

TERMS AND CONDITIONS FOR THE PROVISION OF HARDWARE MAINTENANCE SERVICES

1. DEFINITIONS

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

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

'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;

'Data Protection Legislation' means (i) any law of England and Wales implementing Data Protection Directive 95/46/EC, including but not limited to the Data Protection Act 1998, and (ii) when it becomes, and for as long as it remains, directly applicable in the UK, EU Regulation 2016/679 ("**GDPR**"), and any national implementing laws and secondary legislation, as amended or updated from time to time and then (iii) any successor legislation to the GDPR 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 Company, 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 hardware as set out in the Schedule and such additions and changes thereto as shall from time to time be agreed or authorised in accordance with the terms of the Agreement;

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

'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

'RPI' means the general index of retail prices measure of inflation which is published monthly in the United Kingdom by the Office for National Statistics;

'Schedule' means the separate schedule to which these Conditions apply to include details such as the Commencement Date, Equipment, Initial Term, Service Charges, applicable Service Levels and Sites;

'Site(s)' means either (i) the premises at which the Equipment is installed as set out in the Schedule; or (ii) where no such premises is set out, the address of the Customer and/or End User as set out in the Schedule;

'Service Charges' means the aggregate maintenance charge in respect of each item of Equipment as set out in the Schedule payable in advance at the intervals set out in the Schedule; and

'Services' means the services to be provided by the Company as set out in Clause 3.

For the purposes of this 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 in 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 in any document that forms part of this 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**

During the continuance of the Agreement the Company shall provide the Customer and End User (as applicable) with the following support and assistance in respect of the Equipment (the “**Services**”):

a) **Corrective Maintenance:** Upon receipt of notification from the Customer or End User (as applicable) that the Equipment has failed or is malfunctioning (an “**Incident**”) the Company shall during the period of Cover for the item of Equipment (i) rectify a breakdown or failure of any hardware component(s) of the Equipment causing stoppage of its functions and requiring repair to or replacement before the Equipment can resume working; and/or (ii) repair or replace any hardware component(s) of the Equipment not causing stoppage of its functions but which are identified as a result of a diagnostic check as requiring the Equipment be taken out of use for repair or replacement. Such corrective maintenance shall include supply of loan or replacement items of Equipment.

b) **Remote Monitoring:** Subject to Clause 9 b) and approval of the Customer, the Company may use an electronic service agent software (“**ESA**”) to continually remotely monitor the Equipment to ensure it is in good operating condition. The Company will provide the ESA or configure the ESA provided by the manufacturer of the Equipment and ensure it is configured to directly contact the Company for all detected Incidents or impending Incidents. The ESA shall be continually monitored by the Company and Incidents will be reported promptly to the Customer’s nominated service control (as notified to the Company in writing from time to time) with sufficient information and recommendations to permit commencement of any required remedial actions.

c) **Response:** On receipt of an Incident, and unless agreed otherwise with the Customer or End User, the Company undertakes to dispatch a suitably qualified service engineer to the relevant Site for corrective maintenance within any Response Time (as defined herein) for the item of Equipment as set out in the Schedule.

d) **Fix:** On receipt of an Incident, and unless agreed otherwise with the Customer or End User, the Company undertakes to dispatch a suitably qualified service engineer and required replacement items for corrective

maintenance to arrive at the relevant Site within any Fix Time (as defined herein) for the item of Equipment as set out in the Schedule.

e) For the avoidance of doubt where the Cover includes a Fix Time the Company shall not be subject to any Response Time measurement. Emergency corrective maintenance will be provided as soon as is practicable after receipt of a request by the Customer or End User (as applicable), and in any event no longer than the relevant Response Time or Fix Time as set out in the Schedule.

4. **COVER**

a) The Company shall perform the Services during the hours of cover and within the response or fix period (“**Cover**”) as specified against each item of the Equipment on the Schedule. Each Cover shall be broken down as follows:

- (1) the hours of cover: (A) Mon-Fri, 09:00-17:30, excl. Bank Hols, (B) Mon-Fri, 08:00-19:00, excl. Bank Hols, or (D) 24 x 7, 365 days; and
- (2) the applicable period for response as described in Clause 3 c) (the “**Response Time**”): (2) two hours, (4) four hours, (6) six hours, or (8) eight hours: or
- (3) the applicable period for fix as described in Clause 3 d) (the “**Fix Time**”): (2) two hours, (4) four hours, (6) six hours, or (8) eight hours

b) For the avoidance of doubt, where a corrective maintenance action other than the onsite presence of a service engineer is agreed pursuant to Clause 3, the applicable Response Time or Fix measure shall not apply to the Services for that request or event.

