



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, LLC 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 Interpretations

1.1 In these Conditions:

Additional Services means any services to be supplied by the Supplier under a Contract other than Maintenance Services;

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 due or 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;

Control means ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of a party or entity;

Contract Year means each period of 12 months commencing on the Effective Date;

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 UK 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; (iv) any applicable state laws, including the California Consumer Privacy Act as amended by the California Privacy Rights Act ("CCPA"), the Colorado Privacy Act ("CPA"), the Connecticut Data Privacy Act ("CTDPA"), the Utah Consumer Privacy Act ("UCPA") and the Virginia Consumer Data Protection Act ("VCDPA") and (v) any successor legislation, as amended, consolidated, re-enacted or replaced from time to time;

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;

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);

Inventory means the schedule of Equipment to be supported as part of the Services, as attached to the Order and forming part of the Contract;

Maintenance Services means any Services solely in respect of the maintenance, repair or support of any Equipment set out in the Inventory;

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

Order Form means the Supplier's order form for Services;

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;

Service(s) means the services to be provided by the Supplier pursuant to a Contract, as described therein, including Maintenance Services and any Additional Services specified therein;

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

Service Level means the service level(s) specified in the Inventory (if any) that applies to the Services (or the relevant part thereof) from its respective Services Commencement Date(s);

Service Terms means any additional or supplemental terms and conditions governing the supply of a specific Additional Service maintained by Supplier and made available to the Customer prior to the formation of a Contract, or otherwise set out in or appended to the Contract, and as may be updated by Supplier from time to time;

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 Inventory or 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 and executed by 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;

Third Party means any person, company, entity or party other than the Supplier or its Affiliates;

Third Party Software means any software products or services provided by a Third Party, including any firmware, middleware, or other application or utility software;

Third Party Resale Services means any products or services provided by a Third Party and resold by Supplier on a resale or "pass-through" basis, including any hardware, subscription, license, Third Party Software or other product or service;

Third Party Services means any Third Party Software and/or Third Party Resale Services supplied by Supplier under a Contract;

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 the United States, nor in 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; (vii) an obligation on a Party not to do something includes an obligation not to allow that thing to be done; (viii) **in writing** includes communications via electronic mail, except for the purposes of serving any proceedings or other documents in any legal action where communication via electronic mail shall be excluded; (ix) any reference to a Party includes their successors in title and permitted assigns; and (x) any headings in these Conditions are for convenience and are not to be used in interpreting these Conditions.

2 Ordering Services

- 2.1 Upon the Customer requesting Supplier provide Services, Customer shall provide Supplier with all information Supplier 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. Any quotation issued by Supplier 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. An Order submitted by Customer 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 authorized representative of the Supplier; (ii) a written confirmation and acceptance of the Order sent by an authorized representative of the Supplier to the Customer via email; or (iii) the provision of Services by the Supplier. The acceptance of an Order by the Supplier shall constitute a contract (a **Contract**) between the Parties 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. 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 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; (ii) the Service Terms applicable to any Additional Services provided under the Contract *mutatis mutandis* as if set out in full (iii) Conditions *mutatis mutandis* as if set out in full; (iv) the Order; and (v) 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 conditions contained on or referred to in any purchase order, quotation, acknowledgement, electronic procurement system (even if checked by a party as a requirement for registration), 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 the Services set out in the Contract to the Customer. The Supplier warrants that in the performance of the Services: (i) it will use competent technicians specifically trained to service the Equipment, and (ii) it will perform the Services in a workmanlike manner pursuant to generally accepted industry standards.
- 3.2 Unless stated otherwise in the Contract, the Services shall include **Corrective Maintenance** of the Equipment as part of the Maintenance Services, which shall consist of:
- 3.2.1 subject to Clauses 4 and 5 and in response to an Incident, the Supplier using its reasonable endeavors 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 labor 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: (a) deemed necessary and mandatory by the Equipment manufacturer to maintain its operating condition; and (b) provided free of charge to the Supplier by the manufacturer, at a time mutually agreed upon by the Parties. Where such change orders are not provided free of charge to the Supplier, Supplier's obligation to provide such change orders to the Customer shall be limited to the extent that such change orders are expressly set out in the Contract and the Charges.

