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## **Contract for Disaster Recovery Service**

### **Schedule**

Between:-

(the Customer)

And

Blue Chip Customer Engineering Ltd  
Franklin Court  
Priory Business Park  
Bedford MK44 3JZ  
(the Company)

### **General**

#### **1. Type of Cover**

The Contract will cover any or all of the Equipment listed on the Schedule(s). The service may be invoked if an event renders the computer system(s) inoperable, as defined by the Customer at the time of invocation. The service will be delivered according to the Service Level Agreement of the solution as specified in the Schedule.

Specific details of the Customer's service are listed in the Service Level Agreement part of this document. Any changes to the standard Contract terms are superceded by the Service Level Agreement and Contract Addendum (if any). Any Contract Addendum is valid only when countersigned by a Blue Chip Company Director.

#### **2. Delivery Locations (Premier & Premier Plus solutions only)**

The Customer may nominate up to 5 addresses (located in England, mainland Scotland or Wales) for delivery of the replacement system in the event of an invocation.

#### **3. Pre Test Meeting & Image Collections**

Prior to the first complete test run Blue Chip will offer the Customer a pre-test meeting to help ensure testing runs smoothly.

If the Contract provides cover for Intel servers with Image Recovery, collection of the images is required prior to testing. Blue Chip will arrange to collect the required images within office hours unless otherwise specified in the Schedule.

Blue Chip will load a small agent on to the Customer's Windows systems to enable snap images of the critical servers to be taken. Once the images have been taken, the agent will be removed. Blue Chip will retain the image(s) on a secure NAS (Network Attached Storage) at its Data Centre in Bedford.

Intel Image Collections are performed during normal Business Hours (9.00 – 17:30) unless otherwise specified in the Contract schedule.

#### 4. Testing

The Contract includes a minimum of 2 days testing per annum (unless otherwise specified in the Schedule). Any additional test days deemed necessary by Blue Chip will be charged at the Annual Rate shown in the Schedule. Blue Chip will schedule recovery testing days with the Customer's agreement to take place at its Recovery Centre in Bedford (unless otherwise specified in the Schedule). The Customer's attendance is recommended but not obligatory. Depending on the Customer's own infrastructure, Blue Chip may be able to offer remote testing via VPN or an appropriate product.

Once mutually acceptable test dates have been identified, the Customer will be provided with a Test Booking Form. The form provides Blue Chip with the information necessary to complete the arrangements for testing, including providing access to attendees to our secure facilities as part of our SAS70 accreditation. Forms must be completed and returned no later than 4 weeks prior to the test. Any dates offered remain available to other Customers until completed booking forms are returned.

In the event that Blue Chip has a live invocation during a testing period, the Customer agrees to terminate the test. Any test so interrupted will be re-scheduled at no extra cost.

Termination of testing at the Customer's request will result in loss of allocation. If additional testing is required to offset this, it can be purchased at a cost of £500 per day.

#### 5. Test Results

Blue Chip follows procedures in accordance with ISO9001. After the Customer has completed a successful test, Blue Chip will provide a post test report to the Customer. This will document procedures followed during the test, results, restore times and recommendations for future improvements.

A Certificate of Test Completion will also be issued. This is valid for 12 months from the first day of the successful test.

#### 6. Failure to Test

Without prior testing, the chances of a successful recovery in the event of a disaster are less than 20%. If Blue Chip's invitations to the Customer to test are ignored or declined and Blue Chip has, therefore, not been able to carry out successful testing prior to an invocation, the Directors of:-

can be held **personally responsible** for any consequences to the Customer's business arising from a prolonged or unsuccessful recovery.

### Invocation

#### 1. Invoking the Service

- Call Blue Chip's hotline number on 01234 224400. This number is manned 24 x7, 365 days a year by Blue Chip's own call centre staff who have access to the incident logging systems for formal reporting of the invocation.
- Inform the operator:-
  - a) that you wish to invoke your Disaster Recovery Contract
  - b) of your name and company name
  - c) of a contact telephone number
  - d) of the nature of the disaster and provide as much information about the damage to your systems as possible
  - e) of the Nominated Address where you require the replacement system to be delivered (Ship To Site contract holders only).

The call will be escalated to Blue Chip's Disaster Recovery team who will commence recovery procedures and contact you as a matter of urgency.

## **2. Initial Response**

### *Recovery Centre Service*

Blue Chip will make a Blue Chip Recovery Centre available within 4 hours of an invocation and will manage the restoration of the Customer's system/s from backups held at its Offsite Tape Store in Bedford or on receipt of the Customer's current back-ups.

