

## TERMS AND CONDITIONS FOR THE PROVISION OF HARDWARE MAINTENANCE SERVICES

### 1. **DEFINITIONS**

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

**"Affiliates"** means in relation to a Party, any existing or future person which directly or indirectly controls, is controlled by or is under common control with such Party;

**"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 which is not a Saturday, Sunday or a public holiday in England and Wales, or the country or countries in which the Services are performed;

**"Commencement Date"** means the date on which the Agreement shall become effective as set out in the Schedule, or where no such date is specified, the date of signing of the Schedule by the Customer;

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

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

**"CRU"** or **"Customer Replaceable Unit"** means a hardware component which can be replaced by a non-technical person from the Customer or End User without specialist tools;

**"Customer"** means the (i) Customer as named in the Schedule; and (ii) its Affiliates (which may collectively also be referred to as the **"Customer Group"**);

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

**"End User"** means either (i) a separate entity set out on the Schedule and recognised by the Parties as a client of the Customer, and with which the Company has no

direct contractual or other responsibilities under this Agreement; or (ii) where no separate entity is set out on the Schedule, the Personnel 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;

**"Good Industry Practice"** means using that degree of skill and care, diligence, prudence and foresight which would ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking;

**"Fix Time"** has the meaning set out in Clause 4;

**"Incident"** has the meaning set out in Clause 3;

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

**"Manufacturer"** means the manufacturer of an item of hardware comprising the Equipment;

**"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;

**"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);

**"Response Time"** has the meaning set out in Clause 4;

**"Schedule"** means the separate schedule or statement of work to which these Conditions apply to include details such as the Commencement Date, Equipment, Initial Term, Service Charges, applicable SLA's and Sites;

**"Service Charges"** means the charge(s) for the Services as set out in the Schedule and payable in advance at the intervals set out in the Schedule;

**"Service Credit"** means a credit against the Service Charges made in accordance with Clause 4 for the failure of the Company to achieve an applicable SLA for an item of Equipment;

**"Services"** means the services to be provided by the Company as set out in Clause 3;

**"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; and

**"SLA"** has the meaning set out in Clause 4;

**"Wear and Tear"** means damage that may naturally and inevitably occur over time during competent use and care with proper maintenance, in line with the Manufacturer's documentation.

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

## **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 promptly (normally within thirty (30) minutes) contact the Customer or End User (as applicable) to collect any additional information required, commence diagnostics, and determine whether the Incident can be resolved remotely. Following such initial contact, the Company shall in accordance with the applicable SLA 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 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 being notified of an Incident (whether by the ESA, Customer or and End User), and unless agreed otherwise with the Customer or End User, the Company undertakes to dispatch a suitably qualified service engineer or (where applicable) a CRU to the relevant Site for corrective maintenance within any Response Time 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 any required replacement items to the

relevant Site and complete corrective maintenance, allowing the Equipment to resume working, within any Fix Time for the item of Equipment as set out in the Schedule.

e) For the avoidance of doubt where the SLA includes a Fix Time the Company shall not be subject to any Response Time measurement. In the event (i) there are any delays outside of the Company's reasonable control after the suitably qualified service engineer and any required replacement items have arrived at the relevant Site; (ii) replacement of the complete hardware system of which the failed component forms part of is required in order to restore the Equipment to normal operations; and/or (iii) the Customer or End User requests that resolution of the Incident be scheduled for a specific date and/or time, the Company shall not be liable for any Service Credit or measurement in its performance against the Fix Time to the extent such failure is caused by either of the foregoing sub-clauses (i), (ii), and/or (iii).

f) 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 SLA for the relevant item of Equipment.

