TERMS AND CONDITIONS FOR THE PROVISION OF TELEPHONE SOFTWARE SUPPORT SERVICES

CONTENTS

TERMS AND CONDITIONS

1 Definitions

1.1. In this Agreement, unless the context otherwise requires, the following words have the following meanings;

'Affiliates'	means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company, and Holding Company and Subsidiary shall have the meaning given to them in the Companies Act 2006 or its successors;
'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;
'Business Day'	means a day (other than a Saturday or Sunday) on which clearing banks are open for business in England and Wales;
"Change"	means any alteration in the quality or quantity of the Services or the way in which they are performed, including the provision of additional services and amendments to any Service Levels, or any changes to the Inventory;
"Commencement Date"	means the date on which the Agreement shall become effective as set out in the Schedule;
"Confidential Information"	means any information, communications or data, in any form, whether oral, written, graphic, electromagnetic, including all plans, proposals, forecasts, technical, methodologies, know-how, information about technological or organisational systems, customers, personnel, business activities, databases, IPR, the terms and conditions of this Agreement and other information in relation to it (and in the case of the Customer, all Customer data and any other data relating to the End Users), whether or not it is specifically marked confidential but excluding any information, which: (i) was already known to the Recipient at the time of its disclosure to the Recipient and is not subject to confidentiality restrictions; (ii) which is in the public domain at the date of its disclosure to the Recipient or which thereafter enters the public domain through no fault of the Recipient (but only after it becomes part of the public domain); (iii) which, following its disclosure by the Disclosing Party to the Recipient , is received by the Recipient without obligation of confidence from a third party who the Recipient had no reason to believe was not lawfully in possession of such Confidential Information free of any obligation of confidence; or (iv) is independently developed by the Recipient without any reference to Confidential Information of the Disclosing Party, as evidenced by the records of the Recipient;
'Conditions'	means the terms and conditions set out in this document;
'Contract Period'	means the initial Term and any period for the continued provision of the Services following expiry of the Initial Term as agreed in accordance with the terms of the Agreement;
'Customer'	means the (i) Customer as named in the Schedule; and (ii) its Affiliates (which may both also be referred to as the "**Customer Group**") to whom the Service Provider has agreed to provide the Services in accordance with this Agreement;
"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;
"Disclosing Party"	means the party disclosing an item of Confidential Information;
'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 Service Provider has no direct

	contractual or other responsibilities under this Agreement; or (ii) where no separate entity is set out on the Schedule, the Personnel of the Customer which may utilise the Services from time to time;
'Good Industry Practice'	means, in relation to any activity or requirement relevant to this Agreement, the exercise of that degree of skill, care diligence, prudence and foresight and using the practices, processes, procedures and guidelines which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of such activity or requirement under the same or similar circumstances and conditions in the United Kingdom;
'Hardware'	means the items of equipment (if any) set out in the Schedule;
'IBM'	means IBM United Kingdom Limited whose registered number is 00741598 and registered address is PO Box 41, North Harbour, Portsmouth, Hampshire, PO6 3AU
'IBM SWMA'	means the fault resolution (maintenance) service for previously unidentified problems and version and release upgrade services for the Software as available from IBM;
'Incident'	means any event which causes the Customer or End User to utilise the Services and/or may cause an interruption to, or a reduction in, the operation and/or functionality of the Software;
'Initial Term'	means the initial duration of the Agreement as set out in the Schedule;
'Inventory'	means the individual Customer and/or End User Software environments and requirements as set out in the Schedule;
'IPR'	means all copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trademarks, service marks, trade names, registered design and any applications for protection or registration of these rights and all renewals and extensions thereof throughout the world;
'Manufacturer'	means the manufacturer of each item of Hardware, or the authors of the Software;
'Nominated Support Contacts'	means the Customer and/or End User Personnel authorised to place support calls under this Agreement as notified to the Service Provider in writing from time to time;
'Normal Working Hours'	means the hours between 08:00 and 18:00 on a Business Day.
"Personnel"	means officers, directors, employees, workers and agents (including any persons hired as consultants or contract staff) engaged in the use and/or provision of the Services (or part thereof);
'Party'	means either the Service Provider or the Customer and **"Parties"** shall mean both of them;
"Recipient"	means the party receiving an item of Confidential Information;
'Schedule'	means the separate schedule to which these Conditions apply to include details such as the Commencement Date, Inventory, Initial Term, and Service Charges;
'Services'	means the specific Software Support services to be performed from time to time by the Service Provider as identified in the Schedule;
'Service Charges'	means the charge(s) set out as set out in the Schedule payable in advance at the intervals set out in the Schedule, and which may be varied in accordance with Clause 9;
'Service Levels'	means the service hours, service windows, response times and update frequencies specified in Appendix 1;
'Service Provider'	means the (i) Service Provider as named in the Schedule; and (ii) its Affiliates, which may both also be referred to as the **"Service Provider Group"**;

