



*Extended warranty & hardware replacement solutions*

## Master Services Agreement

Customer	
Start Date	
Contract number	

Contact	
End date	
Document date	

Produced by Afinitek for



*Specialists in the source and supply of IT hardware*

# Maintenance Contract

This Maintenance Agreement relates to the onsite maintenance support services provided by Afinitex under the service brand name of Caretek and incorporates the Afinitex Terms and Conditions for support services Trading, a copy of which are as below.

This Agreement represents the Master Agreement between the parties. Additional Schedules may be added during the Term of the Agreement with the consent of both parties and in such circumstances the particulars in these Schedules shall be subject to the Terms and Conditions of Trading attached herewith.

If you encounter difficulties with your system, then please contact us via our Service Desk.

Where a satisfactory remedy cannot be achieved via the Service Desk, a Customer Support Engineer will attend your site within the agreed response time.

**TO LOG A SERVICE DESK CALL WITH THE CUSTOMER SUPPORT TEAM  
Dial 0845 1777 000**

Special Instructions	
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Please be prepared to give the following information:

1. Company name
2. Caller's name
3. Telephone number
4. Site address
5. Contract Number
6. Product problem/query
7. Brief description of problem

**Alternatively please send an email to: [support@afinitex.com](mailto:support@afinitex.com)**

# Maintenance Contract

**THIS AGREEMENT** is made the day of

**BETWEEN:**

Afinitek Limited:

Incorporated and registered in England and Wales with company number 6954722 whose registered office is at 3-33 Lansdown Crescent Cheltenham GL50 2SH

**(Company).**

Incorporated and registered in England and Wales with company number  
registered office is at

whose

**(Customer).**

**Document version: 7d**

This Agreement relates to the support services provided by Afinitek Ltd and incorporates the Afinitek Ltd Terms and Conditions of Trading, which are attached herewith.

This Agreement represents the Master Services Agreement between the parties. Additional Schedules may be added during the Term of the Agreement with the consent of both parties and in such circumstances the particulars in these Schedules shall be subject to the Terms and Conditions of Trading attached herewith.

## Terms and Conditions

This Agreement;

- (a) supersedes any prior Agreements, proposals, representations and undertakings between the parties in relation to its subject matter; and
- (b) constitutes the entire Agreement between the parties relating to its subject matter; and
- (c) includes but is not limited to the terms and conditions for the supply of the Services

### 1. Interpretation

1.1 The definitions and rules of interpretation in this Clause apply in this Agreement.

“Advanced Replacement”	means the Equipment; or equivalent if no direct replacement is available, which will arrive at the Site Address in accordance with the Coverage Hours and the Service Level specified in the Schedules. The Service Level commences with the Company’s problem diagnosis and determination that a FRU is required and ending when the FRU is delivered to the Site Address. All software, firmware, and configuration related incidents are exempt from this Service Level.
“Agreement”	means the Agreement between the Company and the Customer which incorporates these Terms and Conditions and the Schedules.
“the Company”	Afinitek Limited (Company No. 6954722)

