

IMPORTANT

(1) THE CUSTOMER REPRESENTS THAT IT IS NOT ACTING AS A CONSUMER IN ENTERING INTO THE CONTRACT. (2) THE CUSTOMER IS ADVISED OF THE DISCLAIMERS, LIMITATIONS AND EXCLUSIONS ON THE LIABILITY OF RDS AS SET OUT IN CLAUSE 17.

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STANDARD TERMS

1. ABOUT THIS DOCUMENT

1.1 Supplier

This document sets out the standard terms for the sale, hire and supply of services, goods, software and works (the "Standard Terms") of the following company ("RDS"):

RDS GLOBAL LIMITED registered in England and Wales with company number 03380944 and registered office at Century House, St James' Court, Friar Gate, Derby DE1 1BT.

1.2 Application of these Standard Terms

These Standard Terms shall apply to and be incorporated into all quotations, proposals, offers, and contracts for the sale, hire and supply of services, goods, software and works by RDS.

2. DEFINITIONS

In these Standard Terms, and any contract which incorporates these Standard Terms:-

"**Activation**" and "**Activated**" means in relation to any element of or variation to a Supply, when such element or variation is set-up, live, enabled or available for use, as specified or determined by RDS or any Supplier in its sole and absolute discretion;

"**Activation Date**" means, with respect to any Supplies, as determined by RDS in its sole and absolute discretion, either: (a) such date as may be specified as the Activation Date in the terms of this Agreement; or (b) the date of first Activation of any element of those Supplies;

"**Additional Charge**" means any price, charge, rental, fee (including licence fee), or other amount (excluding VAT) which is or becomes payable under this Agreement which is not a Base Charge, including any amount expressly stated in these Standard Terms or any other terms of this Agreement to be an Additional Charge or to be payable for any Additional Supplies;

"**Additional Supplies**" means any services, goods, software, materials or works delivered or provided by RDS which are not covered by the Base Supplies or for which an Additional Charge is payable, including any which arise, are requested, or are agreed, under this Agreement after the Effective Date of this Agreement;

"**Affiliate**" means, in relation to a company, any subsidiary of that company, any holding company of that company, and any subsidiary of any such holding company, from time to time, where references to "company", "subsidiary" and "holding company" shall be as defined in Section 1159 of the Companies Act 2006, and for these purposes a company shall also be considered to be a member of any other company if it has any legal or beneficial ownership of any shares of that other company, whether or not it is recorded in the register of members or has granted any security over such ownership;

"**Agreement**" means the agreement which incorporates these Standard Terms;

"**Agreement Change**" means any variation (including addition) to this Agreement or the Supplies under this Agreement, made after the Effective Date of this Agreement, which (1) is agreed in writing by RDS and the Customer from time to

time;

"**Base Charges**" means the prices, charges, rentals, fees (including licence fees) and other amounts payable for the Base Supplies as stated in the other Terms of this Agreement as at the Effective Date of this Agreement, as varied from time to time in accordance with the terms of this Agreement;

"**Base Supplies**" means services, goods, software, materials, or works which are specifically described in the Specification and other terms of this Agreement, including in any line item of a Quotation or Proposal from RDS which led to this Agreement, as at the Effective Date of this Agreement, or which are identified as being 'Base Services' or 'Base Supplies' in the Specification or any other terms of this Agreement, as varied from time to time in accordance with the terms of this Agreement;

"**Call Service**" means any Supply that is a telephony or messaging service (including any PSTN or IP telephony, mobile calls, text and media messaging);

"**Call and Usage Charges**" means any Charges calculated by reference to any actual or estimated quantities of usage by the Customer of any Call Service or other Supplies, including calls made or received, messages sent or received, or data transferred, uploaded or downloaded, and including as set out in any published tariffs of RDS from time to time;

"**Charges**" means the Base Charges and the Additional Charges, as varied from time to time in accordance with the terms of this Agreement;

"**Confidential Data**" means, in relation to the Customer, the Customer Data and, in relation to RDS, RDS Data;

"**Consumer**" means any Customer who is an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession;

"**Customer**" means the person who has entered into this Agreement with RDS;