Connectivity for remote users will be provided via a 2MB Shared Internet Link (unless otherwise specified in the Schedule).

Once the system is back on-line, Blue Chip will keep an engineer available for 4 hours to monitor the system and assist the Customer up to a maximum of 24 hours if problems persist.

### *Ship To Site Service*

Replacement system/s will be mobile within 4 hours to one of the Customer's Nominated Addresses (as specified in the Schedule) to be determined by the Customer at the time of invocation. Blue Chip reserves the right, in exceptional circumstances, to determine the Nominated Address. Blue Chip System Specialists will manage the full restore of the system/s either prior to shipping or on arrival at the Customer's Nominated Address.

Once the system is back on-line, Blue Chip will keep an engineer available for 4 hours to monitor the system and assist the Customer up to a maximum of 24 hours if problems persist. This period is part of the 72 hour period in Section 4 Service Solutions of the SLA

### *Flexible Service*

This service combines both our Recovery Service and Ship to Site service. The Customer chooses, in the event of an invocation, which service is required. Please see above for specific details of each service.

## **Image Recovery**

If the Contract provides Image Recovery for Intel servers and the Customer experiences a software or application failure but the hardware is still in place, Blue Chip will attend site and transfer the image from its NAS directly back onto the Customer's own hardware via its mobile imaging server. Once installed, the incremental changes will need to be restored from tape backups.

In the event the Customer experiences a complete loss of site or hardware, Blue Chip will transfer an image directly onto one of its own servers and deliver this system or systems to the either Customer's site or make it available at the Blue Chip Data Centre according to the service level provided under the Contract. The incremental changes will need to be restored from tape backups.

## **3. Aftercare Support**

Blue Chip will:-

- (subject to the Customer having a suitable comms infrastructure in place) monitor the system 24x7 via the TSS monitoring software (AS400/iSeries models only)
- provide on-site support as specified above
- provide telephone support

## **4. Coverage Period**

The Contract provides replacement equipment for a period of 60 days per invocation. The standard Invocation Period may be extended with Blue Chip's agreement at the rates specified in the Schedule.

## **5. Right To Purchase**

Any or all of the equipment supplied as part of the service will remain the property of Blue Chip. The Customer may directly purchase from Blue Chip any or all parts of the equipment supplied by Blue Chip.

## 6. Anti-bribery policy (The Anti Bribery Act 2010)

It is our policy to conduct all of our business in an honest and ethical manner. We take a zero- tolerance approach to bribery and corruption and are committed to acting professionally, fairly and with integrity in all our business dealings and relationships wherever we operate and implementing and enforcing effective systems to counter bribery.

This policy applies to all individuals working at all levels and grades, including senior managers, officers, directors, employees (whether permanent, fixed-term or temporary), consultants, contractors, trainees, seconded staff, homeworkers, casual workers and agency staff, volunteers, interns, agents, sponsors, or any other person associated with us, or any of our subsidiaries or their workers, wherever located, (collectively referred to as **workers** in this policy).

### Definition

A bribe is an inducement or reward offered, promised or provided in order to gain any commercial, regulatory or personal advantage. The purpose of this policy is to set out the rules that must be followed in this organisation and by our business partners and/or Customers to ensure that no bribery occurs.

## BLUE CHIP'S CONDITIONS FOR THE PROVISION OF DISASTER RECOVERY SERVICES

### 1. Interpretation

- 1.1 In these Conditions words defined in the Contract, including the Schedule(s), shall have the same meaning unless the context requires otherwise and the following expressions shall have the following meanings:
- 'ADDITIONAL SERVICES' any goods or services provided by Blue Chip to the Customer other than the Services
  - 'ALTERNATE SITE' the site at which the Services are available as set out in the Schedule(s)
  - 'CONDITIONS' the terms and conditions set out in this document
  - 'CONTRACT' the contract for the provision of the Services pursuant to these Conditions;
  - 'REPLACEMENT EQUIPMENT' Blue Chip's equipment used in the provision of the Services
  - 'RPI' the general index of retail prices which is published monthly in the United Kingdom by the Office for National Statistics
  - 'SCHEDULE' means the schedule(s) annexed to the Contract
  - 'SITE' the location of the Equipment as set out in the Schedule(s)
  - 'TERM' the term of the Contract

### 2. Supply of the Services

- 2.1 During the Term Blue Chip shall provide and the Customer may use the Services as and when required from time to time if, in the opinion of the Customer, the Equipment is inoperable and incapable of repair under normal maintenance conditions in a reasonable period of time.
- 2.2 Blue Chip will (if it is able to do so) at the request and expense of the Customer supply Additional Services. The charge(s) to be agreed at the relevant time. Additional services will include such items as software upgrades, applications supply/support and any items requested by the Customer that are not explicit within the Service Level Agreement.
- 2.3 The Customer shall be entitled to test the Replacement Equipment at such intervals specified in the Schedules. Blue Chip shall be entitled to postpone or cancel any test if the Replacement Equipment is needed by another customer.

