



TRANSACT

TRANSFORM

RUN

RECYCLE

General Terms and Conditions of Purchase of Maintenance Only

Short Form

Author: Viscant Igbinomwanhia

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1. BASIS OF CONTRACT

1.1. These terms and conditions below ("**Conditions**") apply to the agreement ("**Contract**") between Bell-TSIV Limited or its Group Company ("**Customer**") for the provision of services carried out by the Supplier, including preventative maintenance, corrective maintenance and emergency maintenance (collectively, "**Maintenance**") of the equipment (collectively, "**Maintained Equipment**") specified in the Customer's order ("**Order**"). The Supplier shall provide the Customer with Maintenance and/or support services for software, cloud services and/or hardware as detailed in the Order (individually defined as "**Software**" "**Cloud Services**" or "**Hardware**" respectively) (collectively "**MSS**"). Once the Order is issued by the Customer, the Contract is formed between the Customer and the Supplier. These Conditions shall apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate within its quotation, or which are implied by trade, custom, practice or course of dealing.

2. DEFINITIONS

- 2.1 "**Customer Premises**" means the Customers and end customer premises or those premises identified in the Order where the Maintenance performance is to be carried out;
- 2.2 "**Bundled**" means sold with the provision of services for Maintenance under the same Contract and not as a separate service under another Contract;
- 2.3 "**Fix Time**" means maximum amount of time to be taken by the Supplier to provide the fault correction as set out in the relevant Order;
- 2.6 "**Fault Correction(s)**" means any repair, correction, adjustment, replacement, renewal, bug-fix, work-around, patch or other modification or addition to any part of the Hardware and/or Software that brings the Hardware and/or Software into conformity with the specification and the Contract provided that a Fault Correction shall only be deemed to be complete once it is implemented within the Hardware and/or Software and the Hardware and/or Software is working again fully in accordance with the Hardware or Software specifications as stipulated in the Order and Contract and are doing so without any having a harmful impact on or causing any diminution in performance, capacity or functionality of our other systems;
- 2.7 "**Fault**" means any error, failure or malfunction of the Hardware and/or Software such that it does not to operate in accordance with the Hardware or Software specification and/or the Contract;
- 2.1. "**Group Company**" means with respect to the relevant party, any company which is a subsidiary or holding company of such Party or a subsidiary of its holding company.
- 2.4 "**New Version**" means any new version of the Hardware and/or 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;
- 2.8 "**Priority Categorisation**" means in Customers reasonable opinion:
- (a) Priority 1 – a reproducible fault which substantially hinders or prevents all users of the Hardware from using a material part of the functionality of the Hardware in question
- (b) Priority 2 – a reproducible fault which substantially hinders or prevents a significant number of users from using a material part of the functionality of the Hardware in question

- (c) Priority 3 - a reproducible fault which hinders or prevents all or some users of the Hardware from using some non-material part of the functionality of the Hardware in question
- (d) Priority 4 - a reproducible fault which hinders or prevents one or more user of the Hardware from using some non-material part of the functionality of the Hardware in question
- (e) Priority 5 - other, a cosmetic defect which does not impact a material part of the functionality of the Hardware
- 2.5 "**Upgrade**" means an upgrade of the Hardware and/or Software which corrects faults, adds functionality or otherwise amends or upgrades the Hardware, which does not constitute a New Version;

3. WARRANTIES

- 3.1. The Supplier warrants, represents and undertakes to the Customer that:
- 3.1.1. the Maintenance will be performed in such a way as not to cause any interruption to the business processes of the Customer or its end customer (other than any agreed and unavoidable interruption which is required in order to perform the Maintenance in a proper and efficient manner);
- 3.1.2. the updated Software or Hardware will continue to provide the facilities and functions and shall continue to comply with the Contract;
- 3.1.3. the performance of the Maintenance will:
- 3.1.3.1. comply with all laws, legislation and government regulations applicable to a party's rights and obligations set out in this Contract from time to time ("**Applicable Laws**") relating to the performance;
- 3.1.3.2. be free from material defects in design, materials and workmanship;
- 3.1.3.3. correspond in all material respects with any relevant specification in the Order;
- 3.1.3.4. be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer whether expressly or by implication;
- 3.1.3.5. be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended); and
- 3.2. shall pass to the Customer for its own benefit and the benefit of its end users, the benefit of all manufacturer and other third-party warranties and/or guarantees relating to the performance of the Maintenance; and.
- 3.3. gives the warranties more specifically set out in the Order.

