

TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

AVM Solutions (UK) Ltd is a company incorporated in England and Wales under company registration number 07950131, and whose registered office is at Minerva House, 8-10 Minerva Road, Farnworth, Bolton, BL4 0HX (**Supplier**).

1. DEFINITIONS AND INTERPRETATION

- 1.1 All capitalised words in this agreement shall have the meaning as given at Schedule B to this agreement, unless the context provides otherwise.
- 1.2 The Quotation and the Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Quotation and the Schedules.
- 1.3 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 A reference to **writing** or **written** includes emails.

2. AGREEMENT AND ORDER PROCESS

- 2.1 This agreement, constitutes the entire agreement between the parties. By executing the agreement both parties are automatically agreeing to the provisions of the entire contract. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the agreement.
- 2.2 These Conditions apply to the agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.4 The Order shall be deemed to be accepted at the earlier of the following events:
 - 2.4.1 when the Supplier issues written acceptance of the Order;
 - 2.4.2 the Customer instructs the Supplier to deliver the Goods to it;
 - 2.4.3 the Customer instructs the Supplier to commence performance of the Services; or
 - 2.4.4 the Supplier issues to the Customer any invoice for payments due under this agreement,
 at which point and on which date this agreement shall come into existence (**Commencement Date**).
- 2.5 After the Customer has placed an Order, the Supplier may email an acknowledgement of receipt of the Customer's Order, but this does not mean that the Order has been accepted by the Supplier. Any quotation is only valid for a period of 30 days from its date of issue.
- 2.6 The Supplier reserves the right to reject any Order, or part of an Order, for any reason, although the Supplier will try to inform the Customer promptly the reason for its decision, which must be due to the Supplier not providing a service which the Customer has requested in its Order, running out of stock or resources, a price or description mistake, inability to obtain the Customer's payment or other genuine fair reason.
- 2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the agreement or have any contractual force.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.9 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. TERM

- 3.1 This agreement shall commence on the Commencement Date, and unless terminated earlier in accordance with Clause 17, it shall continue until the later of:
 - 3.1.1 where no Support Services are to be provided, on the Installation Completion Date; or
 - 3.1.2 where Support Services are to be provided, for the period specified in paragraph 1.2 of Schedule A.

4. SUPPLY OF GOODS

- 4.1 The Goods are described in the Quotation.
- 4.2 The Supplier reserves the right to amend the Goods' description if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

5. DELIVERY OF GOODS

- 5.1 The Supplier shall deliver the Goods to the location set out in the Quotation or such other location as the parties may agree (**Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 5.2 The Supplier may use a third party courier service of its choice to deliver the Goods to the Customer. The Customer shall take any risk of deterioration in the Goods which are incident of the course of delivery by a courier.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Location.
- 5.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or the Customer's failure to comply with its obligations under this agreement.
- 5.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the agreement in respect of the Goods:
 - 5.6.1 delivery of the Goods shall be deemed to have been completed at 09.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods are ready; and
 - 5.6.2 the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods are ready for delivery the Customer has not accepted actual delivery of it, the Supplier may resell or otherwise dispose of part or all of the Goods and account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.8 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject it.
- 5.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. QUALITY OF GOODS

- 6.1 The Supplier warrants that on delivery, and for the Warranty Period, the Goods shall:
 - 6.1.1 conform with their description; and
 - 6.1.2 be free from material defects in design, material and workmanship.
- 6.2 Subject to Clause 6.3, if:

- 6.2.1 the Customer raises a Support Request during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 6.1;
- 6.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in Clause 6.1 if:
- 6.3.1 the Customer makes any further use of such Goods after raising a Support Request in accordance with Clause 6.2;
- 6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 6.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 6.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 6.3.6 the Goods differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this Clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 6.1.
- 6.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 7. TITLE AND RISK**
- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods, the Installation Services, and any other goods that the Supplier has supplied to the Customer in which case title to the Goods shall pass at the time of payment of all such sums.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 unless otherwise permitted by the Supplier, store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 7.3.2 unless otherwise permitted by the Supplier, not remove, deface or obscure any identifying mark or packaging on or relating to the Goods without the prior consent of the Supplier;
- 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in Clause 17.1.2 to Clause 17.1.9 (inclusive); and
- 7.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
- a. the Goods; and
- b. the ongoing financial position of the Customer.
- 7.4 At any time before title to the Goods passes to the Customer, the Supplier may:
- 7.4.1 by notice in writing, terminate the Customer's right to use the Goods in the ordinary course of its business;
- 7.4.2 require the Customer to deliver up all Goods in its possession, at the Customer's cost, and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover it and charge Customer the reasonable costs incurred by the Supplier for taking such action; and
- 7.4.3 require the Customer to pay a restocking fee equivalent to 22% of the value of the Goods which are being returned to the Supplier.
- 8. SERVICES: GENERAL**
- 8.1 The Supplier shall supply the Services to the Customer in accordance with the Quotation in all material respects.
- 8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services agreed by the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Supplier reserves the right to amend the description of the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 9. SERVICES: INSTALLATION SERVICES**
- 9.1 The Supplier shall provide the Installation Services at the Location.
- 9.2 The Installation Services shall be deemed to be complete when the requirements and process set out in Clause 11.1.7 have been exhausted (**Installation Services Completion**).
- 10. SERVICES: SUPPORT SERVICES**
- 10.1 The Supplier shall provide the Support Services in accordance with the provisions of Schedule A.
- 11. CUSTOMER'S OBLIGATIONS**
- 11.1 The Customer shall:
- 11.1.1 ensure that the Order and any information provided in the Quotation is complete and accurate;
- 11.1.2 co-operate with the Supplier in all matters relating to the Services;
- 11.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's site, office accommodation, materials, connectivity equipment, software, network access, endpoints and facilities as reasonably required by the Supplier to provide the Services, including for the Supplier to carry out a site survey prior to the Order and/or performance of the Services;
- 11.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 11.1.5 ensure that the Goods are kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- 11.1.6 not use the Goods for any unlawful purpose;
- 11.1.7 procure that a duly authorised representative of the Customer shall be present when the Installation Services are being performed to agree that the Installation Services have been completed,. Acceptance by such representative of completion of the Services shall constitute conclusive evidence that the Customer is satisfied with the Installation Services, notwithstanding any residual activity which the Supplier deems to be snagging issues, and the Installation Services shall be marked as complete. If required by the Supplier, the Customer's duly authorised representative shall sign a receipt confirming such acceptance, In the event the Customer unreasonably withholds its agreement that the Installation Services have been completed, the Supplier shall deem, at its sole discretion, the Installation Services to have been completed on the same day it sought that agreement from the Customer;
- 11.1.8 acknowledge and respond to communications (oral or written) from the Supplier within a reasonable time;
- 11.1.9 in respect of the Support Services, comply with the terms of Schedule A and any obligations on the Customer contained therein;
- 11.1.10 inform the Supplier of all health and safety and security requirements that apply at any of the Locations;
- 11.1.11 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, in all cases before the date on which the Services are to start;
- 11.1.12 agree any reasonable request from the Supplier for an extension of any date or period, if it appears to the Supplier that, for reasons (including a Force Majeure Event) that were not apparent on the Commencement Date, an extension of time would be required in order to complete the Services, but so that there is no obligation on the Supplier to provide any work other than that already included in the Services;