5. **EXCEPTIONS**

a) The Services do not include any maintenance of the Equipment which is necessitated as a result of any cause other than fair wear and tear or the Company’s neglect or fault including without limitation:

- (1) failure or fluctuation of electrical power, air conditioning, humidity control or other environmental conditions;
- (2) accident, transportation, neglect, misuse or default of the Customer, End User, their employees, agents or any other third party;
- (3) any fault in any attachments or associated equipment (whether or not supplied by the Company) which do not form part of the Equipment including but not limited to telecommunications equipment;

- (4) act of God, fire, flood, war, act of violence, or any other similar occurrence;
 - (5) any attempt by any person other than the Company's personnel to adjust, repair, convert or maintain the Equipment;
 - (6) software faults (including faults within the operating system) or viruses;
 - (7) use of the Equipment other than for the purposes for which it was designed; or
 - (8) use of consumables which result in repetitive service calls or abnormal wear and tear.
- b) Furthermore the Services do not include:
- (1) service other than at the Site(s) (or such other premises as the Company shall have approved in writing);
 - (2) repair or renewal of all consumables as specified by the manufacturer of the equipment including but not limited to tapes, print cartridges, print heads, laser consumables or mice;
 - (3) maintenance or support of the operating system and the loading or uninstalling software, applications or data or any other software support services;
 - (4) electrical or other environmental work external to the Equipment;
 - (5) maintenance of any attachments or associated equipment (whether or not supplied by the Company) which do not form part of the Equipment, including un-jamming or fitting of consumable supplies;
 - (6) recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Equipment;
 - (7) painting, refurbishing, changes to or alteration of the Equipment or installation, moving or removal of the Equipment other than for repair.

6. **SERVICE CHARGES**

- a) In consideration of the Services the Customer shall pay the Service Charges periodically in advance as set out in the Schedule. The 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) Any 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.

c) The Company shall be entitled at any time and 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 RPI for the period from the Commencement Date (in the case of the first increase) or the date on which the 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 provided further that no increase may be made pursuant to this sub-clause until a period of twelve (12) months has elapsed since the immediately preceding increase came into effect pursuant to this sub-clause.

d) 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.

e) Subject to sub-clause 6 f), any item 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 an 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.

f) 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.

g) If the Customer fails to make any undisputed payment by the due date 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 deliveries of the Goods or 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 five (5) 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).

- h) 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 shall make an additional charge, to be agreed in advance with the Customer, and in accordance with its 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 Equipment due to causes not covered by the Services;
- (2) if the Company is able so, for repair or replace any part of the Equipment which has failed due to a cause other than fair wear and tear or due to the Company's neglect or fault; or
- (3) made at the request of the Customer or End User but which the Company finds are frivolous or not necessary;
- (4) for corrective maintenance of equipment not covered by this Agreement which the Company agrees to provide provided always that it shall not be obliged to carry out such works.

8. REPLACEMENT EQUIPMENT

- a) The Company reserves the right to replace the whole of the Equipment or any part or parts thereof which may be found to be faulty or in need of investigation. If identical Equipment is not available for replacement the Company will install replacement Equipment of a higher specification provided always that if the permanent replacement Equipment is materially different the Company reserves the right to increase the Service Charges by not less than thirty (30) days notice in writing to the Customer in accordance with the Company's standard charges from time to time.

- b) If the permanent replacement parts or equipment is not equipment which is identical in all material respects to the Equipment replaced the Company shall inform the Customer in writing.

- c) Within five (5) business days of being informed of replacement of non-identical equipment the Customer or End User shall have the right to request that the replacement equipment or any part or parts thereof be removed and either the Equipment be put back or other equipment materially identical to the

Equipment be installed and the Company shall comply with such request as soon as reasonably possible.

- d) The replacement equipment shall become the property of the owner of the Equipment. With the exception of any defective parts containing Customer or End User data which will be left with the Customer or End User (as applicable), defective parts shall be returned to and become the property of the Company.

