

GENERAL TERMS AND CONDITIONS: HARDWARE MAINTENANCE SERVICES

These General Terms and Conditions: Hardware Maintenance Services (the “**Conditions**”) shall apply to the provision of hardware maintenance and other services by Service Express Europe Limited or any of its Affiliates (the “**Supplier**”) to the customer identified in the Order (the “**Customer**”, and together with the Supplier the “**Parties**” and each a “**Party**”) pursuant to a Contract, to the exclusion of all other terms and conditions.

1 Definitions and Interpretation

1.1. In these Conditions:

“**Affiliate**” means in relation to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with that Party;

“**Charges**” means the charges or any other amounts payable for or arising out of or in connection with the Services, as detailed in the Contract;

“**Contract**” has the meaning given to it in Clause 2.2;

“**Corrective Maintenance**” has the meaning given to it in Clause 3.2;

“**CPIH**” means the general index for measuring consumer prices inflation which is published monthly in the United Kingdom by the Office for National Statistics, measured as at the date of the Supplier’s notice issued in accordance with Clause 7.4.1;

“**Data Protection Legislation**” means (i) EU Regulation 2016/679, (ii) UK GDPR, as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; (iii) any applicable 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 (iv) any successor legislation, as amended, consolidated, re-enacted or replaced from time to time;

“**Due Date**” has the meaning given to it in Clause 7.1;

“**Effective Date**” has the meaning given to it in Clause 2.2;

“**Equipment**” means the hardware, equipment and/or devices to be covered by the Services, as set out in the Order (and such additions and changes agreed between the Parties in writing from time to time in accordance with these Conditions);

“**ESA**” means any electronic service agent software used or deployed by the Supplier from time to time to remotely monitor the Equipment;

“**Fix Time**” has the meaning given to it in Clause 6.1;

“**Force Majeure Event**” means any event, circumstance or causes beyond a Party’s reasonable control including acts of God, riots, war, terrorism, acts of Governmental authorities, fire, flood, hurricane, tornado, earthquake, pandemic, epidemic, endemic, disaster, force majeure declaration of suppliers, or strike, lockout or other form of industrial action (other than a strike, lockout or other form of industrial action of or by its own Personnel);

“**Incident**” has the meaning given to it in Clause 4.1.1;

“**Initial Term**” has the meaning given to it in Clause 8.1;

“**Order**” means an Order Form, a SOW or such other documentation as agreed between the Parties pursuant to which a Contract is formed under these Conditions;

“**Order Form**” means the Supplier’s order form for Services;

“**Parties**” means the Supplier and the Customer, and each a “**Party**”;

“**Personnel**” means officers, directors, employees, workers, and agents (including any consultants or contract staff) of a Party, their Affiliates or any of their sub-contractors;

“**Response Time**” has the meaning given to it in Clause 6.1;

“**Service(s)**” means the services to be supplied by the Supplier pursuant to a Contract, as described therein;

“**Service Commencement Date**” means, in respect of each part of the Services, the date upon which the Supplier notifies the Customer that such part(s) of the Services are ready for use, or the date from which cover will commence for Corrective Maintenance, irrespective of whether the Customer makes use of the Services (or any part thereof) from such date;

“**Service Credit**” means a credit in the amount agreed between the Parties in the Order (if any) to be applied against future invoices for the Charges and issued in accordance with Clause 6.4 in respect of any failure by Supplier to achieve the Service Level(s) to which the credit(s) relates;

“**Service Level**” means the service level(s) specified in the SLA that applies to the Services (or the relevant part thereof) from its respective Services Commencement Date(s);

“**Sites**” means the locations at which the Services will be provided, or at which the Equipment is located (as applicable), as set out in the Contract;

“**SLA**” means the Service Level Agreement applicable to the Equipment (or the applicable part thereof) set out in the Contract;

“**Statement of Work**” or “**SOW**” means a statement of work agreed between the Parties (in the Supplier’s standard form, or as otherwise agreed between the Parties) setting out the scope and extent of the Services to be provided under a Contract, including the applicable Charges and any other terms and conditions applicable to that statement of work;

“**Term**” has the meaning given to it in Clause 8.1;

“**Third Party Services**” means any products or services provided by a third party other than the Supplier, including any software;

“**Third Party Terms**” means any terms and conditions, license agreement, terms of use, warranty or other conditions, including any agreement entered into directly between the Customer and the third party, that may be imposed by a third party provider and apply to Third Party Services, as updated by the third party from time to time; and

“**Working Day**” means a day which is not a Saturday, Sunday or a public holiday in England and Wales, or the country(ies) in which the Services are performed.