#### 4. SERVICE LEVELS AND CREDITS

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

- (1) the hours of cover: (A) Mon-Fri, 09:00-17:30, on Business Days, (B) Mon-Fri, 08:00-19:00 on Business Days, or (D) 24 x 7, 365 days a year, and for the purposes of this sub-clause time is measured locally to the Customer; and
- (2) the applicable period for response as described in Clause 3 c) measured from the point at which the Customer logged an Incident with the Company (the "**Response Time**"): (2) two hours, (4) four hours, or (8) eight hours; or
- (3) the applicable period for a fix as described in Clause 3 d) measured from the point at which the Customer logged an Incident with the Company (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 Time measure shall not apply to the Services for that Incident.

c) As the sole remedy for failure to achieve a Fix Time SLA applicable to an Incident, the Company shall provide a Service Credit to the Customer to be used against the next invoice issued by the Company against any item of Equipment for which the Fix Time is not achieved following complete Equipment failure. The amount of a Service Credit shall be equivalent to eight (8) percent of the annual Service Charge for the item of Equipment that failed. The number of Service Credits that may be paid to the Customer in any year of the Agreement shall be capped at twelve (12). For the avoidance of doubt, Service Credits are not available for any items of Equipment with a Response Time only SLA. In the event the provision of any Service Credits remains outstanding on expiration or termination of the Agreement, the Company shall pay such Service Credits to the Customer via electronic bank transfer within thirty (30) days of such expiration or termination.

#### 5. EXCEPTIONS

a) The Services exclude any maintenance of the Equipment which is necessitated for any cause other than fair Wear and Tear or the Company's neglect or fault. As such, the Services exclude maintenance required due to:

- (1) fluctuation (outside the Manufacturer's written recommendations) or failure of electrical power, air conditioning, humidity control or other environmental conditions;
- (2) accident (including during transportation), neglect, or misuse of the Equipment by the Customer, End User, their Personnel or any other third party;
- (3) any fault in any attachments (whether or not supplied by the Company) which does not form part of the Equipment including to telecommunications equipment;
- (4) act of God, fire, flood, war, act of violence, or any other similar occurrence leading to partial or complete damage to the Equipment;
- (5) any attempt by any person other than the Company's Personnel to physically adjust, repair, convert or maintain the Equipment other than for installing or removing CRU's;
- (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;
- (8) recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Equipment; or

- (9) 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 replacement of SSD Hardware (as defined herein) where the conditions in Clause 8 b) have not been met;
  - (3) repair or renewal of consumables (as defined by the Manufacturer's written documentation) relating to the Equipment, including tape media;
  - (4) maintenance or support of the operating system, loading or uninstalling software, applications or data, or any other software support services;
  - (5) maintenance of any attachments (whether or not supplied by the Company) which do not form part of the Equipment, including un-jamming or fitting of consumable supplies;
  - (6) refurbishing, installation, physical changes to or alteration of the Equipment other than for repair, 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 and in accordance with the payment terms as set out in the Schedule and stated on each correctly rendered invoice (the "**Due Date**"). Service Charges may be specified within the Schedule as: (i) recurring (at such frequency and for such periods as set out in the Schedule, for example monthly, quarterly or annually) or (ii) "one-off" or non-recurring (for example for the purchase of new equipment or hardware or the provision of certain professional services).
- b) All 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 and, subject to Clause 17 c), the Service Charges shall be non-refundable on termination of this Agreement (in whole or part) for any reason.
- c) 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. The Customer must make payment of the disputed invoice in full, without set off

or deduction, in accordance with the normal payment terms for the invoice. If, after resolving the dispute, it is agreed that any overpayment of Service Charges has been made by the Customer, Supplier will issue a credit note to Customer to be applied against future invoices in the amount of the overpayment.

- d) Subject to this sub-clause, the Company shall be entitled to increase the Service Charges:

- (1) no more than once in each period of twelve (12) months commencing on the Service Commencement Date and each anniversary thereafter by giving to the Customer not less than thirty (30) days prior written notice. Such increase shall not exceed the greater of: (i) the percentage rate of CPIH at the date of notice being issued by the Company; and (ii) five percent (5%) of the Service Charges as at the date of notice being issued by the Company; and
- (2) in addition to any increase to the Service Charges made pursuant to sub-paragraph d) (1) above, at any time by giving the Customer not less than thirty (30) days' notice in writing where the costs of providing the relevant Services (or any part thereof) by the Company increase due to matters outside of the Company's control, including but not limited to any increase in the cost of power or energy, any licensing, charges payable by the Company to any third party in connection with the provision of the relevant Service(s) (or part thereof), or in meeting any legal or regulatory requirements applicable to the Company in providing the Services (or any part thereof).

- e) 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.

- f) If the Customer fails to make any undisputed payment within thirty (30) days after the Due Date for payment then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to suspend any further performance of the Services and charge the Customer interest accrued daily (both before and after any judgement) on the amount unpaid, at the rate of three (3) per cent per annum above the 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).