- 11.1.13 comply at all times with all laws and obligations applicable to it and the use of the Services, including any health and safety laws;
- 11.1.14 notify the Supplier in writing immediately, where in the reasonable opinion of the Customer, the Supplier has failed to provide the Services to the standard required by this agreement; and
- 11.1.15 keep and maintain all materials, (including tools, systems, cabling or facilities), documents and other property of the Supplier (**Supplier Materials**) at the Location in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 11.2 The Customer will take all reasonable steps to ensure that their systems are secure and in good working order, including but not limited to ensuring:
- 11.2.1 its networks are adequately protected from being accessed by unauthorised third parties, whether by the installation of an appropriate firewall or otherwise;
- 11.2.2 any equipment installed by or on behalf of the Customer is installed in such a manner that it was secure from access by unauthorised third parties.
- 11.3 In order to protect the legitimate business interests of the Supplier, the Customer covenants with the Supplier that it shall not at any time after termination of this agreement, say, write or otherwise communicate, anything which may be harmful to the reputation of the business of the Supplier or the Supplier, whether defamatory or otherwise. This Clause 11.3 shall survive the termination of the agreement.
- 11.4 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 11.4.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 11.4.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 11.4; and
- 11.4.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 12. CHARGES AND PAYMENT**
- 12.1 The charges for Goods shall be the price set out in the Quotation. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods which shall be paid by the Customer when it pays for the Goods, if such costs are invoiced by the Supplier.
- 12.2 The charges for the Installation Services shall be the price set out in the Quotation, provided that the Supplier shall be entitled to charge an additional overtime rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Installation Services outside the Business Hours. Any additional charges shall be calculated from when the individuals arrive at the Customer's premises until they leave the Customer's premises. Different rates will apply for the following time periods during which the Installation Services are delivered by an individual person:
- 12.2.1 5.00 pm to 11.00 pm and 5.00 am to 8.00 am worked on Business Days;
- 12.2.2 11.00 pm to 5.00 am worked on Business Days; and
- 12.2.3 any time on Saturday or Sunday.
- 12.3 For the performance of the Support Services, the Customer shall pay to the Supplier the Support Services Fees.
- 12.4 For the performance of any Additional Services, the Customer shall pay to the Supplier the Additional Services Fees.
- 12.5 The Support Services Fees and the Additional Services Fees shall be inclusive of all expenses, other than those recoverable in accordance with Paragraph 4.1, Paragraph 4.2 and Paragraph 5.2 of Schedule A, and the Supplier shall be responsible for all costs and expenses incurred in providing the Support Services (other than those recoverable in accordance with Paragraph 4.1, Paragraph 4.2 and Paragraph 5.2 of Schedule A).
- 12.6 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials;
- 12.7 The Supplier shall be entitled to charge for any expenses reasonably incurred where:
- 12.7.1 the Customer cancels the Order; or
- 12.7.2 the Customer changes the agreed dates for the performance of the Services.
- 12.8 The Supplier may require the Customer to pay the total price for Goods and/or Services (as set out in the Quotation) in periodic stages (**Stage Payments**). In such circumstances, the amounts of each Stage Payment, the times at which each Stage Payment becomes due, and the timeframes within which the Stage Payments must be paid by the Customer, shall be set out in the Quotation, or otherwise in a separate email by the Supplier. If the Customer fails to pay any Stage Payment by the due date, the Supplier shall be entitled to recover the total price for the Goods and Services in one full payment from the Customer, and such payment shall be immediately payable by the Customer.
- 12.9 Where Stage Payments are not the Supplier's chosen method for payment of charges under this agreement:
- 12.9.1 in respect of Goods, where the Customer has not been granted credit by the Supplier, the Supplier shall invoice the Customer on the Commencement Date and the Customer shall pay the invoice immediately in order for the Supplier to release the Goods for delivery to the Customer. For the avoidance of doubt, the Supplier reserves the right to withhold delivery of the Goods to the Customer until full payment for the Goods has been received by the Supplier;
- 12.9.2 in respect of Goods, where the Customer has been granted credit by the Supplier, the Supplier shall invoice the Customer on or after the date of delivery of the Goods and the Customer shall pay the invoice by the due date as specified on the invoice; and
- 12.9.3 in respect of Services, where the Customer has been granted credit by the Supplier, the Supplier shall invoice the Customer, at its sole discretion, either:
- a. on the Commencement Date and the Customer shall pay the invoice by the due date as specified on the invoice; or
- b. on the Installation Services Completion date and the Customer shall pay the invoice by the due date as specified on the invoice.
- 12.10 Any Additional Services Fees shall be due and payable monthly, within 30 days of receipt of a valid invoice. Any charges for spare parts and Loan Equipment recoverable in accordance with Paragraph 4.1, Paragraph 4.2 and Paragraph 5.2 of Schedule A shall be due within 30 days of receipt of an invoice from the Supplier.
- 12.11 In respect of any amounts payable under this agreement:
- 12.11.1 the Customer shall pay each invoice in full and in cleared funds to a bank account nominated in writing by the Supplier; and
- 12.11.2 time for payment shall be of the essence.
- 12.12 All amounts payable by the Customer under the agreement are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 12.13 The Supplier reserves the right to increase the charges for the Services to reflect market conditions and inflation, provided that no change will be greater than 10% of the variation in costs from those in force at the time immediately prior to the change taking effect. The Supplier will give the Customer written notice of any such increase at least 7 days before the proposed date of the increase. If the increase is greater than 10% and is not acceptable to the Customer, it shall notify the Supplier in writing within 5 days of the date of the Supplier's notice and the Customer shall have the right to terminate the agreement by giving 2 weeks' written notice to the Supplier. If the Customer does not notify the Supplier in accordance with this Clause 12.13 it shall be deemed to have accepted the increase in charges and shall not be entitled to object to the same once those increased charges have taken effect.