1.2.

In these Conditions, and in a Contract: (i) any reference to legislation is (unless otherwise stated) to it as amended, re-enacted or replaced from time to time and includes any subordinate legislation issued under it, and reference to a document or provision thereof is to that document or provision as amended, supplemented, replaced or novated from time to time; (ii) where the words “**include**”, “**including**” or “**in particular**” (or similar derivatives) are used, they are deemed to be followed by the words “**without limitation**”, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms; (iii) use of the singular includes the plural and vice versa and (unless the context otherwise requires) reference to one gender shall include all other genders; (iv) headings are for reference purposes only and will not limit or affect the interpretation of the Conditions or a Contract; (v) references to any “**Clause**”, “**Schedule**” or “**Paragraph**” refer to the applicable clause or paragraph of these Conditions or a Contract (as applicable in the context), unless expressly stated otherwise; (vi) “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), and “**company**” shall include any company, corporation or other body corporate, wherever and however incorporated or established; and (vii) an obligation on a Party not to do something includes an obligation not to allow that thing to be done.

2 Ordering Services

2.1. Where the Customer requests the Supplier provide Services, it shall provide Supplier with all information it may reasonably request. If the Supplier is able to supply the requested Services, it may (but is not obliged to) provide a quotation to the Customer (which shall be deemed issued subject to these Conditions). If the Customer wishes to proceed on the basis of the quotation, it shall submit a signed Order to the Supplier for its acceptance, which shall be deemed (i) an offer to acquire the Services; and (ii) made subject to these Conditions.

2.2. An Order shall only be deemed accepted by the Supplier on the earlier of: (i) the Order being signed by an authorised representative of the Supplier; (ii) a written confirmation and acceptance of the Order sent by an authorised representative of the Supplier to the Customer via email; or (iii) the provision of the Services by the Supplier. The acceptance of an Order by the Supplier shall constitute a contract (the “**Contract**”) between the Parties as at and with effect from the date of the Supplier’s acceptance of the Order (the “**Effective Date**” of that Contract). Each Contract formed under these Conditions shall be separate from and in addition to all other Contracts between the Parties. The Supplier shall not be obliged to accept any proposed Order or any other request for

Services, or to provide any Services, unless and to the extent that the Parties enter into a Contract pursuant to these Conditions.

- 2.3. Each Contract entered into between the Parties pursuant to these Conditions shall incorporate, or be deemed to incorporate (and, in the event of any conflict, the following order of precedence shall apply in descending order of importance): (i) any special or additional terms and conditions expressly set out in the Order Document(s); (ii) the Order; (iii) the Conditions *mutatis mutandis* as if set out in full; and (iv) any other document expressly referred to in the Order.
- 2.4. These Conditions apply to the supply of Services by the Supplier pursuant to a Contract to the exclusion of any other terms that the Customer seeks or may seek to impose or incorporate, or which are implied by law, practice or course of dealing, into the Contract. Any standard or pre-printed terms or conditions contained on or referred to in any purchase order, quotation, acknowledgement, invoice or similar document shall have no effect and shall not apply to the Contract. Only modifications or additions to these Conditions expressly agreed in writing by the Supplier and set out in the Order shall form part of the Contract.