“Confidential Information”	means all information that each party provides to the other which is either expressed to be confidential or by its very nature is confidential including but not limited to know how and trade secrets and the contents of this Agreement.
“Coverage Hours”	means the hours specified in the Schedules or, if no hours are specified then, the hours of 9:00 a.m. and 5:00 p.m. on Monday to Friday excluding bank holidays.
“the Customer”	means the Customer specified in this Agreement.
“the Enhancement” or “the Upgrade”	means the addition to the Equipment of memory, co processors, optional cards, manufacturer’s modifications and/or any other changes to the technical specifications or configuration of the Equipment.
“the Equipment”	means the Equipment explicitly and specifically listed in the Schedules.
“the Fee”	means the charges specified in Clause 3 and the Schedules together with any additional charges which may become payable pursuant to Clause 4.2.
“Fix”	
“the FRU”	
“Incident”	means the field replacement unit for the Equipment; or equivalent if no direct replacement is available.
means an unplanned interruption to the normal operation of the Equipment	
“the Integration Period”	means a period of 14 days after confirmed receipt of a purchase order.
“the Renewal Date”	means the date on which the Term (or any renewal of the Term) expires.
“Response”	means an engineer onsite service, the engineer will arrive at the Site Address in accordance with the Coverage Hours and the Service Level specified in the Schedules. The Service Level commences with the Company’s problem diagnosis and determination that remedial onsite service is required and ending when the engineer arrives onsite. The FRU is dispatched following diagnosis and determination that a FRU is required. All software, firmware, and configuration related incidents are exempt from this Service Level.
“the Schedules”	means an explicit and complete list of Equipment at the Site Address and includes the Services and Service Level as agreed by the Customer and the Company from time to time and signed on behalf of each of the Customer and the Company.
“the Service Commencement Date”	means the date from which the Company is under an obligation to provide the Services to the Customer as specified in the Schedules.
“Service Level”	means the Service Level relating to Fix, Response, or Advanced Replacement and specified in the Schedules.
“the Services”	means the maintenance services to the Equipment described in and pursuant with the Schedules.
“the Site Address”	means the address set out in the Schedules being the location where the Equipment is installed and operated.

“the Term”	means the period during which the Services are to be provided on the terms of this Agreement and as referred to in the Schedules and the initial Term shall be as stated in the Schedule.
“Ultimate recipient”	Means the receiver of the services as identified in the contract schedule
“Updates”	means corrections, by-passes or revisions to the software which add no functionality.
“Upgrades	means an enhancement to features or capabilities or performance of the Equipment.
“Vendor”	means the original manufacturer of the equipment
“Voucher”	means, an engineer only; remote support or onsite service, no FRU is supplied. The Service has a defined Service Level, explicitly detailed in the Schedule.

### Preamble

It is acknowledged by all parties that this Agreement is in force on the presentation to the Company of a Purchase Order for the Services provided within this Agreement whether supported by signature of the Parties or otherwise on the commencement date or anniversary of the Agreement.

The Reseller, the Customer or the Ultimate Recipient of the Services under the Agreement acknowledges and agrees that prior to entering into the Agreement that all considerations, claims, actions or otherwise have been provided to the Company in relation to the effects, actions or claims of any Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and that the Reseller, the Customer or the Ultimate Recipient of the Services under the Agreement indemnifies in full and holds the Company harmless of any such actions or claims of TUPE against the Company for business transfers or service provision changes for the term of the Agreement and six months following termination or the term end of the Agreement.

Any failing to this may be considered by the Company to be a breach of contract allowing the Company free right to dissolve the Agreement and be held harmless of any such claims in relation to TUPE

- 1.2 The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to Clauses and Schedules are to Clauses and Schedules of this Agreement. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.5 Words in the singular include the plural and in the plural include the singular

## 2.0 THE SERVICES

- 2.1 The Company shall provide the Services to the Customer during the Term on the terms and conditions of this Agreement.
- 2.2 The Customer acknowledges that for the first twenty days of the Term, beginning on the Service Commencement Date (“Integration Period”), the Company requires this time to process the Customer’s requirements into the Company’s systems and procure any additional spares and equipment required to enable the Company to provide the Services. During the Integration Period, the Customer accepts that the Company shall use its reasonable endeavors to provide the Services.

- 2.3 The Services to be provided to the Customer consists of corrective maintenance in respect of faulty materials in relation to the Equipment Schedule and includes all repairs which may be reasonably necessary including the supply and fitting of replacement parts or the replacement of equipment on a like for like basis where necessary. Those replacement parts or equipment may be refurbished or reconditioned. An engineer will attend the Site Address within the times specified in the Schedules, after a request made to the Company has been received in respect of an Equipment fault. When replacement parts are fitted the parts removed shall immediately become the property of the Company. The Company reserves the right to use equipment of a similar or higher specification if exact spares are unavailable for any reason.
- 2.4 In the event of the Customer requiring the Company to provide the Services to additional Equipment, then such Equipment must be added to the Schedules using the prescribed change process and any such changes as agreed will be deemed to form part of this Agreement.
- 2.5 The Services include maintenance of the Equipment which is necessitated as a result of fair wear and tear only. Any repair and/or replacement of the consumable items listed below are excluded from the Services and will be subject to additional charges at the Company's prevailing rates:

**Excluded items from the service contract Include:**

Drum cartridge	Ribbons	Toner cartridge	Paper	Collector units/ Bottles
Paper separator belt	Maintenance kits	Ozone filters	Developer kits	Print heads
Fuser units	Print Wheels	Ink bottles / ink	Ribbon Masks	Transfer Belts
Print shields	Ink Cartridges	Rechargeable batteries	Cathode Ray tubes	Print bands

All peripherals - A peripheral is a device attached to a host computer behind the chipset whose primary functionality is dependent upon the host, and can therefore be considered as expanding the hosts capabilities, while not forming part of the system's core architecture

The service also doesn't include Terminal / PC Accessories such as: screen filters, mouse mats, holsters and monitor arms.

- 2.6 The Company warrants that it will perform the Services with reasonable skill and care and will exercise that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances.
- 2.7 The Company will not be responsible for the repair or replacement of any consumable items.
- 2.8 All work carried out shall be acknowledged by the signature of a person holding position of sufficient authority at the time of signing.
- 2.9 This Agreement is to be signed by both parties and shall become effective immediately following such signatures and upon full payment of the Fee.
- 2.10 In the event of this Agreement being entered into at any time subsequent to the sale or delivery of the Equipment to the Customer by the Company or where the Customer has installed any equipment themselves, then the Company reserves the right to undertake an inspection and produce a satisfactory report by an engineer of the Company on the following conditions:
- (a) Should the Company not require an inspection or if the inspection reveals the Equipment to be in working order then this Agreement shall immediately come into force. Where the Customer has installed the Equipment any subsequent fault calls that are the result of incorrect setup and configuration of the Equipment will not be covered by this Agreement and any remedial work will be carried out by the Company at the Company's rates in force at that time; or
  - (b) If the inspection reveals, in the sole opinion of the Company's engineer, that the Equipment is in need of repair then the Company shall notify the Customer and, if the Customer requires, the Company shall carry out such repair work. Such inspection and repair work to be charged to the Customer at prevailing rates which may from time to time change and any parts

supplied shall be charged based on the then current prices and this agreement shall come into force upon the signature of a duly authorised representative of the Customer, and the Company shall not be obliged to provide the Services until the foregoing conditions of this Clause 2.10 have been satisfied to the Company's satisfaction.

