

TERMS AND CONDITIONS FOR THE PROVISION OF DISASTER RECOVERY SERVICES

1. **DEFINITIONS**

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

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

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

'Business Day' means a day which is not a Saturday, Sunday or a public holiday in England and Wales;

'Commencement Date' means the date on which the Agreement shall become effective as set out in the Schedule;

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

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

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

'End User' means either (i) the separate entity set out on the Schedule and recognised by the Parties as a client of the Customer, and with which the Company has no direct contractual or other responsibilities under this Agreement; or (ii) where no separate entity is set out on the Schedule, the officers, directors, employees, sub-contractors, workers and agents (including any persons hired as consultants or contract staff) of the Customer which may utilise the Equipment and/or Services from time to time;

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

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

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

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

'Invocation Period' means the period as detailed in the Service Level Agreement during which the Replacement Equipment will be made available to the Customer and/or End User following an Invocation without any additional charges;

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

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

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

'Period Discount' means the discount offered to the Customer by the Company for entering into the Agreement as set out in the Schedule

'Recovery Test' means a scheduled test of the Replacement Equipment and other Services at the Recovery Centre as detailed in the Service Level Agreement;

"Replacement Equipment" means the Company's hardware equivalent to or greater than the specification set out in the Schedule and used in the provision of the Services;

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

‘Service Charges’ means the charges in respect of each item of Equipment or part of the Services as set out in the Schedule and payable in advance at the intervals set out in the Schedule;

‘Service Level Agreement’ means the named Disaster Recovery Service Level Agreement and found at <https://www.bluechip.co.uk/terms-conditions> under the heading Disaster Recovery; and

‘Services’ means the services to be provided by the Company as set out in the Service Level Agreement and herein; and

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

For the purposes of the Agreement (i) reference to legislation is, except as otherwise specifically referenced, to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; (ii) reference to a document or provision thereof is to that document or provision as amended, supplemented, replaced or novated; (iii) where the words “include”, “includes”, “including” or “in particular” (or similar derivatives) are used, they are deemed to be followed by the words “without limitation”; (iv) “will” and “shall” are expressions of command, not merely expressions of future intent or expectation; (v) use of the singular imports the plural and vice versa; and (vi) headings are for purposes of reference only and will not in any way limit or affect the interpretation of any of the terms herein and references to any clause or paragraph in any document that forms part of the Agreement refer to the applicable clause of that document, unless expressly stated otherwise.

2. DURATION

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

3. THE SERVICES

a) During the continuance of the Agreement the Company shall provide the Customer and/or End User (as applicable) with the Services following an Invocation

(including Replacement Equipment where specified in the Schedule).

b) **Invocation:** To initiate use of the Services in the event of failure of the Equipment, the Customer or End User (as applicable) notification must be made to the Company’s nominated service control as set out in the Service Level Agreement or as notified to the Customer in writing from time to time.

c) **Images:** The Customer acknowledges that the provision of Image Recovery (where specified on the Schedule as part of the Services) is contingent upon the Customer permitting the Company to complete collection of server images in accordance with the Service Level Agreement. Collection of server images is required prior to any Invocation or Recovery Test.

d) **Testing:** The Customer and/or End User (as applicable) shall be entitled to undertake a Recovery Test subject to the number of days per annum as specified in the Schedule. The procedure for requesting a Recovery Test is described in the Service Level Agreement. The Company shall be entitled to postpone or cancel any a Recovery Test if the Replacement Equipment is needed by another customer Invocation. Any such cancelled Recovery Test can be rescheduled at no additional cost. Termination of an active Recovery Test at the Customer’s or End User’s request will result in loss of allocation. If additional testing is required to offset a cancellation by the Customer or End User, it can be purchased at a cost of £500 per day.

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

4. COVER

On receipt of a request for Invocation, and unless agreed otherwise with the Customer or End User, the Company undertakes to make the Replacement Equipment and other Services available as set out in the Service Level Agreement.