### 3. Delivery of the Services

- 3.1 To elect to use the Services the Customer must notify Blue Chip in writing in accordance with Blue Chip's procedures as notified to the Customer from time to time. The procedure for instigation and use of the service will be supplied to the Customer at the commencement of the contract.
- 3.2 The Customer shall be responsible to Blue Chip for giving Blue Chip any necessary information (including ensuring the accuracy of such information) within a sufficient time to enable Blue Chip to perform the Contract in accordance with its terms.
- 3.3 Subject to the Customer's written permission, which may not be unreasonably withheld or delayed, Blue Chip reserves the right to make any changes in the specification of the Services which are required to comply with any applicable safety, statutory or EC requirements or which do not materially affect the nature, quality or performance of the service.

### 4. Charges

- 4.1 Subject to the following provisions of this clause, the Services shall be available in return for payment of the Charges and the Services shall be provided without additional charge for the Invocation Period and thereafter the price for the Services shall be Blue Chip's standard price for those Services from time to time.
- 4.2 Blue Chip shall be entitled at any time and from time to time to increase the Charges with not less than 90 days prior written notice such notice to take effect on or after the expiry of the Initial Period. For the sake of clarity, the initial period is the initial contract term. If the increase shall exceed the percentage increase in the RPI for the period from the Commencement Date or, if later, the last charge increase review date, the Customer shall have the right to terminate the Contract as and from when such notice expires by giving Blue Chip written notice of termination not less than 60 days before such date.
- 4.3 Blue Chip shall invoice the Customer in advance at the intervals set out in the Contract in respect of the Services and the Customer shall pay the sum due before the commencement of the service period. 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.
- 4.4 Blue Chip shall invoice the Customer monthly in arrears for the charges in respect of the Additional Services (as described in Clause 2.2) or in respect of any loss or expense incurred as a result of the Customer's instructions or lack of instructions and the Customer shall pay the sum due (without deduction or set off) within 30 days from the date on which each invoice is submitted by Blue Chip.
- 4.5 The Charges are exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Blue Chip.
- 4.6 Blue Chip shall be entitled to recover the Charges notwithstanding that performance of the Services may not have taken place, e.g. no disaster invocation. The time of payment of the Charges shall be within 30 days of Invoice receipt. Receipts for payment will be issued only upon request.
- 4.7 If the Customer fails to make any payment by the due date then, without prejudice to any other right or remedy available to Blue Chip, it shall be entitled to cancel the Contract or suspend performance of the Services, appropriate any payment made by the Customer to such of the goods or services supplied under any other contract between the parties as Blue Chip may think fit (notwithstanding any purported appropriation by the Customer) and/or charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of 5 percent per annum above HSBC Bank Plc base rate from time to time until payment in full is made (apart from a month being treated as a full month for the purpose of calculating interest).
- 4.8 Subject to Clause 4.9, any item may be removed from the Contract by the Customer at any time during the Term by giving Blue Chip 90 days written notice. A full pro-rata credit, without penalty, will be issued unless the Contract is subject to a period discount. Where a period discount applies to a Contract, the value of the period discount already received up to the end of the notice period will be deducted from the pro-rata credit.
- 4.9 During the Term of the Contract, the net effect of any additions and/or removals to/from the Contract must not at any time cause the value of the Contract to fall below 80% of the Contract's original annual value.