- 12.14 If the Customer fails to make any payment due to the Supplier under the agreement by the due date for payment, then, without limiting the Supplier's remedies under Clause 17, the Customer shall pay interest on the overdue amount at the statutory rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 12.15 The Customer shall pay all amounts due under the agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Intellectual Property Rights in or arising out of or in connection with the Services, including but not limited to all software, schematic diagrams, drawings and designs created by the Supplier, shall be owned by the Supplier.
- 13.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 13.3 All Supplier Materials are the exclusive property of the Supplier.

14. DATA PROTECTION

- 14.1 For the purposes of this Clause 14, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the Data Protection Legislation.
- 14.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Legislation.
- 14.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor.
- 14.4 Without prejudice to Clause 14.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the agreement.
- 14.5 Without prejudice to Clause 14.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the agreement:
- 14.5.1 process that Personal Data only on the written instructions of the Customer unless the Supplier is required by Domestic Law to process Personal Data (**Purpose**). Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless those Domestic Laws prohibit the Supplier from so notifying the Customer;
- 14.5.2 ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- 14.5.3 notify the Customer without undue delay on becoming aware of a personal data breach involving the Personal Data;
- 14.5.4 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 14.5.5 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 14.5.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Domestic Law to continue to process that Customer Personal Data. For the purposes of this Clause 14.5.6, Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and

- 14.5.7 maintain records to demonstrate its compliance with this Clause 14.

- 14.6 The Customer provides its prior, general authorisation for the Supplier to:

- 14.6.1 appoint processors to process the Customer Personal Data, provided that the Supplier:

- shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation, and are consistent with the obligations imposed on the Supplier in this Clause 14;
- shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
- shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Legislation, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.

- 14.6.2 transfer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Data Protection Legislation. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

- 14.7 Either party may, at any time on not less than 30 days' notice, revise this Clause 16 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

- 14.8 The Supplier's liability for losses arising from breaches of this Clause 14 is as set out in Clause 16.4.2.

15. CONFIDENTIALITY

- 15.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specification, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.

- 15.2 The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 15.3 This Clause 15 shall survive termination of the agreement.

16. LIMITATION OF LIABILITY

- 16.1 The restrictions on liability in this Clause 16 apply to every liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 16.2 Nothing in agreement shall limit or exclude either party's liability for:

- 16.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 16.2.2 fraud or fraudulent misrepresentation;
 - 16.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 16.2.4 defective products under the Consumer Protection Act 1987; and
 - 16.2.5 the indemnity at Clause 14.6.1(c).
 - 16.3 Nothing in this Clause 16 shall limit the Customer's payment obligations under this agreement.
 - 16.4 Subject to Clause 16.2, the Supplier's total liability to the Customer:
 - 16.4.1 for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £10,000,000 for any one event or series of connected events; and
 - 16.4.2 for all other loss or damage which does not fall within Clause 16.4.1, shall not exceed the total amounts paid by the Customer to the Supplier under this agreement during the twelve month period immediately preceding the date on which the cause of action first arose.
 - 16.5 Subject to Clause 16.2, Clause 16.3 and Clause 16.4, this Clause 16.5 specifies the types of losses that are excluded:
 - 16.5.1 loss of profit;
 - 16.5.2 loss of sales or business;
 - 16.5.3 loss of agreements or contracts;
 - 16.5.4 loss of anticipated savings;
 - 16.5.5 loss of use or corruption of software, data or information;
 - 16.5.6 loss of or damage to goodwill;
 - 16.5.7 loss of reputation; or
 - 16.5.8 indirect or consequential loss.
 - 16.6 The Supplier has provided warranties at Clause 6 and Clause 8. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
 - 16.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
 - 16.8 This Clause 16 shall survive termination of the agreement.
- 17. TERMINATION**
- 17.1 Without limiting its other rights or remedies, the Supplier may terminate the agreement with immediate effect by giving written notice to the Customer if:
 - 17.1.1 the Customer commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
 - 17.1.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 17.1.3 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 17.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of the Customer;
 - 17.1.5 the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - 17.1.6 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 17.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
 - 17.1.8 the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 17.1.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the other party;
 - 17.1.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.1.2 to Clause 17.1.9 (inclusive);
 - 17.1.11 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 17.1.12 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the agreement has been placed in jeopardy; or
 - 17.1.13 the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation;
 - 17.1.14 the Customer fails to pay any amount due under this agreement on the due date for payment;
 - 17.1.15 there is a change of Control of the Customer; or
 - 17.1.16 the results of any survey of the Location by the Supplier shows the Location to be unsuitable for the Services in the Supplier's opinion acting reasonably.
 - 17.2 Without limiting its other rights or remedies, the Supplier may suspend the supply of Goods and/or Services under the agreement or any other contract between the Customer and the Supplier if:
 - 17.2.1 the Customer fails to pay any amount due under this agreement on the due date for payment;
 - 17.2.2 the Customer becomes subject to any of the events listed in 17.1.2 to Clause 17.1.9 (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them; or
 - 17.2.3 required for the Supplier's operational reasons or in the case of emergency.
 - 17.3 On termination of the agreement for any reason:
 - 17.3.1 the Customer shall retain financial responsibility (in accordance with the agreement) and shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of this agreement but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 17.3.2 the Customer shall immediately return all of the Supplier Materials. If the Customer fails to do so, then the Supplier may enter the Customer's site and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this agreement;
 - 17.3.3 the Customer shall immediately cease having access to the Services;
 - 17.3.4 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry; and
 - 17.3.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
 - 17.4 If a suspension is implemented by the Supplier as a consequence of the breach, fault or omission of the Customer, the Customer shall reimburse the Supplier on a full indemnity basis for all costs, expenses, management time calculated at a reasonable hourly rate and any other losses incurred as a result of the suspension and/or the recommencement of the provision of the Goods and Services as appropriate.

