by the Customer of sub-clauses a) and b) above or any breach of the Customer's obligations pursuant to Clause 9.

d) The Customer shall indemnify the Company against any claim made by any third party for alleged infringement of any copyright or other intellectual property rights which arises as a result of the storage or processing of any of the Customer's and/or End User's programs or data on the Replacement Equipment.

e) The Customer 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 Customer, End User, their Personnel or subcontractors.

#### **11. COMPANY WARRANTIES**

a) Subject to sub-clause b) the Company warrants that it will use reasonable skill and diligence in in

accordance with Good Industry Practice and appropriately qualified and experienced Personnel in performing the Agreement. The Company undertakes to take all reasonable measures to maintain in good working order all Replacement Equipment that it uses in the supply of the Services, but the Company does not warrant that the Services or any Additional Services will cause the Replacement Equipment to operate without interruption or error. The Replacement Equipment will be subject to a number of hardware diagnostic tests by the Company prior to handover to the Customer and/or End User for recovery of the Customer environment.

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

- (1) the Company shall be under no liability in respect of any defect in the Services arising from any information or instruction supplied by the Customer or End User;
- (2) the Company shall be under no liability in respect of and to the extent of any defect in the Services arises from wilful damage, negligence and/or negligence by the Customer and/or End User, abnormal working conditions, failure to follow the Company's reasonable written instructions, misuse or alteration or repair of the Replacement Equipment by the Customer or End User without the Company's approval;
- (3) the Company 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 6 i);

c) The Company warrants and undertakes that the Company premises used to provide the Services and the Services will be maintained and delivered using policies and procedures compatible with ISO27001.

d) The Company shall indemnify the Customer against any claim made by any third party for alleged infringement of any copyright or other intellectual property rights which arises as a result of any hardware or software supplied by the Company in provision of the Services.

e) The Company shall indemnify the Customer and keep the Customer 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, its employees, agents or subcontractors.

f) 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.

## **12. LIABILITIES**

a) Any claim by the Customer which is based on any defect in the Services shall be notified to the Company within two (2) Business Days from the date of performance or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.

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

c) In the event of any failure or breakdown of the Replacement Equipment with consequent spoiling or loss of the Customer's and/or End User's data the Company shall use the Customer's and/or End User's back-up copies to reconstitute the data as soon as reasonably practicable. This sub-clause c) states the entire liability of the Company for any loss or spoiling of the Customer's and/or End User's data caused by any failure or breakdown of the Replacement Equipment.

d) The Parties accept that nothing in the 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) the Company'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.

e) Subject to sub-clause d) the liability of the Company under the Agreement in respect of each event or series of connected events shall not exceed the aggregate Service Charges during the Initial Term. 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.

f) The Company shall not be liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of the Replacement Equipment or loss of or spoiling of the Customer's or End User's (as applicable) software, programs or data) resulting from any breakdown of, or fault in the Replacement Equipment except to the extent such breakdown or fault is caused by any omission or negligence on behalf of the Company.

g) The Company shall not be liable to the Customer for any loss arising out of any failure by the Customer 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.

h) Notwithstanding anything else contained in these Conditions, 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 by the other Party as a result of an action brought by a third party) even if such loss was reasonably foreseeable or a Party had been advised of the possibility of the other Party incurring the same.

i) For the avoidance of doubt the Customer is responsible to the End Users for all obligations and liability in respect of the performance, and/or availability of the Services, or their non-performance and non-availability. Unless explicitly stated in this Agreement the Service Provider is only obligated to the Customer for the provision and performance of the Services, and then only under the terms and conditions of this Agreement.

### **13. CONFIDENTIALITY**

Each Party shall treat as confidential all information obtained from the other pursuant to the Agreement and shall not divulge such information to any person (except to such Party's own Personnel and then only to those Personnel who need to know the same) without the other Party's prior written consent provided that this Clause 13 shall not extend to information which was rightfully in the possession of such Party prior to the Commencement Date or the commencement of the negotiations leading to the Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 13) or which is trivial or obvious. Each Party shall ensure that its Personnel are aware of and comply with the provisions of this Clause 13.

### **14. 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 and Processing shall be as defined in the Data Protection Legislation.

b) The Parties acknowledge that the Customer is a Data Controller and that the Company is not considered a Data Processor in providing the Services. The Company further acknowledges that it has not been given any authority by the Customer to make any attempt to access any data on the Equipment or Replacement Equipment and confirms that it shall not do so.

c) The Customer acknowledges that Company does not require access to, use of, or other rights to the data on the Equipment or Replacement Equipment in order to deliver the Services and its obligations in accordance with the terms of this Agreement.

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

### **15. SUBCONTRACTING**

a) The Company may not subcontract the Services provided under this Agreement after the Commencement Date either in whole or part without the prior written consent of the Customer (which shall not be unreasonably withheld or delayed).

b) in the event any Services are subcontracted under this Agreement the Company shall procure and ensure that its permitted sub-contractors; (i) are authorised, licensed, qualified, approved and permitted to deliver the subcontracted services in accordance with Good Industry Practice; and (ii) the Company 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.