- 2.11 If there is a failure or deficiency in the supply of the Services by the Company, the Customer shall always notify the Company in writing of the same providing sufficient details of the failure or deficiency and the Customer shall provide the Company with reasonable opportunity to correct such failure or deficiency.
- 2.12 Where repairs cannot be effectively conducted at the Site Address, the Company reserves the right to install loan equipment of similar specification whilst repairs are conducted.
- 2.13 If loan equipment is installed, the Company will use reasonable endeavours to ensure that the repair works are completed within 21 days.
- 2.14 The Company is required, at all times, to comply with the vendor's rules, regulations, guidelines and definitions; these may be different from the Company's own.
- 2.15 For NBD Service Level the cut off for delivery is 4:30pm on the previous day (Monday – Friday, 9:00-17:30).
- 2.16 The Company is not responsible for delays due to common couriers.
- 2.17 Software and firmware are included in the Services when specified in the Schedules; but are exempt from the Service Level and the Customer agrees that the Company will be entitled to charge the Customer additional charges, at its prevailing rates, for time which in the reasonable opinion of the Company it spends in relation to or on account of any of the following:
  - (a) data restoration and/or re-establishment;
  - (b) installation and configuration of software on new or replacement hardware or devices;
  - (c) training;
  - (d) upgrades and/or updates of any kind;
  - (e) unauthorised use of the software;
  - (f) inadequate back-up procedures;
  - (g) providing Services to the Customer in circumstances where any reasonably skilled and competent system administrator would have judged the Customer's request to have been unnecessary;
  - (h) providing the Services to the Customer where such support would in the Company's reasonable opinion have been unnecessary if the Customer had implemented and installed any Update(s) supplied or offered to the Customer;
  - (i) providing the Services outside the Coverage Hours; or
  - (j) providing any other Services not covered herein.
- 2.18 Software, firmware, operating system, application, data or configuration file restorations do not constitute part of the Service Level. Reasonable endeavors will be made to restore any software, firmware, operating system, applications, assuming that they are listed in the Schedules and have been made readily available to the Company.
- 2.19 The Company is not responsible for the security or integrity of any software, firmware, operating system, application, data or configuration file supplied by the Customer.
- 2.20 No representation or warranty is given by the Company with regard to software and firmware that is included in the Services or that any faults will be fixed or that they will be fixed in accordance with the Service Levels.
- 2.21 Beyond economical repair (BER) is the state and condition of a repairable / supported item where its estimated repair cost exceeds a percentage of 90 percent of the equipment's replacement value.
- 2.22 A Voucher can be purchased in any quantity; but at the Companies discretion minimum quantities may apply. The Service Level is defined in the Schedule and has predetermined time limits. The time limits are detailed in the Schedule and are on based a per Voucher usage. Any partially used Voucher will be deemed to have been spent regardless of the amount of time used. The company will; using reasonable endeavors assign an engineer with the appropriate skill level, to the Site



Address, where this isn't possible the Customer will be informed at the point at which the Voucher is redeemed against the Service Level. A Voucher is valid for a maximum of 12 months from the date of purchase; the Company may; at its discretion increase the period of the validity beyond the maximum. The Company reserves the right to refuse the redemption of Voucher for any reason or no reason. The Fees are payable commensurate with clauses 3.1,3.2, 3.5, 3.7,3.8, 3.9 and 3.10. Fees are payable regardless of the usage of the Vouchers, even if the usage has been zero at the expiry date.

### 3. FEES

- 3.1 The Fee's payable by the Customer to the Company shall be as specified in the Schedules. Software fees are payable annually in advance. The Customer and the Company acknowledge that software contracts can take up to 60 days to be processed with the vendors.
- 3.2 If in the opinion of the Company the Services are required by the Customer are as the result of any misuse or neglect of, or accident to the Equipment, or due to the Customer not adhering to Clauses 6.1 to 6.4 (inclusive), or other third party hardware related problems; the Company reserves the right to charge an additional Fee in relation to the provisions of the Services.
- 3.3 The Company reserves the right to charge an additional Fee for a maintenance call to the Equipment that has been moved to a new location and not installed by the Company if the Company shall reasonably determine that the problem was caused by the transportation or re installation of the system.
- 3.4 In the event of additional Fees becoming due, those fees will be charged at such rates as the Company shall from time to time specify.
- 3.5 Any invoices rendered by the Company shall be paid by the Customer in full (without any set off or other deduction) within 30 days of the date of the invoice.
- 3.6 If payment is not made on the due date, the Company shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 3% above the base rate from time to time of the Barclays Bank plc from the due date until the outstanding amount is paid in full.
- 3.7 In addition to the Company's other rights, it may (by notice in writing) suspend the provision of the Services and/or terminate this Agreement if any invoice raised by the Company is overdue
- 3.8 In addition to the Company's other rights, it may (by notice in writing) suspend the provision of the Services and/or terminate this Agreement if any invoice raised by the Company is overdue.
- 3.9 All sums payable to the Company under this Agreement shall become due immediately on its termination, despite any other provision. This Clause 3.9 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 3.10 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