- g) If the Customer fails to make any undisputed payment within sixty (60) days of the Due Date for

payment then, without prejudice to any other right or remedy available to the Company, the Customer shall be deemed in material breach of the Agreement and the Company shall have termination rights in accordance with Clause 17 d) (1), provided that this sub-clause shall apply only to the failure to pay a material undisputed amount owed.

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**

The Company shall make an additional charge, to be agreed in writing and in advance with the Customer, and in accordance with the Company's standard scale of charges from time to time in force, for service visits, repairs or replacements made at the request of the Customer or End User (as applicable):

- (1) where the Company repairs or replaces any part of the Equipment which has failed due to a cause other than fair Wear and Tear including those set out in Clause 5 a); or
- (2) by reason of any fault in the Equipment or maintenance of the Equipment due to causes not covered by the Services including those set out in Clause 5 b);
- (3) which the Company repeatedly and reasonably finds (having given prior written notice to the Customer or End User) are not Incidents and/or hence avoidable, frivolous or not necessary;
- (4) for corrective maintenance of hardware not covered by this Agreement which the Company agrees to perform and where the Customer does not want such hardware added to the Services,

provided always that the Company shall not be obliged to carry out such works and that any required consumables, replacement parts or other hardware shall be charged in addition to the relevant charges for the Company's service engineer.

## **8. REPLACEMENT PARTS AND 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 part or parts are not available as a replacement the Company will install part or parts of a higher specification and notify the Customer at the time of installation provided always that if the permanent replacement Equipment is materially different the Company reserves the right to increase the Service Charges by the differential in accordance with the Company's standard charges from time to time

and given sufficient prior written notice to the Customer, such that the Customer may at its discretion invoke replacement of the non-identical Equipment pursuant to sub-clause 8 d).

b) Subject to the terms in this sub-clause b) corrective maintenance for solid state based (flash) hard drives and solid state based (flash) I/O cards ("**SSD Hardware**") is provided as part of the Services. SSD Hardware is not covered by the Services if (i) it has not been explicitly declared by the Customer and included as an item in the Schedule on a chargeable or non-chargeable basis; and/or (ii) it is considered a consumable as set forth in the Manufacturer's documentation. For SSD Hardware requiring replacement that has reached its maximum supported lifetime and/or the maximum usage limits (collectively "**End of Life**") as set forth in the Manufacturer's documentation, corrective maintenance may be subject to additional fees at the Company's sole discretion over and above any Service Charges, subject to confirmation at the time an Incident is logged. The Company is under no obligation to replace any End of Life SSD Hardware until any additional fees are approved by the Customer in writing. The Company reserves the right to audit any hardware containing SSD Hardware at a date and time agreed with the Customer.

c) 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 and the Customer may either accept the replacement parts or request removal pursuant to sub-clause d).

d) 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.

e) 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.

f) Where the Equipment or any part or parts thereof removed become the property of the Company in accordance with sub-clause e) or as stated elsewhere in the Agreement, the Customer warrants that it or the End User (as applicable) shall have 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.

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

h) Subject to the warranty set out herein 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 ensure the Company is informed by notification to the Company's nominated service control (as notified to the Customer in writing from time to time) in a reasonable period of time, of any Equipment failure or potential failure, and shall as applicable, permit or arrange with the End User for the Company to have the necessary access to the Equipment and use of necessary tools, machines and devices in the Customer's 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 utilised and/or 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:

- (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 physical modification to, tamper with, wrongfully operate, or repair the Equipment (other than for installing or removing CRU's) without the Company's prior written consent or authorise anyone other than the Company to carry out any physical 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 written operating instructions and ensure that only competent trained Personnel (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 carry out any minor non-corrective maintenance from time to time as per Manufacturer's written recommendations;

(5) use on the Equipment only such consumables 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 in accordance with Clause 7 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 use the Equipment other than for the purpose for which it was designed and take reasonable precautions to avoid damage to the Equipment.

d) **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 facilities as may be reasonably agreed from time to time 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, are at all times accompanied by a member of the Customer's or End User's (as applicable)

Personnel familiar with the Site and safety procedures.