"**Customer Associate**" means any person (other than the Customer) who is to or who in fact does at any time receive, use, resell or consume any of the Supplies, including: (1) the occupier of any Location; (2) any Affiliate or ex-Affiliate of the Customer; (3) if the Customer is an IT service provider or reseller, any and all subsequent clients, sub-resellers or customers in the resale or contract chain; and (4) any representatives of the Customer or any of the foregoing persons;

"**Customer Data**" means all data and information which is disclosed by or on behalf of the Customer to RDS under or in connection with this Agreement, including any such data or information located in any Customer Systems access to which is given to RDS by the Customer, and any such data or information which is or is to be processed by RDS for the Customer under the Supplies;

"**Customer Systems**" means all computer, network, telephony, security, and communications systems and infrastructure owned or used by the Customer or any Customer Associates from time to time, including all associated equipment, cabling, and other chattels, fixtures and fittings, software, and third party services, as varied from time to time, including any Supported Customer Systems, but excluding any Supplies or RDS Systems;

"**Customer Systems Agreement**" means, except for this Agreement and any other agreement between RDS and the Customer, any contract directly between the Customer or any Customer Associate and any third party for the purchase, supply, hire, licence, support, installation, maintenance, repair or warranty of any Supported Customer Systems or other Customer Systems, or the provision of any services forming part of or used in connection with the Supported Customer Systems or other Customer Systems;

"**Discloser**" means the Customer, in connection with the Customer Data, and RDS, in connection with RDS Data;

"**Effective Date**" means the effective date of this Agreement or any Agreement Change as determined in accordance with Clause 3.4;

"**Implementation**" means any planning, procurement, transportation, implementation, survey, design, scoping, layout, specification, installation, set-up, siting, commissioning, developing, testing, acceptance, delivery, go-live, migration, and other actions, activities and steps in relation to any Supplies, including in order for the Customer to receive or use any Supplies or for RDS to commence any Supplies;

"**Implementation Service**" means any Implementation activities or services which RDS has agreed to be responsible for as part of the Supplies;

"**Initial Period**" means with respect to any Periodic Supplies, any period stated as an initial, minimum or other term or period for this Agreement as a whole or for any particular Periodic Supplies, in the other terms of this Agreement, including any line item in a Quotation or Proposal which specifies a period of time or words to that effect (such as 'x year deal'), but if not so otherwise stated the Initial Period for any Periodic Supply shall be 12 months from the Activation Date of that Periodic Supply, and, in any other case, 12 months from the Effective Date of this Agreement or Agreement Change under which the Periodic Supplies were agreed;

"**ICT Service**" means any Service which consists of the provision of a software application service, or a computing, storage, networking or communications service, which is provided by means of any system, including the provision of a voice or data communications line or service to any premises, but excluding any labour based services, such set-up, implementation, commissioning, management or monitoring of any system or service;

"**Infrastructure Sub-Suppliers**" means any company listed in Schedule 1;

"**Insolvency Event**" means any of the events detailed in Clause 15.3;

"Intellectual Property Rights" or **"IPR"** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Labour Rates" means (a) such hourly or daily rates of RDS for labour as may be initially stated in the other terms of this Agreement on the Effective Date of this Agreement; and (b) if not initially stated, the standard labour rates of RDS from time to time, or a reasonable labour rate if no standard labour rate exists; as such rates in (a) or (b) shall be varied from time to time in accordance with the terms of this Agreement;

"Loan Equipment" means: (a) any equipment or other chattels specifically identified as being loaned (including bailed or hired) under the Specification or any other terms of this Agreement; (b) any equipment or other chattels which RDS may unilaterally loan (including bail or hire) to the Customer or install at any premises of the Customer, any Customer Associate, or representative of them, for the purposes of providing any Services (such as wires, routers, switches and other customer premises equipment, or a temporary replacement for any Supported Customer Equipment) or otherwise for any reason not covered by any other agreement between the parties;

"Location" means, other than any premises of RDS or any Supplier, any building, land or other premises where: (1) any action is, is required to be, or needs to be carried out in order to perform or provide the Supplies; (2) any premises where any Purchased Equipment is to be delivered or anything is to be installed as part of the Supplies; (3) any premises where any Supported Customer Systems are located; and (4) any premises to or over which any ICT Service is to be provided or Tail Circuit is or needs to be installed;