### 4 UPGRADES AND ENHANCEMENTS

- 4.1 Where Upgrades or Enhancements are made to the Equipment by the Company they shall be deemed to be included in the definition of "Equipment" in Clause 1 and shall become subject to the terms of this Agreement for the unexpired Term of this Agreement from the date of the Upgrade or Enhancement.
- 4.2 The Fees shall be increased to such sum as the Company shall require to take account of the Upgrade or Enhancement referred to in Clause 4.1 above.
- 4.3 The Customer will notify the Company in writing forthwith of any Enhancement or Upgrade made to any equipment or software which is installed by any third party.
- 4.4 Upgrades and Enhancements made to the Equipment pursuant to Clause 4.3 shall be included within the definition of "Equipment" in Clause 1 only after a report prepared by an engineer of the Company on the effect of the Upgrade or Enhancement on the Equipment has been produced and the Company has confirmed it is satisfied with the report at which point such third party Upgrades or Enhancements shall become subject to the terms of this Agreement. The Company reserves



the right to exclude any such third party Upgrades or Enhancements from becoming subject to the terms of this Agreement at its complete discretion.

- 4.5 The inspection and report referred to in Clause 4.4 shall be charged to the Customer at the rate specified by the Company from time to time and shall be paid in addition to the sum referred to in Clause 4.2.

## 5 EXCLUSION / LIMITATION OF LIABILITY

- 5.1 This Clause 5 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- (a) any breach of this Agreement;
  - (b) any use made by the Customer of the Services, the Equipment or any part of them; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 5.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 5.3 Nothing in this Agreement limits or excludes the liability of the Company: for death or personal injury resulting from negligence; or for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company.
- 5.4 Subject to Clause 5.2 and Clause 5.3
- (a) the Company shall not be liable for:
    - (i) loss of profits; or
    - (ii) loss of business; or
    - (iii) depletion of goodwill and/or similar losses; or
    - (iv) loss of goods; or
    - (v) loss of contract; or
    - (vi) loss of use; or
    - (vii) loss of corruption of data or information; or
    - (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  - (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of this Agreement shall be limited to the price paid by the Customer for the Services.
- 5.5 The Company is not liable for manufacturer's defects or the resultant use thereof.
- 5.6 The Company shall have no liability to any end-user (whether defined in the Schedules or not) with whom the Customer contracts with in connection with any goods or services provided to such end-user, and the Customer shall indemnify and keep indemnified the Company in respect of any claims, demands, liabilities, costs, actions, damages, legal fees and expenses incurred by the Company in respect of any matters arising therefrom.

## 6 CARE OF EQUIPMENT

- 6.1 The Customer shall at its own expense provide the Company with full and prompt access to the Equipment to enable the Company to provide the Services.
- 6.2 The Customer will take care of the Equipment and will operate it in a suitable environment as recommended by the manufacturers of the Equipment.
- 6.3 The Customer will operate the Equipment with a suitable stable power supply free from surges and fluctuations as recommended by the manufacturers of the Equipment.
- 6.4 No alterations shall be made to or parts fitted or adjustments made or repairs carried out to any parts of the Equipment except without prior notification to the Company and assurances that the alterations will be compliant with manufacturer guide lines. Consequence for non conformity will be that the item is excluded from the contract with no refund.

