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TERMS OF BUSINESS

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1. INTERPRETATION

1.1 In these Terms of Business (the "Terms"), the following words and meanings shall have the meaning ascribed to them:-

"TS" means TechSapiens Limited (CRN: 09087759), a company registered in England and Wales, and whose registered office is at 75 Park Lane, Croydon, Surrey, CR9 1XS;

"Customer" means the person whose details are set out on the Quotation; and where the Customer is a partnership references to "Customer" include all partners and each partner is jointly and severally liable for performance of the Customer's obligations under the Agreement;

"Agreement" means the agreement made between TS and the Customer comprising these Terms, the Quotation and the Scope of Work;

"Delivery and Installation Date(s)" means the estimated dates for the delivery and installation of the Equipment as set out in the Quotation;

"Equipment" means the items of equipment and accessories specified on the Quotation and any other items of equipment agreed between the parties from time to time;

"Initial Maintenance Fee" means the fee for provision of Maintenance Services during each Maintenance Year of the Initial Maintenance Term, as set out in the Quotation;

"Initial Maintenance Term" means the initial maintenance term set out in the Quotation;

"Maintenance Commencement Date" means the date from which TS will perform the Maintenance Services;

"Maintenance Fee" means the fee payable annually for Maintenance Services, as increased from time to time in accordance with the Agreement, including the Initial Maintenance Fee but excluding for the avoidance of doubt any other sums charged by TS from time to time in respect of services not included in Maintenance Services;

"Maintenance Year" means the period of 12 months commencing on the Maintenance Commencement Date and expiring on the first anniversary of the Maintenance Commencement Date, and each successive period of 12 months thereafter during which TS provides Maintenance Services;

"Maintenance Services" means the number of preventive maintenance visit(s) per Maintenance Year set out in the Quotation and the provision of maintenance and repair services for the Equipment in response to a fault, as set out in the Quotation and Terms 8 - 11 of the Agreement;

"Price" means the price for the supply and installation of the Equipment as set out in the Quotation;

"Quotation" means TS' quotation attached to these Terms;

"Response Time" means, where Maintenance Services are provided, the number of hours, commencing from the time at which a notification of the fault is received by TS, within which TS agrees to respond to notification of a fault, as set out in the Quotation;

"Scope of Work" means the document entitled "Scope of Work" agreed in writing between the parties setting out the Customer's operational, installation and performance requirements for the Equipment;

"Site" means the address specified in the Quotation where Equipment is to be installed and maintained;

"Software" means software licensed by TS to the Customer pursuant to the Agreement to enable the Customer to use the Equipment, excluding, for the avoidance of doubt, Third Party Software;

"Third Party Software" means the software described in the Quotation for which TS will procure a licence for the Customer;

"Warranty Period" means the period of twelve months commencing on the date on which the tests referred to in Term 4.7 have been successfully completed;

"Working Hours" - means 9 a.m. to 5 p.m. Monday to Friday inclusive (excluding bank and public holidays in England).

- 1.2 Each Quotation is valid until the date specified in it, unless TS withdraws the Quotation before that date. If no date is specified in the Quotation, it shall be valid for 30 days from the date of the Quotation. A contract shall not exist and the Agreement shall not come into force until a valid Quotation signed by the Customer has been received by TS.

- 1.3 The Agreement shall govern the contract between TS and the Customer for the sale, installation and maintenance of the Equipment to the exclusion of any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order, specification or other document.
- 1.4 If any of the provisions of these Terms, the Quotation and the Scope of Work are inconsistent, such inconsistency shall be resolved by applying the provisions of the documents in the following order of decreasing precedence to the extent of such conflict only:
  - (a) Scope of Work;
  - (b) Quotations;
  - (c) these Terms.
- 1.5 In these Terms, unless the context otherwise requires:-
  - (a) References to these Terms include any and all other documents relating to the Agreement and/or such business as may be defined by TS from time to time;
  - (b) Words importing the singular shall include the plural and vice versa, words importing a gender include every gender;
  - (c) References to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated body of persons or any State or any agency thereof;
  - (d) Any reference to a statutory provision shall include such provision and any regulations made in pursuance thereof as from time to time modified or re-enacted;
  - (e) References to any person related with another shall include corporations so related;
  - (f) Reference to clauses, terms and conditions herein are to clauses of these Terms and references to these Terms includes any amendments, supplements and any and all other documents relating to these Terms as may be defined by the Terms from time to time; and
  - (g) References to a time of day are to United Kingdom time.
- 1.6 The headings do not form part of these Terms and shall not be taken into account in its construction or interpretation.

2. PREAMBLE

2.1 These Terms together with the Agreement, made between the Customer and TS, govern the Customer's purchase and use of Equipment, Software, Software Licences and Maintenance Services (the "Equipment & Services") from TS.

2.2 The Products & Services are solely for the Customer's internal use. If the Customer wishes to resell TS' Equipment & Services, alternative reseller terms of sale will apply.

*Application of Terms*

2.3 These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate (including under any purchase order, confirmation of Order, specification or any other document), or which are implied by trade, custom, practice or course of dealing.

*The Quotation*

2.3 In preparing any Quotation, TS shall be entitled to ask the Customer for, and the Customer shall provide within 7 Business Days, such information as TS may require in its absolute discretion.

2.4 It shall be a condition of any Quotation that the information provided by the Customer is correct, accurate, not misleading and a complete response to TS' request(s) when provided and remains so for at least until the later of the date when the Quotation lapses or the relevant Equipment & Services are delivered.