3 Services

- 3.1. In consideration of payment of the Charges, the Supplier shall provide to the Customer the Services set out in the Contract. The Supplier warrants that all services provided shall be performed in a workmanlike manner.
- 3.2. Unless stated otherwise in the Contract, the Services shall include “**Corrective Maintenance**” of the Equipment, which shall consist of:
- 3.2.1. subject to Clauses 4 and 5 and solely in response to an Incident, the Supplier using its reasonable endeavours to perform remedial maintenance, repair or replacement of the hardware component(s) of the affected Equipment in accordance with the time limits set out in the Service Levels;
 - 3.2.2. labour and (subject to Clause 3.3) parts as deemed necessary by the Supplier to maintain the Equipment or to return the Equipment to operating condition following an Incident; and
 - 3.2.3. installation of change orders deemed necessary and mandatory by the Equipment manufacturer to maintain its operating condition, at a time mutually agreed upon by the Parties.
- 3.3. **Equipment Audit.** Supplier reserves the right to audit or inspect the Equipment at any time within thirty (30) Working Days from the Effective Date. If the Supplier identifies any inaccuracies, defects or other issues in the Equipment, or additional hardware that should form part of the Equipment, it shall notify the Customer and advise of any change to the Service(s) and/or Charges. If the Customer does not accept any proposed revision under this Clause 3.3, it may cancel the affected Contract by giving thirty days’ (30) written notice within seven (7) days of the Supplier’s notice, otherwise it shall be deemed to have accepted the revised Service and/or Charges. If the Customer exercises its right to cancel under this Clause 3.3, it shall be liable to pay Charges up to the expiry of its notice. Where the Supplier carries out an audit, the Service Commencement Date for that Contract will commence on the later of (i) the conclusion of the audit; and (ii) the Customer’s acceptance or deemed acceptance of any changes to the Service(s) and/or Charges under this Clause 3.3.
- 3.4. **Ownership of Replaced Parts.** Any replacement equipment shall become the property of the Customer and be deemed the Equipment after its replacement as part of any Corrective Maintenance. The Supplier may take ownership of exchanged parts removed from Equipment, except in the case of failed devices containing magnetic media which Customer may retain ownership of at Customer’s discretion. All removable storage media containing Personal Data shall be left with the Customer at the Site(s). The Customer warrants that it shall transfer the replaced defective parts to the Supplier with free and unencumbered title and that it shall have obtained all necessary consents and authorities to part with possession and give good title thereto.
- 3.5. **Spare Charges.** Unless specified otherwise in the Contract, standard spare or replacement parts directly related to the supported Equipment used as part of any Corrective Maintenance shall be included within the Charges. Where the Contract specifies a stocking Charge for spare or replacement parts, it shall be invoiced in accordance with Clause 7. Any additional, bespoke or non-standard parts required to resolve an

Incident shall be subject to additional Charges, as notified by the Supplier in writing.

- 3.6. **Replacement.** Supplier may replace the whole or part of the Equipment and/or supply new, second-hand, or reconditioned parts or equipment, as part of any Corrective Maintenance. If identical parts are not available, the Supplier will use its reasonable endeavours to install replacements of equivalent specification. It shall notify the Customer if the specification of any replacement equipment is materially lower than that of the Equipment being replaced and (i) the Customer may reject the replacement; and (ii) where it does so, the Supplier shall leave the defective Equipment with the Customer and the Incident shall be deemed closed.
- 3.7. **Equipment Inventory Changes.** Any additions to the Equipment shall be made by prior written agreement between the Parties. Customer shall submit any request to add to the Equipment to such address or using such methods (including email, form, online portal or link) as the Supplier may require from time to time and shall be subject to additional Charges (as specified by the Supplier on receiving the Customer’s request).
- 3.8. **Third Party Services.** Where the Services include any Third Party Service(s), they shall be provided subject to any Third Party Terms or other guidelines, restrictions or provisions imposed (whether by the relevant third party or any other person) on the Third Party Service(s), or otherwise applicable to such Third Party Service(s) (including any law, regulation, regulator, government agency or body or otherwise). The Supplier shall have no liability to the Customer in respect of the delayed or non-performance of any Services as a result of any non-compliance or breach of the Third Party Terms by the Customer.
- 3.9. **Additional Charges.** Additional Charges will be incurred at the Supplier’s then prevailing charging rates for labour and parts, for any service visits, repairs or replacements:
- 3.9.1. made at the request of the Customer outside of the scope of the Services;
 - 3.9.2. where the Incident relates to equipment outside the scope of covered Equipment;
 - 3.9.3. where any Corrective Maintenance is undertaken and the cause of the relevant Incident is determined to be any of the matters set out in Clause 5.2 or any other cause or factor not covered by the Services; or
 - 3.9.4. which the Supplier determines are not Incidents for any reason, provided always that the Supplier shall not be obliged to carry out such works. Any required consumables, replacement parts or other hardware shall be charged in addition to the Supplier’s service engineer Charges.