'Software'	means the software products listed in the Schedule and to be covered by the Software Support;
'Software Support'	means the provision of services in accordance with Clause 3 of this Agreement;

1.2. References in this Agreement to clauses or schedules are to clauses of, or Schedules to, this Agreement.

1.3. In this Agreement, unless the context otherwise requires:

   a) words in the singular include the plural and vice versa and words in one gender include any other gender;

   b) words defined in the Schedules or on the signature page of this Agreement have the meaning set out in that definition;

   c) a reference to:

      (i) any Party includes its successors in title and permitted assigns;

      (ii) a "person" includes any individual, firm, corporation wherever incorporated, trust, joint venture (whether or not having a separate legal existence), partnership, limited liability company, association (whether incorporated or not), or any other entity, or any governmental body or subdivision, agency, or authority;

      (iii) "including", "include", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms; and

      (iv) "in writing" includes, except for the purposes of Clause 18, communications via electronic mail.

1.4. The headings in this Agreement are for convenience and are not to be used in interpreting the Agreement.

1.5. Reference to any statute or statutory provision includes reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

1.6. The Schedule forms part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement. If there is any ambiguity between the terms of a Schedule or this Agreement the Schedule shall prevail notwithstanding any variance with the terms and conditions of any proposal, quotation or other statement made or given by the Service Provider Personnel or any order submitted by the Customer in respect of the Hardware, Inventory, or Software.

2   Appointment and Duration

The Agreement shall commence on the Commencement Date and shall (subject to early termination in accordance with the Agreement) continue for the Initial Term and (unless specified otherwise on the Schedule) thereafter from year to year until terminated by the Service Provider giving the Customer or the Customer giving the Service Provider 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   Software Support

3.1. In consideration of the payment by the Customer to the Service Provider of the Service Charges, the Service Provider shall provide to the Customer or End User the Software Support in relation to Software operating on the Inventory which satisfies the conditions for eligibility set out in Clause 4.

3.2. The Service Provider shall perform the Software Support with reasonable skill and care in accordance with Good Industry Practice; and all applicable laws.

3.3. The Software Support shall comprise the following elements provided by the Service Provider to the Customer and/or End User in the form of email or telephone contact, and where requested by the Service Provider remote access to the Customer equipment on which the Software is installed;

   a) Technical expertise on the use of the Software in the event of difficulty;

   b) Using proven problem diagnostic techniques to identify the root cause of problems and requisite patch identification as applicable;

   c) Providing technical advice where the Customer or End User requires guidance on the use of the Software to assist in utilising the Software to "Best Practice" techniques including: usage, installation, product compatibility, interoperability, planning information for software fixes, interpretation of documentation;

   d) Identifying and recommending such updates to the Software (where available from the Manufacturer) as are reasonable and necessary for the Software to operate under new releases of the operating system applicable to the Hardware;

   e) Incident management, tracking and escalation.

3.4. At the Service Provider's sole discretion and at the professional services rates detailed in Appendix 2, the Software Support can also be extended on an ad hoc basis for the following;

   a) Providing remote or on-site assistance to update or upgrade the Software; and/or

b) Providing on-site assistance at a Customer or End User location to resolve an Incident.

3.5. The Services shall be provided and available in accordance with the Service Levels, subject to the provisions of this Agreement. Software Support may be provided outside the Service Levels at the Service Provider's sole discretion, subject to availability and will be chargeable in accordance with the professional services rates detailed in Appendix 2.

3.6. Where a Software version becomes unsupported by the authors of the Software, the Service Provider will use reasonable endeavours to provide Software Support. However, where the only solution (in the absolute discretion of the Service Provider) is to upgrade to a later version of the Software, this will be chargeable in accordance with Clause 3.4.

3.7. The Customer agrees that any IBM SWMA services provided by IBM for the listed hardware in the Schedule are governed by IBM terms and conditions. The Service Provider will provide logging and incident management for IBM SWMA support calls in addition to the Software Support.

3.8. The procedure for requesting Software Support is described in Appendix 3. Additional copies are available on request. The Service Provider may update this procedure from time to time at its sole discretion.

3.9. The computing environment and equipment where the Software is installed and operated from remains under the management and administration responsibility of the Customer in accordance with Clause 7.

