

## BACKGROUND

(A) The Supplier is in the business of providing a range of IT support, hosting and consultancy goods and services.

(B) The Customer wishes to obtain and the Supplier wishes to provide the goods and/or services on the terms and conditions set out in this contract.

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**Additional Services:** any Emergency Maintenance performed by the Supplier under this agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Conditions:** these terms and conditions as amended from time to time.

**Commencement Date:** the date that the Services will be provided from which is to be agreed between the Supplier and Customer.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Contract Term:** the contractual term for the provision of Goods and/or Services specified in the Order to start on the Commencement Date.

**Corrective Maintenance:** means:

- (a) making any adjustments to the Maintained Equipment; and
- (b) replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order, in accordance Schedule 4

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Customer-site Equipment:** any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by the Supplier as part of the Managed Services.

**Customer Software:** has the meaning given to that term in the definition of Software.

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Emergency Maintenance:** in accordance with Schedule 4:

- (c) making any adjustments to the Maintained Equipment; and
- (c) replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order

**Excluded Causes:** means:

- (a) a defect in the manufacturer's design of the Maintained Equipment;
- (b) faulty materials or workmanship in the manufacture of the Maintained Equipment;
- (c) use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by the Supplier;
- (d) any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents;
- (e) the Customer or a third party moving the Maintained Equipment;
- (f) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied;
- (g) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
- (h) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or
- (i) the neglect or misuse of the Maintained Equipment.

**Excluded Maintenance:** any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.

**Fix Time:** the applicable fix times as set out in the Order.

**Force Majeure Event:** an event or circumstance beyond a party's reasonable control.

**Good Industry Practice:** in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances.

**Goods:** the goods (or any part of them) set out in the Order.

**Good Working Order:** the Maintained Equipment operates in accordance with the Operating Manuals.

**Hardware:** all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by the Supplier to deliver the Managed Services to the Customer as set out in the Order.

**Hardware Maintenance Services:** Corrective Maintenance and Emergency Maintenance of the Maintained Equipment.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Location:** the location of the Maintained Equipment at the Customer's premises as specified in the Order, or any other location as may be agreed by the parties in writing from time to time.

**Maintenance:** any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Managed Services, as well as any other support or training services to be provided to the Customer under this agreement.

**Maintained Equipment:** the equipment specified in the Order including any or all parts of the network, hardware, software as identified in the Order.

**Maintenance Release:** release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

**Maintenance Events:** has the meaning given in Schedule 2

**Managed Services:** the service described in the Managed Services Specification to be performed by the Supplier in accordance with this agreement.

**Managed Services Specification:** the specification for the Managed Services as described in the Order.

**New Version:** any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

**Operating Manuals:** any operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment

**Order:** the purchase order for the supply of Goods and/or Services

**Response Time:** the applicable response times as set out in the Order

**Services:** the services, including the Deliverables, Managed Services, Set-up Services and Hardware, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Level Arrangements:** the service level arrangements set out in the Order.

**Service Specification:** the description or specification for the Services as set out in the Order.

**Set-up Services:** the due diligence, configuration and related work to be performed by the Supplier to set up the Managed Services as specified in the Order.

**Site:** the premises from which the Customer carries out its business as notified to the Supplier in writing from time to time.

**Software:** any software used by the Supplier (or any of its sub-contractors) exclusively to provide the Managed Services to the Customer whether owned by a third party (Third Party Software), by the Customer (Customer Software) or by the Supplier (Supplier Software) as listed in the Order.

**Supplier:** ARC (U.K.) SYSTEMS LIMITED registered in England and Wales with company number 02695504 whose registered office is at Spectrum House, 2b Suttons Lane, Hornchurch, Essex, RM12 6RJ.

**Supplier Software:** has the meaning given to that term in the definition of Software.

**Supplier's System:** the information and communications technology system to be used by the Supplier (or any of its sub-contractors) in performing the Services, including the Hardware, the Software, the Customer-site Equipment and communications links between the Hardware and the Customer-site Equipment and the Customer's Operating Environment.