2.5 The Customer shall indemnify TS in full against all losses, costs, damages, claims, charges and/or expenses (including without limiting effect any obligation to pay any sum(s) to the relevant manufacturer(s) of relevant Equipment or the provider of relevant Services) incurred by TS as a result (whether directly or indirectly) of information provided by the Customer in accordance with 2.3 being or subsequently becoming incorrect, inaccurate, misleading and/or incomplete or of the Customer acting other than in accordance with such information.

2.5 Save where indicated to the contrary on TS' Quotation, it shall automatically lapse after 7 days of the date of the Quotation.

*The Order*

2.6 The Order constitutes an offer by the Customer to purchase the Equipment and/or Services in accordance with these Terms. The Customer is solely responsible for ensuring that the terms of the Order are complete and accurate.

- 2.7 The Order shall only be deemed to be accepted when TS confirms acceptance of the Order by formal acknowledgment or by processing the Order for delivery (whichever is earlier), at which point the Agreement shall come into existence.
- 2.8 TS shall be entitled to either accept or to reject the Customer's offer and shall for the avoidance of doubt be under no obligation to accept the Customer's offer, particularly where its supplier is unable or unwilling to supply the Equipment & Services to TS for onward supply to the Customer.
- 2.9 TS' acceptance of all Backorders shall be subject to TS' approval of the Customer's credit status.

*Entire Agreement*

- 2.10 The Agreement constitutes the entire agreement between TS and the Customer. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of TS which is not set out in the Agreement.

*Waiver*

- 2.11 In entering into the Agreement, the Customer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Agreement for, any such representations which are not so confirmed (unless such representations were fraudulently made).
- 2.12 Any samples, drawings, descriptive matter or advertising produced by TS and any descriptions or illustrations contained in TS' catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment & Services described in them. They shall not form part of the Agreement or have any contractual force.
- 2.13 TS reserves the right to vary any specification of the Equipment & Services and/or withdraw, modify or amend any Equipment & Services without prior notice. Any such variation, withdrawal or modification shall not affect any Order that has already been accepted by TS, save that TS reserves the right to make any changes in any specification of the Equipment which are required to conform with any applicable statutory requirements.

*Dispute Resolution*

- 2.14 Any dispute arising out of or in connection with these Terms or the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in London in accordance with the London Court of International Arbitration Rules for the time being in force, which rules are deemed to be incorporated by reference in this Term.

TS are members of the Centre for Effective Dispute Resolution (CEDR) Communications & Internet Services Adjudication Scheme (CISAS). Any dispute relating to Communication and Internet Services may be subject to the scheme's adjudication.

### 3. SCOPE OF AGREEMENT

3.1 In accordance with the Agreement, TS will:-

- (a) Supply the Equipment;
- (b) Supply the Software;
- (c) Supply the following Services:
  - (i) Cloud services and hosting;
  - (ii) Consultancy and installation services of any and/or all of the following types:
    - (i) On-site;
    - (ii) Remote;
  - (iii) IT support services;
  - (iv) IT security services of any and/or all of the following types:
    - (i) Assessment;
    - (ii) Audit;
    - (iii) Consultancy;
  - (v) Monitoring and management services; and
  - (vi) Managed services of any and/or all of the following types:
    - (i) Managed IT;
    - (ii) Managed security.

3.2 The Customer will:

- (a) pay the Price and, where appropriate, the Initial Maintenance Fee, subsequent

Maintenance Fees and other sums due to TS in accordance with the terms of the Agreement; and

- (b) perform its obligations under the Agreement in a timely manner and cooperate TS to enable TS to perform its obligations under the Agreement.

#### 4. OTHER CUSTOMER RESPONSIBILITIES

##### *Authority to Grant Access*

- 4.1 Customer represents and warrants that it has obtained permission for both Customer and TS to access and use, whether remotely or in-person, Customer-owned or licensed software, hardware, systems, the data located thereon and all hardware and software components included therein, for the purpose of providing these Services.
- 4.2 If Customer does not already have that permission, it is Customer's responsibility to obtain it, at Customer's expense, before Customer asks TS to perform these Services.

##### *Non-solicitation*

- 4.3 Customer will not, without TS' prior written consent, for a period of two years from the date listed on your Order Form, directly or indirectly solicit for employment any TS employee with whom you have come in contact in connection with TS' performance of the Service; provided, however, that general advertisements and other similarly broad forms of solicitation will not constitute direct or indirect solicitation hereunder and you are permitted to solicit for employment any employee that has been terminated or has resigned his or her employment with TS for a period of 12 months prior to the commencement of employment discussions with you.

##### *Customer Cooperation*

- 4.4 Customer understands that without prompt and adequate cooperation, TS will not be able to perform the Service or, if performed, the Service may be materially altered or delayed. Accordingly, Customer will promptly and reasonably provide TS with all cooperation necessary for TS to perform the Service.
- 4.5 If Customer does not provide reasonably adequate cooperation in accordance with the foregoing, TS will not be responsible for any failure to perform the Service and Customer will not be entitled to a refund.

##### *On-site Obligations*

- 4.6 Where Services require on-site performance, Customer will provide (at no cost to TS)

free, safe and sufficient access to Customer's facilities and environment, including ample working space, electricity, safety equipment (if applicable) and a local telephone line. A monitor or display, a mouse (or pointing device), and a keyboard must also be provided (at no cost to TS), if the system does not already include these items.