e) **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 seventy two (72) hours of the Customer or End User first becoming aware of such failure or incorrect working may result in additional charges being levied by the Company in the event such failure of notification can reasonably be demonstrated by the Company to have increased the replacement parts required to resolve the related Incident;
- (2) make available to the Company such programs (including Manufacturer supplied recovery media), operating manuals and information as may be reasonably necessary to enable the Company to perform its obligations hereunder and shall if requested by the Company provide Personnel familiar with the Customer's or End User's (as applicable) software and operations, and such Personnel shall cooperate fully with the Company's Personnel in the diagnosis of any malfunction of the Equipment;
- (3) provide such telecommunication facilities as are reasonably required by the Company for testing and diagnostic purposes, including to support operation of any ESA, at the Customer's expense;
- (4) 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 such software or programs.

#### **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 the Agreement and permit the Company to perform the Services on the Equipment.
- b) The Customer undertakes to indemnify and hold harmless the Company against any losses, damages and/or reasonable costs and expenses that the

Company may suffer as a result of a breach by the Customer of sub-clause 10 a) above.

c) The Customer warrants to the Company that it has prior to the making of the Agreement made reasonable efforts to collate and disclose to the Company all known faults or defects in the Equipment or operating system which existed 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, End User, their Personnel or subcontractors, or any breach of its warranty at sub-clause 10 c).

#### **11. COMPANY WARRANTIES**

a) Subject to sub-clause 11 b) the Company warrants that it will use reasonable skill and diligence in accordance with Good Industry Practice and appropriately qualified and experienced Personnel in performing the Agreement, that it shall have free and unencumbered title to any replacement parts, that such replacement parts will be of satisfactory quality and at least functionally equivalent to the part(s) being replaced. 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 and to the extent of any defect in the Services arises from wilful damage and/or negligence by the Customer and/or End User, abnormal working conditions, failure to follow the Company's reasonable written instructions, misuse or alteration or repair of the Equipment by the Customer or End User without the Company's approval;
  - (3) the Company shall be under no liability if the undisputed Service Charges have not been paid by the Due Date for payment and the Services have been suspended pursuant to Clause 6 f).
- b) Any replacement equipment or parts provided by the Company as part of the Services are supplied without warranty save for the benefit of such warranty or guarantee as is given by the Manufacturer

or supplier to the Company. Subject to Clause 8 a) all replacement equipment and parts shall be included within the scope of the Services at no additional cost in the same manner and subject to the same SLA as per the original equipment and/or parts.

c) The Company shall indemnify the Customer and keep the Customer fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Company, its Personnel, or subcontractors.

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 two (2) Business Days 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, and subject to payment of any applicable Service Credits, the Company shall have no further liability to the Customer in respect of such claim.

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 or End User's (as applicable) 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) Subject to having made commercially reasonable efforts to mitigate such delay, the Company shall not be liable for any delay in performing its obligations hereunder if any recommended spare parts become obsolete, and the Company and shall be entitled to remove any impacted Equipment from the Agreement in accordance with Clause 17 b).

h) Notwithstanding anything else contained in these Conditions, neither Party shall be liable to the other 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 other Party as a result of an action brought by a third party) even if such loss was reasonably foreseeable or a Party had been advised of the possibility of the other Party incurring the same.

i) 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 Company 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.

## **13. CONFIDENTIALITY**

Each Party shall treat as confidential all information obtained from the other pursuant to the Agreement and shall not divulge such information to any person (except to such Party's own Personnel and then only to those Personnel who need to know the same) without the other Party's prior written consent provided that this Clause 13 shall not extend to information which was rightfully in the possession of such Party prior to the Commencement Date or the commencement of the negotiations leading to the Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 13) or which is trivial or obvious. Each Party shall ensure that its Personnel 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 it is relevant in respect of the provision and use of the Services. For the purposes of the Agreement, the terms Data Controller, Data Processor, Personal Data and Processing shall be as defined in the Data Protection Legislation.

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

c) The Customer acknowledges that Company does not require access to, use of, or other rights to the data on the Equipment in order to deliver the Services and its obligations in accordance with the terms of this Agreement.

d) The Parties further acknowledge that it may be necessary to exchange Personal Data relating to their respective Personnel and/or the End User(s) in order to receive the benefit of or deliver the Services (as applicable). Where a Party receives any such Personal Data from the other Party it does so as Data Controller and shall ensure that it fully complies with the Data Protection Legislation.