3.10. With the exception of IBM SWMA the Service Provider may not subcontract the Software Support provided under this Agreement after the Commencement Date either in whole or part without the prior written consent of the Customer (which shall not be unreasonably withheld or delayed).

4   Eligibility of Software

4.1. The Service Provider reserves the right to examine Software which was not previously on cover immediately preceding the Commencement Date or the Customer requests in writing be added after the Commencement Date to determine whether it is in an acceptable condition for the performance of the Services under this Agreement.

4.2. Any examination arising from Clause 4.1 shall be carried out by the Service Provider within thirty (30) days of the Commencement Date or for Software to be added after the Commencement Date, within thirty (30) days of this Agreement being amended and agreed by all Parties for the additional Software,

4.3. Whether examined by the Service Provider or not, if in the reasonable opinion of the Service Provider any item of Software which was not on cover immediately prior to the Commencement Date, is not in an acceptable condition, it shall be excluded from cover until its condition becomes acceptable to the Service Provider.

5   Confidentiality

5.1. The Recipient shall treat and keep confidential in accordance with the terms and conditions herein all Confidential Information of the Disclosing Party and may use the Confidential Information only for the performance of its obligations and the exercise of its rights under this Agreement.

5.2. All rights, title and interest in the Confidential Information shall remain the property of the Disclosing Party. The Recipient acknowledges that it shall not acquire any right, title to, interest in or licence in respect of any part of the Confidential Information, except as expressly provided in this Agreement.

5.3. The Recipient may disclose Confidential Information to the extent required by law, by any Government Authority or other regulatory authority or by a court or other authority of competent jurisdiction. However, to the extent it is legally allowed to do so, the Recipient must give the Disclosing Party as much notice of that disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 5.3, it shall take into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

5.4. Subject to the provisions of this Agreement, the Recipient may disclose the Confidential Information of the Disclosing Party to those of its Personnel, permitted sub-contractors, consultants, auditors and professional advisers that have a need to know such Confidential Information for the purposes of this Agreement. The Recipient shall take all reasonable measures to protect the Confidential Information of the Disclosing Party, in any event no less than those used to protect its own Confidential Information, and shall be responsible to the Disclosing Party for any breach of the provisions of this Clause 5 by any of its Personnel, permitted sub-contractors, consultants, auditors and professional advisors as if it were a breach by the Recipient.

5.5. In the event that the Recipient learns of any unauthorised use or disclosure, or threatened unauthorised use or disclosure, of any Confidential Information, the Recipient shall as soon as reasonably practicable notify the Disclosing Party of the particulars of such use or disclosure.

5.6. Promptly on the Customer's request, the Service Provider shall (and shall procure each of its Personnel) do all things and execute all further documents necessary to give full effect to this Clause 5.

5.7. The Parties acknowledge that a Disclosing Party may suffer irreparable harm in the event that the Recipient fails to comply with the terms of this Agreement and that monetary damages may be inadequate to compensate for such breach. Accordingly, in addition to any other remedies available to it at law or in equity, the Disclosing Party shall be entitled to seek injunctive relief to enforce the terms of this Agreement.

5.8. The Customer warrants that it will ensure that End Users and/or other third parties of the Customer maintaining and utilising the Services are under obligations of confidentiality that are substantially similar in effect to the terms of this Clause 5.

5.9. A Recipient's obligation to maintain the confidentiality of Confidential Information and the restrictions on such Recipient's use of the Confidential Information, as provided in this Clause 5, shall survive the termination of this Agreement.

6   Data Protection

6.1. 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 this Agreement, the terms Data Controller, Data Processor, Personal Data, Sensitive Personal Data and Processing shall be as defined in the Data Protection Legislation.

6.2. The Parties acknowledge that the Customer is a Data Controller and that the Service Provider is not considered a Data Processor in providing the Services. The Service Provider 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.

6.3. The Parties further acknowledge that it may be necessary to exchange Personal Data) relating to their respective Personnel 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.

7   Obligations of the Customer

7.1. The Service Provider shall have no obligation to provide the Services if the Customer and/or End User;

   a)   fails to use the Software correctly and in accordance with the Manufacturer's operating instructions or fails to carry out maintenance routines recommended by the Manufacturer in writing, or

   f)   fails to provide to the Service Provider such information as the Service Provider may reasonably require to perform the Services, or

   g)   alters the Software (except as necessary to carry out standard user routines) or permits any third party other than the Manufacturer and/or the Service Provider Personnel to do so or otherwise without the written consent of Blue Chip or the Manufacturer, or

   h)   fails to notify the Service Provider as soon as is reasonably practical of any breakdown or malfunction of the Software, or

   i)   moves, alters, adds or attaches anything to the Software, which is not designed for that purpose, or in breach of the Manufacturer's written guidelines, or

   j)   (where on-site support is required) fails to make available to the Service Provider Personnel adequate working space and facilities and full and free access and use of the Hardware to enable the Service Provider to provide the Services.