4. BREACH OF WARRANTY

If there is a breach of any of the warranties in Condition 3.1, then without limiting any of its other rights or remedies, and whether or not it has accepted the performance, the Customer may exercise any one or more of the following remedies at the Supplier's cost and expense: (i) have the Supplier promptly re-perform the Maintenance and provide Maintenance that complies with the Contract; or, (ii) the Supplier shall refund the price paid.

5. PERFORMANCE OF THE CONTRACT

- 5.1. The Supplier shall provide Maintenance to the delivery Customer Premises on the delivery date set out in the Order or as amended in writing between the parties from time to time.

- 5.2. The Supplier shall attend, as is necessary, the Customers Premises to perform Maintenance. Where the Supplier is conducting the Maintenance on-site, it shall do so between the hours of 9:00 am to 5:30pm ("**Working Hours**") on a day other than a Saturday, Sunday or a bank holiday in the jurisdiction of the Customer ("**Working Day**").
- 5.3. Supplier shall use all reasonable endeavours to perform Maintenance within the relevant fix time as stipulated in the Order.
- 5.4. Following the Customer informing the Supplier that the Maintained Equipment is malfunctioning or not in good working order, the Supplier shall:
- 5.4.1. use all reasonable endeavours to perform Maintenance within the Fix Time; and
 - 5.4.2. use all reasonable endeavours to attend the Customer Premises, if necessary, during Normal Business Hours within the relevant response time as stipulated in the Order or otherwise agreed to by parties.
- 5.5. If the Customer informs the Supplier outside Normal Business Hours that there has been a failure in performance the Supplier shall:
- 5.5.1. use all reasonable endeavours to perform Maintenance within the relevant Fix Time;
 - 5.5.2. where, in the Suppliers opinion, it cannot reasonable perform Maintenance remotely, use all reasonable endeavours to attend at the Customer Premises within the relevant response time as stipulated in the Order or otherwise agreed to by parties.
- 5.6. In performing any Maintenance services, the Supplier shall use all reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to good working order either remotely or while in attendance at the Customer Premises. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours, the Supplier shall either arrange for a further visit to the Customer Premises within Normal Working Hours to complete the repair or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site.
- 5.7. The Supplier shall procure and ensure that personnel shall comply with Customers reasonable health and safety and security policies.
- 5.8. The Customer may terminate all or part of the Contract at any time by giving written notice via email to the Supplier. If the Supplier has not performed the Maintenance in accordance with the Order, then such termination shall be without liability on the part of the Customer.
- 5.9. If the MSS is Bundled then the following shall apply:
- 5.9.1. either, the MMS shall be sold to the Customer on the same terms and conditions as those upon which the party with whom the Supplier contracts for supply of the MSS to the Customer ("**Third Party Vendor**").
 - 5.9.2. if there is a EULA or Subscription Agreement which specifically references maintenance and/or support, then the MSS shall be supplied in accordance with the terms of the applicable EULA or Subscription Agreement.
- 5.10. If the MSS is not Bundled then it shall be supplied on the same terms and conditions as apply to Professional Services and the MMS and the applicable service levels shall be as described in the applicable SOW.
- 5.11. Supplier shall comply with the supplier charter along with any other applicable Customer or end user policies as provided by Customer from time to time.
- 6. REPLACEMENT AND SPARE PARTS FOR HARDWARE**
- 5.1 In performing the Maintenance, the Supplier shall source spare parts required to restore the Maintained Equipment to good working order. Where the Supplier can reasonably source individual spare parts for less than those amounts specified in the Order, the Supplier shall not charge the Customer for the spare parts, unless otherwise agreed to by both parties.
- 5.2 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 during Maintenance shall no longer constitute part of the Maintained Equipment and will be the property of the Supplier.
- 7. MAINTENANCE SUPPORT FOR HARDWARE AND SOFTWARE**
- 7.1. In order, to be eligible for Maintenance services under the Contract, the Hardware and Software must be unmodified and operated by the Customer in accordance with the operating manuals, user instruction manuals, technical literature, specifications and other documentation relating to the Software and/or Hardware ("**Documentation**").
- 7.2. The Supplier may, in its absolute discretion, examine and test the Hardware to ascertain its eligibility for support prior to the provision of the Maintenance. Where the Supplier determines that the Hardware is ineligible for support, the Customer may choose to either:
- 7.2.1. terminate the Contract; or
 - 7.2.2. require the Supplier to carry out any necessary repairs, modifications and adjustments (which the Supplier reasonably determines to be necessary to make the Hardware eligible for Support) which will be made by the Supplier at additional costs. The Supplier shall not make any such repairs, modifications and adjustments without the prior written consent of the Customer.
- 7.3. The Supplier shall:
- 7.3.1. resolve queries via a telephone call or email originated by the Customer to the Contact Email or Contact Telephone Number;
 - 7.3.2. provide workable and successful recommendations relevant to the course of action necessary to recover from a Fault, error or failure in the Hardware or Software;
 - 7.3.3. upon request by the Customer provide the diagnosis of Faults and the rectification of such Faults by the issue of Fault Corrections and Upgrades in accordance with the provisions set out in paragraphs 7.5 to 7.8 (inclusive) below.
- 7.4. Upon becoming aware of or receiving notification of a Fault, the Customer shall, acting reasonably, assign a Fault Categorisation according to the Priority Categorisations and shall inform the Supplier of the Fault and Fault Categorisation
- 7.5. When the Supplier becomes aware of a Fault, the Supplier shall respond to the Customer within the response times as indicated in the Order to indicate the actions that the Supplier will take to provide Fault Correction within the Fix Times and shall promptly achieve Fault Corrections within such Fix Times.
- 7.6. The Supplier shall maintain an accurate and up to date record of all Faults reported, showing the date and time of Fault, nature of the Fault, actions taken, status, expected or actual resolution time and shall provide the same to the Customer upon request.
- 7.7. The Supplier shall:
- 7.7.1. ensure that the Hardware and/or Software conforms to any change in legislation or new legal requirements which affect the application of any function or facility described in the relevant Hardware and/or Software specifications as stipulated in the Order;