6.5 The Company will not be accountable for:

- (a) any failure of the Customer or any of its employees to comply with the terms of this Agreement or any user manual or other documentation supplied by the Company or the Vendor;
- (b) visits to premises other than the Site Address;
- (c) any use of the Equipment by the Customer in conjunction with any other equipment or any software not previously approved by the Company;
- (d) electrical work external to the Equipment;
- (e) maintenance of equipment not forming part of the Equipment or of accessories to the Equipment not supplied by the Company;
- (f) the attachment or removal of accessories, attachments or other devices by the Customer or a third party;
- (g) the supply and fitting of consumable accessories such as ribbons, tapes or disks;
- (h) painting, refurbishing or cleaning the exterior of the Equipment;
- (i) reconditioning or replacement of the Equipment or parts thereof;
- (j) placing the Equipment into proper working condition at the commencement of the Period if the Equipment has not been supplied by the Company;
- (k) relocation of the Equipment;
- (l) the installation of an operating software upgrade or any other work in relation to any firmware/ software loaded onto the Equipment or used by the Customer in conjunction with the Equipment;
- (m) use of inappropriate software in conjunction with the Equipment;
- (n) willful damage to or negligent use of the Equipment;
- (o) providing the Services outside the Coverage Hours;
- (p) repair of damage which in the Company's reasonable opinion results from :-
  - (i) accident, transportation, neglect or misuse of the Equipment during the course of this Agreement; or
  - (ii) modifications to the Equipment made during the course of this Agreement without prior notification to the Company; or
  - (iii) unauthorised attempts by or on behalf of the Customer to repair the Equipment, failure or surge of electrical power, or failure of air conditioning or humidity control;

## 7 CUSTOMER'S RESPONSIBILITIES

7.1 The Customer shall:

- 7.1.1 provide the Company (and its agents and sub contractors) with such information, co operation, assistance, facilities and computer resources as it reasonably requires enabling it to perform the Services. Failure to provide information such as full address and Equipment details may result in Services being withheld [and/or may lead to the Service Level being considered [as reasonable endeavours and outside of this Agreement;
- 7.1.2 prepare the premises for installation of the Equipment to be worked on by the Company to the Company's reasonable satisfaction;
- 7.1.3 faulty Equipment shall be returned to the Company within 7 working days, and in the event the Equipment is not returned within this time period the Company may charge the Customer for that Equipment;
- 7.1.4 give prompt attention to any matter raised by the Company relating to Customer's obligations and the performance of the Services;
- 7.1.5 comply with any laws and regulations applying to the Customer's business;
- 7.1.6 promptly implement recommendations by the Company in respect of remedial actions; whether prior to or following an incident; and confirm that it owns or will obtain valid licences of all Intellectual Property, commercial off the shelf products or software developed under license which

are necessary to grant the Company access to and use of the software for the purpose of fulfilling its obligations under this Agreement.

- 7.2 To the extent that the Customer does not fulfil its responsibilities under this Agreement, then (without prejudice to the Company's other rights and remedies), the Customer acknowledges and agrees that:
- 7.2.1 the Company reserves the right to charge the Customer for resources assigned to performing the Services even if not utilised;
- 7.2.2 the Company reserves the right to change the scope of the Services or any timetable for their performance (provided the Company shall consult with the Customer and act reasonably in doing so);
- 7.2.3 the Company's Fees and any estimates may be affected; and
- 7.2.4 the Company will be relieved of its obligations to the Customer under this Agreement to the extent that the Company is prevented from performing the Services in accordance with this Agreement.

## 8 THE TERM AND TERMINATION

- 8.1 Subject to the remaining provisions of this Clause 8, the terms of this Agreement shall commence on the date as stated in the Schedules. The Service Commencement Date and end date for the Services on the Equipment will be specified in the Schedules. The Services on the Equipment to be provided and as specified in the Schedules will automatically continue to be provided after the initial Term for a period of time equivalent to the initial Term unless written notice to the contrary is received by the Company from the Customer no less than 90 days before the Renewal Date.
- 8.2 The Customer shall give the Company at least 90 days notice in writing prior to the removal of any Equipment from the location specified as the Site Address. Should the proposed relocation site of the Equipment be unacceptable to the Company for maintenance purposes, the Company reserves the right to terminate this Agreement without any liability to the Customer, with effect from the date of removal of the Equipment.
- 8.3 Without prejudice to any other right or remedy contained in this Agreement or otherwise, the Company may terminate this Agreement immediately without liability to the Customer: in the event of the non payment by the Customer of any sums due to the Company on the due date for payment pursuant to this Agreement;
- or
- if the provisions contained in Clauses 6 and/or 7 are materially breached;
- or
- if the Customer shall be liquidated wound up or have a petition for winding up presented against it or have its assets sequestrated or pass a resolution for winding up or summon a meeting to pass any such resolution or have a Receiver or Administrator appointed or if the Customer shall convene a meeting of his or its creditors or execute a Deed of Trust or Assignment in favour of or enter into or attempt to enter into any arrangement or composition with his or its creditors or if any steps should be taken to levy a distress or if a distress should be levied or threatened to be levied on any goods of or in the possession of the Customer of rent rates or taxes or if any steps should be taken by a judgement creditor of the Customer to levy execution or other legal process upon the goods of or in the possession of the Customer;
- or
- subject to sub-clause 8.2(b), the Customer commits a material breach of any of the material terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days; or the Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- or
- the Customer suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

