

GENERAL TERMS AND CONDITIONS OF SALE

1.0 DEFINITIONS AND INTERPRETATIONS

Agreement	means the Contract Specification, the General Terms and Conditions and the Specific Terms and Conditions (including any schedule or annexure to it and any document referred to herein);
Ad Hocs	means an ad hoc service which is outside of any contracted service level;
Case	is the term used to identify any request for the Service(s) logged by CUSTOMER with SCT's Service Delivery Teams;
Charge	means the applicable recurring or non-recurring fees for agreed SCT Services and/or Time and Material Work
Charging Period	means the time periods starting on the Start Date and ending on the quarterly anniversary of the Start Date in accordance with the Payment Terms during which Services are agreed to be provided;
Confidential Information	means all information (in whatever format) designated as such by either party together with such information which relates to the business, affairs, networks, products, developments, trade secrets, know-how, security information and personnel of either party and which may reasonably be regarded as the confidential information of the disclosing party;
Contract Specification	means the Hardware Advance Replacement Contract Specification signed by SCT and CUSTOMER, which incorporates by reference these General Terms and Conditions of Service and the Specific Terms and Conditions of the Service(s) to be provided;
Customer	means the individual customers of CUSTOMER to which SCT would provide Services to under this agreement
Cover Period	means the timeframe during which CUSTOMER is entitled to receive the Service(s) as defined by this Agreement;
CUSTOMER	means the party named as such in the Contract Specification to which SCT will provide the Service(s) under the scope of this Agreement;
Equipment	means those units, components or sub-assemblies referred to in the Equipment List(s) for which the Service(s) will be provided;
Equipment List	means the list of Equipment on support;
Incident	is the term used to identify any request for the Service(s) logged by CUSTOMER with SCT's Service Delivery Teams;
Manufacturer	means the company responsible for making or producing the Product(s) associated in the Services;
Nominated Contacts	means the name, email address and phone number of the individuals provided to SCT to contact in relation to providing service to CUSTOMER and its customers;
Non-legitimate	A Product which is un-registerable by the manufacturer or counterfeit;
Normal Working Hours	means the hours of 9.00am to 5.30pm, Monday to Friday, excluding bank and other public holidays;
Product	Means spare parts and/or whole units and/or sub-modules used by SCT in the Services under this Agreement;
Request for Service	means a formal request by CUSTOMER for the provision of the Services and includes other services not provided under this Agreement but subject to confirmation and agreement by SCT, including but not limited to additional cost;
Response	means the delivery to the designated address of the part specified within the related Case;
Service Cover Periods	Response Times and applicable charges, broken down by manufacturer for which the Service(s) will be provided, which is attached as an Appendix to this Agreement;
SCT / Smart Capital Technology	means Smart Capital Technology Limited as further detailed in the Contract Specification;
Service Representative	means any employee of SCT who may be involved with any Case logged under the scope of this Agreement;
the Services	means the Hardware Advance replacement as detailed in the Contract Specification
Start Date	means the date as specified in the Contract Specification from which CUSTOMER's entitlement to receive the Services shall commence;
Service Start and End Dates	Means the dates between which the Service shall be provided and the Charges shall be calculated for each piece of equipment on the Equipment List;
Time and Materials Work	means any work conducted for CUSTOMER by SCT which falls outside of the scope of the Services, as provided by this Agreement, either through its nature or time of execution;
VAT	means Value Added Tax.

2.0 GENERAL

- 2.1 These General Terms and Conditions of Service are the terms and conditions on which the Service(s) will be provided to CUSTOMER. The terms and conditions specific to the Service selected by CUSTOMER as indicated in the Contract Specification, the “Specific Terms and Conditions of Service”, are set-out in Schedule B to this Agreement.
- 2.2 Where there is any inconsistency between these General Terms and Conditions of Service and the Specific Terms and Conditions of Service for the Service(s) as indicated in the Contract Specification, the Specific Terms and Conditions of Service shall apply.
- 2.3 Clause headings are included for convenience only, have no legal effect and shall be ignored when constructing this Agreement.
- 2.4 Response time is measured by reference to the Cover Period that CUSTOMER has chosen.

3.0 SCT’S RESPONSIBILITIES

- 3.1 Commencing on the Start Date, SCT shall provide the Service(s) as indicated in the Equipment List Schedule D which CUSTOMER’S purchase order is raised against.
- 3.2 SCT warrants that notwithstanding any statutory rights accruing to CUSTOMER it will use every degree of care and skill to be reasonably expected of an experienced Hardware Advance Replacement Service provider in the provision of the Service.
- 3.3 SCT’s Service Department, where applicable, will coordinate the Service(s) and will be the point of contact for CUSTOMER for all issues relating to the Service(s).
- 3.4 SCT does not, under any circumstance, guarantee fix times and any reference to such within any separate agreement will be construed as an agreement for SCT to use reasonable endeavours to achieve response time targets in relation to Cases logged and Requests for Service made under the scope of this Agreement.