- 7.7.2. promptly notify the Customer in writing of all such changes and new requirements; and
- 7.7.3. operate a telephone helpdesk where detailed in the Contract or Order.
- 7.8. The following terms are in relation to providing Maintenance for Software specific Orders:
- 7.8.1. The Supplier shall, at no further cost to the Customer, amend the relevant part of the Software and Software specification necessary to enable the Customer to make proper use of the corrected version of the Software;
- 7.8.2. the Customer shall be free to photocopy or otherwise duplicate the Documentation provided by the Supplier and relating to the use of the Software;
- 7.8.3. the Supplier shall promptly notify the Customer of any Upgrade, New Version or other release of the Software issued by the Supplier (collectively, "Modifications"). If such Modification is an Upgrade or a New Version, give at least 20 Working Days' notice prior to the planned implementation date of such Upgrade or New Version and shall offer such Modifications as reflective in the Order.
- 7.8.4. No Modification shall have a detrimental effect on the functionality, reliability or performance of the Software or use of the same: (a) in the case of an Upgrade, the Customer may within a reasonable time require the Supplier to supply, free of charge, such additional services as are required to rectify any defect in the Software which the Upgrade was intended to rectify; or (b) in the case of a New Version, the Customer may, within a reasonable time require the Supplier to supply, free of charge, such additional services as are required to rectify any defect in the Software by installing the New Version.
- 7.8.5. The Supplier will provide the Customer with written notice (notice period as agreed to in the Order) of the date when a version of the Software is no longer going to be maintained or supported by the Supplier ("Extinct Software"). Following such notification, the Customer may, at its option (a) migrate to a maintained and supported version at the then prevailing price or such other price as may be agreed between the Customer and the Supplier or (b) terminate the Contract. The Supplier will be under no obligation to continue to provide the Software Maintenance services for the Extinct Software from such date. Any prepayment shall be credited against the Maintenance price for the maintained and supported version adopted by the Customer or, in the case of termination, refunded to the Customer.