5. EXCEPTIONS

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

6. SERVICE CHARGES

a) In consideration of the Services the Customer shall pay the undisputed Service Charges periodically in advance and in accordance with the payment terms as set out in the Schedule and stated on each correctly rendered invoice (the “Due Date”). All undisputed Service Charges shall be paid without deduction, set off or prior demand and no payment shall be considered made until it is received by the Company. For the avoidance of doubt the Customer shall not be entitled to a refund in the event that it does not make use of the Services at its disposal.

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

c) Any undisputed charges payable by the Customer hereunder in addition to the Service Charges shall be paid within thirty (30) days after receipt of the Company's invoice therefore without any deduction or set off.

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

e) Subject to this sub-clause, the Company shall be entitled from time to time to increase the Service Charges by giving to the Customer not less than ninety (90) days prior written notice. Such increase shall not exceed the percentage increase in the CPIH for the period from the Commencement Date (in the case of the first increase) or the date on which any immediately preceding increase came into effect pursuant to this sub-clause (in the case of second or subsequent increase) up to the date of such notice. No increase in Service Charges pursuant to this sub-clause may be made until a period of twelve (12) months has elapsed since the later of (i) the Commencement Date; or (ii) the effective date of any immediately preceding increase.

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

g) Subject to sub-clause 6 h), any item of Equipment may be removed from the Agreement by

the Customer at any time during the Term by giving the Company ninety (90) days written notice. A full pro-rata credit, without penalty, will be issued unless the Agreement is subject to a Period Discount. Where a Period Discount applies to the Agreement, the value of the Period Discount already received up to the end of the notice period will be deducted from the pro-rata credit.

h) During the term of the Agreement, the net effect of any additions and/or removals to/from the Agreement must not at any time cause the value of the Agreement to fall below eighty (80) percent of the Agreement's original annual value as at the Commencement Date

i) If the Customer fails to make any undisputed payment within thirty (30) days of the Due Date for payment then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

- (1) cancel the Agreement or suspend any further performance of the Services;
- (2) appropriate any payment made by the Customer as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- (3) charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of three (3) per cent per annum above the base rate of Barclays Bank plc from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

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

7. ADDITIONAL CHARGES

a) The Company will (if it is able to do so) at the request and expense of the Customer supply Additional Services. The additional charge(s) to be agreed in advance with the Customer, and in accordance with the Company's standard scale of charges from time to time in force. Additional Services may include such items as software upgrades, applications supply/support and any other items requested by the Customer that are not explicit within the Service Level Agreement.

b) The Company shall make an additional charge, to be agreed in advance with the Customer, and in accordance with the Company's standard scale of charges from time to time in force, for service visits,

repairs or replacements made at the request of the Customer or End User (as applicable):

- (1) by reason of any fault in the Replacement Equipment due to causes not covered by the Services;
- (2) if the Company is able to repair or replace any part of the Replacement Equipment which has failed due to a cause other than fair Wear and Tear or due to the Customer's neglect or fault; or
- (3) repeatedly made at the request of the Customer or End User but which the Company finds (having given prior written notice to the Customer) are avoidable frivolous or not necessary.

8. REPLACEMENT EQUIPMENT

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

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

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

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

9. CUSTOMER OBLIGATIONS

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

b) The Customer shall be responsible for: (i) informing the Company of any changes in the Equipment or its specifications that may require

changes to the Replacement Equipment provided on Invocation; and (ii) providing the Company with any other reasonably requested information (including ensuring the accuracy of such information) within a sufficient time to enable the Company to perform the Agreement in accordance with its terms.

c) The Customer is responsible for the availability and integrity of security copies of the Customer's or End User's (as applicable) data, software, programs and computer records in accordance with best computing practice. All system and application security and password controls are a Customer responsibility, including the resolution of any issues relating to the operation of application software linked to hardware serial numbers.