### 5. Customer's Obligations

- 5.1 Blue Chip and the Customer 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 Equipment and all statutory and other regulations relating to the use of the Replacement Equipment.
- 5.2 Whilst the Replacement Equipment is in the possession or under the control of the Customer, the Customer shall ensure that proper environmental conditions are maintained for the Replacement Equipment; not make any modification to, tamper with, wrongfully operate, repair or maintain the Replacement Equipment; not remove the Replacement Equipment from the Site or, if relevant, the Alternate Site; take reasonable precautions to avoid damage to the Replacement Equipment; provide Blue Chip with full and safe access to the Replacement Equipment for the purposes of the Contract; provide adequate working space around the Replacement Equipment for the use of Blue Chip's personnel and shall make available such reasonable facilities as may be requested from time to time by Blue Chip for the storage (on license only and at Blue Chip's risk) and safekeeping of test Replacement Equipment and spare parts; notify Blue Chip within 24 hours if the Replacement Equipment needs maintenance or is not operating correctly; make available to Blue Chip any information as may be necessary to enable Blue Chip to perform its obligations and shall, if requested by Blue Chip, provide staff familiar with the Customer's programs and operations; such staff shall co-operate fully with Blue Chip's personnel in the diagnosis of any malfunction of the Replacement Equipment; make available to Blue Chip free of charge all facilities and services reasonably required by Blue Chip to enable Blue Chip to perform the Services and/or maintenance of the Replacement Equipment; provide such telecommunication facilities as are reasonably required by Blue Chip for testing and diagnostic purposes at the Customer's expense; use the Equipment for Replacement Equipment for the data processing services for which it was designed and/or keep proper back up of data on at least a daily basis. The quality and integrity of the data is entirely the Customer's responsibility.
- 5.3 The Customer shall grant Blue Chip access to the Site to enable the Replacement Equipment to be removed without any delay and shall give such access, if so required by Blue Chip, at any time on any day of the week including Sundays and Public and Bank Holidays, subject to reasonable notice.
- 5.4 When the Replacement Equipment is removed from the Site the Customer shall first remove all its software and data, subject to reasonable notice.

### 6. Duration

- 6.1 The Agreement shall commence on the Commencement Date and shall continue (subject to early termination in accordance with these Conditions) for the Initial Term and thereafter from year to year until terminated by the Company giving the Customer or the Customer giving the Company not less than 90 days prior written notice to expire on the last day of the Initial Term or any subsequent anniversary thereof.
- 6.2 The Contract may be terminated:
- 6.2.1 by either party forthwith on giving notice in writing to the other if the other commits any breach of any term of the Contract (other than any failure by the Customer to make any payment hereunder in which event the provisions of Clause 4 above shall apply) and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or
- 6.2.2 by either party forthwith on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of 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 enter administration or into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