"Manufacturer Warranty" means any warranty or guarantee offered by a manufacturer or other Supplier directly to an end-customer of their Sub-Supplies, as to the description and quality of their Sub-Supplies, which either comes with any Supplies or is expressly stated to be procured by RDS in this Agreement;

"Normal Working Hours" means the hours of 8.30am to 5.30pm (inclusive, London time) on any Working Day;

"One-Off Supplies" means any Supplies other than Periodic Supplies

"One-Off Charges" means any Charges other than Periodic Charges;

"Payment" means any amount which is required to be paid by the Customer to RDS under this Agreement, including on account of Charges, VAT or interest;

"Periodic Charge" means all Charges which are payable monthly, Quarterly, annually or on any other periodic or recurring basis;

"Periodic Supply" means each Supply which is provided by reference to a period of time, which is either a fixed period of time or a period of time that continues indefinitely until terminated by either party;

"Personal Data" shall have the meaning ascribed in the Contract Amendment between the Parties dated [] 2019 ;

"Proposal" or **"Quotation"** means (1) any document titled as such or functioning as a proposal, quotation, tender, invitation to treat, or offer, and issued by RDS, which incorporates these Standard Terms; and (2) in relation to this Agreement, the most recent such document issued by RDS which led to this Agreement, including any such document presented by RDS electronically or in print, and signed or accepted by the Customer;

"Purchased Equipment" means any specific quantity equipment or other goods or chattels to be sold to and purchased by the Customer under this Agreement, as stated in a Specification or any other terms of this Agreement, including any Third Party Software or Third Party Materials incorporated therein, including any wiring or other materials to be supplied and installed by RDS as a fixture at any Location as part of the Supplies;

"Quarter" means each period of 3 consecutive months, commencing on a Quarter Day;

"Quarter Days" means 1st January, 1st April, 1st July and 1st October;

"Rates" means the Labour Rates and any other rates and tariffs by which any Charges, including Call and Usage Charges, may be calculated, as stated or referred to in the terms of this Agreement, as may be varied from time to time in accordance with the terms of this Agreement;

"RDS Data" means: (a) all data and information which is disclosed by or on behalf of RDS to the Customer under or in connection with this Agreement, including data and information of any Supplier, and data and information relating employees and other representatives of RDS; and (b) the amount of the Charges under this Agreement;

"RDS Materials" means any materials created by RDS which are supplied by RDS as part of the Supplies, excluding Third Party Materials and Third Party Software, and excluding RDS Software;

"RDS Premises" means any buildings, land or other premises of RDS or any Sub-Supplier;

"RDS Software" means any software created by RDS which is supplied by RDS as part of the Supplies, excluding Third Party Materials and Third Party Software;

"RDS Systems" means any Loan Equipment and any other computer, network, telephony, security, and communications systems and infrastructure provided, owned or used by RDS or any Supplier to provide any Supplies, including all associated equipment, cabling, and other chattels, fixtures and fittings, software, and third party services, as varied from time to time by RDS and its Suppliers;

"Recipient" means the Customer, in connection with RDS Data, and RDS, in connection with the Customer Data;

"Relevant Liability" has the meaning given to it in Clause 17;

"Replacement Equipment" means any parts, materials or other goods which are supplied by RDS as replacements for all or any part of any Purchased Equipment or Supported Customer Equipment, including under any Services, or as a remedy for breach of this Agreement or any warranty under this Agreement;

"Services" means all services and works which are or are to be provided or procured by RDS under this Agreement, including as specified in the Specification, including any ICT Services and any Implementation Services;

"Specification" means any description (including quantity) of the Supplies given in the terms of this Agreement, including any standard service descriptions of the RDS in any products and services manual published by RDS;

"Sub-Recipient" means any person to whom a party may disclose any data or information in respect of which it is the Recipient;