- 3.3 **Equipment Survey.** Supplier reserves the right to review or inspect the Equipment within thirty (30) days of the Effective Date. If the Supplier identifies any inaccuracies, defects or other issues in the Equipment, or additional hardware that it considers 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 either cancel the affected Contract or reject the proposed additions by giving thirty days' (30) written notice within seven (7) days of the Supplier's notice. If the Customer does not cancel the Contract or reject the additions within seven (7) days of the date of the Supplier's notice, it shall be deemed to have accepted the amendments to the Service(s) and/or Charges with effect from that date. If the Customer exercises its right to cancel under this Clause 3.3, it shall be liable to pay Charges up to the expiration of its notice.
- 3.4 **Ownership of Replaced Parts.** Any replacement equipment provided as part of any Corrective Maintenance shall become the property of the Customer and be deemed the Equipment after its replacement. The Supplier shall take ownership of exchanged or defective parts removed from Equipment (**Replaced Parts**), with the exception of removable storage media. 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 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 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, as part of any Corrective Maintenance. If identical parts are not available, the Supplier will use its reasonable endeavors 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.**
- 3.7.1 **Additions.** Any additions to the Equipment (**Additions**) shall be made by prior written agreement between the Parties. Customer shall submit any request for Additions 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). The Service Commencement Date for any Additions shall be confirmed by Supplier in writing and Supplier shall have no liability to provide Services in respect of Additions prior to that date. Additional Charges (on a time and materials basis) shall apply to any Services provided in respect of Additions prior to its Service Commencement Date.
- 3.7.2 **Removals.** Equipment may be removed from coverage under a Contract by the Customer giving not less than thirty (30) days' prior written notice to the Supplier. Clause 9.3 shall apply to any Equipment removed from coverage under this Clause 3.7.2.
- 3.8 **Third Party Services.** Where the Services include any Third Party Service(s), they shall be provided subject to any Third Party Terms and any other guidelines, restrictions or provisions imposed (whether by the relevant third party or any other person) on or otherwise applicable to the Third Party Service(s) (including any law, regulation, regulator, government agency or body or otherwise). Supplier shall have no liability to Customer in respect of any delay or non-performance of any Service(s) as a result of any non-compliance or breach of the Third Party Terms or any other guidelines, restrictions or provisions imposed on or applicable to the Third Party Service(s) by the Customer.

3.9 **Additional Charges.** Additional Charges will be incurred at the Supplier's then prevailing call rates for labor 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 (including any Additions prior to their Service Commencement Date);
- 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,

that Supplier agrees (but shall not be obliged) to undertake. 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 arises. 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 authorize 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 (including vendor compliance that the Customer requires through a third party), permit or procure permission for the Supplier, and ensure Supplier has all necessary rights of access (including the obtaining of any permission, authorization 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 utilizing 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 Service Levels 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) unauthorized 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), except where negligently installed by Supplier; 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 labor 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 by Supplier 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 and Clause 9.3 shall apply.
- 5.4 Waivers of liability may not be imposed by Customer as a requirement for site or Premise access. The Supplier may temporarily suspend Services if, upon arriving at Customer's site, it is Supplier's reasonable opinion that the conditions at Customer's site jeopardize the health or safety of Supplier Personnel.

6 Service Levels

- 6.1 The Supplier shall use its reasonable endeavors 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 Inventory.

- 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 Inventory:
- 6.2.1 the Response Time shall be measured from the time and date the Incident was logged on the Supplier's Incident management system to the time the engineer records arriving at the applicable Site; and
- 6.2.2 any 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/or (ii) any of the matters set out in Clause 5; shall in each case be excluded, discounted and disregarded.
- 6.3 Additional Service Level definitions:
- 6.3.1 Coverage Hours Definitions:
7 (Days) x 12A-12A (Hours) – Engineer is dispatched 24 hours per day, 7 days per week and 365 days per year.
5 (Days) x 8A-5P (Hours) – Engineer is dispatched 8:00am to 5:00pm, Monday through Friday.
- 6.3.2 Response Time Definitions:
4 HOUR – Engineer will arrive onsite within 4 hours
8 HOUR – Engineer will arrive onsite within 8 hours
WTYTRACK – Currently covered under Original Equipment Manufacturer's warranty. Any calls to Service Express for service will be at current time and material rates.
WTY 4 HOUR – Currently covered under Original Equipment Manufacturer's warranty. Engineer is dispatched and will arrive onsite within 4 hours.
WTY 8 HOUR – Currently covered under Original Equipment Manufacturer's warranty. Engineer is dispatched and will arrive onsite within 8 hours.
- 6.4 No service credits or other sums shall be due or payable in respect of any Service Level failure by Supplier (**Service Failure**) unless expressly set out in writing within the Contract. The Customer shall not be entitled to any financial remedy in connection with any loss arising from or in relation to a Service Failure.
- 6.5 Subject to Clauses 5 and 6.2.2, if the Contract does specify that service credits or other specified sum(s) are payable in connection with a Service Failure, any such service credit(s) or other specified sums due shall be the Customer's sole and exclusive financial remedy in connection with any loss arising from or in relation to a Service Failure. Any service credit(s) or other specified sums that may be due in respect of a Service Failure must be claimed by the Customer within six (6) months of the date on which the right to claim the service credit(s) or other specified sum first arose.
- ## 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. Charges for Equipment added to or removed from a Contract pursuant to Clause 3.7 will be pro-rated on a thirty (30) day month.
- 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 as at the date of its invoice 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.
- 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 undisputed portion of the 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 disputed funds are owed to Supplier, such sums shall immediately become due and payable and Customer shall immediately make payment of the overdue balance in full, without set off or deduction.
- 7.4 The time of payment of the Charges shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 7.5 The Supplier reserves the right to increase or amend the Charges at any time after expiration of the Initial Term by giving the Customer not less than thirty (30) days' prior written notice.
- 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 Wall Street Prime Rate 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 any applicable sales tax or other 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 expiration 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 thirty (30) days' prior written notice at any time (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 expiration 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 A Contract may be terminated without penalty by either Party upon thirty (30) days' prior written notice at any time (whether during or after the Initial Term).
- 9.2 Without prejudice to any other rights a Party may have 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, reorganization 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.
- 9.3 Where a Contract is terminated pursuant to Clause 9.1 or 9.2, the Customer may, on written request to the Supplier, claim a credit in an amount calculated as: (i) any pre-paid Charges for any period after the effective date of termination, on a pro rata basis; less (ii) any unavoidable losses, liabilities, damages, costs, expenses, disbursements, penalties or other amounts that Supplier can reasonably demonstrate have been or must be paid by Supplier as a result of such termination (including any license fees or early termination charges). Supplier may apply the credit against any