8. PRICE AND PAYMENT

- 8.1. The Customer shall pay all invoices within sixty (60) days from the date of the invoice.
- 8.2. All payments shall be made in pounds (GBP) or Euro (€), unless otherwise agreed in writing between the Parties.
- 8.3. If any charges payable under any Contract is not paid when due then Supplier shall be entitled to payment and may claim interest from the due date until payment is made in full both before and after any judgment, at two per cent (2%) per annum over the Bank of England Bank Rate from time to time.
- 8.4. If the Customer, on bona fide grounds, disputes any part of an amount invoiced by the Supplier ("**Disputed Sum**"), the Customer shall notify the Supplier in writing of that dispute within five (5) Working Days of receiving the invoice, giving

details of the nature of the dispute and the amount that it claims should have been invoiced and:

- 8.4.1. the Customer will pay that part of the invoice which is not the Disputed Sum in accordance with Condition 8.1;
- 8.4.2. the Customer will be entitled to withhold payment of the Disputed Sum;
- 8.4.3. the Supplier will provide all such information and evidence as may be reasonably necessary to verify the Disputed Sum; and
- 8.4.4. following resolution of the dispute under this Condition, the Customer will promptly pay to Supplier that part of the Disputed Sum as it is resolved is payable by the Customer.

9. CONFIDENTIALITY

- 9.1. The Supplier shall:
- 9.1.1. protect all information, disclosed by the disclosing party, or its employees, officers, advisers, agents or representatives ("**Representatives**"), pursuant to the Contract, including but not limited to, financial, end customer information, business or technical or other data and all other confidential information (whether written, oral, visual or in electronic form or in magnetic or other media) ("**Confidential Information**") and, in doing so, must use no less than the equivalent degree of care that such party applies to its own Confidential Information which shall in no case be less than a reasonable standard of care;
- 9.1.2. have internal systems to ensure that Confidential Information is stored and handled in such a way as to prevent unauthorised disclosure;
- 9.1.3. procure that its personnel and any third parties do not; disseminate, copy, employ, exploit, adapt, modify or in any other manner whatsoever utilise the Confidential Information other than strictly for the provision of Maintenance. For the avoidance of doubt, the Supplier shall be liable for all acts and/or omissions of its personnel and any third parties.
- 9.2. The obligations contained in Conditions 9.1.1 to 9.1.3 shall not apply to any Confidential Information which: (a) is lawfully in the possession of the Supplier prior to receipt from the disclosing party, as reasonably evidenced in writing; (b) is or becomes publicly known, other than as a consequence of a breach of the Contract; (c) can be reasonably evidenced by written records that it has been developed independently by the Supplier without access to, use of, or incorporation of the Confidential Information; (d) is required to be disclosed by a court of competent jurisdiction or operation of law, provided the Supplier, where reasonably practicable, provides notice to the Customer of such disclosure; (e) is received from a third party without breach of any other relevant confidentiality obligations.
- 9.3. Where the receiving party is required to disclose Confidential Information by a court of competent jurisdiction or operation of law, the receiving party shall:
- 9.3.1. where reasonably practicable and legally permitted, provide notice to the disclosing party of such disclosure;
- 9.3.2. co-operate with the disclosing party, at the disclosing party's costs and expense, in such manner as it may reasonably require to prevent or limit such disclosure; and
- 9.3.3. limit the disclosure of Confidential Information only to the extent required.
- ## 10. DATA PROTECTION
- 10.1. For the purpose of this Condition 9, "Controller", "Personal Data" and "Process" shall have the meanings given to them in the Data