7.2. Courtesy is expected at all times. Services will be withdrawn from abusive Customer and End User contacts and incidents will be reported to the Service Provider management for further investigation. The Customer must advise the Service Provider of any errors or omissions set out in the Schedule, and any changes during the Contract Period.

7.3. The Customer agrees to contact the Service Provider for Services via Nominated Support Contacts. When requesting Services, the Customer and End User shall follow the procedure for requesting the Services as described in Appendix 3.

7.4. The Customer and/or End User are responsible for all activities related to normal day to day monitoring, operation, configuration, patching, upgrades, and management of the Software. For the avoidance of doubt the Service Provider is only responsible for the provision of the Services in accordance with this Agreement.

7.5. It may be necessary to attempt to recover data stored on the Hardware. The success of such a recovery will be dependent on the back up procedure previously carried out. It is the Customer's responsibility to ensure that recovery is achievable and completed.

7.6. In the event of data retrieval being necessary, this is the Customer's responsibility.

7.7. The Customer and/or End User must maintain valid licences as maybe necessary for the Software being supported and sufficient maintenance agreements (where available) with the relevant vendor(s) to allow fault resolution for previously unidentified Software faults together with the provision of fixes and upgrades.

7.8. The Customer shall make available suitable remote access via modem or Internet to its machines for remote problem diagnostic and correction. Such activities shall be performed under the Customer's and/or End Users control (as applicable). The Customer acknowledges that failure to provide remote access may delay the problem resolution time.

7.9. The Customer shall ensure that the Service Provider Personnel are made aware of all rules, procedures and other relevant matters in relation to health and safety in advance at any visits to Customer and/or End User premises or premises under the control of the Customer.

7.10. The Customer will procure that in so far as an End User has access to or use of the Services such End User will comply with all the terms and obligations of this Clause 7 as if such End User was a party to this Agreement.

7.11. The Customer is responsible to the End User for all the success and completion of any and all contractual obligations, responsibilities, costs and other implications of termination of this Agreement. Unless explicitly stated in this Agreement the Service Provider is only obligated to the Customer, and then only under the terms and conditions of this Agreement.

8 Exclusions

8.1. The Service Provider does not warrant uninterrupted or error free operation of the Software and for the avoidance of doubt the Services do not cover the following:

   a) Damage or problems with the Software which in the Service Provider's reasonable opinion results from neglect or misuse, other software faults, hardware faults, or breaches by the Customer and/or End User of their obligations;

   b) Any Event of Force Majeure;

   c) Rectification of faults due to day/date errors;

   d) Subject to Clause 3.4, on site assistance at a Customer or End User location;

   e) System administration, management and strategy; or

   f) Notification of patch updates, maintenance levels, bios, firmware or latest microcode availability.

8.2. The Parties agree that any warranties not expressly set out in this Agreement, conditions or other terms whether implied by statute, Common Law, course of dealing or otherwise, shall be excluded in respect of the Service Provider's obligations and liabilities under this Agreement to the fullest extent permitted by law.

9 Payment

9.1. In consideration of the provision of the Services, the Customer shall pay to the Service Provider the Service Charges periodically in advance as set out in the Schedule, subject to (i) any agreed variations resulting from any Change to the Services approved by both Parties as described in Clause 13 and/or (ii) other increases in accordance with this Clause 9.

9.2. Without prejudice to any other remedy available to it the Service Provider may at any time by one (1) month notice in writing to the Customer vary all or any of its charges to cover any increases in cost to the Service Provider in performing its obligations under the Agreement: (i) resulting from non-compliance by the Customer and/or End User with the terms of this Agreement; or (ii) where the Agreement is for an unlimited number of calls and the Service Provider can demonstrate in good faith that the cost of providing the Services is no longer economically viable.

9.3. Within fourteen (14) days of notice provided pursuant to Clause 9.2 (the "**Increase Notice Period**") the Customer may give written notice to the Service Provider to terminate the Agreement unless the amendment or variation in Service Charges is imposed by legal requirements when the Customer shall have no right to terminate. If the Customer does not terminate in the Increase Notice Period the Customer is deemed to have accepted the increased/new Service Charges.