4.0 CUSTOMER’S RESPONSIBILITIES

- 4.1 CUSTOMER shall use all reasonable endeavours to ensure that their customers provide and maintain a suitable environment as specified by the Equipment’s manufacturer for the Equipment to be maintained or supported by SCT.
- 4.2 CUSTOMER may, where required give SCT’s Service Representatives full, free and safe access to the Equipment as is reasonably required to provide the Services.
- 4.3 Before requesting any assistance from SCT under the Service, CUSTOMER shall use its best endeavours to implement the following:
 - 4.3.1 Any applicable operator tasks and procedures on problem determination, analysis and recovery (of which CUSTOMER is aware or made aware of by SCT) have been carried out;
 - 4.3.2 All safeguards that might reasonably be considered to be appropriate for all programs, software data or configuration information contained in, on or in relation to the Equipment have been implemented.
- 4.4 CUSTOMER shall notify SCT of the identity and contact details of the Nominated Contacts within fourteen (14) days of the Start Date. Any subsequent changes to the Nominated Contacts shall be made at least seven (7) days prior to the new Nominated Contact being permitted to log calls with SCT.
- 4.5 CUSTOMER shall ensure that the Nominated Contacts are suitably skilled and knowledgeable in the operation of the Equipment, through the provision of training where appropriate.
- 4.6 CUSTOMER shall take sole responsibility for the maintenance of procedures to enable the reconstruction of any lost or altered files, data or programs. CUSTOMER is solely responsible for carrying out all back-up procedures so that data integrity can be maintained.
- 4.7 CUSTOMER shall pay for all contracted Services in accordance with Clause 6 of this Agreement.

5.0 EXCLUSIONS

- 5.1 SCT shall not be responsible for:
 - 5.1.1 Faults in the Equipment arising for reasons other than fair wear and tear. Without limitation as to the generality of this Clause, SCT shall not be responsible for any faults arising from the following causes:
 - 5.1.1.1 Accident, neglect or misuse;
 - 5.1.1.2 Failure or fluctuation of electricity supply, air-conditioning, humidity control or other environmental conditions;
 - 5.1.1.3 Fire;
 - 5.1.1.4 The fitting of parts, software or accessories that are not compatible with the Equipment;
 - 5.1.1.5 Modifications and / or alterations to the Equipment by CUSTOMER or other third party which have not been agreed by SCT, such agreement shall not unreasonably be withheld or delayed. A Change Control

process will be used for seeking such agreement from SCT shall be that agreed as mutually acceptable to both parties;

- 5.1.1.6 Any use of the Equipment other than that for which it was designed or which is contrary to the instructions of the manufacturer or SCT.
- 5.1.2 The provision of operating supplies, materials or accessories including but not limited to disks, tapes, printer ribbons, tape heads, print heads, anything identified by the manufacturer as consumable and any other item which might reasonably be considered to be consumable.
- 5.1.3 Performing electrical works external to the Equipment or providing the Service in relation to accessories, alterations to, attachments to the Equipment or other devices not specified in this Agreement.
- 5.1.4 Performing the Services outside of the Cover Period. If CUSTOMER wishes for the Services to be provided outside of Cover Period or for any other services to be provided outside of the scope of this Agreement they may make such a Request for Service of SCT in accordance with Clause 9 of this Agreement.

6.0 CHARGES AND PAYMENT

- 6.1 Details of charges including Service Start and End Dates for each piece of equipment in relation to the Service(s) at the Start Date are set out in the Equipment List. SCT guarantee that for the equipment at the Start Date and for all additional equipment to be added to the Equipment List shall at a minimum attain a charge for the Service(s) All Charges shown include all delivery and packaging costs and exclude VAT unless otherwise detailed which shall be payable at the rate in force at the time such payment becomes due. The exchange rate used will be fixed on a per calendar basis as per the published rate in the Financial Times on the first date of each quarter.
- 6.2 SCT shall use reasonable endeavours to permit additions to the Equipment List and for the Service(s) to be invoiced on a pro-rata basis, such that payment for such additions shall fall on the appropriate quarterly date following the start date. The Service(s) will commence against such an addition no later than:
 - 6.2.1 five (5) working days after the date of receipt of such a request where such products are already supported, or
 - 6.2.2 ten (10) days where such requests are for new product types
- 6.3 SCT shall permit deletions from the Equipment List and for the Service(s) credited on a pro-rata basis, such that credit for such deletions shall fall on the appropriate quarterly date. The Service(s) shall cease against such a deletion no later than thirty (30) days after the date of receipt of such a request.
- 6.4 Payment of all non-recurring payments properly due and payable to SCT will fall due no later than thirty (30) days after the date of the relevant invoice.
- 6.5 In the event of late payment of any undisputed invoice, SCT reserves the right, without prejudice to any other available remedy, to suspend provision of the Services in whole or in part giving fifteen (15) days written notice to CUSTOMER and then until payment has been made. CUSTOMER acknowledges that SCT will not be responsible for any consequences, financial or otherwise, which may flow from the suspension of the Services.
 - 6.5.1 CUSTOMER will notify SCT of any invoice disputes within five (5) Business days.
- 6.6 Payments which are not received when the amount invoiced is properly due and payable will be considered overdue and will remain payable by CUSTOMER together with interest for the late payment from the date payable at the rate of 4% per annum above the base rate, for the time being, of Barclays Bank plc applicable after as well as before any judgement. Interest will accrue on a daily basis and be payable on demand.