- 17.5 For the avoidance of doubt and without prejudice to Clause 16 of these Conditions, the Supplier shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension or termination of the agreement.
- 18. FORCE MAJEURE**
- 18.1 The Supplier shall inform the Customer about a Force Majeure Event as soon as it reasonably can and let the Customer know what it is the Supplier is unable to do as a result of it.
- 18.2 The Supplier's obligations under this agreement shall be suspended:
- 18.2.1 to the extent that it is affected by the Force Majeure Event; and
- 18.2.2 while the Force Majeure Event continues; provided that the Supplier shall promptly take reasonable steps to resume performance as soon as reasonably possible.
- 18.3 If the Supplier cannot carry out any obligation under this agreement because of a Force Majeure Event the Supplier shall:
- 18.3.1 not be in breach of this agreement; and
- 18.3.2 not be liable for any delay on its part or any inability to carry out any obligation under this agreement.
- 19. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE**
- 19.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
- 19.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the director of the Customer (or an individual of similar seniority) and the director of the Supplier (or an individual of similar seniority) shall attempt in good faith to resolve the Dispute;
- 19.1.2 if the director of the Customer and director of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 7 days after the date of the ADR notice.
- 19.2 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 20.9.2.
- 20. OTHER IMPORTANT TERMS**
- 20.1 Variation:
- 20.1.1 Subject to Clause 12.9, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.2 Waiver:
- 20.2.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.3 Rights and remedies:
- 20.3.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 20.4 Third party rights:
- 20.4.1 This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 20.5 Severance:
- 20.5.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 20.6 Assignment:
- 20.6.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 20.6.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 20.7 No partnership or agency:
- 20.7.1 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 20.8 Notices:
- 20.8.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to, in the case of the Customer, to the address specified in the Quotation, and in the case of the Supplier to krishan.mistry@avmsolutionsuk.com.
- 20.8.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Business Hours, at 09:00 on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. Any notice sent by email shall be deemed to have been received at the time of transmission ((or if transmission is not during Business Hours, at 09:00 on the first Business Day following transmission)).
- 20.9 Governing law and Jurisdiction:
- 20.9.1 This agreement 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 in accordance with the law of England and Wales.
- 20.9.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claim).

SCHEDULE A – Support Services

1. COMMENCEMENT OF SUPPORT SERVICES AND DURATION

- 1.1 This Supplier shall commence providing the Support Services to the Customer in accordance with this agreement from the Support Services Commencement Date.
- 1.2 Unless this agreement is terminated earlier in accordance with Clause 17, the Support Services shall continue until the end of the Initial Period, and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Period or the relevant Renewal Period, to terminate this agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.