- Protection Act 2018 unless and until: (a) the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then (b) any successor legislation to the GDPR or the Data Protection Act 2018 (“Data Protection Legislation”);
- 10.2. The parties each acknowledge and agree that they may need to Process Personal Data (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Maintenance; (b) request and receive the Maintenance; (c) compile, dispatch and manage the payment of invoices relating to the Maintenance; (d) manage the Contract and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the performance of the Maintenance; and (f) comply with their respective regulatory obligations.
- 10.3. Each party shall Process Personal Data for the purposes set out in Condition 9.2 in accordance with their respective privacy policies. The parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Condition 9.2, and in doing so each party will ensure that the sharing and use of this Personal Data complies with DPA.
- 11. CUSTOMER MATERIALS**
- 11.1. The Supplier including any of its employees, agents, consultants, contractors and any third party shall:
- 11.1.1. not store, copy, disclose, or use material which is made available or supplied by the Customer to the Supplier (“**Customer Materials**”) except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise expressly authorised in writing by the Customer.
- 11.1.2. take all precautions necessary to preserve the integrity of Customer Materials and to prevent any corruption, destruction or loss of data relating to the Customer or their end customer which is processed, stored, generated, or capable of access by, or which otherwise comes into the possession of the Supplier or any third party.
- 12. INSURANCE**
- 12.1. The Supplier agrees to take out and maintain insurance in respect of employer’s liability, public liability and professional liability as is commercially prudent and reasonable with a reputable insurance company unless otherwise agreed in the Contract. The Supplier shall provide the Customer with a copy of such insurance certificates upon reasonable request in order to verify the extent and level of insurance cover taken out by the Supplier and the payment of the relevant premiums.
- 13. IPR INDEMNITY**
- 13.1. The Supplier shall indemnify and hold the Customer harmless from and against any and all liability or damage (including reasonable and verifiable costs and expenses) suffered or incurred by the Customer and arising from any action, claim or proceedings brought against the Customer by a third party alleging that the proper possession or use of the Hardware and/or Software by the Customer infringes such third party’s IPR (“**Claim**”) provided that: (a) the Supplier is given prompt written notice of such Claim; (b) the Supplier is given information, reasonable assistance, and exclusive authority to defend or settle the Claim; (c) that the Customer complies with all reasonable instructions of the Supplier with regard to the continuing use of the Hardware and/or Software; and (d) that Customer does not prejudice the Supplier’s defence or settlement of the Claim.
- 14. LIMITATION OF LIABILITY**
- 14.1. Neither party excludes or limits its liability to the other for:
- 14.1.1. personal injury or death caused by its negligence;
- 14.1.2. any matter for which, Applicable Laws, a party cannot exclude or limit or attempt to exclude or limit its liability; and
- 14.1.3. fraud or fraudulent misrepresentation.
- 14.2. Subject to Condition 14.1, neither party shall have any liability to the other party for any indirect, special or consequential loss, loss of profits, loss of revenue, loss of savings, damage to reputation or goodwill or loss of data.
- 14.3. The Supplier’s total liability to the Customer arising under or in connection with the Contract whether for breach of contract, tort, breach of statutory duty or otherwise shall not exceed:
- 14.3.1. £5 million for any and all liability resulting from defects in the Products; any Claim under Condition 13.1 (IPR Indemnity); for breach of Condition 8 (Confidentiality); or, negligence; and,
- 14.3.2. for all other liability, the price of the Maintenance services paid by the Customer under the Contract, unless otherwise agreed in the Contract.
- 14.4. The Customer’s total liability to the Supplier for breach of contract, tort, breach of statutory duty or otherwise shall not exceed:
- 14.4.1. £5 million (five million) per claim for all liability arising from defects in the supplied products;
- 14.4.2. £5 million (five million) for any and all liability resulting from any claim for breach of Condition 16 (Intellectual Property Rights)
- 14.4.3. for all other liability, the price of the Maintenance services paid by the Customer under the Contract, unless otherwise agreed in the Contract.
- 15. ANTI-BRIBERY AND CORRUPTION**
- 15.1. The Supplier including any of its employees, agents, consultants, contractors and subcontractors, shall:
- (i) act in accordance with all Applicable Laws relating to bribery and the non-payment of secret commissions (“**Anti-Corruption Laws**”); (ii) not do, or omit to do anything likely to cause the Customer or end customer to be in breach of Anti-Corruption Laws; (iii) not give, promise, receive or request any bribes (financial or other advantage), including but not limited to in relation to any public official; (iv) comply with the Customer’s anti-bribery policy as updated from time to time provided a copy has been provided to Supplier beforehand (v) maintain an effective anti-bribery (including gift and hospitality) compliance programme, designed to ensure compliance including the monitoring of compliance and detection of violations; and (vi) reasonably assist the Customer, to comply with bribery and corruption legislation at the Customer’s cost and expense and (vii) reasonably assist the other party at the other party’s expense, to comply with its legal obligations related to bribery, corruption and secret commissions required by Applicable Laws any related costs shall be borne by the party requesting assistance. Either party shall promptly notify the other of any allegations of fraud, bribery, secret commissions or corrupt practises made against such party in court, arbitration or administrative proceedings, or if any investigation is commenced in respect of such allegations; at any time during the term of the Contract.
- 15.2. Any breach of Condition 15.1 by a party will be a material breach of the Contract by such party which is not capable of being remedied, irrespective of whether any financial loss or reputational damage arises, and irrespective of the level of any