9.4. The Parties agree that unless otherwise specified in Schedule the Service Charges are inclusive of all expenses anticipated to be incurred by the Service Provider in the performance of this Agreement and, subject to any Change to the Service Charges agreed in accordance with this Agreement, the Customer shall have no obligation to make any payment to the Service Provider other than the Service Charges.

9.5. The Service Charges are stated exclusive of value added tax ("**VAT**"), any similar sales tax and/or any tax that replaces such sales taxes. VAT shall be added to all sums invoiced under this Agreement at the rate prevailing at the date of the invoice in the country in which the Services are delivered and will be payable at the same time as the amount to which it relates.

9.6. Invoices for the Service Charges will be sent by the Service Provider at least forty five (45) days before commencement of the period for which the invoice applies. The Customer shall pay to the Service Provider the total undisputed amount of each invoice in Pounds Sterling by electronic transfer to an account nominated in writing by the Service Provider in accordance with the payment terms on each correctly rendered invoice (the "**Due Date**").

9.7. For the avoidance of doubt where the Customer requires the Service Provider 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 Service Provider provide the applicable Purchase Order number relevant to the Services to be included on any invoice submitted by the Service Provider.

9.8. Where the Customer disputes an invoice, 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.

9.9. In the event that the Customer fails to pay any undisputed amount payable by it to the Service Provider within:

a) thirty (30) days of the Due Date for payment, the Service Provider shall be entitled to charge interest on the undisputed amount outstanding at the rate of three (3) per cent above the then current base rate of the Bank of England, from the Due Date for payment until the date of payment (whether before or after judgment);

b) sixty (60) days of the Due Date for payment, the Customer shall be deemed in material breach of the Agreement in accordance with Clause 10 without prejudice to the right of either Party to determine that any other breach of the Agreement constitutes a material breach. In the event of such breach, the Service Provider may terminate the Agreement under the provisions of Clause 10.

9.10. Any requests by the Customer which are in addition to the Services will be subject to a separate quotation.

9.11. Where additions are made to the Agreement, the Customer shall pay Service Charges to the Service Provider for the additional items from the date such additions become eligible for the Services.

9.12. Where the Agreement covers multiple items of Software the Customer may remove an Item of Software for convenience during the Contract Period subject to Services having been provided by the Service Provider for a minimum period of twelve (12) months and the Customer providing the Service Provider with a minimum of three (3) months notice in writing.

9.13. In respect of Clause 9.12 the Customer will receive a refund from the Service Provider for any prepaid period from the date at which Services are no longer required for a particular item of Software (except where said Software would result in the Agreement not covering any Software and/or the Service Charges are not itemised).

10 Termination

10.1. If any Party materially breaches in its obligations under the Agreement and such breach continues for thirty (30) days after receipt of written notice from the other requiring the remedying of such default the non-defaulting Party may terminate the Agreement forthwith by written notice and in such event all outstanding invoices for Services shall become immediately due and payable.

10.2. The Agreement may be terminated by a Party if the other Party be unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the Customer resulting from such reconstruction or amalgamation as a different legal entity shall agree to be bound by and assume the obligations under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the reasonable opinion of one Party means that the other Party may be unable to pay its debts.

10.3. The Agreement shall terminate automatically if the Customer and End Users combined right to use the Software shall terminate for any reason whatsoever.

10.4. If the Service Provider is affected by an Event of Force Majeure and is unable to cure the effect of the Force Majeure within twenty (20) days, the Customer may terminate this Agreement immediately on written notice and acquire an alternate service in replacement of the Services, without penalty.

10.5. In the event that the Customer terminates this Agreement in accordance with this Clause 10 the Customer may also request that the Service Provider continues to provide the Service for a reasonable time after the termination date, but in any event for no more than six (6) months. The Customer will be liable for pro-rata Service Charges to the Service Provider for the Services in this period.

11 Insurance

The Service Provider will at its cost maintain in force throughout the Agreement Term, and for claims made after the Contract Period in respect of events occurring during the Contract Period, insurance to cover the following:

a) Product Liability Insurance of no less than £15.0 million per annum;

b) Professional Indemnity insurance of value no less than £15.0 million per annum;

c) Public Liability Insurance of no less than £15.0 million per occurrence; and

d) Employers' Liability Insurance of no less than £10.0 million per occurrence;

and shall provide the Customer with copies of insurance certificates of the same if so requested.

12 Liability

12.1. The Parties accept that nothing in this Agreement limits or excludes any liability for fraud or fraudulent misrepresentation or for liability for death or personal injury resulting from their negligent acts or omissions in connection with this Agreement.