### **16. NON-SOLICITATION**

During the term of this Agreement 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 16 shall not restrict a Party from hiring employees of the other Party who apply unsolicited in response to a general advertising or recruitment campaign.

### **17. TERMINATION**

a) Notwithstanding anything else contained herein, the Agreement 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 the Agreement and (in the case of a material 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 6 j) the failure by the Customer



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.

b) For the avoidance of doubt a breach of Party's obligations under Clauses 19 and 20 shall be deemed a material breach not capable of remedy and the non-breaching Party may terminate the Agreement in writing with immediate effect.

c) Termination or expiry of the 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.

#### **18. 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, war or armed conflict, acts of terrorism, acts of government authorities, fire, flood, hurricane, tornado, or earthquake, pandemics, or disaster, force majeure declaration of suppliers, strikes, lockout or other form of industrial action (other than of its own Personnel), wrecks or delays in transportation.

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.

c) A Party cannot claim relief if the event of force majeure is attributable to that Party's wilful act, neglect, or failure to take reasonable precautions against the relevant event and provided it is not an event that the relevant Party would reasonably be expected to manage via its business continuity or disaster recovery planning in accordance with Good Industry Practice.

#### **19. ANTI-BRIBERY**

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**"). In the event that a Party is found not to comply with the 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.

#### **20. MODERN SLAVERY**

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 Company shall comply with any reasonable written request received from the Customer for the purposes of any annual reporting requirements under the Slavery Rules. 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.

#### **21. 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 the Schedule or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 21. 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.

#### **22. 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 Company's employees or agents are not authorised to make any representations concerning the

Services or Additional Services unless confirmed in writing.

d) To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful, or unenforceable in any jurisdiction, that provision shall be deemed severed and not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement, nor shall it affect the validity, lawfulness, or enforceability of that provision in any other jurisdiction.

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

b) 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 Company of any breach of the Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

c) The Company is a member of the group of companies and accordingly the Company 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 Company.

d) The Company shall provide, and the Customer 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.

e) For the avoidance of doubt where the Customer requires the Company to issue invoices against a written Customer requisition ("**Purchase Order**") and

there is any ambiguity and/or conflict between the terms of a Purchase Order and this Agreement, the terms of this Agreement shall prevail. The Customer shall with fifteen (15) Business Days from a request by the Company provide the applicable Purchase Order number relevant to the Services to be included on any invoice submitted by the Company.

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

g) 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 Company acknowledges that this Agreement and the Services are for the benefit of the members of the Customer Group and agrees that each member of the Customer Group shall be entitled to enforce the terms of this Agreement in its own right. For the avoidance of doubt only a member of the Customer Group that directly suffers under this Agreement shall be entitled to make a claim against the Company.

h) 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.

i) 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.

## APPENDIX 1 – SUPPLEMENTARY TERMS FOR DISASTER RECOVERY SERVICES

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### 1. **BACKGROUND**

This Appendix 1 provides additional provisions (the “**Supplementary Terms**”) to be read in conjunction with the Conditions, are subject to the terms and conditions thereof, and form part of the Agreement.

### 2. **INVOCATION PROCEDURE**

a) The Customer or End User (as applicable) may request an Invocation of the Services by telephoning the Company’s hotline number on 0330 0940 400 which is manned 24x7x365 days a year by the Company’s Personnel and who have access to the logging systems for formal reporting of the Invocation.

b) The Customer or End User (as applicable) should inform the Company operator answering the call made in accordance with sub-clause a) that an Invocation is required and be able to provide the following information:

- (1) Contact name and telephone number, together with confirmation of the company name relating to the Agreement;
- (2) details of the disaster and as much information about the damage to the Equipment as possible;
- (3) confirmation of the required items from the Agreement, ie., all Replacement Equipment or specific items; and
- (4) any Nominated Address to which the Replacement Equipment is to be delivered if the Recovery Centre is not being used.

### 3. **INITIATING RECOVERY**

a) Following Invocation, the Disaster Recovery Team will make the Replacement Equipment available in accordance with the service levels set out in Clause 4 of the Conditions, and (where specified in the Recovery Procedures) initiate the restore of Customer’s or End User’s environment from backups already held by the Company or on receipt of the required back-up media.

b) The Company will provide technical assistance or guidance as required by the Customer and/or End User for a period of up to seventy two (72) hours (“**Recovery Support**”) following availability of the Replacement Equipment to the Customer. Additional technical assistance will be available at the normal Company daily rates unless specified otherwise in the Schedule. For the avoidance of doubt, recovery of the Customer or End

User environment onto the Replacement Equipment is and remains a Customer and/or End User responsibility (as applicable).

c) Replacement Equipment (where applicable and requested on Invocation) will normally be prepared for use and the Services delivered at the Recovery Centre. Where specified in the Schedule the Customer may also specify up to five (5) Nominated Addresses (located in England, mainland Scotland or Wales) for delivery of the Replacement Equipment in the event of an Invocation. The Company reserves the right, in exceptional circumstances, to determine the Nominated Address on Invocation.

d) Workplace Recovery (where applicable and requested on Invocation) will normally be prepared for use and the Services delivered at the Recovery Centre, unless specified otherwise in the Schedule. Workplace Recovery is not supported at Customer or End User premises. Nominated Addresses can only be used for Replacement Equipment.