#### *Data Backup*

- 4.7 Customer will complete a backup of all existing data, software and programs on all affected systems prior to and during the delivery of this Service.
- 4.8 Customer should make regular backup copies of the data stored on all affected systems as a precaution against possible failures, alterations, or loss of data.
- 4.9 TS will not be responsible for the restoration or reinstallation of any programs or data.

#### *Third Party Warranties*

- 4.10 These Services may require TS to access hardware or software that is not manufactured by TS. Some manufacturers' warranties may become void if TS or anyone else other than the manufacturer works on the hardware or software. Customer will ensure that TS' performance of Services will not affect such warranties or, if it does, that the effect will be acceptable to Customer.
- 4.11 TS does not take responsibility for Third Party Warranties or for any effect that the Services may have on those warranties.

#### *Service Hours*

- 4.12 Subject to local law relating to weekly work hours, this Service will be performed Monday through Friday during normal TS business hours.
- 4.13 No Service activities will take place outside normal Service Hours unless other arrangements have been made in advance in writing.

#### 5. SUPPLY OF EQUIPMENT

- 5.1 The price for the supply and installation of the Equipment shall be as set out in the Quotation and, unless stated otherwise in the Quotation, TS may invoice the Customer any time after completion of installation of the Equipment, and such invoice shall be payable within seven (7) days of the date of TS' invoice.
- 5.2 TS shall, in its sole discretion, have the ability to do either of the following:
  - (a) split the Agreement into two parts, being the supply of the Equipment and the installation of the Equipment:



- (i) Each part shall constitute a separate contract;
  - (ii) Each part shall be invoiced for separately, and those elements of the Price relating to the supply of the Equipment shall be invoiced on or after delivery of the Equipment to the Site, and the remaining elements shall be invoiced on or after completion of installation of the Equipment;
  - (iii) Such invoices shall be payable within seven (7) days of date of invoice;
  - (iv) Any delay or defect in delivery of the Equipment shall not entitle the Customer to cancel the contract for installation of the Equipment.
- (b) require payment(s) on account of its eventual charges upon receipt of the Customer's signed Quotation or any time thereafter:
- (i) Such payment(s) shall be invoiced out first against the parts of the Price which relates to the supply of the Equipment, and then against the other parts;
  - (ii) To the extent that any payment(s) on account exceeds TS' total eventual charges, such amounts shall be returned to the Customer as soon as reasonably practicable after TS' final invoice in respect of the Agreement is issued.
- 5.3 The Customer warrants to TS that the Scope of Work contains all the Customer's requirements in relation to the Equipment. The Customer is responsible for ensuring that the contents of the Quotation and the Scope of Work are complete and accurate.
- 5.4 The Equipment will be as described in the Quotation. All drawings, descriptive matter, specifications and advertising issued by TS or contained in TS' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the equipment described in them and shall not form part of the Agreement.
- 5.5 If the Equipment is delivered to the Customer prior to installation the Equipment will be at the Customer's risk from the time of delivery until commencement of installation and during that period the Customer shall undertake to insure the Equipment, whereupon thereafter risk in the Equipment will pass to the Customer.
- 5.6 Ownership of the Equipment will not pass to the Customer until TS has received in full in cash or cleared funds:
- (a) all sums payable in respect of the supply and installation of the Equipment; and
  - (b) all other sums which are or which become payable by the Customer to TS on

- 5.7 Until ownership of the Equipment has passed to the Customer, the Customer shall:
- (a) hold the Equipment on a fiduciary basis as TS' bailee;
  - (b) keep the Equipment separate from other equipment belonging to the Customer or any third party in a way that it is readily identifiable as TS' property; and
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and/or
  - (d) keep the Equipment in satisfactory condition insured for its full price against all risks, hold the proceeds of insurance on trust for TS and not mix them with any other money, nor pay them into an overdrawn bank account.
- 5.8 The Customer's right to possession of the Equipment shall terminate immediately and all sums shall become due and payable immediately and the Customer agrees that TS shall have the right to rescind or terminate any order for the Equipment and/or services (including where the Equipment has been delivered) and/or to suspend any further deliveries under any order for the Equipment if before ownership of the Equipment has passed to the Customer:
- (a) the Customer is affected by any of the events specified in Term 11;
  - (b) the Customer encumbers or in any way charges any of the Equipment or suffers or allows any execution, whether legal or equitable, to be levied on the Customer's property or obtained against the Customer, or fails to observe or perform any of the Customer's obligations under the Agreement or the Customer ceases to trade.
  - (c) TS shall be entitled to recover payment for the Equipment and installation notwithstanding that ownership of any of the Equipment has not passed from TS.
  - (d) The Customer grants TS, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be kept (including but not limited to the Site) in order to inspect it or, where the Customer's right to possession has terminated, to recover it.
  - (e) The Customer shall inform TS as soon as reasonably practicable if the Customer wishes to cancel or postpone the installation of the Equipment.
  - (f) If TS receives notice of such cancellation or postponement less than 72 hours before installation is due to commence, TS may charge the Customer a fee of

an amount equal to the elements of the Price relating to the provision of labour for installation of the Equipment, to the extent that TS is unable to reallocate such anticipated labour to another contract for TS.

- (g) Such fee shall be without prejudice to TS' right to charge the Customer for those elements of the Price which relate to services, goods or third party disbursements which it has incurred before the time it receives notification of such cancellation or postponement.
- (h) On termination of the Agreement, howsoever caused, TS' (but not the Customer's) rights contained in Term 5 hereinabove shall remain in effect.