7.0 TERM

- 7.1 This Agreement shall commence on the Start Date specified in the Contract Specification and shall continue in effect for a Term of three (3) years or until terminated by CUSTOMER under the provisions of this Agreement. The Term may be extended by agreement in writing of the Parties in order to support the continued delivery of the Services.

8.0 TERMINATION

- 8.1 Either party may terminate this Agreement forthwith without payment of compensation or other damages at any time by written notice if:
 - 8.1.2 Either party commits a material breach of any term of the Agreement that is incapable of remedy within a period of thirty (30) business days from date from the start of breach.
 - 8.1.3 Either party proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986 or the equivalent thereof, or an interim order is made in relation to SCT under Section 252 of the Insolvency Act 1986 or the equivalent thereof, or any other steps are taken or negotiations commenced by SCT or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving SCT and any of its creditors;

- 8.1.4 Either party is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the equivalent thereof, or calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, or a resolution is passed by the directors of SCT to seek a winding up or administration order or the equivalent thereof, or SCT presents, or has presented, a petition for a winding up order, or presents, or has presented, a petition to appoint an administrator, or has an administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets;
- 8.1.5 Either party suspends or ceases or threatens to suspend or cease to carry on its business but not merely the Services as a result of a breach of this Agreement by CUSTOMER permitting such suspension or cessation;
- 8.1.6 By CUSTOMER if a secured lender to SCT takes any steps to obtain possession of any of the Sites on which it has security or otherwise to enforce its security;
- 8.1.7 By CUSTOMER for a failure to meet Service Levels or for persistent failure: CUSTOMER may terminate this Agreement by giving no less than thirty (30) days' notice to SCT. If SCT fails to provide the Services in accordance with the Service Levels and either such failure is not remediable or such failure is remediable but is not remedied within the [time limits agreed during Monthly Reviews] or SCT persistently fails to meet any of its obligation under this Agreement The Parties agree that "persistently" for these purposes shall mean that SCT has failed to meet either:
 - 8.1.7.1 a minimum of 80% of the Service Levels in respect of Services where Service Levels exist in any Quarter; or
 - 8.1.7.2 a minimum of 80% of the Service Levels in respect of Services where Service Levels exist for two (2) or more occasions in any three (3) month period; or
 - 8.1.7.3 50% of the Service Levels in respect of Services where Service Levels exist in any six (6) monthly period.
- 8.2 Other CUSTOMER termination options: If any circumstances arise which entitle CUSTOMER to terminate this Agreement pursuant to this Termination Clause and without prejudice to any rights CUSTOMER may have pursuant to this Agreement or otherwise, CUSTOMER may instead at its option by serving written notice upon SCT reduce the scope of the Services to be supplied under this Agreement by terminating or suspending all or any part of such of the Services as are affected by SCT Default or failure.
- 8.3 By SCT deliberate withholding of undisputed payments: SCT may terminate this Agreement on no less than thirty (30) days prior written notice in the event that CUSTOMER fails to pay undisputed payments due to Capital Technology for more than 90 days from the due date provided that SCT notifies CUSTOMER of such failure as soon as reasonably possible.

9.0 TIME AND MATERIALS CHARGES

- 9.1 Where applicable and unless otherwise stated in the Contract Specification, SCT shall carry out work outside of the scope of the Services, as provided by this Agreement, for CUSTOMER as set out in Clauses 9.2 to 9.9.
- 9.2 A SCT Service Representative's time will be charged at the rates which will be quoted by the SCT Technical Support Department at the time of such a Request for Service being made. Materials will be charged at the rate quoted by the SCT Technical Support Department at the time of such a request being made.
- 9.3 The rates referred to above apply only to work carried out during Normal Working Hours. Work done outside of these hours shall be charged in accordance with Clauses 9.8 and 9.9 as appropriate.
- 9.4 Travel time to and from CUSTOMER's site will be charged to CUSTOMER at the rates referred to in Clauses 9.3, 9.8 and 9.9 as appropriate.
- 9.5 Whilst SCT will use reasonable endeavours to provide Service Representatives as soon as is reasonably practicable, it does not give any guarantee to response times for Time and Materials Work.
- 9.6 SCT will not provide any Service Representative under this Clause 9 until a signed order, including a purchase order number, has been received from CUSTOMER.
- 9.7 SCT will use reasonable endeavours to provide CUSTOMER with outside of Normal Working Hours resource when so requested but makes no guarantee as to the availability of such resource.
- 9.8 For work conducted outside Normal Working Hours and between 23:59 Sunday and 23:59 Saturday, excluding Bank and other statutory holidays, the standard charges will be uplifted by 50%.
- 9.9 For work conducted outside Normal Working Hours and between 23:59 Saturday and 23:59 Sunday, including Bank and other Statutory holidays the standard charges will be uplifted by 100%.