**Third-Party Additional Terms:** the additional terms and conditions relating to Third-Party Software referred to in the Order, including any applicable end-user licence.

**Third-Party Software:** the third-party software identified in the Order.

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

1.2 Clause, Schedule and Paragraph headings shall not affect the interpretation of this agreement.

**1.3** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**1.4** The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

**1.5** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.6** This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

**1.7** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

**1.8** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

**1.9** A reference to **writing** or **written** includes email.

**1.10** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**1.11** A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

**1.12** References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

**1.13** Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Commencement and duration**

**2.1** The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

**2.2** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.3** The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence and shall continue for the Contract Term (unless terminated earlier in accordance with clause 13) and any further periods in accordance with clause 2.4.

**2.4** The Contract shall continue in accordance with these Conditions for successive periods of 12 months ('**Rollover Contract Term**') until terminated by either the Supplier or the Customer on no more than 90 nor less than 30 days' prior written notice to the other before end of the current Rollover Contract Term.

## **3. Goods**

If the Order indicates any Goods are to be supplied under the Contract then the provisions of Schedule 1 shall apply.

## **4. Supply of Services**

**4.1** The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

**4.2** The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

**4.3** The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

**4.4** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

**4.5** The Supplier does not warrant that the Customer's use of the Managed Services shall be uninterrupted or error-free.

**4.6** The Supplier shall only provide the Services during the service hours specified in the Order or Service Level Arrangements.

**4.7** If the Order indicates there will be a Software Licence under the Contract then the provisions of Schedule 3 shall also apply.

**4.8** If the Order indicates any there will be Hardware Maintenance Services under the Contract then the provisions of Schedule 4 shall also apply.

## **5.0 Service provision**

**5.1** The Supplier shall provide the Services until expiry or termination of this agreement for any reason.

**5.2** The Service Level Arrangements shall apply with effect from the start of the first complete month.

**5.3** The Customer shall not store, distribute or transmit through the Managed Services any material that:

(a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images; and/or

(d) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity.

**5.4** The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).

**5.5** The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services).

**5.6** The Customer shall not provide the Managed Services directly or indirectly to third parties.

**5.7** The Supplier reserves the right to:

(a) modify the Supplier's System, its network, system configurations or routing configuration; or

(b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,

provided that this has no adverse effect on the Supplier's obligations under this agreement and its provision of the Services or the Service Level Arrangements.

**5.8** The Services does not include:

(a) any Software or Maintained Equipment not specified or included in the Order including non-serviceable items (such as iPads/Microsoft Surface Pro / routers / switches) and those not available from the manufacturer or deemed beyond economical repair in accordance with clause 5.9; and

(b) any work to accessories, alterations, attachments or any other equipment that is external to the Software or Maintained Equipment not identified within the Order

**5.9** The Supplier will notify the Customer in writing if, in its reasonable opinion, the Software or Maintained Equipment (or any part of it) is identified as beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary at which point any obligations of the Supplier to provide Services in respect of such equipment will be suspended.

## **6. Customer's obligations**

**6.1** The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access (including remote access) to the Customer's premises, office accommodation and other facilities and all documentation, software, materials and services necessary for the provision of the Services maintenance as reasonably required by the Supplier to provide the Services;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(e) prepare the Customer's premises for the supply of the Services;

(f) will immediately notify the Supplier if there is any failure of the Software or Maintained Equipment;

(g) comply with any additional obligations as set out in the Service Specification and the Goods Specification; and

(h) put and keep in place adequate security measures to protect the Maintained Equipment and any other software or data from viruses, harmful code or unauthorised access and the Supplier shall not be responsible for any unauthorised access to the Maintained Equipment by means of hacking, any unauthorised access of the Equipment with intent to commit or facilitate the commission of an offence or any unauthorised modification of Mainlined Equipment by a third party

**6.2** If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 7. Charges and payment

### 7.1 The price for Goods:

(a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and

(b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

### 7.2 The charges for Services shall be the price set out in the Order.

7.3 In respect of Goods, the Supplier shall invoice the Customer as set out in the Order. In respect of Services, the Supplier shall invoice the Customer on as set out in the Order.