## 6. DELIVERY

- 6.1 TS shall ensure that each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and TS reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered.
- 6.2 TS shall deliver the Equipment to the location stipulated in the Order, or such other location as the parties may agree (Delivery Location), within a reasonable period following receipt of the Order or within such other period as shall be specifically agreed in writing by the Customer and TS.
- 6.3 Delivery of the Equipment shall be completed:
  - (a) on the Equipment's arrival at the Delivery Location; or
  - (b) on the completion of loading of the Equipment at TS' premises in circumstances where it has been agreed that the Customer will collect the Equipment from TS.
- 6.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. TS shall not be liable for any delay in delivery of the Equipment howsoever caused.
- 6.5 If following receipt of the Order, TS is unable to deliver the Equipment for reasons beyond its reasonable control (including without limitation any restriction or withholding of supply by any manufacturer), TS shall be entitled to terminate the Agreement and TS shall have no liability for such termination.
- 6.6 If the Customer fails to take or (as appropriate) accept delivery of the Equipment, then, except where such failure or delay is caused by a force majeure event or TS failure to comply with its obligations under the Agreement:

- (a) delivery of the Equipment shall be deemed to have been completed;
- (b) risk in the Equipment shall pass to the Customer (including for loss or damage cause by TS' negligence);
- (c) TS may store the Equipment until the Customer takes delivery of the Equipment, whereupon the Customer shall be liable for all related costs and expenses (including without limitation storage and insurance);
- (d) any discount or other allowance in respect of the Equipment, which is or would be otherwise be allowed to the Customer, shall be forfeited by the Customer.

6.7 If the Customer (including in the context of this Term any end user or consumer to whom TS has delivered the Equipment at the Customer's request) fails to take delivery or (as appropriate) accept delivery of the Equipment, TS may resell or otherwise dispose of part or all of the Equipment and issue a credit note to the Customer for the price of the Equipment less any reasonable transport and re-stocking costs.

6.8 The Equipment may be delivered in instalments. Each delivery shall constitute a separate Agreement and failure by TS to deliver any one or more of the instalments (or faulty Equipment) in accordance with these Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Agreement as a whole as repudiated.

6.9 The Customer shall not resell outside the UK any of the Equipment covered by the Export Control Act 2002 (or any re-enactment thereof) or the Export Administration Act 1979 (as amended) of the USA (or any re-enactment thereof) without obtaining all necessary licences thereunder and will not resell such Equipment within the UK to a purchaser knowing (or being given reasonable grounds to suspect) that the purchaser intends to export such Equipment without first obtaining either such licences or a copy of such licences obtained by the purchaser.

6.10 Where Equipment is to be exported out of the United Kingdom by TS to the Customer or by the Customer to the Customer's order the provisions herein shall (subject to any special terms agreed in writing between the Customer and TS) apply notwithstanding any other provision of these Terms:

- (a) the terms of purchase will be subject only to the manufacturer's warranty and the Customer shall be solely responsible for ensuring that it fully understands and is aware of such warranty terms;
- (b) the relevant tax legislation will be applied in accordance with and under the United Kingdom legislation at the time of the Agreement;
- (c) the Customer shall be responsible for complying with any legislation or

regulations governing the importation of the Equipment into the country of destination and for the payment of any duties thereon;

- (d) unless otherwise agreed in writing between the Customer and TS, the Equipment shall be delivered FOB at the air or sea port of shipment;
  - (e) the Customer shall be responsible for arranging for testing and inspection of the Equipment at TS' premises before shipment. TS shall have no liability for any claim in respect of any defect in the Equipment which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit;
  - (f) the Customer shall not be entitled to withhold payment of the price for the Equipment due to the Customer's failure to comply with the provisions of this Term;
  - (g) the Equipment will be packaged in accordance with TS' standard practice, and the packaging shall meet any reasonable requirements stipulated in advance by any independent contractors or shippers.
- 6.11 TS shall not be liable for any non-delivery of Equipment (even if caused by the Customer's negligence) unless the Customer informs TS of such non-delivery within seven (7) days of the date when the Equipment would in the ordinary course of events have been received.
- 6.12 Any liability of TS for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata Agreement rate against any invoice raised for such Equipment.
- 6.13 The Customer shall examine the Equipment immediately upon delivery.
- 6.14 TS shall have no liability in respect of claims in respect of shortages or picking errors or damage in transit unless the Customer informs TS of such shortages or picking errors or damage within seven (7) days after delivery.
- 6.15 The Customer shall have no liability in respect of claims for shortages or damages in transit if the Customer or its representative has signed for the Equipment as being received in good condition.
- 6.16 Any liability of TS for shortages or picking errors or damage in transit shall be limited to replacing the missing or wrongly picked or damaged Equipment within a reasonable time or issuing a credit note at the pro rata Agreement rate against any invoice raised for such Equipment.
- 6.17 The Customer shall return the equipment to TS, promptly upon request, and in accordance with TS' returns policy set out in these Terms, any Equipment that has

been incorrectly delivered.