financial loss or deprivation of benefit arising, as a consequence of such breach.

- 15.3. Each party will indemnify the other party against all liability or damage (including reasonable and verifiable costs and expenses), in each case arising out of or in connection with any material breach by the indemnifying party as described in Condition 14.2. Conditions 14 shall apply to this indemnity.

16. ANTI-SLAVERY

- 16.1. The Supplier shall and shall take reasonable measures to procure that its sub-contractors shall at all times:

16.1.1. comply with any and all Applicable Laws anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015 ("Anti-slavery Laws");

16.1.2. comply with the Customer's code of conduct as amended from time to time;

16.1.3. not engage in any Modern Slavery Practice. "Modern Slavery Practice" means any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol), (c) human trafficking or (d) the arrangement or facilitation of the travel of another person with a view to that person being exploited;

16.1.4. not do or omit to do any act or do thing which constitutes an offence under applicable Anti-Slavery Laws; not knowingly employ or engage in any practices that constitute an offence under Anti-Slavery Laws; and

16.1.5. not do or omit to do any act or thing which causes any Customer to be in breach of and/or to commit an offence under any Anti-Slavery Laws.

- 16.2. The Supplier will:

16.2.1. impose upon the third parties, the obligation to conduct proper and appropriate checks on any agency or person used by the third parties to provide labour, employees, contractors or other persons to undertake tasks (in each case whether on a permanent or temporary basis) in the provision of supplying the Hardware designed to ensure that any such agency or person does not engage in any Modern Slavery Practice;

16.2.2. to the extent that it forms part of the Maintenance services, provide the Customer with such reasonable assistance and information as it may require from time to time to assist it to:

16.2.2.1. perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws;

16.2.2.2. prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015 and to include the matters referred to in section 54(5) Modern Slavery Act 2015;

16.2.2.3. comply with any requirement to report on respect for human rights or to enable a Service Recipient to demonstrate compliance with any human rights code or policy to which it adheres or which applies to it;

16.2.2.4. identify any non-compliance with the Customer's code of conduct; and

16.2.2.5. conduct due diligence and to measure the effectiveness of the steps that the Customer is taking or wishes to take to ensure that Modern Slavery Practices are not taking place in its business or supply chains;

to the extent it does not form part of the Maintenance services the Supplier may make a fair and reasonable charge for such assistance.

16.3. The Supplier will promptly give written notice to the Customer upon becoming aware of the occurrence of a breach or suspected breach of any of its obligations under this Condition 15.

16.4. Any breach of Condition 16.1 by the Supplier will be a material breach of this Contract which is not capable of being remedied, irrespective of whether any financial loss or reputational damage arises, and irrespective of the level of any financial loss or deprivation of benefit arising, as a consequence of such breach.

16.5. The Supplier will indemnify the Customer against all liability or damage (including reasonable and verifiable costs and expenses), in each case arising out of or in connection with any breach by the Supplier of Condition 16 (including any failure or delay in performing, or negligent performance or non-performance of, any of its obligations under this Condition 15).

17. INTELLECTUAL PROPERTY RIGHTS

17.1. Any intellectual property rights includes but is not limited to; patents, designs and trade marks (whether registered or unregistered), copyright, database rights and know how (collectively, "IPR").