- e) Where the Equipment or any part or parts thereof removed become the property of the Company in accordance with sub-clause d) or as stated elsewhere in the Agreement, the Customer warrants that either it or the End User (as applicable) shall have a free and unencumbered title to such replaced parts or (where the Equipment is leased or charged) that it shall have obtained all necessary consents and authorities to part with possession and give good title to the replaced parts

- f) The provisions of the Agreement shall apply to all replacements and renewals of any part or parts of the Equipment made by the Company.

- g) Subject to the warranty set out the Company reserves the right to supply new, second-hand or reconditioned parts in the performance of its duties

9. CUSTOMER OBLIGATIONS

- a) **Incident Logging:** The Customer shall inform the Company by notifying the Company's nominated service control (as notified to the Customer in writing from time to time) in a reasonable period of time, of Equipment failure or potential failure, and shall as applicable permit or arrange with the End User for the Company to have necessary access to the Equipment and use of necessary tools, machines and devices in the Customer or End User's possession. The Customer shall maintain or take reasonable efforts to ensure the End User maintains accurate and current logs and records concerning the operation of the Equipment

- b) **ESA Set-Up:** Where applicable the Customer shall permit or use reasonable efforts to arrange with the End User to allow Installation, configuration and testing of any ESA provided by the Company. The Customer shall also provide or use reasonable efforts to ensure that the End User provides the necessary access rights, connectivity and other required facilities to enable the Company to remotely detect and resolve Incidents on items of Equipment that support the ESA functionality.

- c) **Use and Care of the Equipment:** During the continuance of the Agreement the Customer shall, or as applicable take reasonable measures to, ensure any End User shall:

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- (1) ensure proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment, the cables and fittings associated therewith and the electricity supply thereto;
 - (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 Equipment;
 - (3) keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Equipment;
 - (4) ensure that the external surfaces of the Equipment are kept clean and in good condition and shall carry out any minor maintenance recommended by the manufacturer from time to time;
 - (5) use on the Equipment only such operating supplies as recommended by the manufacturer in writing and if such use results in repetitive service calls or abnormal wear and tear then the Company will be entitled to make an additional charge for the Services provided as a result;
 - (6) notify the Company in writing if any of the Equipment is to be moved and or has been moved from Site or if any of the Equipment has been removed from service;
 - (7) not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by the Company;
 - (8) not to use the Equipment other than for data processing services for which it was designed
 - (9) take reasonable precautions to avoid damage to the Equipment.
- b) **Access to the Equipment:** During the continuance of the Agreement 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 Equipment for the purposes of the Agreement;
 - (2) provide adequate working space around the Equipment for the use of the Company's personnel and shall make available such reasonable facilities as may be requested from time to time by the Company for the storage and safekeeping of test equipment and spare parts;
 - (3) 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 the relevant Site;
 - (4) ensure in the interest of health and safety that the Company's personnel, while at the relevant Site 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 Site and safety procedures.
- c) **Notification and Information:** During the continuance of the Agreement the Customer shall, or as applicable take reasonable measures to, ensure any End User shall:
- (1) promptly notify the Company if the Equipment needs maintenance or is not operating correctly. Failure by the Customer or End User (as applicable) so to notify the Company within twenty four (24) hours of the Customer or End User first becoming aware of such failure or incorrect working shall free the Company from all obligations to investigate or correct such failure or incorrect working;
 - (2) make available to the Company such programs (including manufacturer supplied recovery media), operating manuals and information as may be necessary to enable the Company to perform its obligations hereunder and shall if requested by the Company provide staff familiar with the Customer's or End User's (as applicable) software and operations, which staff shall cooperate fully with the Company's personnel in the diagnosis of any malfunction of the Equipment;
 - (3) make available to the Company free of charge all facilities and services reasonably required by the Company to enable the Company to perform the Services including without limitation computer runs, memory dumps, print-outs, data preparation, office accommodation and photocopying; Miscellaneous
 - (4) provide such telecommunication facilities as are reasonably required by the Company for testing and diagnostic purposes at the Customer's expense;

- (5) keep full security copies of the Customer's or End User's (as applicable) software, programs and computer records and carry out appropriate system management functions in accordance with best computing practice. The master copies of software or programs are not to be released by the Customer or End User and the Company is to be given only copies thereof if it requests.