7. RETURN OF EQUIPMENT

- 7.1 A returns authorisation number must first be obtained from TS.
- 7.2 TS will not accept any returns unless they are notified to TS within seven (7) days of the date of delivery and returned within seven (7) days of the date of issue of the returns authorisation number, at the Customer's cost.
- 7.3 The notification shall include the reason for the return, e.g. whether the Equipment are defective or have been wrongly picked.
- 7.4 The Customer has no right to return Equipment which have been delivered in accordance with the Agreement.
- 7.5 Equipment returned must be in the original packaging and in a clean resalable condition.
- 7.6 The returns authorisation number must be written on a label attached to the packaging. Any Equipment not meeting these criteria may, at TS' discretion, be refused and returned to the Customer and/or, a handling charge (equal to a minimum of 15% of the order value of the Equipment involved) will be levied to the Customer's account to cover the additional costs involved (such as, without limitation, repackaging costs and/or the carriage and associated costs of returning the Equipment to the Customer).
- 7.7 In addition, the Customer will be charged for any damage caused to the Equipment whilst they were in the Customer's custody or control.
- 7.8 If the Customer fails to make Equipment ready for collection on the return date agreed with TS, TS reserves the right to charge the Customer a handling fee.
- 7.9 If, upon examination by the TS or the manufacturer, the returned Equipment are found not to be defective, TS reserves the right to return the Equipment to the Customer and to charge the Customer a handling fee equal to a minimum of 15% of the order value of the relevant Equipment.
- 7.10 In addition, the Customer shall be deemed to have purchased the replacement Equipment on these terms and conditions and TS shall be entitled to invoice the Customer for the replacement Equipment.
- 7.11 TS shall not be responsible for the loss in transit of any Equipment where the Customer makes its own arrangements to return the Equipment to TS.
- 7.12 The risk in the Equipment shall pass to the Customer on completion of delivery.

- 7.13 Title to the Equipment shall not pass to the Customer until TS has received payment in full (in cash or cleared funds) for:
- (a) the Equipment; and
  - (b) any other Equipment or Services that TS (or any associated company, subsidiary or holding company of TS) has supplied to the Customer.
- 7.14 Until title to the Equipment has passed to the Customer, the Customer shall:
- (a) hold the Equipment on a fiduciary basis as TS's bailee;
  - (b) store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the TS' property;
  - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - (d) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (e) notify TS' immediately upon the occurrence of an Insolvency Event; and
  - (f) give TS such information relating to the Equipment as TS may require from time to time, but the Customer may resell or use the Equipment in the ordinary course of its business;
  - (g) be obliged to store TS' Equipment separately and identify them as belonging to TS; and
  - (h) allow TS access to its premises to verify that the goods have been stored correctly.
- 7.15 TS shall be entitled to recover payment for the Equipment notwithstanding that ownership of any Equipment has not passed from TS.
- 7.16 If, before title to the Equipment passes to the Customer, the Customer becomes subject to an insolvency event, or TS reasonably believes that any insolvency event is about to happen and notifies the Customer accordingly, or if the Customer's right to possession of the Equipment is terminated, or if any sum due to TS is not paid when due, then, provided that the Equipment have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy TS may have, the TS may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

- 7.17 The Customer's right to possession of the Equipment shall terminate immediately if the Customer becomes subject to an insolvency event. However TS, having been informed of the Customer becoming subject to an insolvency event, may consent in writing (subject to such terms as TS may in its sole discretion impose in respect of such consent) to the Customer's continued right of possession of the Equipment.
- 7.18 The Customer's property supplied to TS by or on behalf of the Customer shall, while it is in possession of TS or in transit to or from the Customer, be deemed to be at the Customer's risk and the Customer shall insure accordingly.
- 7.19 TS shall be entitled to make a reasonable charge for the storage of any of the Customer's property left with TS before receipt of the Order or after notification to the Customer of completion of the Services.

## 8. SUPPLY OF SERVICES

- 8.1 The Customer may raise an Order for Services that it wishes TS to provide in connection with the Equipment. TS shall, as soon as reasonably possible following its acceptance of any such Order, notify the Customer of the date by which it plans to commence the Services under the Order. Unless otherwise agreed by the parties in writing, the Customer shall not delay the agreed delivery date for the Services.
- 8.2 In preparation for the Services to be performed, the Customer shall:
- (a) at its cost, prepare the Customer site and co-operate with TS in accordance with TS's instructions and timescales; and
  - (b) provide an adequate environment and space for the safe operation of the Services.
- 8.3 TS shall provide the Services using reasonable care and skill.
- 8.4 TS shall be entitled to charge the Customer for any costs incurred by TS as a result of any failure by the Customer to satisfy any requirements of 8.2.
- 8.5 The Customer hereby permits TS to have access to the Customer site for the purpose of carrying out the Services at such times as may be agreed between TS and the Customer, such access not to be unreasonably withheld or delayed.
- 8.6 TS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and TS shall notify the Customer in any such event.



- 8.7 If the Services include configuration services the Customer shall be solely responsible for the accuracy of its Order which includes any such configuration services, the specification of the components and their configuration and for ensuring that the configured Equipment specified are satisfactory for the purpose for which they are required, including that they have sufficient overall functionality and will support and be compatible and inter-operable with any hardware, software and middleware with which they are intended to operate.
9. SOFTWARE LICENCE
- 9.1 TS shall grant to the Customer a perpetual, non-exclusive, non-transferable licence to use the Software in relation to the Equipment at the Site.
- 9.2 The licence shall commence when installation has been successfully completed and the Customer has paid the Price and Initial Maintenance Fee, if applicable, and may be terminated by TS.
- 9.3 No licence is granted for use of the Software with any other hardware or at any other address.
- 9.4 The Customer acknowledges that it shall have no rights in the Software or in any trade mark, trade name, or service mark used in association with the Software.
- 9.5 The Customer shall not:
- (a) copy, reproduce, assign or otherwise deal with the Software without TS's prior written approval; or
  - (b) modify, de-compile, disassemble, reverse engineer, merge or combine with other software, copy, translate, adapt, or vary any of the Software without TS's prior written consent except as expressly permitted by applicable law.
- 9.6 TS will indemnify the Customer against any claim that the use or possession of the Software (but for the avoidance of doubt, not the Third Party Software), as authorised by the Agreement infringes the intellectual property rights of any third party provided that TS is given immediate and complete control of such claim, the Customer does not prejudice TS' defence of such claim and the claim does not arise as a result of the use of the Software in combination with any equipment or software not supplied or approved by TS.
- 9.7 TS shall have the right to replace or change all or any part of the Software in order to avoid any infringement or to terminate the Agreement and the Maintenance Services (if any) and refund to the Customer an appropriate portion of the price paid by the Customer for the supply and installation of the Equipment.