10.0 SERVICE LEVELS AND SERVICE CREDITS

- 10.1 Following the Start Date, SCT shall commence provision of and shall thereafter throughout the Term continue to provide the Services in accordance with the Service Levels set-out in Schedule C of this Agreement.
- 10.2 In the event that SCT fails to provide any part of the Services in accordance with the relevant Service Levels then, without prejudice to CUSTOMER's other rights and remedies:
 - 10.2.1 as an adjustment to the Service Charges, Service Credits may be applied;
 - 10.2.2 If appropriate, SCT shall arrange all such additional resources as are necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to CUSTOMER;
 - 10.2.3 SCT shall, at the request of CUSTOMER, promptly remedy any Default or re-perform any non-conforming Service at no additional charge to CUSTOMER;
 - 10.2.4 CUSTOMER may discontinue or suspend the affected Services; and
 - 10.2.5 CUSTOMER may terminate this Agreement in accordance with the provisions of the Termination Clause.
- 10.3 Failures due to CUSTOMER: To the extent that SCT is unable to perform the Services in accordance with the Service Levels and this is due wholly to the default of CUSTOMER, then SCT shall be relieved from any liability that arises therefrom.
- 10.4 Changes to Service Levels and Service Credits: SCT agrees that Service Levels and Service Credits may only be changed to improve and increase their benefit to CUSTOMER and may not be lowered without CUSTOMER's prior written consent. If at any time the Services are changed (including the addition of new service elements), new or amended Service Levels and Service Credits for such changes and additions shall be agreed and included within Schedule C.
- 10.5 Re-allocation of Service Credits: CUSTOMER and SCT may agree to re-allocate Service Credits between Service Levels (provided that the monetary amount of the Service Credits does not increase and is agreed by both parties).

11.0 INTEGRITY OF SPARES

- 11.1 SCT will only utilise official and legitimate Manufacturer Products for the delivery of this agreement.
- 11.2 SCT will validate the integrity to ensure official and legitimacy of all Products on any Manufacturer's online facility prior operational use in the delivery of this Agreement.
- 11.3 In the unlikely event that the integrity of a product is brought into question, SCT will, at its own cost, replace the product.
- 11.4 Exception: in the event support is requested on old or rarely available End-of-Service-Life (EoS) products and where such support can only be delivered through 'non-legitimate' products, SCT will advise CUSTOMER accordingly prior to taking on to support.
- 11.5 CUSTOMER reserve the right to accept or decline support in the event of clause 11.4.

12.0 STEP IN RIGHTS

- 12.1 SCT acknowledges and agrees that if SCT is in material Default of its obligations under this Agreement or there is a serious risk that SCT will meet any of the grounds specified in the Termination Clause CUSTOMER may, in its sole discretion and subject only to notifying SCT in writing of its intention to do so, arrange itself or for a third party to provide all or any of the Services.
- 12.2 CUSTOMER shall not be obliged to make any payment for that element of the Services in relation to which it has exercised any right of step in during the period that CUSTOMER itself or SCT is providing such elements of the Services.
- 12.3 CUSTOMER's rights under this Step In Clause will cease on the earlier of the cessation or resolution of the matter giving rise to the right of step in or thirty (30) days from when the step in right was exercised. CUSTOMER shall notify SCT in writing of the date it plans to end exercising its step in right. SCT shall, on receipt of the notice, develop a plan to be approved by CUSTOMER, which will ensure that the Services meet the Service Levels and are provided in accordance with this Agreement. SCT shall co-operate in all reasonable respects with CUSTOMER and any third party supplier engaged by CUSTOMER under this Clause.
- 12.4 The provisions of this Clause 12 are without prejudice to any other right or remedy of CUSTOMER.

13.0 SUBCONTRACTING

- 13.1 This Agreement is personal to SCT and SCT shall at all times remain as prime contractor. SCT shall not sub-contract all or any of its obligations under this Agreement to any third party including any SCT Group companies without the prior written consent of CUSTOMER.
 - 13.1.1 CUSTOMER understands SCT's current third party named supplier list for the delivery of this agreement includes partnerships with UPS and RICO (subject to change without notice).

- 13.2 In the event that SCT has subcontracted any of its obligations pursuant to the above Clause 13.1, CUSTOMER may at any time request that any sub-contractor or persons engaged by or on behalf of such sub-contractor be removed from the Project by SCT.
- 13.3 SCT shall be and at all times remain liable for the acts and omissions of any sub-contractors in relation to this Agreement, notwithstanding any consent by CUSTOMER to the sub-contracting of all or any of SCT's obligations under this Agreement to any third party.
- 13.4 In the event that CUSTOMER consents to SCT sub-contracting any of its rights or obligations pursuant to this Subcontracting Clause, SCT shall procure and ensure that its approved sub-contractors:
 - 13.4.1 enter into a confidentiality agreement in substantially the terms of the confidentiality provisions of this Agreement for the benefit of and enforceable by each Party;
 - 13.4.2 are authorised, licensed, qualified, approved and permitted to provide the sub-contracted Services as required by any Regulatory Body or other relevant person.

14.0 CO-OPERATION

- 14.1 SCT shall co-operate, and procure that each of its authorised sub-contractors co-operate, with CUSTOMER and any third party engaged by CUSTOMER to provide Services to CUSTOMER, including a third party which is a competitor of SCT, so as to integrate (where reasonably required by CUSTOMER) other services, materials or equipment supplied by CUSTOMER or any third party with the Services.
- 14.2 Such co-operation shall include, where appropriate, the provision of information and provision of access to SCT operations but SCT shall not be obliged to disclose any confidential information or trade secrets.
- 14.3 The co-operation shall be limited to enable CUSTOMER and any third party to provide the services covered under the terms of this Agreement and shall be supplied by SCT at its standard rates as notified to CUSTOMER from time to time.