- 6.3 Any termination of the Contract 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.
- 7. Warranties**
- 7.1 The Customer warrants to Blue Chip that the Customer's Equipment is fully operational at the Commencement Date and the Equipment is subject to and the Customer will maintain a hardware maintenance agreement.
- 7.2 The Customer hereby warrants to Blue Chip that the Customer has not been induced to enter into the Contract by any prior representations or warranties, whether oral or in writing, except as specifically contained in the Contract and the Customer hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in the Contract or for breach of any warranty not contained herein and/or to rescind the Contract.
- 7.3 Blue Chip warrants that the Services will be provided using reasonable skill and care. This warranty is given subject to the following conditions: Blue Chip shall be under no liability in respect of any defect in the Services arising from any information or instruction supplied by the Customer; Blue Chip shall be under no liability in respect of any defect in the Replacement Equipment arising from wilful damage, negligence, abnormal working conditions, failure to follow Blue Chip's written instructions, misuse or alteration or repair of the Replacement Equipment without Blue Chip's approval or any other matter set out in Clause 10; Blue Chip shall be under no liability if the Charges have not been paid by the due date for payment.
- 7.4 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.
- 7.5 Any claim by the Customer which is based on any defect in the Services must be notified to Blue Chip within 48 hours from the date of performance or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. Time is of the essence.
- 7.6 Where any valid claim in respect of the Services is notified to Blue Chip in accordance with these Conditions, Blue Chip shall be entitled to and shall be given the opportunity to re-perform the Services free of charge in which event any and all losses shall be as a direct result of the claim. Consequential losses shall not be deemed a direct result.
- 7.7 Except in respect of injury to or death of any person the liability of Blue Chip under these Conditions in respect of each event or series of connected events shall not exceed the Charges for that year of the Term. A number of defaults whether successive or concurrent, which together result in or contribute to substantially the same loss or damage, shall be treated as one default in assessing Blue Chip's liability pursuant to this Clause 7.
- 7.8 Notwithstanding anything else contained in these Conditions Blue Chip shall not be liable to the Customer for loss of profits or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever
- 7.9 The Customer agrees to indemnify Blue Chip against costs, expenses or damages arising as a result of breach of the Customer's warranties set out above or any breach of the Customer's obligations pursuant to Clause 5.
- 7.10 The Customer acknowledges that the provision of the Services does not ensure uninterrupted operation of the Equipment or the Replacement Equipment.
- 8. Replacement Equipment**
- 8.1 The Replacement Equipment shall at all times remain the sole and exclusive property of Blue Chip and the Customer shall have no right or interest therein except for quiet possession and the right to use the same upon the terms and conditions.
- 8.2 Whilst the Replacement Equipment is in the possession or control of the Customer it shall be at its risk and it shall be responsible for insuring the same against all normal risks.
- 8.3 Blue Chip shall use its reasonable endeavours to maintain the Replacement Equipment in good working order and condition and if it shall fail or breakdown Blue Chip shall use its reasonable endeavours to restore the Replacement Equipment to its proper operating condition as soon as reasonably possible but without any undue delay.
- 8.4 In the event of any failure or breakdown of the Replacement Equipment with consequent spoiling or loss of the Customer's data Blue Chip shall use the Customer's back-up copies to reconstitute the Customer's data as soon as reasonably practicable. This clause states the entire liability of Blue Chip for any loss or spoiling of the Customer's data caused by any failure or breakdown of the Replacement Equipment or other fault of Blue Chip.
- 9. Exceptions**
- 9.1 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 Blue Chip's neglect or fault unless otherwise agreed between Blue Chip and the Customer.
- 9.2 Blue Chip will (if it is able to do so) at the request and expense of the Customer 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 Blue Chip's neglect or fault unless otherwise agreed between Blue Chip and the Customer.
- 10. Content of Customer's Data**
- 10.1 The Customer warrants that the Customer's data will not contain anything obscene, offensive or defamatory, that it is registered for the purposes of the Data Protection Act and that the Customer has and will during the Term comply with the provisions of that Act. The Customer will indemnify Blue Chip and keep Blue Chip fully and effectively indemnified against all actions, proceedings, claims, demands, damages and costs (including legal costs on a full indemnity basis) occasioned to Blue Chip as a result of any breach of the said warranties. Any data or software supplied by Blue Chip in provision of the service will be subject to the same indemnity in protection of the Customer's rights. Both parties are to fully comply with the Data Protection Act currently in force.
- 11. Intellectual Property Rights Indemnity**
- 11.1 The Customer shall indemnify Blue Chip 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 programs or data on the Replacement Equipment. Any data or software supplied by Blue Chip in provision of the service will be subject to the same indemnity in protection of the Customer's rights.
- 12. Confidentiality**
- 12.1 Each party shall treat as confidential all information obtained from the other pursuant to the Contract 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 shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date (other than as a result of a breach of this clause) 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. Force Majeure**
- 13.1 Neither party shall not be liable to the other or be deemed to be in breach by reason of any delay in performing, or any failure to perform, any of Blue Chip's obligations if the delay or failure was due to any cause beyond Blue Chip's reasonable control.
- 14. Restrictive Covenant**
- 14.1 Both parties hereby agree that they shall not during the Term and for 12 months thereafter solicit or entice away or seek to entice away from either party or offer employment or engagement to any member of its staff employed in the provision of the Services and/or employ or engage any member of either party's staff to perform services materially the same as the Services.
- 15. General**
- 15.1 Neither party shall assign the Contract without the prior written consent of the other party.
- 15.2 No failure or delay by Blue Chip in exercising any of its rights under the Contract shall be deemed to be a waiver of that right and no waiver by Blue Chip of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.3 The Contract shall be governed by the laws of England and the Customer agrees to submit to the exclusive jurisdiction of the English courts.
- 15.4 No variation to the Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and Blue Chip. The representative for Blue Chip shall be the Managing Director. The Customer's representative shall be determined by the Customer.
- 15.5 Blue Chip's employees or agents are not authorised to make any representations concerning the Services or Additional Services unless confirmed in writing.
- 15.6 Any advice or recommendation given by Blue Chip or its employees or agents to the Customer as to the Services or Additional Services but not confirmed in writing is followed or acted upon entirely at the Customer's own risk.
- 15.7 Any typographical, clerical or other error or omission in any sales literature, quotation, invoice, drawings, document or information issued by Blue Chip shall be subject to correction without any liability on the part of Blue Chip.
- 15.8 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 Contract 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 may be delivered personally or by first class pre paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched. In the case of Blue Chip it shall be addressed to the Managing Director.