"Sub-Supplier" means any third party other than an Infrastructure Sub-Supplier from whom RDS may procure any Supplies, including: (1) any ultimate manufacturer, producer or provider of any Supplies, or owner of any IPR in any Supplies; (2) for any Supplies licensed by RDS, any person in any licensing chain leading from the IPR owner to the licence granted by RDS; (3) any Supplies licenced by a third party directly to the Customer or a Customer Associate, any person in any licensing chain leading from the IPR owner to such licence; (4) any sub-contractor of RDS with respect to any Supplies sub-contracted or resold by RDS, including any person in any chain of such sub-contracts or resales from the ultimate provider of such Supplies; and (5) for any Supplies purchased by RDS for resale, any person in any chain of re-sales leading to RDS;

"Sub-Supplies" means all or any part of the Supplies which RDS may procure from a Supplier;

"Supplied Equipment" means any and all Purchased Equipment, Replacement Equipment, and Loan Equipment;

"Supplier" means any Sub-Supplier and any Infrastructure Sub-Supplier;

"Supplies" means any and all Purchased Equipment, Loan Equipment, Replacement Equipment, Services, Third Party Software, RDS Software, RDS Materials, Third Party Materials, Implementation Services, and other things to be or actually sold, supplied, loaned, hired, performed, procured, prepared, licensed or provided by RDS under or in connection with this Agreement or any other Supplies, as may be set out in a Specification and any other terms of this Agreement;

"Supported Customer Systems" means any Customer Systems in respect of which RDS is to provide any investigation, diagnosis, support, fault handling, repair, maintenance or other service, as part of the Supplies, as specified in a Specification or other terms of this Agreement, as may be varied from time to time in accordance with the terms of this Agreement;

"Supported Customer Equipment" means any equipment, cabling, chattels, fixtures and fittings which form part of the Supported Customer Systems from time to time;

"Tail Circuit" means any physical line over which any telephone or data communications service is provided, running from any physical premises to a point of presence of a telecommunications service provider's network (such as a local exchange, street cabinet, or other point of presence), which line may be made up of any of any of, of a combination of, copper, radio, or fibre or other telecommunications technologies;

"Third Party Equipment" means equipment produced by a third party which is, or is to be, procured and supplied by RDS as part of the Supplies, including any Supplied Equipment, and any equipment produced by a third party which is the subject of any Supplies;

"Third Party Materials" means any materials to be or actually procured and supplied to the Customer as part of the Supplies, excluding Third Party Software, and including as may be supplied as a Service;

"Third Party Service" means any telecommunications, software, technology, computing, support, repair, maintenance, warranty or other service provided by a third party to be or actually procured by RDS as part of the Supplies, and any service actually provided by a third party which is the subject of any Supplies;

"Third Party Software" means software produced by a third party which is, or is to be, procured and supplied by RDS as part of the Supplies, including as may be incorporated in any Supplied Equipment, and including as may be supplied as a Service, and any software produced by a third party which is the subject of any Supplies;

"Time and Materials Charge" means a charge calculated or stated on the basis of the time spent by representatives and/or costs and expenses incurred, which shall be calculated in accordance with Clause 9.8 unless otherwise agreed;

"Update" means, in relation to any software, any fix, patch, service pack, update, new release, upgrade, or new version of that software, which is published from time to time;

"VAT" means value added tax or any similar or equivalent tax, including any consumption tax, payable or chargeable in any country in the world;

"Website" means any website operated by RDS or any third party website or internet based quoting and ordering system used by RDS such as Quote Valet; and

"Working Day" means any day, other than: (a) Saturday or Sunday; or (b) a bank or public holiday in the United Kingdom; or (c) Christmas Day, Boxing Day, or New Year's Day.

3. FORMATION OF AGREEMENT

3.1 RDS's Proposals

Where RDS issues any Quotation or Proposal, for a contract or change variation to a contract with the Customer, which incorporates these Standard Terms, including through any Website, then: (1) it shall not constitute a legal offer from RDS, and shall just be an invitation to treat, unless it is in writing and RDS expressly states that it is a legal offer in such document; (2) to proceed with the contract, the

Customer must follow the instructions in the Quotation or Proposal, or if there are no instructions, the Customer must submit an unconditional order to the Customer referring to the Quotation or Proposal, and not excluding these Standard Terms; and (3) a binding contract will be formed when RDS accepts the order from the Customer.