4 Customer Obligations

- 4.1. As a condition to the Supplier’s obligation to provide the Services, Customer shall:
- 4.1.1. **Notification:** contact the Supplier immediately when Equipment fails or malfunctions (an “**Incident**”). Additional Charges may be incurred where Supplier is notified of an Incident more than seventy two (72) hours after the Incident first arising. Customer shall take all reasonable precautions to limit further damage to the Equipment;
 - 4.1.2. **Use and Maintenance of the Equipment:** (i) not use the Equipment other than for the purpose for which it was designed; (ii) take reasonable precautions to avoid damage to the Equipment and keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer’s operating instructions (including only using such consumables, accessories, attachments, additional equipment or media with the Equipment as recommended by the manufacturer); (iii) ensure proper environmental conditions are maintained for the Equipment, including maintaining any accommodation, cabling, fittings or electricity supply of or to the Equipment in good condition; (iv) not make any physical modification to, tamper with, wrongfully operate the Equipment nor authorise anyone other than the Supplier to carry out any Corrective Maintenance or any other repair, modification or reconditioning of the Equipment; and (v) notify the Supplier in writing if any of the Equipment is to be moved and or has been moved from the relevant Site;

- 4.1.3. **Access to the Equipment:** (i) provide the Supplier with full and free access to Equipment; (ii) at the Customer's cost, permit or procure permission for the Supplier, and ensure Supplier has all necessary rights of access (including the obtaining of any permission, authorisation or other permit required), to: (A) enter any part of the Site(s), or any other premise, land or location where the Equipment is located, necessary to provide the Services; and (B) carry out any work in connection with Corrective Maintenance (including the installation, moving or replacing of any Equipment or parts) at such location(s); (iii) upon Supplier's request (and at Supplier's sole discretion): (A) permit or procure permission for the Supplier to install, configure and test any electronic service agent software ("ESA") on the Equipment; and (B) provide or procure the necessary access rights, connectivity and other required facilities to enable the Supplier to remotely detect and resolve Incidents on items of Equipment utilising the ESA functionality; and (iv) provide adequate working space around the Equipment for the use of the Supplier's Personnel, including making available such facilities as may be reasonably required by the Supplier from time to time for: (A) the storage and safekeeping of test equipment and spare parts; and (B) the Supplier's Personnel to carry out Corrective Maintenance (including any parking, IT facilities, programs or software, media, internet access, manuals or other requirements the Supplier or its Personnel may reasonably request from time to time); and
- 4.1.4. **Other Obligations:** (i) promptly provide, without delay, all information reasonably requested by the Supplier in respect of an Incident; (ii) perform, keep and maintain regular back-ups or recovery copies of the Customer's software, programs, information, data and other computer records and carry out appropriate system management functions in accordance with best computing practice; and (iii) ensure that a Customer representative is present during Corrective Maintenance by Supplier Personnel.

5 Service Exclusions

- 5.1. Requests for Service received outside of the hours of coverage stipulated in the SLA shall be responded to on a commercially reasonable efforts basis.
- 5.2. Unless expressly set out in the Contract, the Services:
- 5.2.1. do not cover: (i) damage due to improper treatment or use of Equipment; (ii) unauthorised attempts to repair, maintain, or modify the Equipment other than by or at the direction of the Supplier; (iii) damage created by external sources to the Equipment; (iv) fluctuation (outside the manufacturer's written recommendations) or failure of electrical power, air conditioning, humidity control or other environmental conditions; (v) water or other environmental damage; (vi) accident (including during transportation), damage, neglect, or misuse of the Equipment by (or caused by) the Customer, their Personnel or any other third party; (vii) cosmetic damage; (viii) any Force Majeure Event; (ix) software faults (including faults within the operating system) or viruses; (x) incorrect, incompatible, illegal or inaccurate software or firmware installed on the Equipment (including arising out of any patching or update of any software or firmware); or (xi) loss, damage, destruction, recovery or reconstruction of or to any data or programs on any Equipment as a result of any Incident. Repairs made under these circumstances shall be made at the Supplier's discretion and shall be subject to additional Charges at the Supplier's then prevailing call rates for labour and parts; and
- 5.2.2. do not include: (i) operation, supplies, consumables, media, cables, or accessories (as defined by the manufacturer) (ii) work external to the Equipment itself (iii) LTU (License to Use) updates; (iv) software updates, software support, firmware upgrades or updates; (v) hardware upgrades; (vi) hardware replacements, updates, installation or alterations, other than for Corrective Maintenance; (vii) loading, installing, uninstalling, updating, upgrading or maintenance of software, application(s), consumables, attachments to the Equipment or

data; (viii) adding, updating, upgrading, installing or amending any feature or option of the Equipment; (ix) access to any proprietary information of any original equipment manufacturer, or access to technical websites; (x) Corrective Maintenance at any site or premise other than the Site(s), unless agreed in writing in advance by the Supplier; or (xi) the recovery, restoration, installation or reconstitution of any data (whether from data back-ups or otherwise) held or stored on any Equipment.