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

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

- (1) except where the Replacement Equipment is installed on the Company's premises, ensure proper environmental conditions are maintained for the Replacement Equipment and maintain in good condition the accommodation of the Replacement Equipment, the cables and fittings associated therewith and the electricity supply thereto, including compliance with appropriate health and safety regulations;
- (2) not make any modification to, tamper with, wrongfully operate, repair or maintain the Replacement Equipment without the Company's prior written consent or authorise anyone other than the Company to carry out any adjustments, repairs or maintenance of the Replacement Equipment;
- (3) notify the Company within twenty four (24) hours if the Replacement Equipment needs maintenance or is not operating correctly;
- (4) not use in conjunction with the Replacement Equipment any accessory, attachment or additional equipment other than that supplied by or approved in writing by the Company without the Company's prior written consent;

- (5) not remove the Replacement Equipment from a relevant Nominated Address; and notify the Company in writing if any of the Replacement Equipment is to be moved or if any of the Replacement Equipment has been removed from service;
 - (6) take reasonable precautions to avoid damage to the Replacement Equipment and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Replacement Equipment;
 - (7) if requested by the Company, co-operate with the Company's personnel in the diagnosis of any malfunction of the Replacement Equipment;
 - (8) except where the Replacement Equipment is installed on the Company's premises, make available to the Company free of charge all facilities and services reasonably required by the Company to enable it to perform the Services and/or maintenance of the Replacement Equipment;
 - (9) provide at the Customer's or End User's expense such local network and other telecommunication facilities as are reasonably required by the Company for installing the Replacement Equipment, testing and diagnostic purposes;
 - (10) only use the Replacement Equipment for the purpose for which it was designed and keep proper back up of data on at least a daily basis. The quality and integrity of the data is entirely the Customer's and/or End User's (as applicable) responsibility;
- f) **Access to the Replacement Equipment:** Whilst the Replacement Equipment is in the possession or under the control of the Customer and/or End User, the Customer shall, or as applicable take reasonable measures to, ensure any End User shall:
- (1) provide the Company with full and safe access to the Replacement Equipment for the purposes of the Agreement;
 - (2) except where the Replacement Equipment is installed on the Company's premises, provide adequate working space around the Replacement Equipment for the use of the Company's personnel;
 - (3) except where the Replacement Equipment is installed on the Company's premises, where practicable provide a suitable vehicle parking facility for use by the Company's personnel

which is free from any legal restrictions and is close to a relevant Nominated Address;

- (4) ensure in the interest of health and safety that the Company's personnel, while at a relevant Nominated Address for the purposes of the Agreement, are at all times accompanied by a member of the Customer's or End User's (as applicable) staff familiar with the location and safety procedures.
 - g) Whilst any Replacement Equipment is in the possession or control of the Customer and/or End User, other than when it is being used at the Company's premises, the Replacement Equipment shall be at the Customer's risk and it shall be responsible for insuring or ensuring the End User insures the same against all normal risks.
 - h) The Customer shall ensure the Company has access to the Customer and/or End User premises (as applicable) to enable any Replacement Equipment to be removed without any delay and shall give such access, if so required by the Company, at any time on any day of the week including Sundays and public Holidays, subject to reasonable notice. Prior to removal of the Replacement Equipment the Customer shall be responsible for the removal of all software and data.
- 10. CUSTOMER WARRANTIES**
- a) The Customer warrants to the Company that the Equipment is fully operational at the Commencement Date and the Equipment is subject to and the Customer or End User (as applicable) will maintain a hardware maintenance agreement with an appropriately qualified and skilled provider.
 - b) The Customer warrants: (i) that the Customer's and/or End User's data (as applicable) will not contain anything obscene, offensive or defamatory,; and (ii) it has made commercially reasonable efforts to obtain confirmation from the End User (where not the Customer) that it is registered for the purposes of the Data Protection Legislation (where required) and that it will comply with the provisions of the Data Protection Legislation.
 - c) The Customer undertakes to indemnify and hold harmless the Company against any losses, damages and/or reasonable costs and expenses that the Company may suffer as a result of a breach by the Customer of sub-clauses a) and b) above or any breach of the Customer's obligations pursuant to Clause 9.
 - d) The Customer shall indemnify the Company against any claim made by any third party for alleged infringement of any copyright or other intellectual property rights which arises as a result of the storage or

processing of any of the Customer's and/or End User's programs or data on the Replacement Equipment.