#### **15. SUBCONTRACTING**

a) The Company may not subcontract the Services 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).

b) in the event any Services are subcontracted under this Agreement the Company shall procure and ensure that its permitted sub-contractors; (i) are authorised, licensed, qualified, approved and permitted to deliver the subcontracted services in accordance with Good Industry Practice; and (ii) the Company shall be and shall remain responsible and liable for all its obligations pursuant to this Agreement and for all acts and omissions of its subcontractors.

#### **16. 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 16 shall not restrict a Party from hiring employees of the other Party who apply unsolicited in response to a general advertising or recruitment campaign.

#### **17. TERMINATION**

a) If in its reasonable opinion considering factors such as (but not limited to) Incident rates and current industry standards the Company considers that all or part of the Equipment needs reconditioning it will notify the Customer in writing and where practical provide a quotation for reconditioned replacement Equipment of identical or higher specification. If the Customer does not accept the quotation 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, by giving not less than thirty (30) days written notice to the Customer, to cancel that part of the Agreement insofar as it relates to 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 17 c) of the Service Charges which have been paid in advance by the Customer.

c) On termination of the Agreement or part thereof in accordance with the provisions of sub-clauses 17 a) and/or 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 by either Party forthwith on giving notice in writing to the other Party if the other Party:

- (1) commits any material breach of any term of the Agreement and (in the case of a material breach capable of being remedied) shall have failed, within thirty (30) days after the receipt of a request in writing from the other Party so to do, to remedy the material breach (such request to contain a warning of such Party's intention to terminate). For the avoidance of doubt, and subject to Clause 6 g) the failure by the

Customer to pay any material amount of any undisputed sums due under this Agreement shall be considered a breach of a material obligation; or

- (2) shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a Court of competent jurisdiction shall make an order to that effect, or if the other Party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

e) For the avoidance of doubt a breach of Party's obligations under Clauses 19 and 20 shall be deemed a material breach not capable of remedy and the non-breaching Party may terminate the Agreement in writing with immediate effect.

f) Termination or expiry 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.

#### **18. FORCE MAJEURE**

b) Neither Party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including acts of God, riots, war or armed conflict, acts of terrorism, acts of government authorities, fire, flood, hurricane, tornado, or earthquake, pandemics, or disaster, force majeure declaration of suppliers, strikes, lockout or other form of industrial action (other than of its own Personnel), wrecks or delays in transportation, embargoes, container shortages, 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. The Party affected by the force majeure event shall use reasonable endeavours to mitigate any effects of the force majeure event.

c) A Party cannot claim relief if the event of force majeure is attributable to that Party's wilful act, neglect, or failure to take reasonable precautions against the relevant event and provided it is not an event that the relevant Party would reasonably be

expected to manage via its business continuity or disaster recovery planning in accordance with Good Industry Practice.

#### **19. ANTI-BRIBERY**

Both Parties shall comply with all applicable laws, regulations, legally binding codes and sanctions relating to anti-bribery and anti-corruption ("**Anti-Bribery Law**"). In the event a Party is found not to comply with 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.

#### **20. MODERN SLAVERY**

Both Parties shall comply with all applicable laws, statutes, regulations legally binding codes and sanctions relating to modern slavery and human trafficking (the "**Slavery Rules**") and the Company shall comply with any reasonable written request received from the Customer for the purposes of any statutory annual reporting requirements under the Slavery Rules. In the event 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.

#### **21. NOTICES**

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Schedule or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 21. Any such notice shall be deemed to have been served if by hand when delivered, if by first class post forty eight (48) hours after posting.

#### **22. GENERAL**

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

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

c) 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.

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

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 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.

e) 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.

f) 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 within 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.

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

h) The Parties acknowledge that no rights or benefits are expressly conferred upon or implied as conferred upon any other person or third party under the Agreement, however, the Company acknowledges that this Agreement and the Services are for the benefit of the members of the Customer Group and agrees that each member of the Customer Group shall be entitled to enforce the terms of this Agreement in its own right. For the avoidance of doubt only a member of the Customer Group that directly suffers under this Agreement shall be entitled to make a claim against the Company.

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

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