- 5.3. Individual items of Equipment may be withdrawn from coverage if, in the Supplier's reasonable opinion, the items can no longer be supported for any reason. In these circumstances, the Supplier shall (where possible) provide Customer with reasonable notice of withdrawal.
- 5.4. Waivers of liability may not be imposed by Customer as a requirement for site or Premise access. The Supplier may suspend Services when, in the Supplier's reasonable opinion, conditions at Customer's site jeopardise the health or safety of Supplier Personnel.

6 Service Levels

- 6.1. The Supplier shall use its reasonable endeavours to respond to and/or carry out Corrective Maintenance in connection with an Incident within the Service Level(s) timeframe(s) set out in the SLA.
- 6.2. Where the Service Level includes "**Response Time**", meaning the onsite presence of a Supplier engineer within a certain period as specified in the SLA, the Response Time shall be measured from the date of the Incident was logged on the Supplier's incident management system to the time the engineer records arriving at the applicable Site.
- 6.3. Where the Service Level includes "**Fix Time**", meaning a Supplier engineer is to resolve an Incident and return the Equipment to operational status within a certain period as set out in the SLA, the Fix Time shall be measured from the time and date the engineer arrives at the applicable Site (as recorded in the Incident log on the Supplier's Incident management system) to the time and date the Supplier logs the Incident as resolved on its Incident management system.
- 6.4. No Service Credits shall be due or payable in respect of any SLA failure by Supplier unless expressly set out in the Contract, and the Customer shall not be entitled to any financial remedy in connection with any loss arising from or in relation to a failure by the Supplier to meet any Service Level. Subject to Clauses 5 and 6.5, where the Contract specifies Service Credits are payable in connection with a SLA failure, any Service Credit(s) due shall be issued by the Supplier as a credit note to be applied by the Customer against any future invoice for Charges and shall be the Customer's sole and exclusive financial remedy in connection with any loss arising from or in relation to a failure by the Supplier to meet the applicable Service Level. Any Service Credit(s) that may be due in respect of a SLA failure must be claimed by the Customer within six (6) months of the date on which the right to claim the Service Credit(s) first arose.
- 6.5. In calculating the total Response Time and/or Fix Time of the Supplier in responding to an Incident, time spent in respect of: (i) any period where any act, instruction, omission or delay of the Customer (including but not limited to any prevention of Supplier or its Personnel accessing any Site by the Customer or any other party) resulted in Supplier being unable to perform its obligations under the Contract; and (ii) any of the matters set out in Clause 5, shall be excluded, discounted and disregarded.

7 Charges and Payment

- 7.1. In consideration of the provision of the Services, the Customer shall pay the Charges periodically in advance. All Charges are to be paid within thirty (30) days of the date of the Supplier's invoice, or such other period as agreed in the Contract (the "**Due Date**"). Charges may be: (i) recurring (at such frequency and for such periods as set out in the Contract, e.g. monthly, quarterly or annually) or (ii) "one-off" or non-recurring. Recurring Charges may be invoiced up to ninety (90) days prior to their next billing period. One-off Charges will be invoiced on or before commencement of the applicable Service(s) or the relevant work is undertaken.
- 7.2. All Charges shall be paid without deduction, set off or prior demand and no payment shall be considered made until it is received by the Supplier. The Supplier shall be entitled to recover the Charges notwithstanding that performance of the Services may not have taken place and the Customer shall not be entitled to a refund in the event that it does not make use of the Services at its disposal. The Charges shall be non-