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

11. COMPANY WARRANTIES

a) Subject to sub-clause b) the Company warrants that it will use reasonable skill and diligence in and appropriately qualified and experienced staff performing the Agreement. The Company undertakes to take all reasonable measures to maintain in good working order all computer hardware and software that it uses in the supply of the Services, but the Company does not warrant that the Services or any Additional Services will cause the Replacement Equipment to operate without interruption or error.

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

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

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

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

e) The Company shall indemnify the Customer and keep the Customer fully and effectively indemnified on demand against any loss of or damage to any property

or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Company, its employees, agents or subcontractors.

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

12. LIABILITIES

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

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

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

d) Subject to sub-clause c) the liability of the Company under the Agreement in respect of each event or series of connected events shall not exceed the aggregate Service Charges during the Initial Term. If a number of events give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

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

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

or End User to keep full and up-to-date security copies of the software, programs or data it uses, in accordance with best computing practice.

g) Notwithstanding anything else contained in these Conditions, the Company shall not be liable to the Customer for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.

13. CONFIDENTIALITY

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

14. DATA PROTECTION

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

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

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

15. NON-SOLICITATION

During the term of this Agreement and for twelve (12) months thereafter, neither Party may solicit, directly or indirectly, any employee of the other Party who was involved in the provision or receipt of the Services. This Clause 15 shall not restrict a Party from hiring employees of the other Party who apply unsolicited in response to a general advertising or recruitment campaign.

16. TERMINATION

a) Notwithstanding anything else contained herein, the Agreement may be terminated:

- (1) by either Party forthwith on giving notice in writing to the other if the other commits any material breach of any term of the Agreement (other than any failure by the Customer to make any payment hereunder in which event the provisions of sub-clause 6 i) above shall apply) and (in the case of a material breach capable of being remedied) shall have failed, within thirty (30) days after the receipt of a request in writing from the other Party so to do, to remedy the material breach (such request to contain a warning of such Party's intention to terminate); or
- (2) by either Party forthwith on giving notice in writing to the other if the other Party shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a Court of competent jurisdiction shall make an order to that effect or if the other Party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

b) For the avoidance of doubt a breach of Party's obligations under Clauses 18 and 19 shall be deemed a material breach not capable of remedy and the non-breaching Party may terminate the Agreement in writing with immediate effect.

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

17. FORCE MAJEURE

a) Neither Party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to acts of God, riots, war or armed conflict, acts of terrorism, fires, flood, hurricane, tornado, or earthquake, or disaster, force majeure declaration of suppliers, strikes, lockout or other form of industrial action (other than of its own employees), wrecks or delays in transportation.

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

18. ANTI-BRIBERY

a) Both parties agree to comply with all applicable laws, regulations, legally binding codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Anti-Bribery Law**").

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

19. MODERN SLAVERY

a) Both Parties shall comply with all applicable laws, statutes, regulations legally binding codes and sanctions relating to the Modern Slavery Act 2015 (the "**Slavery Rules**") and the Company shall comply with any reasonable written request received from the Customer for the purposes of any annual reporting requirements under the Slavery Rules.

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

20. NOTICES

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Schedule or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice shall be deemed to have been

served if by hand when delivered, if by first class post forty eight (48) hours after posting.

21. GENERAL

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

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

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

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

e) The Parties shall observe all appropriate regulations in relation to electricity supplies, telecommunications and other communication services, all directions and guidelines issued by the manufacturer of the Replacement Equipment and all statutory and other regulations relating to the use of the Replacement Equipment

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

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

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

d) For the avoidance of doubt where the Customer requires the Company to issue invoices against a

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

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

f) The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement and no rights or benefits expressly or impliedly conferred by it shall be enforceable under such act of legislation against the parties to the Agreement by any other person.

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

h) In the event of any inconsistency between the Conditions, Service Level Agreement and the Schedule then the following order of priority shall prevail; (i) the Schedule; (ii) the Service Level Agreement; and (iii) these Conditions.

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