### 7.4 The Customer shall pay each invoice submitted by the Supplier:

(a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

7.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13 (Termination), the Customer shall:

(a) pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and

(b) pay an administration charge of £45.00 for any failed or returned payment.

7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 8. Intellectual property rights

8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

8.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 9. Data protection and data processing

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 9, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.

9.3 Without prejudice to the generality of clause 9.1, the Customer will ensure that it has all necessary appropriate consents and notices in laws of a member of the European Union to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.

9.4 Without prejudice to the generality of clause 9.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

(a) process that Personal Data only on the instructions of the Customer which are set out in the Order unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity,

availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Provider has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

(g) at the written direction, and cost, of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain records and information to demonstrate its compliance with this clause 9.

9.5 The Customer consents to the Provider appointing third-party processors of Personal Data under this agreement.

## 10. Warranties

10.1 The Customer warrants, represents and undertakes that:

(a) it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Customer;

(b) it has the authority to grant any rights to be granted to the Supplier under this agreement, including the right to provide the Software and Hardware to the Supplier as indicated in this agreement and for the same to be used in the provision of the Services and otherwise in connection with this agreement;

(c) it shall comply with and use the Services in accordance with the terms of this agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws;

(d) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to license to the Supplier, any materials reasonably necessary for the fulfilment of all its obligations under this agreement, including any third-party licences and consents in respect of any Customer Software; and

(e) the Supplier's possession and use in accordance with this agreement of any materials (including third-party materials supplied by the Customer to the Supplier) shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.

## 11. Confidentiality

11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

(e) defective products under the Consumer Protection Act 1987.

**12.2** Subject to clause 12.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of or damage to goodwill; and

(g) any indirect or consequential loss.

**12.3** Subject to clause 12.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the lower of £2,000 or one month's charges paid under the Contract.

**12.4** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**12.5** This clause 12 shall survive termination of the Contract.

### 13. Termination

**13.1** Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Customer's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(e) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(f) there is a change of control of the Customer.

**13.2** Without affecting any other right or remedy available to it, and subject to clause 14.2, the Supplier may terminate the Contract on giving not less than 90 days' written notice to the Customer.

**13.3** The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so.

**13.4** Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

### 14. Consequences of termination

**14.1** On termination of the Contract:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) the Supplier shall immediately cease provision of the Services;

(d) if the Supplier receives, no later than ten days after the effective date of the expiry or termination of this agreement for any reason, a written request for the delivery to the Customer of the most recent backup of the Customer Data, the Supplier shall use

reasonable commercial endeavours to deliver the backup to the Customer within 30 days of its receipt of such a written request in the format stored or in a format as otherwise reasonably requested by the Customer, provided that the Customer has at that time paid all fees and charges outstanding at (and including any resulting from) expiry or termination (whether or not due at the date of expiry or termination). The Customer shall pay all reasonable costs and expenses incurred by the Supplier in returning and disposing of Customer Data and expunging it from the Supplier's System;

(e) at the sole discretion of the Supplier, the Supplier will use reasonable endeavours to assist in any migration of Managed Services on termination for which the Customer shall pay all reasonable costs and expenses incurred by the Supplier in assisting with this.

**14.2** On termination of the Contract in accordance with clause 13.2, the Supplier shall repay to the Customer any amount which it may have been paid in advance in respect of Services not provided or procured by the Supplier as at the termination date

**14.3** Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**14.4** Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

### 15. Restrictions on the Customer

The Customer undertakes to the Supplier that they shall not do any of the following in any capacity, whether on its own behalf, or on behalf of, or jointly with, any other person at any time during the Contract Term and for period of two years from termination employ or engage, or offer to employ or engage, or solicit or otherwise entice or attempt to entice away from the Supplier, any person who is employed or engaged by the Supplier.