12.2. Neither Party shall be liable for special, indirect or consequential loss which shall include loss of profits, business, revenue, goodwill or anticipated savings however arising from this Agreement, whether in tort (including negligence) or contract.

12.3. Save as provided in Clause 12.2, each Party accepts liability for the losses arising as a consequence of its breach of this Agreement or its negligent or fraudulent acts and omissions and those of its Personnel in performance of this Agreement.

12.4. Neither Party shall be liable for any of the following loss or damage, however caused and even if in the contemplation of the Parties; (i) loss arising from any claim made against the Customer by any other person or party except to the extent that such loss is a consequence of the Service Provider's breach of this Agreement or its negligent or fraudulent acts or omissions; or (ii) loss of or damage to data.

12.5. Except for the liabilities accepted by the Service Provider under Clause 12.1 above, the Service Provider's entire liabilities in respect of any claim arising out of the performance by the Service Provider of its obligations under this Agreement (whether in contract, tort or otherwise) shall be limited to an amount equivalent to the annual value of the Service Charges.

12.6. For the avoidance of doubt the Customer is responsible to the End Users for all obligations and liability in respect of, the performance, and/or availability of the Services, or their non-performance and non-availability. Unless explicitly stated in this Agreement the Service Provider is only obligated to the Customer for the provision and performance of the Services, and then only under the terms and conditions of this Agreement

12.7. The liability provisions of this Clause 12 shall survive the termination of this Agreement howsoever caused.

13   Changes to the Services

13.1. Either Party may at any time request a Change in accordance with the procedures set out in this Clause 13. A Change shall only apply if there is an amendment to the terms and conditions of this Agreement or a Schedule and where other procedures are not specified to apply. The Customer shall apply to the Service Provider Representative for a Change Request Form and the Parties will process the Change in accordance with this Clause 13.

13.2. Until such time as a Change is made in accordance with this Clause 13, the Parties shall, unless otherwise agreed in writing, continue to perform their respective obligations under this Agreement in compliance with its terms prior to the Change.

13.3. The Party receiving the Change Request Form shall within five (5) Business Days evaluate the Change Request Form and, as it deems appropriate (i) request further information from the other Party, (ii) notify the Party seeking the Change of the rejection of the Change Request Form and giving reasons for such rejection; or (iii) notify the Party seeking the Change of any amendments, or additional terms and conditions, required to be incorporated in the Change Request Form.

13.4. In the case of any Change Request Form initiated by the Customer, if the Service Provider does not notify the Customer of the rejection of the Change Request Form, the Service Provider shall in addition, where relevant, respond to the Change Request Form by confirming in writing details of any variation to be made to the Service Charges and/or Service Levels as a result of introducing the relevant Change as part of the Services.

13.5. Except as provided in this Clause 13 neither Party shall be obliged to agree a request for a Change provided that neither Party shall withhold agreement to any Change required to comply with any applicable law.

13.6. Each Party shall bear its own costs in connection with the preparation of all documentation relating to and negotiation of proposed changes. Any discussions, negotiations, or other communications that may take place between the Parties in connection with any proposed change shall be without prejudice to the rights of either Party.

13.7. Following acceptance of a Change by all Parties the Agreement (including updates to the Inventory) shall be amended so that it includes a description of the Change and the Service Provider shall be entitled to vary the Service Charges, with effect from the date of implementation of the Change, by an amount equal to the amount notified to the Customer under this Clause 13.

14   Intellectual Property Rights

14.1. Neither Party shall cause or permit anything that may infringe or exploit any of the IPR of the other Party or a third party without the written permission of the other Party.

14.2. Nothing in this Agreement shall constitute or create any licence, right to use, right to exploit or other rights in respect of any of the Parties' IPR.

14.3. The Customer acknowledges that any products, software, services or paperwork delivered in the course of the Services may contain knowledge and code in the form of methods, techniques, modules, fragments, principles and algorithms developed over time by the Service Provider and its agents not specifically for the Services. The Customer agrees that the Service Provider and its agents may reuse all such knowledge and code at entirely the Service Provider's own discretion.

14.4. The Service Provider shall fully indemnify the Customer against all claims, demands, actions, reasonable costs, reasonable expenses (including but not limited to reasonable legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any the Service Provider IPR used in the provision of the Services.

14.5. For the avoidance of doubt, the Service Provider acknowledges that documents, records or other materials provided or made available to the Service Provider by or on behalf of the Customer and any amendments additions or changes to them, shall be owned by and remain within the ownership of the Customer or End User (as applicable) and nothing in this Agreement or otherwise shall confer on the Service Provider any right, title or interest in respect of such documents, records or materials.