- refundable on termination of the Contract (in whole or part) for any reason unless otherwise specified within these Conditions or a Contract.
- 7.3. Where the Customer disputes an invoice, the nature and detail of the dispute shall be provided in writing within sixty (60) days of the date of the disputed invoice, and the Parties will act promptly and in good faith to resolve the matter. The Customer must make payment of the disputed invoice in full, without set off or deduction, in accordance with the normal payment terms for the invoice. If, after resolving the dispute, it is agreed that any overpayment of Charges has been made by the Customer, Supplier will issue a credit note to Customer to be applied against future invoices in the amount of the overpayment.
- 7.4. Subject to the terms within this Clause 7.4, the Supplier shall be entitled to increase the Charges:
- 7.4.1. no more than once in each period of twelve (12) months commencing on the Service Commencement Date and each anniversary thereafter by giving to the Customer not less than thirty (30) days prior written notice. Such increase shall not exceed the greater of: (i) the percentage rate of CPIH at the date of the Supplier's notice; and (ii) five percent (5%) of the Charges as at the date of the Supplier's notice; and
- 7.4.2. in addition to any increase to the Charges made pursuant to Clause 7.4.1 above, at any time by giving the Customer not less than thirty (30) days' notice in writing where the costs of providing the relevant Services (or any part thereof) by the Supplier increase due to matters outside of the Supplier's control, including but not limited to any increase in the cost of power or energy, any licensing, charges payable by the Supplier to any third party in connection with the provision of the relevant Service(s) (or part thereof), or in meeting any legal or regulatory requirements applicable to the Supplier in providing the Services (or any part thereof).
- 7.5. The time of payment of the Charges shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 7.6. If the Customer fails to make any undisputed payment within thirty (30) days of its Due Date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to (i) immediately on written notice suspend any further performance of the Services or terminate the applicable Contract(s); and (ii) 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).
- 7.7. The Charges, and any additional charges due under a Contract, are exclusive of value added tax and any other applicable taxes, which the Customer shall pay in addition to the Charges.

8 Duration

- 8.1. Each Contract shall commence on its Effective Date and, unless terminated earlier in accordance with its terms, shall continue until the expiry of the initial minimum period set out in the Contract (the "**Initial Term**"). Thereafter (unless specified otherwise in the Contract) it shall continue from year to year unless terminated by either Party giving the other at least ninety (90) days' prior written notice, such notice to expire no earlier than the last day of the Initial Term or any subsequent anniversary thereof (the Initial Term and all subsequent renewals being collectively the "**Term**").
- 8.2. Each Service under the Contract shall commence on its Service Commencement Date and shall continue until the expiry of the Term. The Customer acknowledges that, where multiple Services are provided under a Contract, each Service may have a different Service Commencement Date.

9 Termination

- 9.1. Without prejudice to any other rights a Party may to end the Contract (whether set out in these Conditions or otherwise), either Party may terminate the Contract immediately, by giving written notice to the other Party, if the other Party: (i) commits any material breach of the Contract and (in the case of a material breach capable of being remedied) fails to remedy it within thirty (30) days of being notified of the breach; (ii) has a liquidator, administrative receiver, administrator, receiver, bankruptcy trustee or similar officer appointed over all or some

of their assets or business (other than for purposes of a genuine amalgamation, reorganisation or restructure), passes a resolution for winding-up or a Court of competent jurisdiction makes an order to that effect, becomes subject to an administration order, enters into any voluntary arrangement with its creditors, ceases or threatens to cease to carry on business, or is subject to any events or circumstances analogous to the foregoing in any applicable jurisdiction; (iii) in respect of the Customer, fails to make any payment of Charges or other sums due under a Contract within thirty (30) days of its Due Date; or (iv) is suspected, in the first Party's reasonable opinion, of committing fraud or attempted fraud or any other criminal offence in connection with the use of the Services, the Equipment or the Contract. Unless expressly set out in the Contract, Customer shall have no right to terminate (in whole or part) the Contract and/or the Service(s) for convenience.

- 9.2. Where a Contract is terminated by the Customer pursuant to Clause 9.1, the Customer shall be entitled to a pro rata refund of any Charges paid in advance for any period after the date of termination (calculated on a time, and on an item by item, basis).
- 9.3. Termination or expiry of a Contract (howsoever caused) shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry. Any provision of the Contract expressed or by implication are intended to continue after termination shall remain in full force and effect. Termination or expiry of a Contract shall not affect any other Contract, which shall continue in accordance with their terms in full force and effect.