2. SUPPORT SERVICES

- 2.1 The Supplier shall attend the Support Site during the Support Hours, at the frequency specified in the Quotation, and on a date agreed by both parties, to perform Preventative Maintenance of the Supported Equipment.
- 2.2 On the Customer submitting a Support Request, the Supplier shall:
 - 2.2.1 use all reasonable endeavours to perform Corrective Maintenance of the Supported Equipment within the Resolution Time; and
 - 2.2.2 where, in the Supplier's opinion, it cannot reasonably perform Corrective Maintenance remotely, and where the Quotation specifies that on-site support is to be provided by the Supplier, use all reasonable endeavours to attend at the Support Site during the Support Hours within the relevant Resolution Time.
- 2.3 The Customer acknowledges that any hours outside of the Support Hours shall not count towards the calculation of the Resolution Time under Paragraph 2.2.
- 2.4 In performing any Support Services, the Supplier shall use all reasonable endeavours to restore any malfunctioning or failed Supported Equipment to Good Working Order either remotely or while in attendance at the Support Site. Where this is not reasonably practicable, or not reasonably practicable within the Support Hours (in the case of Preventative Maintenance and Corrective Maintenance), the Supplier shall either arrange for a further visit to the Support Site within Support Hours to complete the repair, or remove the Supported Equipment or part of the Supported Equipment for repair off-site.
- 2.5 For any Support Services which the Customer requests to be performed by the Supplier outside of the Support Hours, such services shall be:
 - 2.5.1 performed at the Supplier's sole discretion; and
 - 2.5.2 the Supplier shall charge the Customer the Additional Services Rates.

3. SUBMITTING A SUPPORT REQUEST

- 3.1 To receive the benefit of Corrective Maintenance the Customer must submit a Support Request, by either raising a ticket on the Helpdesk, emailing helpdesk@avmsolutionsuk.com, sending a message via Whatsapp on 07387 579759_ or telephoning 0333 8880204, which provides a complete description of the Fault and any other information reasonably requested by the Supplier.
- 3.2 The Supplier shall use all reasonable endeavours to acknowledge receipt of each Support Request within 2 hours of receipt.

4. REPLACEMENTS AND SPARE PARTS

- 4.1 In performing the Support Services and the Additional Services, where the Supported Equipment is inside of any applicable and valid warranty period, the Supplier shall use all reasonable endeavours to source spare parts required to restore the Supported Equipment to Good Working Order or to facilitate the manufacturer's warranty. The Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the manufacturer's failure or delay to implement any applicable and valid warranty. Where the Supported Equipment is outside of any applicable warranty period, the Supplier shall not be obliged to source spare parts however where it does so, the Supplier shall have the right to charge the Customer for the spare parts. The amounts owed pursuant to this Paragraph 4.1 shall be invoiced in accordance with Clause 12.10 and shall be payable by the Customer in accordance with Clause 12.
- 4.2 The costs of delivering the spare parts and/or replacements to the Support Site shall be met by the Customer. The amounts owed pursuant to this Paragraph 4.2 shall be invoiced in accordance with Clause 12.10 and shall be payable by the Customer in accordance with Clause 12.

- 4.3 All spare parts and/or replacements provided by the Supplier to the Customer shall become part of the Supported Equipment and the property of the Customer. All parts and components removed from the Supported Equipment by the Supplier in the course of performing the Support Services or the Additional Services shall no longer constitute part of the Supported Equipment and will be the property of the Supplier. The Customer will assign to the Supplier, with full title guarantee and free from all third-party rights, all parts and components removed from the Supported Equipment by the Supplier in accordance with this Paragraph 4.3. For the purposes of this sub-clause, 'assign' includes 'transfer ownership of'.

5. LOAN EQUIPMENT

- 5.1 Where, in accordance with Clause 4.3, the Supplier removes the Supported Equipment or part of the Supported Equipment for repair off-site, the Supplier may supply the Customer with Loan Equipment, as soon as is practicable for the Supplier and subject to availability of such equipment, to assist the Customer with continuing its business operations.
- 5.2 The Supplier shall have the right to charge the Customer for the Loan Equipment. The amounts owed pursuant to this Paragraph 5.2 shall be invoiced in accordance with Clause 12.10 and shall be payable by the Customer in accordance with Clause 12.