14.6. The Customer will procure that in so far as an End User has access to or use of the Services such End User will comply with all the terms and obligations of this Clause 14 as if such End User was a party to this Agreement.

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 Anti- Bribery & Modern Slavery

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

16.2. Furthermore, 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 Service Provider shall comply with any reasonable written request received from the Customer for the purposes of any annual reporting requirements under the Slavery Rules

17 Force Majeure

17.1. Subject to Clause 17.2 neither Party shall be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any cause beyond its reasonable control including but not limited to the force majeure declaration of suppliers or strike, lockout or other form of industrial action (other than a strike, lockout or other form of industrial action of or by its own staff) (an "**Event of Force Majeure**").

17.2. The Party affected by any Event of Force Majeure shall use all reasonable endeavours to mitigate the effect of the Event of Force Majeure and shall immediately give the other Party written notification of the nature and extent of the Event of Force Majeure and the Parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

18 Notices

18.1. Any notice to be given by a Party under this Agreement shall be in writing, signed by or on behalf of the Party giving it and addressed to the Customer's Representative or the Service Provider Representative (as the case may be). Each notice shall be delivered to the other Party personally or be left at or sent by prepaid first class post or prepaid recorded delivery to the address of the Party as set out on the Signature Page of this Agreement or as otherwise notified in writing from time to time.

18.2. Except as referred to in Clause 18.3 a notice shall be deemed to have been served at the time of delivery if delivered personally; or two (2) Business Days after posting in the case of an address in the United Kingdom and four (4) Business Days after posting for any other address.

18.3. If the deemed time of service is not during normal business hours in the country of receipt, the notice shall be deemed served at the opening of business on the next Business Day of the country of receipt.

18.4. A Party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.

19   General

19.1.   This Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement.

19.2.   This Agreement shall be governed by and construed in accordance with the law of English and Wales. Each of the Parties irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.

19.3.   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.

19.4.   To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed severed and not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

19.5.   No purported variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each of the Parties.

19.6.   The rights and obligations of both Parties under the Agreement are wholly independent of their rights and obligations under any other contract.

19.7.   No single or partial exercise, or failure or delay in exercising any right, power or remedy by any Party shall constitute a waiver by that Party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.

19.8.   Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to it. However, the Service Provider acknowledges that this Agreement and the Services are for the benefit of the members of the Customer Group and agrees that any loss or damage of whatever form and howsoever caused of any member of the Customer Group and which arise out of or in connection with the Services or this Agreement shall be deemed to be loss or damage of the Customer and the Service Provider shall raise no objection, defence or protest in respect thereof. Each member of the Customer Group shall be entitled to enforce the terms of this Agreement in its own right.

19.9.   The Agreement supersedes all previous agreements between the Parties relating to its subject matter.

19.10.   Assignment or other transfer by either Party of all or part of the Agreement will only be valid with the prior written consent of the other Party (and such consent shall not to be unreasonably withheld or delayed).

19.11.   Each Party undertakes to promptly do all things and execute all further documents necessary to give full effect to this Agreement.

19.12.   Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership and none of the Parties shall be, or be construed to be, the agent of the other Party for any purpose or to have any authority to bind or incur any liability on behalf of any of the other Party, save as otherwise expressly provided in this Agreement.

20   Survival

The expiry or termination of this Agreement for any reason will not affect those provisions which are expressly or by implication to survive expiry or termination of this Agreement and those provisions shall continue in full force and effect.

APPENDIX 1 – SERVICE LEVELS

Service Hours	Minimum call Units Used	Maximum Time Per Call Unit
Call made during Normal Working Hours	1	4 Hours
Call made outside Normal Working Hours	1.5	4 Hours
Saturday & Sundays	2	4 Hours
Public Holidays	2	4 Hours

Call Priority	Service Window	Response Time Period	Update Frequency Period
1	24 hours, 7 days a week	30 minutes	2 hours
2	Normal Working Hours	2 hours	2 working days
3	Normal Working Hours	4 hours	5 working days

Call Priority	Definition
1	A Call Priority 1 Incident is defined as where there is a total or significant failure of a system with no work around. E.g: The failure of an entire system or software service with no work around such that the server cannot be used by the Customer business.
2	A Call Priority 2 Incident is where there is failure of a significant proportion of a system with a work around. E.g: The failure of one or more software services that does not cause the server to fail but the Customer is working under a non-standard configuration which is causing ongoing risk and/or disruption to use of the server by the business and/or a significant number of users.
3	A Call Priority 3 Incident is where there is a minor failure of a software service or a system with or without a work around. E.g: The failure of a single software function that does not impact critical business functions and/or relates to the inability of a single user to complete normal business activity.