15.0 REGULATORY COMPLIANCE

- 15.1 SCT shall provide the Services in accordance with all applicable Legislation as from time to time subsists and, in the case of industry specific legislation applicable to CUSTOMER, as is notified to SCT by CUSTOMER prior to the commencement of the Services.
- 15.2 SCT shall provide the Services in accordance with all applicable Regulatory Bodies requirements and guidelines as from time to time subsist and as are notified to SCT by CUSTOMER prior to the commencement of the Services and from time to time to reflect regulatory changes.
- 15.3 To the extent that any of the Legislation or requirements referred to in this Clause is advisory rather than mandatory, the standard of compliance to be achieved by SCT shall be the best practice of the relevant industry.
- 15.4 SCT shall throughout the Term and for a period of six (6) years following termination or expiry have and maintain, as a minimum, the following insurances with insurers of repute "Insurances"
 - 15.4.1 public liability insurance (including product liability) for a minimum of £5 million for each occurrence;
 - 15.4.2 professional indemnity insurance for a minimum of £5 million for each occurrence; and
 - 15.4.3 employer's liability insurance for a minimum of £5 million for each occurrence; and
 - 15.4.4 such other insurances as SCT deems appropriate in order to meet its obligations under this Agreement or as are required by law or contract.
- 15.5 The payment of the premiums in respect of any insurances required under this Clause shall be the responsibility of, and paid by, SCT and if requested SCT shall send a copy of the premium receipt(s) for such insurances to CUSTOMER promptly on request.

16.0 CONFIDENTIALITY

- 16.1 Each Party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other Party disclosed or obtained as a result of the relationship of the Parties under this Agreement and shall not use nor disclose the same save for the purposes of the proper performance of their obligations and the exercise of their rights under this Agreement or with the prior written consent of the other Party. Where disclosure is made to any employee, consultant, Replacement Supplier, sub-contractor or agent, it shall be done subject to obligations equivalent to those set out in this Agreement and each Party agrees to ensure that if the other Party so requests prior to such disclosure such employee, consultant, Replacement Supplier, sub-contractor or agent enters into a deed of covenant with the other Party in a form reasonably acceptable to that other Party containing obligations equivalent to those set out in this Clause
- 16. Each Party shall procure that any such employee, consultant, sub-contractor or agent complies with such obligations.

- 16.2 Each Party shall be responsible to the other Party in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.
- 16.3 The obligations of confidentiality in this Clause shall not extend to any matter which either Party can show:
- 16.3.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
 - 16.3.2 was in its lawful possession prior to the Start Date; or
 - 16.3.3 was independently disclosed to it by a third party entitled to disclose the same; or
 - 16.3.4 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
- 16.4 Each Party shall take all reasonable measures available to it, and in any event not less than those used to protect its own Confidential Information, including:
- 16.4.1 physical security of areas where access may be gained to the Confidential Information;
 - 16.4.2 controls on access to any computer facility and tape, or disk library where Confidential Information may be kept;
 - 16.4.3 visitor control;
 - 16.4.4 controls over photocopying Confidential Information;
 - 16.4.5 document and computer network control systems which limit access to the Confidential Information to employees, contractors and agents who have a need to access for the purposes of this Agreement and which provides for a secured method of destruction; and
 - 16.4.6 confidential agreements with the respective Party's employees, professional advisors, contractors (or in the case of SCT, any approved sub-contractors), agents or auditors who are permitted access to the Confidential Information, which shall be for the benefit and enforceable at the instance of each Party.
- 16.5 In the event that either Party learns of any unauthorised use or disclosure, or threatened unauthorised use or disclosure, of any Confidential Information, such Party shall as soon as reasonably practicable notify the other Party of the particulars of such use or disclosure.
- 16.6 Upon the expiry or earlier termination of this Agreement, the Parties shall, within thirty (30) days:
- 16.6.1 return all Confidential Information then in its or its employees, agents or sub-contractors possession or control, including whole or partial copies thereof in any media, all notes, memorandum and other materials containing Confidential Information, to the other Party; and
 - 16.6.2 Deliver written certification to the other Party that all of the Confidential Information which it or its employees, agents or sub-contractors have had in their possession or control and which has not been returned has been securely destroyed.
- 16.7 A Party's obligation to maintain the confidentiality of the Confidential Information and the restrictions on such Party's use of the Confidential Information, as provided in this Clause, shall survive the termination of this Agreement and shall continue for a period of ten (10) years unless and until such time as the Confidential Information has become non-confidential information in accordance with this Clause 16.