Risk and Title

- 5.3 The Loan Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Loan Equipment (save the right to possession and use of the Loan Equipment subject to this Paragraph 7).
- 5.4 The risk of loss, theft, damage or destruction of the Loan Equipment shall pass to the Customer on Delivery. The Loan Equipment shall remain at the sole risk of the Customer during the period which the Loan Equipment is provided to the Customer (**Loan Period**) and any further term during which the Loan Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Loan Equipment is redelivered to the Supplier.
- 5.5 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Loan Equipment arising out of or in connection with the Customer's possession or use of the Loan Equipment.
- 5.6 If the Customer fails to effect or maintain any of the insurances required under this agreement, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 5.7 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

Customer's obligations regarding the Loan Equipment

- 5.8 The Customer shall during the term of the Loan Period:
 - 5.8.1 ensure that the Loan Equipment is kept and operated in a suitable environment used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
 - 5.8.2 take such steps (including compliance with all safety and usage instructions) as may be necessary to ensure, so far as is reasonably practicable, that the Loan Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - 5.8.3 maintain at its own expense the Loan Equipment in good and substantial repair in order to keep it in as good an operating condition as it was prior to the date of Delivery (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Loan Equipment;
 - 5.8.4 make no alteration to the Loan Equipment and shall not remove any existing component(s) from the Loan Equipment unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Loan Equipment shall vest in the Supplier immediately upon installation;

- 5.8.5 at all times keep the Loan Equipment in the possession or control of the Customer and keep the Supplier informed of its Support Site;
- 5.8.6 not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Loan Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 5.8.7 not without the prior written consent of the Supplier, attach the Loan Equipment to any land or building so as to cause the Loan Equipment to become a permanent or immovable fixture on such land or building. If the Loan Equipment does become affixed to any land or building then the Loan Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Loan Equipment from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
- 5.8.8 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Loan Equipment and, where the Loan Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Loan Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Loan Equipment and a right for the Supplier to enter onto such land or building to remove the Loan Equipment;
- 5.8.9 not suffer or permit the Loan Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Loan Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Loan Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 5.8.10 not use the Loan Equipment for any unlawful purpose;
- 5.8.11 ensure that at all times the Loan Equipment remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Loan Equipment; and
- 5.8.12 deliver up the Loan Equipment at the end of the Loan Period or on earlier termination of this agreement at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Support Site or any premises where the Loan Equipment is located for the purpose of removing it.
- 5.9 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Loan Equipment arising out of or in connection with any negligence, misuse, mishandling of the Loan Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Supplier on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this Paragraph 5.
- 6. CUSTOMER'S OBLIGATIONS**
- 6.1 The Customer shall:
- 6.1.1 notify the Supplier promptly if the Supported Equipment is discovered to be operating incorrectly;
- 6.1.2 ensure that the Supported Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- 6.1.3 not allow any person other than the Supplier to maintain, alter, modify or adjust the Supported Equipment without the prior written approval of the Supplier;
- 6.1.4 not move the Supported Equipment from the Support Site without the prior written approval of the Supplier (approval not to be unreasonably withheld or delayed); and
- 6.1.5 only use the Software in accordance with any applicable end user licence terms and conditions.
- 7. OUT-OF-SCOPE SERVICES**
- 7.1 The Customer acknowledges that the Supplier is not obliged to provide Out-of-scope Services. The Supplier may reasonably determine that any services are Out-of-scope Services. If the Supplier makes any such determination, it shall promptly notify the Customer as such.
- 7.2 Where the Supplier is performing or has performed Out-of-scope Services, the Supplier may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.