10 Changes to the Contract and the Services

- 10.1. The Supplier shall be entitled to vary or amend the Conditions from time to time by posting the varied Conditions to its website. It is the Customer's responsibility to determine the latest version of the Conditions in force as at the Effective Date for each Contract and, by entering into a Contract pursuant to Clause 2.1, shall be deemed to have read, understood and accepted the then current version of the Conditions.
- 10.2. The Supplier shall be entitled to vary the terms and conditions of the Contract after the Effective Date to the latest version of the Conditions at any time by giving the Customer not less than thirty (30) days' prior written notice. If the proposed change(s) have a materially detrimental impact on the Customer then, unless the change is required by law (where no such right shall arise), the Customer may terminate the affected Contract(s) by giving the Supplier not less than thirty (30) days' written notice within seven (7) days of the date of the Supplier's notice of the changes. If the Customer fails to give notice within such period, or if the changes would not have a materially detrimental impact on the Customer, the Contract shall be deemed varied to incorporate the amended Conditions on the date the Supplier's notice expired. Save as amended in accordance with this Clause 10.2, each Contract shall be subject to and incorporate the version of the Conditions in force as at its respective Effective Date.
- 10.3. The Supplier shall be entitled to change or amend the Service(s) in such a manner as it may determine from time to time (including but not limited to: any change as a result of a change to its supplier's service, improvements or changes to the technical methods of delivery of the Services or the technology used in the performance of the Services, withdrawing or amending any of its equipment used in the deployment of the Services, change of name or any other substitution or alteration to the Service) without notice to the Customer, provided that such change(s): (i) do not reduce or materially alter the scope or extent of the Services provided under the Contract; (ii) no additional Charges shall be incurred or due as a result of the change(s); and (iii) there is no amendment to the Term of the Services.
- 10.4. Save as provided for in Clauses 10.1 to 10.3, no variation of the Contract shall be effective unless it is in writing and signed by or on behalf of both Parties.

11 Confidentiality

Each Party shall treat as confidential all information obtained from the other pursuant to all Contracts, including the terms of the Contract(s) and (save as provided for in these Conditions) the existence of the relationship between them. Each Party agrees to treat such information with the same degree of care and skill as it applies to its own confidential

information, use it only for the purpose for which it was disclosed and not to divulge such information to any other person (except to such Party's own Personnel and then only to those Personnel who need to know the same in connection with the Contract) without the other Party's prior written consent. This Clause 11 shall not extend to information which was rightfully in the possession of such Party without breaching the confidentiality of any other party or prior to the Effective Date the commencement of the negotiations leading to the Contract or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 11). Each Party shall ensure that its Personnel are aware of and comply with the provisions of this Clause 11.

12 Limitation of Liability

- 12.1. Except for any express warranties set forth in these Conditions, all Services are provided as-is without warranty of any kind, express or implied, including all warranties of merchantability and fitness for a particular purpose and Supplier disclaims all warranties of any kind (whether express, implied or statutory) to the fullest extent permitted by law.
- 12.2. The Parties accept that nothing in these Conditions or the Contract limits or otherwise excludes any liability for: (i) fraud or fraudulent misrepresentation; (ii) death or personal injury resulting from a Party's negligent acts or omissions in connection with the Contract; (iii) the Customer's liability to pay Charges and all other sums properly due under or in connection with the Contract; or (v) any liability which cannot be limited or excluded by law.
- 12.3. Subject to Clause 12.2, neither Party will have any liability to the other in contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with its performance, contemplated performance, non-performance or breach of its obligations under these Conditions or a Contract for any:
 - 12.3.1. loss of: (i) profits; (ii) business; (iii) value; (iv) revenue; (v) production; (vi) data; (vii) opportunity; (viii) goodwill; or (ix) anticipated savings, (in each case whether direct or indirect); and/or
 - 12.3.2. any loss or damage arising from: (i) business interruption; (ii) wasted expenditure; or (iii) any liability to any third party, (in each case whether direct or indirect); and/or
 - 12.3.3. any indirect, special or consequential loss or damage,howsoever arising and whether or not such loss or damage could have been anticipated, even if reasonably foreseeable and even if it has been advised of the possibility of such losses or events.
- 12.4. Subject to Clauses 12.2 and 12.3, each Party's total overall liability to the other for all losses, liabilities, claims, damages, costs or other expenses, of whatever type of claim and however arising (including but not limited to in respect of contract, indemnity, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise) arising out of or in connection with the Services and/or the Contract during each period of 12 months commencing on the Effective Date and each anniversary thereof (each a "**Contract Year**") shall be limited to an amount not exceeding one hundred percent (100%) of the Charges paid for Services under the Contract and during that Contract Year.
- 12.5. The provisions of this Clause 12 shall survive the termination of a Contract howsoever caused.

13 Data Protection

- 13.1. 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 Contract, the terms Data Controller, Data Processor, Personal Data and Processing shall be as defined in the Data Protection Legislation.
- 13.2. The Parties acknowledge that the Supplier and the Customer are each independent Data Controllers and that the Supplier is not considered a Data Processor of the Customer in providing the Services. The Parties further acknowledge that it may be necessary to exchange Personal Data relating to their respective Personnel (such Personal Data being "**Business Contact Information**") in order to receive the benefit of or deliver the Services (as applicable). Where a Party receives Business Contact Information from the other Party it does so as Data Controller and shall ensure that it fully complies with the Data Protection Legislation.