17.2. Unless otherwise expressly agreed by the Parties in this Contract, nothing in this Contract shall transfer any IPR from one party to the other party and the Supplier or its licensor, shall retain ownership of all IPR in the Deliverables.

17.3. The Customer hereby authorises the Supplier to use any IPR in materials provided to it by the Customer for the purposes only of performing its obligations under the Contract for the duration of the Contract.

17.4. The Supplier hereby grants (or shall procure the grant of) the right to possess and use the Hardware and/or Software for the purpose for which the Maintenance have been supplied.

17.5. The Customer shall not remove, deface or obscure any identifying or proprietary mark on or relating to the Maintenance.

18. TERMINATION

18.1. Either party may by written notice terminate the Contract if the other party is in material breach of any Condition(s) of the Contract, which is either:

18.1.1. not capable of remedy; or

18.1.2. being capable of remedy, has not been remedied within thirty (30) days after written notice from the other party requiring it to do so.

18.2. Either party may by written notice to the other party, terminate the Contract if the other party is in persistent breach of any Condition(s) of the Contract.

18.3. Either party may terminate the Contract at any time with immediate effect if:

18.3.1. a resolution is passed, or an order is made for the winding up (or equivalent order in the relevant jurisdiction) of the other party, otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction;

18.3.2. the other party becomes Insolvent. Insolvent means a party (a) has a receiver, LPA receiver, fixed charge receiver, receiver and manager, administrative receiver or court appointed receiver or provisional liquidator appointed over any of its assets, undertaking or income; (b) has an administration order made in respect of it or a notice