17.0 LIMITATION OF LIABILITY

- 17.1 SCT does not limit its liability for fraud or personal injury or death caused by its negligence and this clause does not apply to such liability.
- 17.2 Subject to Clause 17.1 SCT's liability to CUSTOMER in connection with this Agreement whether in contract, tort (including negligence) or otherwise shall not exceed (a) in respect of any one event or series of connected events the mutually accepted manufacturer's list value, by reference to the Equipment List, of the Equipment and (b) in aggregate twice the Annual Charge for the Services whichever is the greater.
- 17.3 Subject to Clause 17.1, in no event shall either party be liable to the other for any loss of profits, sales or business, agreements or contracts, anticipated savings, damage to goodwill, use or corruption of software, data or information or any indirect, economic or consequential loss of whatever nature.
- 17.4 In the course of providing the Services, SCT may rely on Software and Hardware produced or supplied by third parties. CUSTOMER acknowledges that in such circumstances SCT relies on the description given by the relevant manufacturer of the performance and functionality of its product, provided that SCT shall take reasonable steps to satisfy itself that the relevant item performs in accordance with the manufacturer's description and it is suited to the purpose for which SCT intends it to be used. SCT's sole responsibility shall be use of reasonable skill and care in supplying such products and to use reasonable efforts to resolve any problem caused by the non-compliance with any manufacturer's description by liaising with the relevant manufacturer. Other than the foregoing, SCT does not give any warranties, terms, conditions or representations (whether express or implied) in respect of any software or hardware provided by SCT as part of the Services and the implied terms of satisfactory quality and fitness for purpose are hereby excluded.

18.0 ASSIGNMENT

- 18.1 Neither party may assign this Agreement without the others prior written consent, such consent shall not be unreasonably withheld.

19.0 NON-COMPETITION AND NON-SOLICITATION

- 19.1 Save in circumstances where this agreement is terminated for cause by CUSTOMER, during the term, and for one year thereafter, the SCT shall not offer to provide nor provide to a Customer services equivalent to the Services nor services that are of a competitive nature to CUSTOMER's services without prior written consent of CUSTOMER.
- 19.2 During the term of this Agreement and for a period of twelve months following its termination for any reason, neither party will employ or offer employment to any person employed by the other party and, in the case of SCT employees who are assigned to provides Services to CUSTOMER in connection with this Agreement, at any time during the preceding twelve months.

20.0 FORCE MAJEURE

- 20.1 Neither party is liable for any breach of this Agreement (other than the obligation to make payments due under it) to the extent that the breach was caused by a matter beyond its reasonable control including (without limit) any act of God, fire, flood or storm, failure or shortage of power supplies, civil unrest, violence or vandalism, war, military operations or riot, difficulties, delays or failure in manufacture, production or supply by third parties of any goods to SCT under this Agreement, acts or omissions of government, or other competent authority, industrial disputes of any kind, or acts or omissions of persons for whom it is not responsible (including, in particular, other service providers)

21.0 ENTIRE AGREEMENT AND VARIATIONS

- 21.1 This Agreement constitutes the entire Agreement between the parties on the subject matter contained herein and supersedes all representations and prior agreements (written and oral). Each party confirms that it has not relied upon any representation, statement or warranty not recorded in this Agreement. The only remedy available in respect of any misrepresentation shall be a claim for damages for breach of contract under this Agreement. This clause shall not apply to any statement, representation or warranty made fraudulently in respect of which the remedies available shall be those available under the governing law. No variation of this Agreement will be valid unless confirmed in writing by the authorised signatories of both parties on or after the date of the Contract Specification.
- 21.2 Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute or be deemed to constitute between the parties a partnership, associate, joint venture or other co-operative entity.

22.0 WAIVER

- 22.1 No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or any breach of any contractual terms will be deemed to be a waiver of any other right of any later breach.

23.0 THIRD PARTIES

- 23.1 Unless expressly provided in this Agreement, no terms of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

24.0 NOTICES

- 24.1 Any notice required or authorised to be given under this Agreement by either party to the other must be in writing and may be delivered personally or by prepaid registered post or by facsimile transmission (immediately confirmed by post). Notices will be delivered or sent to the addresses of the parties given in the Contract Specification (or to any other address notified in writing by either party to the other for the purpose of receiving notices after the date of the Contract Specification) and shall be deemed to have been served 48 hours after such posting or such transmission.
- 24.2 Each party shall execute such documents and take such steps as the other party may reasonably require to fulfil the provisions of and to give to each party the full benefit of this Agreement.

25.0 ARBITRATION

- 25.1 Any dispute between parties in relation to this Agreement shall be referred to a single arbitrator agreed between the parties or, on failure to agree within 30 days of a written request by one party to the other, appointed on the application of either party to the then President for the time being of the Institute of Arbitrators. The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Agreement. The costs, charges and expenses incurred in respect of such arbitration including the legal costs of each of the parties will be at the discretion of the arbitrator.

26.0. GOVERNING LAW

- 26.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

SCHEDULE A – SERVICES

1.0 HARDWARE ADVANCE REPLACEMENT SERVICE

- 1.1 Hardware Advance Replacement Service is a service provided by SCT for the provision and delivery of hardware units, components or sub- assemblies within specified time frames to designated locations.