10. CUSTOMER WARRANTIES

- a) The Customer warrants and undertakes to the Company that it or the End User is the owner of the Equipment and that it has full power and authority to enter into this Agreement and permit the Company to perform its services.
- b) The Customer undertakes to indemnify and hold harmless the Company against any loss or damage that the Company may suffer as a result of a breach by the Customer of sub-clause 10 a) above.
- c) The Customer warrants to the Company that it has prior to the making of the Agreement disclosed to the Company all known faults or defects in the Equipment or operating system which exist at or immediately prior to the Commencement Date.
- d) 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, its employees, agents or sub-contractors, by any defect in the design or workmanship of the Equipment or any breach of its warranty at sub-clause 10 c) or breach of its obligation under these Conditions.
- e) The Customer hereby warrants to the Company that the Customer has not been induced to enter into the Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in the Agreement and the Customer hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in the Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind the Agreement.

11. COMPANY WARRANTIES

- a) Subject to sub-clause 11 b) The Company warrants that it will use reasonable skill and diligence in performing the Agreement and that it shall have free and unencumbered title to any replacement parts which will be of satisfactory quality. The Company does not warrant that the Services or any additional services will cause the Equipment to operate without interruption or error.

b) For the avoidance of doubt the warranty in sub-clause 11 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 any defect in the Services arising from wilful damage, negligence, abnormal working conditions, failure to follow the Company's written instructions, misuse or alteration or repair of the Equipment without the Company's approval;
- (3) the Company shall be under no liability if the Service Charges has not been paid by the due date for payment;
- c) Any replacement equipment or parts provided by the Company as part of the Service are supplied without warranty save for the benefit of such warranty or guarantee as is given by the manufacturer or supplier to the Company.
- d) Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12. LIABILITIES

- a) Any claim by the Customer which is based on any defect in the Services shall be notified to the Company within forty eight (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.
- b) Where any valid claim in respect of the Services is notified to the Company in accordance with these Conditions, the Company shall be entitled to re-perform the Services in which event the Company shall have no further liability to the Customer.
- 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 Equipment or loss of or spoiling of the Customer's software, programs or data) resulting from any breakdown of or, fault in the 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) The Company shall not be liable for any delay in performing its obligations hereunder if any recommended spare parts become obsolete.

h) 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

a) 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 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, Sensitive 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 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 of or deliver (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

a) 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) If in its opinion the Company considers that all or part of the Equipment needs reconditioning it will notify the Customer together with its estimate of the cost thereof. If the Customer does not accept the quote to recondition the Equipment within thirty (30) days of receipt thereof the Company may by not less than thirty (30) days prior written notice cancel that part of the Agreement insofar as it relates to the Equipment which requires reconditioning.

b) If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is destroyed or damaged beyond economic repair otherwise than through the Company's fault (as to whether either of which events has occurred the Company's decision shall be final and binding on the Customer) the Company reserves the right to terminate the Agreement, by giving not less than thirty (30) days written notice to the Customer, in respect of the whole or any part of the Equipment which can no longer be maintained, in which case the Company's sole liability shall be to repay to the Customer a fair proportion in accordance with sub-clause 16 c) of the Service Charges which has been paid in advance by the Customer.

c) On termination of the Agreement in accordance with the provisions of sub-clauses 16 a) and b) the Customer shall be entitled to reimbursement of a pro-rata part of the Service Charges paid in advance calculated on a time basis and item by item basis after adding back to the Service Charges the Period Discount. In calculating any damages payable to the Company upon termination of this Agreement the Period Discount shall be added back to the Service Charges.

d) 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 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 g) above shall apply) and (in the case of a 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 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 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 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.

e) 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 this Agreement in writing with immediate effect.

f) 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 fires, strikes (of its own or other employees) insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority.

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.

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

a) 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 may be delivered personally or by first class pre-paid letter and 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) The Company's employees or agents are not authorised to make any representations concerning the Services unless confirmed in writing

b) The Customer shall not assign the Agreement without the prior written consent of the Company.

c) 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.

d) The Agreement shall be governed by the laws of England and Wales, and the Customer agrees to submit to the exclusive jurisdiction of the English Courts.

e) 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.

f) 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.

g) 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.

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

i) 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 that Act against the parties to it by any other person.

j) Notwithstanding that the whole or any part of any provision of the Conditions 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.

k) In the event of any inconsistency between the Conditions and the Schedule then the Schedule shall prevail over the Conditions.