### 4. **RECOVERY CENTRE INVOCATIONS**

a) Connectivity to the Recovery Centre for Customer and/or End User remote users will be provided via a shared Internet link with guaranteed bandwidth as specified in the Schedule, dedicated for the Customer’s and/or End User’s use and protected by a high encryption firewall managed by the Company to ensure the Customer’s, End User’s and other clients of the Company are isolated from each other.

b) If the Schedule provides for Image Recovery and the Customer or End User experiences a software or application failure requiring Image Recovery, the Disaster Recovery Team will transfer the relevant server images directly onto the Replacement Equipment from the Company’s secure storage.

c) Following completion of any initial Image Recovery by the Disaster Recovery Team, any incremental changes made since the service image copies were made will need to be restored from backups as specified in the Recovery Procedures using media already held by the Company or following receipt of the current back-up media at the Recovery Centre. Recovery of changes made since the service image copies were collected is and remains a Customer and/or End User responsibility (as applicable).

## **5. NOMINATED ADDRESS INVOCATIONS**

- a) Restoration of the Customer's or End User's environment will either be prior to shipping or on arrival at the selected Nominated Address, as specified in the Recovery Procedures. The Replacement Equipment will be subject to hardware diagnostic tests by the Company prior to handover to the Customer and/or End User.
- b) If the Schedule provides for Image Recovery and the Customer or End User experiences a software or application failure but the existing Customer or End User hardware is still in place and operational, the Disaster Recovery Team will attend the Nominated Address and transfer the image from its secure storage directly back onto the existing hardware via use of a mobile imaging server.
- c) If the Schedule provides cover for Image Recovery and the Customer or End User experiences a complete loss of site or hardware and Image Recovery is required, the Disaster Recovery Team will transfer the relevant server images directly onto the Replacement Equipment from the Company's secure storage and deliver the Replacement Equipment to the Nominated Address.
- d) Following completion of any initial Image Recovery by the Disaster Recovery Team, any incremental changes made since the service image copies were made will need to be restored from the current back-up media, as specified in the Recovery Procedures. Recovery of changes made since the service image copies were collected is and remains a Customer and/or End User responsibility (as applicable).

## **6. POST RECOVERY SUPPORT**

- a) On completion of the Company's responsibilities within the Recovery Procedures, the Company will ensure a member of the Disaster Recovery Team is available for four (4) hours to monitor the Replacement Equipment and assist the Customer up to a maximum of twenty four (24) hours if problems persist. For the avoidance of doubt this period is part of the Recovery Support. Additional technical assistance is available at the normal Company daily rates unless specified otherwise in the Schedule.
- b) In addition to the support specified in sub-clause a) the Company will provide telephone support for the Replacement Equipment during the Invocation Period and subject to the Customer having a suitable communications infrastructure in place if the Replacement Equipment is installed at a Nominated Address, the Company will monitor the Replacement Equipment remotely for any hardware issues. For the

avoidance of doubt any monitoring provided by the Company will be limited to the hardware layer and not individual instances of operating systems.

## **7. RECOVERY TESTS**

- a) In order to ensure recovery success, efficiency and accuracy in the event of an Invocation, a regular Recovery Test will be co-ordinated with the Customer based on a minimum allowance of two (2) days per annum (or as otherwise specified in the Schedule). Any additional testing days requested by the Customer or End User above the minimum or number set out in the Schedule can be purchased at a cost of £500 per day (unless specified otherwise in the Schedule).
- b) The Company will schedule each Recovery Test with the Customer's agreement to take place at its Recovery Centre (unless otherwise specified in the Schedule). The Customer's and/or End User's attendance (as applicable) is recommended but not obligatory. Depending on the Customer's and/or End User's own infrastructure, the Company may be able to offer remote testing via a Virtual Private Network ("VPN") connection, or an appropriate alternative solution, although is under no obligation to do so. Any such VPN connection for the purposes of a Recovery Test shall be limited to a maximum of 5MBps across a shared Internet link.
- c) Following agreement on the date for a Recovery Test, the Customer will be provided with a Test Booking Form by the Company. A completed Test Booking Form is intended to provide the Company with the information necessary to complete the arrangements for the Recovery Test, including providing access to Customer and/or End User attendees to the Recovery Centre. Prior to the first Recovery Test and after the Commencement Date the Company will offer the Customer a planning meeting to help ensure the Recovery Test runs smoothly.
- d) Test Booking Forms must be completed and returned no later than four (4) weeks prior to the offered date of the Recovery Test. Any dates offered remain available to other Customers until a completed Test Booking Form has been returned and accepted by the Company.
- e) After the Customer and/or End User has completed a successful Recovery Test, the Company will provide a report to include the Recovery Procedures followed, details of the results, restore times and recommendations for future improvements. A Certificate of Test Completion will also be issued for each successful Recovery Test, valid for twelve (12) months from the first day of the Recovery Test.