- of appointment of an administrator filed in respect of it at any court; (c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring); (d) becomes subject to a moratorium under Part A1 of the Insolvency Act 1986; (e) has a winding up order made by a court in respect of it; (f) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring); or (g) ceases to carry on business;
- 18.3.3. the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent or ceases to be able to pay its debts as they fall due;
- 18.3.4. the other party commits a breach under Condition 15 (Anti-Bribery Laws) and 16 (Anti-Slavery Laws); or
- 18.3.5. a Force Majeure Event (defined in Condition 23.1) continues for a period of sixty (60) days.
- 18.4. If the Contract is terminated:
- 18.4.1. the Contract shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after termination; and
- 18.4.2. the rights of either party accrued on or prior to termination shall remain unaffected.
- 18.5. Upon early termination of the Contract in accordance with its terms by either party, where the Customer has paid the Supplier for performance of Maintenance that have not been supplied at the date of termination, the Supplier shall, upon demand, either repay such Price to the Customer or perform the Maintenance.
- 19. AUDIT AND INSPECTION**
- 19.1. The Supplier shall permit the auditors to conduct audits of the Supplier during the term of the Contract (and for six years after the expiry or termination of the Contract). The right of audit includes a right for the auditor to enter any of the Supplier premises to inspect and take copies of such books and records and to interview members of the Supplier personnel once per annum.
- 19.2. The purpose of any audit carried out under this Condition 18 shall be to: provide the auditor with assurance as to the Supplier's compliance with the Contract; to enable the Customer to investigate any complaints or queries of or provide information required by a regulatory authority or any Customers or the Customer group relating to the Maintenance or the conduct of the Supplier, the Supplier personnel; and to investigate any suspicion of fraud or wrongful practice on the part of the Supplier, the Supplier personnel.
- 19.3. The Supplier shall cooperate with the auditor and will provide or procure such access and assistance as the auditor requires in order to enable the auditor to fully exercise the rights set out in Condition 18.1. Except where the audit is undertaken in respect of suspected fraud or breach or by a regulatory authority which stipulates that no notice should be given, the Customer shall provide at least three (3) Working Days' written notice of the audit; shall conduct the audit (or procure it is conducted) within Normal Business Hours; and shall use reasonable endeavours to avoid any disruption to the business of the Supplier or the Subcontractors.
- 20. ASSIGNMENT AND SUB-CONTRACTING**
- 20.1. The Supplier shall not assign, transfer or sub-contract its rights or obligations under the Contract without the Customer's prior written consent. Any such consent shall not relieve the Supplier of its obligations under the Contract.
- 21. NOTICES**
- 21.1. Where the Contract requires notice to be given by one party to the other such notice shall be in writing and shall be delivered by hand, e-mail, courier, first class post or special delivery post to the following:
- 21.1.1. in the case of delivery to the Customer, to the CFO or General Counsel (or equivalent) at New Hampshire Court, St. Paul's Road, Portsmouth, PO5 4AQ;
- 21.1.2. in the case of e-mail, to an email address previously used by the receiving party for the purposes of issuing or receiving Orders and which the sender has reasonable grounds to believe is in use, if a non-automated confirmation of receipt is not received with 24 hours of sending then another method of delivery shall also be used but this shall not affect the deemed receipt of the e-mail;
- 21.1.3. in the case of delivery to the Supplier to a Director at the Supplier's registered office address.
- 21.2. Notices will be deemed to have been duly served if delivered by hand or courier at the time of delivery; if by e-mail at the time of sending; if delivered by first class post or special delivery post 48 hours after being posted, provided that where in the case of delivery by hand, courier or e-mail such delivery occurs either after 4.00 pm on a Working Day, service will be deemed to occur at 9.00 am on the next Working Day;
- 21.3. in the case of communications relating to the Contract which do not relate to matters where the Contract requires notice to be given, communications may take place by email between the parties using their current e mail addresses usually used between the parties.
- 22. SEVERABILITY**
- 22.1. If any provision(s) under the Contract are deemed or found to be invalid or unenforceable by a court of competent jurisdiction, such provisions shall be deemed omitted, all other provisions shall remain in full force and effect.
- 23. THIRD PARTY RIGHTS**
- 23.1. Save for the Indemnified Persons, a person who is not a party to the Contract may not enforce the Contract.
- 24. FORCE MAJEURE**
- 24.1. Neither party shall be liable for the failure to perform its obligations under the Contract, if such failure results from any circumstance or event which is beyond such party's reasonable control, that was not known or reasonably foreseeable by the affected party at the date of the relevant Contract and which prevents that party from performance of its obligations under this Contract in whole or part including but not limited to; acts of God, fire, flood or earthquake, war, civil commotion affecting a third party (for which a substitute third party is not readily available), government action, regulations, guidelines, terrorist attack, computer or network failure or malfunction, strikes or industrial action other than by that party's employees ("Force Majeure Event").
- 24.2. Either party may by written notice to the other party, terminate the Contract if the other party is in persistent breach of any Condition(s) of the Contract.
- 24.3. Each party shall use all reasonable endeavours to limit the effects of any Force Majeure Event and a party which relies upon a Force Majeure Event to excuse performance may only do so if it has taken reasonable steps to mitigate the effects upon it of the Force Majeure Event and continues to perform the obligations that are not affected.
- 25. VARIATION AND WAIVER**
- 25.1. No variation of this Contract shall be effective unless it is in writing and signed by the parties.
- 25.2. A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 25.3. A failure or delay by a party to exercise any right or remedy provided under this 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 under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

26. ENTIRE AGREEMENT

26.1. The Contract contains all the terms which the Customer and the Supplier have agreed in relation to the performance of the Maintenance and supersedes any prior written or oral agreements, representations or understandings between the parties. The Supplier's standard terms and conditions referred to in any correspondence or quotation form shall not apply to the Contract. The Supplier acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Customer which is not set out in the Contract and agrees that it shall have no claim in respect of the same. Nothing in the Contract will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

27. NO PARTNERSHIP, JOINT VENTURE, AGENCY OR EMPLOYMENT

27.1. Nothing contained in the Contract, and no action taken by the parties pursuant to the Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

28. PUBLICITY

28.1. The Supplier shall not: (a) make any public announcement or issue any public circular (including a media or press release) relating to the Contract or its subject matter without the prior written approval of the Customer; or (b) use the name or logos of the Customer and member of its group of companies or of its customers, as a reference or in any advertising or promotional materials without the Customer's prior written consent (on every occasion), which may be withdrawn at any time if it is given.

29. JURISDICTION AND GOVERNING LAW

29.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed at all times in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.