Charges due under any Contract between the Parties. Customer may request a cash refund of the credit only if all invoices due on any Contract between Parties are paid in full.

- 9.4 Termination or expiration 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 expiration, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiration. Any provision of the Contract expressed or by implication are intended to continue after termination shall remain in full force and effect. Termination or expiration 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 updated 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. Each Contract shall be subject to and incorporate the version of the Conditions in force as at its Effective Date.
- 10.2 The Supplier shall be entitled to change or amend the technical or operational manner in which it performs or delivers the Service(s) at any time 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; (any change that would fall under Clause 10.2(i) to (iii) being a **Detrimental Change**).
- 10.3 Save as provided for in Clauses 10.1 to 10.2, no variation of the Contract (including any Detrimental Change) shall be effective unless it is in writing and signed by or on behalf of both Parties.

11 Confidentiality

- 11.1 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 Commencement 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 intentional misconduct; (ii) the Customer's liability to pay Charges and all other sums properly due under or in connection with the Contract; or (iii) 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 within a Contract Year shall be limited to an amount not exceeding one hundred percent (100%) of the Charges paid for Services under the Contract during that Contract Year.
- 12.5 Any action against Supplier must be brought within twelve (12) months after the cause of action occurs.
- 12.6 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).
- 13.4 Notwithstanding the provisions of this Clause 13, if it is agreed between the Parties that Supplier will process Personal Data on behalf of Customer in connection with a Contract, the Parties will negotiate in good faith, and enter into, a data processing addendum to that Contract governing such processing.

14 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.

15 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 mail or other delivery service to the recipients registered office (or such other address as a Party may notify the other from time to time), or 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 mail or other next Working Day delivery service, on the second Working Day after posting (or the fifth Working Day where the recipient's address for service is in a different country from the sender's), 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 mail 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 will not apply to the service of any proceedings or other documents in any legal action.

16 General

- 16.1 **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 16.1 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.
- 16.2 **Compliance with Laws.** Each Party shall comply with all applicable laws related to the provision of Services, including, but not limited to, those relating to wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Without limiting the generality of the foregoing, 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 labor, 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, harboring 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. Supplier Express further represents it does not, directly or indirectly, utilize the labor of North Korean nationals and/or North Korean citizens.
- 16.3 **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 16.3, 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.
- 16.4 **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.
- 16.5 **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.
- 16.6 **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 authorize any Party to make or enter into any commitments for or on behalf of any other Party.
- 16.7 **Third Party Rights.** A person who is not a party to the Contract has no right under the Contract to rely upon or enforce any term of the Contract.
- 16.8 **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.
- 16.9 **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.

17 Governing Law and Jurisdiction

- 17.1 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 following laws:
- 17.1.1 where the Supplier entering into the Contract is formed or registered in the United States of America, the laws of the State of Delaware (without regard to its conflict of law principles); and
- 17.1.2 where the Supplier entering into the Contract is formed or registered in in Canada, the laws in force in the Province of Ontario and the applicable laws of Canada.
- 17.2 Each Party irrevocably agrees that the courts in the applicable jurisdiction set out above (including, where the jurisdiction is the state of Delaware, the state or federal courts in the state of Delaware) 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.