- 13.3. The Customer acknowledges that the Supplier does not require access to, use of, or other rights to the data (including any Personal Data) on or stored in the Equipment to provide the Services and its obligations in accordance with the terms of the Contract. The Customer agrees, warrants and undertakes to the Supplier that it shall not provide any Personal Data to the Supplier during the Term other than Business Contact Information and data unless expressly agreed in writing between the Parties (which shall include details of the nature and scope of such Personal Data).

14 General

- 14.1. **Force Majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for four (4) weeks, the Party not affected may terminate the Contract by giving thirty (30) days' written notice to the affected Party.
- 14.2. **Non-Solicitation.** During the Term and for twelve (12) months thereafter, the Customer may not solicit, directly or indirectly, any employee of the Supplier who was involved in the provision of the Services. This Clause 14.2 shall not restrict the Customer from hiring employees of the Supplier who apply unsolicited in response to a general advertising or recruitment campaign made to and directed at members of the public at large.
- 14.3. **Compliance with Laws.** Each Party shall comply with all applicable anti-bribery and anti-corruption laws, and other laws governing improper payments, in connection with the performance of the Contract, including but not limited to, the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010, each as amended, and the rules and regulations under it, and each Party shall not act in a way that would cause the other Party to be in violation of such laws (such as, by way of example, providing a kickback, bribe or inappropriate gift to any representative of the other Party or government official or political party in order to obtain or retain business or to secure an improper commercial advantage). Each Party represents that it does not, directly or indirectly, engage in or otherwise support child, slave, prisoner or any other form of forced or involuntary labour, or engage in abusive worker treatment or corrupt business practices, in the supply or receipt of Services, including, without limitation, Human Trafficking. For the purposes of this Clause, "**Human Trafficking**" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- 14.4. **Notices.** Any notice or other communication to be given by a Party to the other under or in connection with the Contract must be in writing and be delivered personally to the recipient's registered office, sent by pre-paid first class post or other next Working Day delivery service to the recipients registered office (or such other address as a Party may notify the other from time to time), or sent via email (to such address as a Party may notify the other from time to time). Any notice shall be deemed given when delivered personally, or if sent by first class or next Working Day delivery service within the UK, on the second Working Day after posting, or where sent by email the next Working Day after transmission. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee. The provisions of this Clause, in respect of email, in will not apply to the service of any proceedings or other documents in any legal action.
- 14.5. **Assignment.** Supplier may assign the Contract to any of its Affiliates at any time by giving written notice to the Customer. Supplier may subcontract the performance of all or any part of its obligations under the Contract to a subcontractor but shall remain responsible to the Customer for the performance of its obligations under the Contract. Save as provided for by this Clause 14.5, neither Party shall assign the Contract, or assign or subcontract any of its rights or obligations under the Contract, without the prior written consent of the other Party.
- 14.6. **Severance.** If any part or provision of these Conditions or the Contract is or becomes invalid, illegal or unenforceable: (i) the applicable part or provision shall be deemed modified to the minimum extent necessary

to make it valid and enforceable, or, if modification is not possible, deleted; and (ii) it shall not affect the validity or enforceability of any other part or provision of these Conditions or the Contract.

- 14.7. **No Waiver.** Any waiver of any right or remedy by a Party shall only be effective if in writing and shall not be deemed a waiver of any subsequent right or remedy. The failure or delay of any Party to exercise or enforce any right or remedy under the Contract or at law shall not be deemed to be a waiver of any such right nor shall it operate so as to bar the exercise or enforcement of that right at a later date.
- 14.8. **No Partnership.** Nothing in these Conditions or the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 14.9. **Third Party Rights.** A person who is not a party to the Contract has no right under the Contract (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract.
- 14.10. **Entire Agreement.** These Conditions, the Contract and any documents referred to within them constitute the entire understanding and agreement between the Parties and supersedes and extinguishes all prior agreements, negotiations and/or discussions between them (whether written or oral) in relation to its relevant subject matter. Each

Party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions or the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions or the Contract.

- 14.11. **Counterparts.** The Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.
- 14.12. **Governing Law and Jurisdiction.** These Conditions, the Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with any of them or their respective subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions, the Contract or their respective subject matter or formation.