The foregoing states the entire liability of TS to the Customer in respect of the infringement of intellectual property rights of any third party.

- 9.8 TS shall be entitled to terminate the Customer's licence to use the Software immediately by notice in writing:
- (a) if the Customer attempts or purports to transfer or assign the licence of the Software or is in breach of any other provision of the Agreement;
  - (b) the Customer is affected by any of the events specified in Term 11;
  - (c) in accordance with 9.6 and 9.7.
- 9.9 TS shall provide the Third Party Software to the Customer under the standard licence terms provided by the relevant third party, copies of which shall be provided to the Customer.
- 9.10 The Customer agrees to comply with such licence terms and to indemnify and hold TS harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising. TS may treat the Customer's breach of any such licence as a breach of the Agreement.
10. MAINTENANCE SERVICES
- 10.1 These maintenance terms apply only if the Customer has stated on the Quotation that it wishes TS to perform the Maintenance Services in respect of the Equipment.
- 10.2 TS shall provide Maintenance Services with reasonable care and skill.
- 10.3 Unless otherwise agreed, TS shall provide during each Maintenance Year the number of preventative maintenance visit(s) set out in the Quotation at such time(s) during Working Hours and on such date(s) as the parties agree from time to time. During such visit TS shall:
- (a) carry out routine inspection and testing of the Equipment in accordance with TS' recommendations; and
  - (b) carry out such repairs, replacement of parts, cleaning, lubrication or adjustment as TS shall believe to be necessary in respect of any Equipment.
- 10.4 Where during a Maintenance Year the Customer experiences a fault or malfunction with the Equipment, the Customer shall notify TS. Where possible, the Customer shall attempt to rectify the fault or malfunction by discussing the problem on the telephone with one of TS' engineers and following his/her instructions. Where this is not possible, TS shall use reasonable endeavours to arrange for one of its

engineers to arrive at the Customer's premises during Working Hours within the Response Time.

- 10.5 If TS decides that Equipment reported to be faulty cannot be repaired at the Site, TS shall be entitled to remove the Equipment for repair. If the Customer objects to the removal of the Equipment, TS shall not have any further obligation to provide Maintenance Services with respect to that Equipment and shall cease to do so, but will use reasonable endeavours to provide Maintenance Services for the remaining Equipment.
- 10.6 The Customer shall not be entitled to a refund of any part of any Maintenance Fee payable in respect of the Initial Maintenance Term. Following expiry of the Initial Maintenance Term the Customer shall not be entitled to a refund of any part of the Maintenance Fee for the then current Maintenance Year, but the Maintenance Fees for subsequent Maintenance Years shall be reduced appropriately.
- 10.7 If TS has to remove any Equipment from the Site, it will use reasonable endeavours to loan to the Customer alternative equipment free of charge. Any such alternative equipment shall remain TS' property and shall be at the Customer's risk while it is at the Site. The Customer shall indemnify TS in respect of any damage to, theft or loss of the alternative equipment and shall insure it for its full value while it is at the Site. When TS has repaired and, where applicable, re-installed the previously faulty Equipment or has informed the Customer that the faulty Equipment is not capable of repair, the Customer shall cease using the loaned equipment and make it available at the Site for collection by TS.
- 10.8 In respect of any Equipment for which TS is providing Maintenance Services under the Agreement, TS reserves the right to supply new, second-hand or reconditioned replacement parts. Any parts replaced by TS pursuant to the Agreement shall become TS' property as soon as they have been replaced, and the Customer warrants that either the Customer shall have a free and unencumbered title to such replaced parts or (where any such equipment has been leased or charged) that it shall have obtained all necessary consents and authorities to part with possession of and give good title in the replaced parts to TS.
- 10.9 Unless otherwise agreed, the Maintenance Services shall not include maintenance in respect of:
- (a) Third Party Software, any equipment used by the Customer in conjunction with the Equipment or accessories, attachments, or other devices not supplied to the Customer by TS under the Agreement; or
  - (b) the correction of any fault or defect which arises due to:
    - (i) the Customer's failure to maintain a suitable environment for the Equipment in accordance with TS' specifications including, without

limitation, failure to maintain a constant power supply, air conditioning or humidity control;