or

an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the Customer;

or

a floating charge holder over the assets of the Customer has become entitled to appoint, or has appointed, an administrative receiver;

or

a person becomes entitled to appoint a receiver over the assets of the Customer, or a receiver is appointed over the assets of the Customer;

or

the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

- 8.4 The termination of this Agreement (whether under this Clause or otherwise) shall not relieve either party of any obligation already incurred under this Agreement and failure by the Company in any one or more instances to terminate this Agreement on account of any default or breach by the Customer shall not constitute a waiver of the same or of any default or breach.
- 8.5 Notwithstanding any other provision of this Agreement, the Company reserves the right to terminate this Agreement for any reason or no reason, at any time with 30 days notice without liability to the Customer or any other party.
- 8.6 Upon the termination or expiry of this Agreement, however caused:
- 8.6.1 the Customer shall pay all Fees and other charges payable (including the Fees set out in the schedules in their entirety and whether or not invoiced) forthwith without deduction or set off any such amounts; and
- 8.6.2 the Customer shall promptly return all of the Company's Equipment to the Company or at the Company's direction. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping.
- 8.6.3 termination or expiry shall not affect any accrued rights or liabilities of either party at the date of termination or expiry.

## 9 CONFIDENTIALITY AND USE OF INFORMATION

- 9.1 The Customer shall keep in strict confidence all technical or commercial intelligence, information, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products which the Customer may obtain.
- 9.2 The Customer may disclose such information:
- to its employees, officers, representatives, advisers, agents or Subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and as may be required by law, court order or any governmental or regulatory authority.
- 9.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this Clause 9.
- 9.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 9.5 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer (including the Company's Equipment) shall, at all times, be and remain as between the Company and the Customer the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

9.6 Each party shall, on written request, either return or destroy the other's Confidential Information in its possession, except that each party shall be entitled to keep copies or records for archive purposes (and such copies shall continue to be Confidential Information).

## 10 CANCELLATION

In the event of the Customer booking time and materials installation work but subsequently cancelling the same (whether temporarily or indefinitely) then the following cancellation charges shall immediately become due and payable by the Customer to the Company

<b>Time</b>	<b>Charge</b>
Cancellation within 24 hours of work commencing	75% of invoice value
Cancellation within 96 hours of work commencing	50% of invoice value
Cancellation exceeding 96 hours of work commencing	25% of invoice value

## 11 FORCE MAJEURE

11.1 A party, provided that it has complied with the provisions of Clause 11.3, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (and, subject to Clause 11.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event), including but not limited to any of the following:

- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
- (f) fire, explosion or accidental damage;
- (g) loss at sea;
- (h) adverse weather conditions;
- (i) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
- (j) any labour dispute, including but not limited to strikes, industrial action or lockouts;
- (k) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this Clause); and
- (l) interruption or failure of utility service, including but not limited to electric power, gas or water.