### 16. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 17. Change control

**17.1** If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.

**17.2** If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

(a) the likely time required to implement the change;

(b) any variations to the Fees arising from the change; and

(c) any other impact of the change on the terms of this agreement.

**17.3** If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

**17.4** If either party wishes the other party to proceed with the relevant change referred to in clause 17.3, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, and any other relevant terms of this agreement to take account of the change.

### 18. General

#### 18.1 Assignment and other dealings.

(a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

#### 18.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

(b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax, at 9.00 am on the next Business Day after transmission.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**18.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**18.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach

or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**18.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

#### **18.6 Entire agreement.**

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

**18.7 Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**18.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**18.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**18.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

### **SCHEDULE 1 – Goods**

#### **1. Delivery of Goods**

**1.1** The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.

**1.2** Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

**1.3** Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**1.4** If the Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

#### **2. Quality of Goods**

**2.1** The Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

(a) the Customer gives notice in writing within 72 hours from delivery that some or all of the Goods are defective;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

#### **3. Title and risk**

**3.1** The risk in the Goods shall pass to the Customer on completion of delivery.

**3.2** Title to the Goods shall not pass to the Customer until the earlier of the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

**3.3** Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d); and

(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

**3.4** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d), then, without limiting any other right or remedy the Supplier may have the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### **SCHEDULE 2 – Maintenance and support**

#### **1. Maintenance Events**

**1.1** Maintenance work that may require interruption of the Managed Services (Maintenance Events) shall not normally be performed during Normal Business Hours. The Supplier may interrupt the Managed Services outside Normal Business Hours for maintenance provided that it has given the Customer 24 hours advance written notice.

**1.2** Any Maintenance Events that occur during Normal Business Hours, or that occur with less notice than required by paragraph 1.1, and which were not requested by the Customer, shall be considered downtime for the purpose of service availability measurement. The Supplier shall at all times endeavour to keep any service interruptions to a minimum.

#### **2.0 Technical support services**

**2.1** Should the Customer determine that the Managed Services include a defect, the Customer may file error reports or support requests.

**2.2** The Supplier shall only accept telephone or voicemail based incident submittal from the Customer 24 hours a day, seven days a week. The Supplier shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Customer. The Supplier shall use reasonable endeavours to respond to and resolve all support requests from the Customer within the time periods specified below, according to priority.

**2.3** The Supplier shall determine the priority of any incident in accordance with the Service Level Arrangements.

### **SCHEDULE 3 – Software Licence**

#### **1. Licence**

**1.1** The Supplier grants to the Customer a non-exclusive licence for a length of the Contract Term.

**1.2** In relation to scope of use:

(a) for the purposes of paragraph 1.1, use of the Software shall be restricted to use of the Software in object code form in the manner specified in the Order for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).

(b) For the purposes of paragraph 1.1, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed.

(c) the Customer may not use the Software other than as specified in paragraph 1.1 and paragraph 1.2(a) without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.

(d) the Customer may make backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.

(e) except as expressly stated in this paragraph 1, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.

(f) the Third-Party Software shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to the Third-Party Additional Terms.

(g) the Customer shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms howsoever arising.

(h) the Supplier may treat the Customer's breach of any Third-Party Additional Terms as a breach of this licence.

**1.3** The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under paragraph 1.2(e) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

**1.4** The Customer shall not:

(a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;

(b) allow the Software to become the subject of any charge, lien or encumbrance; and

(c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

**1.5** The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

**1.6** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**1.7** The Customer shall:

(a) ensure that the number of persons using the Software does not exceed that as stated in the Order;

(b) ensure that the Software is installed on designated equipment only;

(c) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;

(d) notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;

(e) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

**1.8** The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

## **2. Maintenance Releases**

The Supplier will provide the Customer with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

## **3. Supplier's Warranties**

**3.1** The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.

**3.2** The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

**3.3** All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## **4. Intellectual Property Rights**

**4.1** The Customer acknowledges that all Intellectual Property Rights in the Software and any Maintenance Releases belong and shall belong to the Supplier or the relevant third-party owners (as the case may be), and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this licence.