- (ii) the Customer's neglect or misuse of the Equipment or the Customer's failure to operate the Equipment in accordance with TS' or the manufacturer's instructions or for the purpose for which the Equipment was designed;
  - (c) any alteration, modification or maintenance of the Equipment or its specification not approved by TS or the manufacturer or made by any party other than TS without TS' prior written approval;
  - (d) the transportation or relocation of the Equipment save where the same has been performed by TS or under TS' direction;
  - (e) the use of defective or inappropriate supplies with the Equipment;
  - (f) accidental damage or normal wear and tear;
  - (g) the need for electrical work external to the Equipment;
  - (h) any accident or disaster affecting the Equipment including, without limitation fire, flood, water, wind, lightning, transportation, radiation in the environment, vandalism or burglary;
  - (i) the Customer's failure, inability or refusal to give TS personnel proper access to the Equipment or to permit TS to remove the Equipment from the Site for repair; or
  - (j) the Customer's continued use of the Equipment following notification to TS of a fault or defect; or
  - (k) upgrades to the Equipment, the Software or the Third Party Software.
- 10.10 At the Customer's request TS may, but shall not have any obligation to, provide all or any of the services referred to hereinabove, and charge for such services.
- 10.11 Where TS provides any services referred to hereinabove, TS charges shall be based on its labour charges in force at the time such services are provided plus any expenses reasonably incurred by TS in providing such services. Such additional charges shall be invoiced before the services are provided and shall be payable by the Customer within seven (7) days of receipt of such invoice.
- 10.12 The Maintenance Services, and the Maintenance Fee, do not include maintenance in respect of the following:

- (a) Equipment which in TS's opinion (its decision being final) is beyond economical repair. TS may in its discretion offer to supply replacement Equipment at TS's prices in force from time to time;
  - (b) any software provided by others including Third Party Software;
  - (c) cathode ray tubes; LCD panels; plasma display glass; lamps; screen material; changes to Software.
- 10.13 The Initial Maintenance Fee shall be as set out in the Quotation and shall be payable on the Maintenance Commencement Date. The Customer shall pay all Maintenance Fees annually in advance.
- 10.14 Not later than thirty (30) days before the expiry of a Maintenance Year TS shall notify the Customer in writing of the Maintenance Fee payable for the next Maintenance Year and shall accompany such notice with an invoice for payment requiring payment to be received by TS on or before the commencement of the next Maintenance Year.
- 10.15 Where the next Maintenance Year is part of the Initial Maintenance Term the Customer shall pay the Maintenance Fee within seven (7) days of invoice. If TS has not received the Maintenance Fee on the first day of the Maintenance Year to which it relates, TS may suspend the provision of Maintenance Services until the Maintenance Fee has been received by TS in cleared funds.
- 10.16 Where the Initial Maintenance Term has expired, the Customer may terminate Maintenance Services by not less than seven (7) days' notice to TS to expire before the end of the current Maintenance Year. If TS has not received the Maintenance Fee on the first day of the Maintenance Year to which it relates, TS may terminate the Maintenance Services with immediate effect by notice in writing.
- 10.17 The Maintenance Fee shall not include the cost of any supplementary services for which TS shall be entitled to charge.
- 10.18 TS reserves the right to increase the Maintenance Fee for any Maintenance Year (including for the avoidance of doubt any Maintenance Year of the Initial Maintenance Term) if in TS's reasonable opinion the Equipment is, or will be, used in or subjected to environmental Terms which are exceptional, having regard to those recommended by TS or the manufacturer of the Equipment. Any such increase shall take effect from the date of written notice of the increase by TS to the Customer and a separate invoice shall accompany such notice to the Customer in respect of the increase plus VAT.
- 10.19 Payment of the increase shall be due and payable within seven (7) days of the date of the notice and invoice. If TS has not received the relevant amount by the due date, TS may terminate the Maintenance Services by notice in writing.

10.20 The Customer agrees that Maintenance Services may not be terminated by the Customer during the Initial Maintenance Term set out in the Quotation. On expiry of the Initial Maintenance Term the provision of Maintenance Services may be terminated:

- (a) by the Customer giving not less than 14 days' notice to TS upon receipt of a notice of Maintenance Fee;
- (b) forthwith by TS by notice in writing if the Customer fails to pay a Maintenance Fee or any increase in the Maintenance Fee;
- (c) forthwith by TS by notice in writing if the Customer fails to pay any additional charges due here under within seven (7) days of the due date;
- (d) forthwith by TS by notice in writing in respect of any Equipment in respect of which the Customer withholds consent or which in TS's reasonable opinion can no longer be maintained in good working order by the provision of replacement or spare parts or is not capable of repair.

10.21 The provision of Maintenance Services may be terminated, including for the avoidance of doubt during the Initial Maintenance Term:

- (a) forthwith by either party if the other party commits any material breach of any term of the Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within seven (7) days of a written request by the other party to remedy the same;
- (b) forthwith by either party if the other party (being an individual or partnership) has a bankruptcy order made against it or any partner or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented for the winding up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party; or
- (c) automatically if TS terminates the Customer's licence of the Software.

- 10.22 If TS terminates its provision of Maintenance Services, TS shall be entitled to retain all Maintenance Fees paid by the Customer prior to such termination and shall not have any further obligation to provide Maintenance Services to the Customer.
- 10.23 Termination of Maintenance Services shall not terminate or affect the licence of the Software which shall continue in force in accordance with its terms.
- 10.24 Notwithstanding any other provision of these Terms, TS may:
- (a) terminate and/or suspend provision of Maintenance Services at any time during the Initial Maintenance Term;
  - (b) terminate the provision of Maintenance Services on not less than seven (7) days' notice to the Customer to expire on the last day of the Initial Maintenance Term or any subsequent Maintenance Year.