SCHEDULE B – SPECIFIC TERMS & CONDITIONS OF SERVICE

1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Service on which SCT will provide to CUSTOMER the Hardware Advance Replacement Service. All words and phrases used in these Specific Terms and Conditions of Service have the same meanings as those in the SCT General Terms and Conditions of Service. Where there is a conflict between these Specific Terms and Conditions of Service and the General Terms and Conditions of Service, the Specific Terms and Conditions of Service shall take precedence.

2.0 SCT'S RESPONSIBILITIES

- 2.1 SCT shall, on diagnosis of a hardware failure by CUSTOMER, in relation to Equipment specified by serial number or other unique identifying mark on the Equipment List, deliver to CUSTOMER's contracted site address a Hardware Advance Replacement part, of equivalent or higher specification, within the contracted delivery timeframe as specified in the Service level schedule.
- 2.2 SCT shall answer all telephone calls from CUSTOMER for registering an incident within 30 seconds. Should SCT fail to answer within 30 seconds CUSTOMER shall E-mail SCT the call details and use the E-mail transmission time as the time stamp for the start of the Service level.
- 2.3 SCT shall respond to CUSTOMER by telephone within one (1) hour of CUSTOMER logging an Incident in order to provide an expected delivery of the replacement part.
- 2.4 SCT will respond to CUSTOMER by telephone within 1 hour of actual delivery notify CUSTOMER when the Hardware Advance Replacement part has been delivered and take full responsibility for any proof of delivery.
- 2.5 The faulty part shall be returned where reasonably practicable in the original packing of the replacement part. If the faulty part is not delivered to the designated collection point within ten (10) Business days of the delivery of the replacement part, SCT shall be entitled to a service credit equivalent to the replacement cost of the product.
- 2.6 On provision of replacement part to CUSTOMER by SCT, title of the replacement part shall transfer to CUSTOMER and at the same time title of the faulty part shall transfer to SCT.
- 2.7 For the avoidance of doubt SCT are responsible for the costs of the delivery of any Hardware Advance Replacement part as part of the Services of this Agreement and all associated costs of delivery, of which the cost is included in the Charges for the Services.

3.0 CUSTOMER'S RESPONSIBILITIES

- 3.1 CUSTOMER is responsible for:
- 4.1.1 Where hardware only contracts are being delivered, ensuring that diagnosis has taken place, before contacting SCT under the scope of this Agreement, to determine that the fault in question is hardware based and not due to firmware, software or other application or system as may be running on or connected to the Equipment.
- 4.1.1.1 SCT will test all returned products to determine the nature of the fault. In the event of 'No Fault Found', SCT will record the findings and review with CUSTOMER at the regular Service Reviews.
- 4.1.1.2 CUSTOMER's 'No Fault Found' returns will be recorded and reported by SCT to CUSTOMER at regular service reviews.
- 4.1.2 The installation and configuration of the replacement unit provided under the scope of this Service. CUSTOMER acknowledges that the Hardware Advance Replacement Service does not involve the assumption by SCT of any responsibility for the installation or reinstallation of any equipment or for any consequences that may result from such installation or reinstallation.
- 4.1.3 CUSTOMER agrees to:
- 4.1.5.1 carry out any minor maintenance routines or instructions as required from time to time by SCT and/or as may be set out in the relevant manufacturers' equipment operating instructions or handbooks.
- 4.1.5.2 if so advised by SCT, use only those materials and supplies approved by SCT when operating the Equipment or carrying out minor maintenance routines.
- 4.1.5.3 protect and secure data and system software by regular backup procedures (SCT reserves the right to charge for restoring CUSTOMER's operating systems, applications, other software and data where full system backup media is not available, or up to date or in working condition, but shall not be obliged to carry out any such works. If SCT agrees to provide such Services it shall not be responsible for the validity or accuracy of any CUSTOMER data).

- 4.1.5.4 operate, use and generally treat the Equipment in a prudent and proper manner and avoid any activity in the vicinity of the Equipment which could be prejudicial to the correct functioning of the Equipment, and;
- 4.1.5.5 ensure that the Equipment location is kept clean and tidy and complies with any specification or requirements laid down or recommended by the relevant manufacturer.