## **5. Termination**

**5.1** On termination for any reason:

(a) all rights granted to the Customer under this licence shall cease;

(b) the Customer shall cease all activities authorised by this licence;

(c) the Customer shall immediately pay to the Supplier any sums due to the Supplier under this licence; and

(d) the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.

## **SCHEDULE 4 – Hardware Maintenance Services**

### **1. Hardware Maintenance Services**

**1.1** During the Contract Term, the Supplier shall provide the Customer with the Hardware Maintenance Services for the Maintained Equipment at the Location.

**1.2** On the Customer informing the Supplier that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall:

(a) use reasonable endeavours to attend at the Location during Normal Business Hours within the relevant Response Time; and

(b) use reasonable endeavours to perform Corrective Maintenance of the Maintained Equipment within the relevant Fix Time.

**1.3** On the Customer informing the Supplier outside of Normal Business Hours that the Maintained Equipment is malfunctioning, has failed or is not in Good Working Order, the Supplier shall:

(a) use reasonable endeavours to attend at the Location within the relevant Response Time; and

(b) use reasonable endeavours to perform Emergency Maintenance of the Maintained Equipment within the relevant Fix Time.

**1.4** Emergency Maintenance shall be charged at the Additional Services Rates for each of the Supplier's personnel reasonably required to attend the Location. Any additional charges shall be calculated from when the personnel arrive at the Location until they leave the Location.

### **2. Replacements and Spare Parts**

**2.1** In performing, Corrective Maintenance and the Additional Services, the Supplier shall use reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. The Supplier shall have the right to charge the Customer for the spare parts.

**2.2** All spare parts and/or replacements provided by the Supplier to the Customer shall become part of the Maintained Equipment and the property of the Customer. The Supplier will assign to the Customer, with full title guarantee and free from all third-party rights, all spare parts and/or replacements provided by the Supplier. All parts and components removed from the Maintained Equipment by the Supplier in the course of performing Corrective Maintenance and/or the Additional Services shall no longer constitute part of the Maintained Equipment and will be the property of the Supplier. The Customer will assign to the Supplier, with full title guarantee and free from all third-party rights, all parts and components removed from the Maintained Equipment by the Supplier in accordance with this paragraph 2.2. For the purposes of this sub-clause, 'assign' includes 'transfer ownership of'.

### **3. Customer's Obligations**

The Customer shall:

(a) ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions as the Supplier may give from time to time;

(b) notify the Supplier promptly if the Maintained Equipment is discovered to be operating incorrectly;

(c) at all reasonable times permit full and free access to the Location and to the Maintained Equipment to the Supplier, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable the Supplier to perform the Hardware Maintenance Services and the Additional Services while at the Location;

(d) provide the Supplier with any information that is reasonably requested in the performance of the Hardware Maintenance Services and the Additional Services;

(e) take any steps reasonably necessary to ensure the safety of the Supplier's personnel when attending the Location;

(f) not allow any person other than the Supplier to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of the Supplier;

(g) not move the Maintained Equipment from the Location without the prior written approval of the Supplier (approval not to be unreasonably withheld or delayed);

(h) store any reserve equipment only in conditions approved by the Supplier, and make this equipment available for periodic maintenance, as with all other Maintained Equipment; and

(i) only use supplies or materials supplied or approved by the Supplier (approval not to be unreasonably withheld or delayed).

### **4. Excluded Maintenance**

**4.1** The Supplier is not obliged to perform any Excluded Maintenance.

**4.2** Where the Supplier is performing or has performed the Hardware Maintenance Services in circumstances where it is established that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.