## 11. TERMINATION

Without prejudice to the Terms hereinabove, either party may terminate the Agreement forthwith by notice in writing to the other if:

- (a) the other party commits a material breach of the Agreement and, in the case of a breach capable of being remedied, fails to remedy it within seven (7) calendar days of being given written notice from the other party to do so;
- (b) the other party commits a material breach of the Agreement which cannot be remedied under any circumstances;
- (c) the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- (d) the other party ceases to carry on its business or substantially the whole of its business; or
- (e) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights produced from or arising as a result of the performance of the Agreement shall, so far as not already vested, become the absolute property of TS, and the Customer shall do all that is reasonably necessary

to ensure that such rights vest in TS by the execution of appropriate instruments or the making of agreements with third parties.

12.2 For the avoidance of doubt, nothing in this Term shall act as a waiver of the Customer's obligations herein should it correspond, be similar to and/or contradict any or all of Term 13 as set out below.

### 13. CONFIDENTIALITY & DISCLOSURE OF INFORMATION

13.1 The Customer is hereby made fully aware that via the Agreement they may have access to and be entrusted with information in respect of the business and financing of the TS and its dealings, transactions and affairs, all of which information is or may be confidential.

13.2 The Customer shall not, without the prior written consent of TS, during or after the period of the Agreement divulge to any person whatever or otherwise make use of (and shall use his best endeavours to prevent the publication or disclosure of) any trade secrets or any confidential information concerning the business or finances of TS or any of its suppliers, agents, distributors or customers.

13.3 All documents, notes and memoranda of any trade secrets or confidential information concerning the business of TS or any of its suppliers, agents, distributors or customers which shall be acquired, received or made by the Customer during the course of the Agreement shall be the property of TS and shall be surrendered by the Customer to someone duly authorised on their behalf at the termination of the Agreement or at the request of TS at any time during the course of the Agreement.

13.4 The protection to be accorded in 13.1, 13.2 and 13.3 does not and shall not extend to information:

- (i) which is trivial or obvious;
- (ii) which can be proved by documentary evidence to be information which is publicly available or which subsequently becomes publicly available other than by or in consequence of the breach by the Partner of the Agreement;
- (iii) which is required to be disclosed by applicable law or order of court of competent jurisdiction or government department or agency provided always that prior to such disclosure the Customer consults with TS as to the proposed form, nature and purpose of the disclosure.

### 14. FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including



but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

15. LIMITATION OF LIABILITY

15.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of TS to the Customer in respect of any claim whatsoever or breach of the Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.

15.2 In no event shall TS be liable to the Customer for:

- (a) any loss of business,
- (b) loss of opportunity
- (c) or loss of profits
- (d) or for any other indirect or consequential loss or damage whatsoever, including but not limited to the following:-
  - (i) confidential, proprietary or personal information
  - (ii) lost or corrupted data, programs or software;
  - (iii) loss of a use of a system or network; and/or
  - (iv) for any acts or omissions, including negligence, whether by TS or by a third party.

15.3 The same shall apply even where such a loss was reasonably foreseeable or TS had been made aware of the possibility of the Customer incurring such a loss.

15.4 Nothing in these Terms shall exclude or limit TS's liability for death or personal injury resulting from TS's negligence or that of its employees, agents or sub-contractors.

16. INDEPENDENT CONTRACTORS

16.1 TS and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties.

16.2 TS may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve TS of its obligations under the Agreement.

#### 17. ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under the Agreement without the prior written consent of TS.

#### 18. EXCLUSIVITY

Exclusivity period shall be a minimum of six months. During the exclusivity period, the Customer will not directly or indirectly, through any employee, agent or otherwise, and will not permit any of its agents to solicit, initiate or encourage, any offers or proposals relating to the services provided in the Agreement. The Customer and TS agree that during the exclusivity period, Customer shall purchase exclusively from TS and not from any other.

#### 19. VARIATIONS

TS reserves the right in their discretion to modify without prior warning or notice these Terms and any information or material contained on the Agreement, including, without prejudice to the generality of the above, revisions, amendments, withdrawals and discontinuations of any services or information at the time and at the sole discretion of TS.

#### 20. SEVERABILITY

If any of these Terms are held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of these Terms herein shall continue in full force and effect as if these Terms had been agreed with the invalid illegal or unenforceable provision eliminated.

#### 21. NOTICES

Unless otherwise provided herein all notices, demands or other communications by TS shall be in writing and shall be deemed served upon successful transmission of any such communication sent thereto via the aforesaid medium.

#### 22. NO WAIVER

No failure or delay on the part of TS and/or its agents and/or its licensors in exercising any power right or remedy under the Terms shall operate as a waiver of such power right or remedy, nor shall any single or partial exercise of any power right or remedy preclude the further or other exercise thereof, or the exercise of any power right or remedy which it may have.

#### 23. THIRD PARTIES

23.1 A person or entity who is not a party to these Terms shall have no right under the Contracts (Rights of Third Parties) Act to enforce any part or whole of these Terms, regardless of whether such person or entity has been identified by name, as a member of a class or as answering a particular description.

23.2 For the avoidance of doubt, nothing in this paragraph shall affect the rights of any permitted assignee or transferee of these Terms.

#### 24. GOVERNING LAW & JURISDICTION

24.1 These Terms are governed by and shall be construed in accordance with the laws of England and Wales. In using this Site and its services, the parties agree to hereby submit to the exclusive jurisdiction of the courts of England and Wales.

24.2 These Terms may be translated into other languages but in the event of any inconsistency or uncertainty arising therefrom, this English version shall prevail over any other version.