SCHEDULE C – SERVICE LEVELS

1.0 SERVICE LEVELS

- 1.1 Base Level: SCT shall deliver the Services to a high-quality and high-value standard, at all times meeting or exceeding the expectations agreed with CUSTOMER and in accordance with all the requirements set out below.
- 1.2 Delivery time measurement: The Service Level Measurement will be from the time CUSTOMER register an Incident on SCT to the time of delivery to the required location. SCT will advise CUSTOMER's Help Desk when the Part has been delivered within 1 hour of actual delivery.
- 1.3 Service Level Time Stamps: The time stamps used for CUSTOMER raising a call with SCT and notified delivery time stamp will be SCT's Service Management System.
- 1.4 Reporting Statistics: SCT will collect, analyse, and publish service level reports related to all aspects of the Services on a regular basis to facilitate continual improvement of Service Levels. The minimum required report is to be agreed in the regular Service Meetings.
- 1.5 Monitoring Performance and Escalation: SCT shall monitor performance of the Services and review with CUSTOMER's statistics at the regular Service Reviews. Schedule C (Section 4) details the escalation process that is to be applied if Service Levels are not met in relation to the Services or there is reasonable indication that they may not be met.
- 1.6 Changes: The Service Levels contained within this Schedule C shall apply until such time that CUSTOMER and SCT agree through the Review Meetings that amended Service Levels should be set in accordance with the principles set out in this Schedule C and otherwise in accordance with this Agreement. All such changes shall be agreed and recorded in accordance with any Change Control Procedure.
- 1.7 Exclusions: The following shall not be included in any calculation of SCT's performance against any Service Level for any of the Services:
 - 1.7.1 any Incident, or delay in effecting resolution of any Incident, that is solely and directly caused by CUSTOMER's failure to comply with the terms of this Agreement; provided that SCT shall inform CUSTOMER of the reason for the Incident or delay as soon as reasonably practicable;
 - 1.7.2 in particular, any delays in SCT providing services on any Incident, or delay in effecting resolution of any Incident, that is solely and directly caused by CUSTOMER's failure to comply with the terms of this Agreement; provided that SCT shall inform CUSTOMER of the reason for the Incident or delay as soon as reasonably practicable;
 - 1.7.3 In particular any delay in SCT providing services due to any failure by any third party (excluding all third parties which SCT has contracted with to deliver these services) to act on or to act in a timely fashion in respect of any Incident or Request and provided SCT has correctly followed the procedures set out in the third party contract in respect of such failure.
 - 1.7.4 Incidents due to the adverse impact of CUSTOMER's failure to update hardware or systems software supporting the provision of an element of the Services which are obsolete (as evidenced by the unavailability of the manufacturer's support).
 - 1.7.5 In particular any delay in SCT providing services due to any Force Majeure event provided that SCT has followed the correct procedure set out in this Agreement for such event.
 - 1.7.6 For the avoidance of doubt, as these exclusions do not form part of the Service Levels calculation these calls shall not then be calculated as part of the Service Credit Regime.

2.0 RETURNS

- 2.1 CUSTOMER will return faulty parts to SCT within 10 working days. In the event that SCT requests the return of a 'critical part' then CUSTOMER will use all reasonable endeavours to return the part to SCT within 3 working days. CUSTOMER acknowledges that failure to comply with this may result in SLA failures for which SCT will not be held accountable.
- 2.2 The address for the return of all Equipment to SCT under the scope of this Agreement is SCT, Chancery Gate Business Centre, Ruscombe Park, Twyford, Berkshire RG10 9LT.

3.0 AD HOCS

- 3.1 SCT will accept service requests from CUSTOMER for parts which are not covered under a support schedule. All such requests will be supported on a reasonable endeavours basis.

- 3.2 SCT will charge an Ad Hoc rate for this service. Notification of such charges will be provided at the time of the call. The Ad Hoc rate takes into account the return of the faulty product, further charges will apply in the event the faulty product is not returned.
- 3.3 Upon authorisation of the Ad Hoc charge by CUSTOMER, SCT will despatch the required part to the stated destination.
- 3.4 Within two (2) working days of despatch, CUSTOMER will raise a PO to cover the Ad Hoc charge.
- 3.5 The return of the faulty parts must be returned within the timescales stated in clause 2.0.

4.0 ESCALATIONS

4.1 Escalation contacts are available and in operation on a 24x7 basis. All escalations must follow the usual call flow process; escalations should be requested through the **Service Desk on 0118 960 2525**. The following information will be requested at the time of escalation:

- **Name, contact number and email of person escalating the call**
- **Company name**
- **Reason for the escalation**
- **Requested call-back time**

4.2 Service Delivery escalations should be addressed to the following:

- 1 **Kevin Pascoe (Operations Manager)** +44 (0) 7788 522922
- 2 **Claire Jones (Director of Service Delivery)** +44 (0) 7568 432086

4.3 Commercial escalations should be addressed to the following:

- 1 **Tom Hamblin (Services Coordinator)** +44 (0) 7713 308340
- 2 **Darren Hastings (Channel Services Manager)** +44 (0) 7702 515163

5.0 SERVICE LEVEL DEFINITIONS

2HrEP24x7	2Hr24x7 Engineer & Part to site
2HrEPNBH	2Hr Normal Business Hours (Mon-Fri 08:00 - 18:00) Engineer & Part to site
2HrP24x7	2Hr24x7 Part to site
2HrPNBH	2Hr Normal Business Hours (Mon-Fri 08:00 - 18:00) Part to site
4HrEP24x7	4Hr24x7 Engineer & Part to site
4HrEPNBH	4Hr Normal Business Hours (Mon-Fri 08:00 - 18:00) Engineer & Part to site
4HrP24x7	4Hr24x7 Part to site
4HrPNBH	4Hr Normal Business Hours (Mon-Fri 08:00 - 18:00) Part to site
5BDEP	5 Business Days Engineer & Part to site
5BDP	5 Business Days Part to site
8HrEP24x7	8Hr24x7 Engineer & Part to site
8HrP24x7	8Hr24x7 Part to site
NBDEP	Next Business Day Engineer & Part to site
NBDP	Next Business Day Part to site
NFO	Next Flight Out Part to site *

* requests received before 14:00 will be delivered by the next working day, requests received after 14:00 will be delivered within 2 business days. SCT cannot be held responsible for any delays caused by customs