11.1 The corresponding obligations of the other party will be suspended to the same extent.

11.2 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:

- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- (b) it has used reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

11.4 If the Force Majeure Event prevails for a continuous period of more than two months, either party may terminate this Agreement by giving seven days' written notice to the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

## 12. ENTIRE AGREEMENT

- 12.1 This Agreement and any documents referred to in it (including the Schedules) constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter of this Agreement.
- 12.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in this Agreement.
- 12.3 Nothing in this Clause shall limit or exclude any liability for fraud.
- 12.4 The Company may withdraw this agreement with immediate effect where any party is proved to be offering, promising or giving a bribe or requesting, agreeing to receive or accepting a bribe or bribing a foreign or public official in connection with the Services within this agreement or that of the company's intelligence contrary to the Bribery Act 2011.
- 12.5 It is acknowledged that the Company promotes its services by means of promotional and sponsored events where customer and supplier interaction is invited to attend this in no way constitutes any bribe, offering or promise.

## 13. DATA PROTECTION

- 13.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data in relation to the Customer, and where that Customer is a company or business, any personal data in relation to its employees, which is provided by the Customer to the Company, will be processed by and on behalf of the Company.
- 13.2 Where the Customer provides personal data to the Company in relation to the Customer's employees, the Customer warrants that it is not in breach of any statutes, other legal requirement or contractual obligation in relation to that personal data, and the Customer shall indemnify the Company in respect of any action brought in relation to the provisions of personal data.

## 14. CHANGE CONTROL

- 14.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 14.2 If either party requests a change to the scope or execution of the Services, the Company shall, within a reasonable time, provide a written estimate to the Customer of:
  - (a) the likely time required to implement the change;
  - (b) any necessary variations to the Company's charges arising from the change;
  - (c) the likely effect of the change on the Service Levels; and
  - (d) any other impact of the change on this Agreement.
- 14.3 If the Customer wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Service Levels and any other relevant terms of this Agreement to take account of the change and this Agreement has been varied in accordance with clause 15.11.
- 14.4 Notwithstanding clause 14.3, the Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Company requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.



## 15. GENERAL

- 15.1 This Agreement shall not be assigned or transferred in any manner by the Customer without the prior written consent of the Company and any such assignment or transfer shall not excuse either party from liability for the due performance and observance of any provision expressed herein on their part to be observed or performed up to the date of assignment or transfer. The consent of the Company shall not be unreasonably withheld. The Company shall be entitled to assign or transfer the benefit of the Agreement.
- 15.2 The Customer hereby waives all and any existing and future claims and rights of set off against any payment due hereunder and agrees to pay the Fees and other amounts due hereunder regardless of any equitable set off or cross claim the Customer may have against the Company.
- 15.3 The Agreement between the Company and the Customer may only be amended or supplemented in writing executed jointly by an authorised representative of the Customer and an authorised representative of the Company.
- 15.4 The Company reserves the right to sub contract the maintenance of any part of or all of the Equipment to third parties.
- 15.5 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision had been omitted.
- 15.6 Any notice or other document to be given by delivering the same by hand or by sending the same pre paid registered post, facsimile or telex to the address of the relevant party set out in this Agreement or to such other address as such party may have notified in writing to the address as such party may have notified in writing to the other. Any notice delivered by hand shall be deemed delivered the same working day and any notice sent by post shall be deemed in the absence of evidence of earlier receipt to have been delivered 2 working days after despatch, and in proving the fact of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted. Any notice sent by facsimile shall be deemed to have been delivered on the first working day following its dispatch. The working day shall be construed as Monday to Friday 09.00 to 17.00 hours, excluding Public and Bank holidays.
- 15.7 No term of this Agreement is intended expressly or by implication or other inference to purport to confer a benefit or right of action upon any third party. No such third party (whether or not in existence at the date of this Agreement) is named or described herein. The Contracts (Rights of Third Parties) Act 1999 is expressly excluded to the fullest extent permitted by law.
- 15.8 This Agreement shall be governed and construed in accordance with the Laws of England and the parties submit to the jurisdiction of the English Courts.
- 15.9 The Customer warrants to the Company that the performance of the Services by Company will not in any way constitute an infringement or other violation of any Intellectual Property Right of any third party.
- 15.10 Subject to Clause 6, no variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.