SCHEDULE B - Definitions

Additional Services	Means: a. any Support Services performed by the Supplier in accordance with Paragraph 2.4 of Schedule A; or b. any Out-of-scope Services performed by the Supplier.
Additional Services Fees	The fees payable by the Customer for the Supplier's performance of any Additional Services, as calculated at the Additional Services Rates.
Additional Services Rates	The prevailing rates (available upon request) applied by the Supplier for Additional Services.
Business Day	A day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Business Hours	8.00 am to 5.00 pm on each Business Day.
Commencement Date	Has the meaning given at Clause 2.4.
Conditions	These terms and conditions as amended from time to time in accordance with Clause 20.1.1.
Control	Shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
Corrective Maintenance	In accordance with Paragraph 2.1 of Schedule A: a. making any adjustments to the Supported Equipment; and b. replacing any parts or components of the Supported Equipment, in each case, which are required to restore the Supported Equipment to Good Working Order.
Customer	The person or firm who purchases the Goods and/or Services from the Supplier as specified in the Quotation.
Customer Personal Data	Personal data (as defined in the Data Protection Legislation) belonging to the Customer.
Data Protection Legislation	All applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).
Data Subject	Has the meaning given in the applicable Data Protection Legislation.
Delivery	The transfer of physical possession of the Loan Equipment to the Customer.
Domestic Law	The law of the United Kingdom or a part of the United Kingdom.
Goods	The goods (or any part of them) specified in the Quotation.
EU GDPR	The General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.
Excluded Causes	Means: a. a defect in the manufacturer's design of the Supported Equipment; b. faulty materials or workmanship in the manufacture of the Supported Equipment; c. use of the Supported Equipment with computer equipment or materials not supplied or approved in writing by the Supplier; d. any maintenance, alteration, modification or adjustment of the Supported Equipment performed by persons other than the Supplier or its employees or agents, unless approved by the Supplier in accordance with Paragraph 6.1.3 of Schedule A; e. the neglect or misuse of the Supported Equipment; f. the use of the Supported Equipment in breach of any of the provisions of the agreement under which the Supported Equipment was supplied; g. a failure, interruption or surge in the electrical power or its related infrastructure connected to the Supported Equipment; h. the Customer or a third party moving the Supported Equipment; i. a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Supported Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; j. force majeure; k. neglect or misuse of the Supported Equipment; or l. use of Unsupported Equipment.
Fault	A reproducible fault which hinders or prevents the Customer from using a material part of the functionality of the Hardware or Software in question.
Force Majeure Event	Any circumstance not within the Supplier's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; or non-performance by suppliers or subcontractors.
Good Working Order	The Hardware or Goods (as the context dictates) operate in accordance with the respective operating manuals and specifications.
Hardware	The hardware (or part of them) which make up all or part of the Goods specified in the Quotation, and any other hardware which the parties agree in writing to be supported under this agreement.
Helpdesk	The platform at URL https://support.freshdesk.com (as amended from time to time) via which Support Requests may be submitted by the Customer.
Initial Period	The minimum initial term for which the Support Services are to be provided by the Supplier as specified in the Quotation, or as otherwise agreed in writing by the parties.
Installation Services	The installation and commissioning of the Goods or any other goods (as agreed in writing by the parties) to be provided by the Supplier.
Installation Services Completion	Has the meaning given at Clause 9.2.
Intellectual Property Rights	Patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off [, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Loan Equipment	Equipment which may be loaned by the Supplier to the Customer from time to time to in accordance with Paragraph 7 of Schedule A.
Location	Has the meaning given at Clause 5.1.
Order	The Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order, or the Customer's written acceptance of the Quotation as the case may be.
Preventative Maintenance	Means: a. testing that the Supported Equipment is functional; and b. making any adjustments as may be required to ensure the Supported Equipment remains in Good Working Order, in accordance with Paragraph 2.1 of Schedule A.

Out-of-scope Services	Any maintenance services required by the Customer or provided by the Supplier in connection with: <ul style="list-style-type: none"> a. a malfunction or failure regarding the Supported Equipment where the malfunction or failure results from or is caused by any of the Excluded Causes or a cause outside of the Supplier's control (including any investigational work resulting in such a determination); b. a malfunction or failure of the Supported Equipment which is outside of any applicable warranty period; or c. a malfunction or failure, howsoever caused by the Customer, regarding the Unsupported Equipment.
Quotation	The quotation provided in writing by the Supplier to the Customer which contains the description of the Goods, the Services and the charges.
Renewal Period	The renewal period as set out in the Quotation.
Resolution Time	The applicable Resolution Times as set out in the Quotation.
Services	Means the Installation Services and Support Services together.
Software	The software which make up all or part of the Goods specified in the Quotation, including the firmware installed on the Hardware, which the parties agree to be supported under this agreement.
Stage Payments	Has the meaning given in Clause 12.8.
Supplier Materials	Has the meaning given in Clause 11.1.14.
Supported Equipment	Means the Hardware and Software together.
Support Hours	The hours, during which Support Services are accessible to the Customer, as specified in the Quotation.
Support Request	Notification of a Fault by the Customer to the Supplier.
Support Services	Refers to the support services to be provided by the Supplier, as referred to in the Quotation.
Support Services Commencement Date	The next Business Day following the date of Installation Services Completion.
Support Services Fee	The fees payable by the Customer to the Supplier for the Support Services, at the rates specified in the Quotation.
Support Site	The Customer's premises where the Hardware is installed as specified in the Quotation.
UK GDPR	Has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
Unsupported Equipment	Hardware or software that is not Supported Equipment.
Warranty Period	The period prescribed by the third party manufacturer of the Goods, or if no such period is prescribed then the period shall be 12 months, commencing from the date of delivery of the Goods to the Customer.