APPENDIX 2 – ADDITIONAL CHARGES

1   Change Control Units

1.1.   The Customer may use Change Control Units ("**Change Control Units**") for additional activities outside the scope of the Services. All changes and additions to the Services shall be subject to change control in accordance with Clause 12 of the Conditions and no additional sums will be levied on the Customer without formal sign off.

1.2.   Unused Change Control Units in any year of the Contract Period cannot be carried over to the next year. Each Change Control Unit has a value depending upon when it is used as defined in the table below. Multiple Change Control Units may be combined for longer activities:

Time of Delivery	9:00am-5:30pm	5.30pm-9:00am	Weekends and Public Holidays
Duration of 1-Change Control Unit	60 minutes	45 minutes	30 minutes

1.3.   Change Control Units can be purchased in minimum packs of ten (10) units at £1,500 with each Change Control valued for a duration as detailed in Clause 1.2. All requirements for work out of scope of the Services should be submitted as a Service Request to the Service Provider.

1.4.   For the avoidance of doubt, the Service Provider is under no obligation to provide assistance with any activities or services outside the scope of the Services.

2   Professional Services

2.1.   As an alternative to Change Control Units as described in Clause 1 the following charges will be applied for any additional activities outside the scope of the Services requested by the Customer. All changes and additions will be subject to change control in accordance with Clause 12 of the Conditions and no additional sums will be levied on the Customer without formal sign off.

Resource Description	Daily Rate
AIX Consultant	1100.00
Data Centre Engineer	900.00
Data Management / Storage Consultant	1300.00
Hardware Engineer	900.00
iSeries Consultant	1000.00
Microsoft / x86 / Linux Consultant	900.00
Network Consultant	900.00
Offsite Tape Storage Analyst	400.00
Operations Analyst	700.00
Project Manager	1000.00
Service Delivery Manager	900.00
Service Desk Analyst	400.00
Virtualisation (VMware) Consultant	1000.00

2.2.   The Professional Services charges show the amounts due to the Service Provider in GBP excluding VAT and are to be paid by the Customer in accordance with Clause 8 of the Conditions.

2.3.   The Daily Rates in Clause 2.1 will be subject to an increase of fifty (50) percent for work to be completed outside the Business Day Monday to Friday, and increased by one hundred (100) percent for work completed at weekends or on public holidays.

APPENDIX 3 – SUPPORT REQUEST PROCESS

1.1.   The Service Provider provides a manned Service Desk which is available 24x7x365, subject to the terms and conditions of this Agreement, via the telephone number 08444 825 400.

1.2.   If contacting the Service Provider outside Normal Working Hours the Customer and/or End User should ensure that cover is available for those hours. Outside Normal Working Hours the Services is limited to the handling of Priority 1 Incidents only as defined in the Service Levels. Any non-Priority 1 Incidents logged outside Normal Working Hours will be progressed the next Business Day.

1.3.   In order to make effective use of the Services all Customers and End Users shall adhere to the following procedure for the logging of Incidents:

   a)   Ensure that any Incident is reported by being is channelled through Nominated Support Contacts for verification and synopsis;

   b)   Contact the Service Provider Service Desk on the telephone number provided in Clause 1.1 and report the problem to the Service Desk personnel, giving;

      (i)   immediate contact details; and

      (ii)   details of the equipment as listed in the Agreement including type and serial number;

   c)   Service Desk personnel will discuss the problem and agree an initial prioritisation of the Incident using the categorisation provided in the Service Levels;

   d)   All calls are logged on the Service Provider's Incident management system and will be given a unique log number as a reference. If several issues are raised in a single call, each Incident will have a separate log number and will be handled separately;

   e)   Service Desk personnel may be able to resolve the reason for a call immediately or, commit to handling the request by returning the contact, or dependant on this Agreement, and with the appropriate authorisation, may log into the impacted system, or request further information;

   f)   If Service Desk personnel cannot respond immediately as above, they will contact a suitable Service Provider technical specialist to progress the Incident. That person will make contact as soon as possible using the provided contact details;

   g)   The Service Provider technical specialist will enlist the assistance of other the Service Provider Personnel or that of third parties as required;

   h)   The Service Provider technical specialist will pursue the Incident until it is satisfied a suitable outcome has been achieved and, with Customer and/or End User agreement, close the Incident accordingly; and

   i)   The Service Provider management monitors the progress of Incidents and will intervene if response or update frequencies exceed the targets defined in the Service Levels, or if there is any disagreement between the Customer and Service Provider on the prioritisation, progress, or closure of calls.