3.2 RDS's Offers

Where RDS has provided any legal offer to enter into a contract or variation to a contract with the Customer, including through any Website, which incorporates these Standard Terms, including in any Quotation or Proposal, then: (1) the offer shall only be valid for acceptance for any period stated in it, or if not stated, for 30 days from the date of the legal offer; (2) it may only be accepted by the Customer by an unconditional written acceptance communicated to RDS in writing, or by counter signature of any form of contract signed by RDS; and (3) it may be withdrawn by RDS at any time before it is accepted by the Customer. If RDS signs any form of contract which incorporates these Standard Terms, and submits this to the Customer for signature, this shall constitute a legal offer from RDS.

3.3 Customer's orders

Where the Customer submits an order in response to a written legal offer from RDS then it shall constitute an acceptance of that legal offer. Any other order from the Customer shall be deemed to be a legal offer from the Customer to contract with RDS on the terms of this Agreement, open for acceptance by RDS for at least 30 days from the date such offer is communicated, which acceptance may be by means of written communication to the Customer, invoice for any Charges from RDS, or counter-signature of any form of contract signed by the Customer. An order from the Customer shall include any printed order document, any order made orally, by email or fax, the completion and submission of any ordering and checkout web pages on any Website of RDS, the first signature of any form of contract supplied by RDS, or the submission of any order against a Quotation or Proposal from RDS in any electronic quotation system used by RDS.

3.4 Effective Date

This Agreement and each Agreement Change shall become legally effective on the following date: (1) if any other term of this Agreement or that Agreement Change specifies an effective date or commencement date for this Agreement or such Agreement Change then it shall be that that specified date, or (2) in any other case, the date that this Agreement or that Agreement Change became legally binding, including the date of acceptance by one party of a legal offer from the other in relation to this Agreement or such Agreement Change.

3.5 Entire Agreement

The following terms represent the entire agreement between the Customer and RDS, and no other terms shall apply to this Agreement: (1) the Agreement Documents recording this Agreement and each Agreement Change; and (2) any rights or terms implied by statute or any other law of England and Wales (except to the extent validly excluded by any other term of this Agreement). Unless the "Agreement Documents" are defined otherwise under any other term of this Agreement, the Agreement Documents mean: (1) these Standard Terms (2) each written Proposal, Quotation, order form, order acknowledgement, web page ordering form, and other contract document, produced by RDS, which expressly incorporates these Standard Terms, on the basis of which this Agreement or an Agreement Change was made, and any other documents referred to in them including any such document signed by or on behalf of the Customer and/or RDS; (3) any acceptance by RDS of any order from the Customer which led to this Agreement or an Agreement Change; and (4) any order or unconditional acceptance of any legal offer from RDS communicated by the Customer which led to this Agreement or an Agreement Change, but not any additional terms proposed by the Customer in such order or acceptance. No standard terms and conditions published or communicated by the Customer shall apply. All terms, conditions and warranties implied into this Agreement by law, are hereby excluded to the fullest extent permitted by law, except terms implied under any rule of law allowing terms to be implied that are necessary to achieve the parties' express agreement. Each obligation, right or remedy under a term of this Agreement shall be subject to any other term which further limits or restricts that obligation, right or remedy. In the event of inconsistency between these documents, the following order of priority shall apply: (1) Any Agreement Change; (2) The main body of the Agreement; (3) any other documents forming the Agreement Documents and (4) these Standard Terms.

3.6 No representations

The Customer confirms it has not been induced to enter into this Agreement by any statements or representations made by or on behalf of RDS, and agrees that RDS shall have no Relevant Liability for misrepresentation, but this provision will not exclude any Relevant Liability of RDS for fraud to fraudulent misrepresentation.

3.7 Customer Warranties

The Customer warrants and represents that: (1) it is not acting as a Consumer in entering into this Agreement; (2) that it has full power, authority and capacity to enter into and perform this Agreement; (3) that it is entering into this Agreement as principal and not at agent; and (4) that all information it has provided and provides in future to RDS is and will be true, accurate and complete.

3.8 Credit Check

RDS reserves the right to check the credit worthiness of the Customer after entering into this Agreement, before any Supplies are delivered or Activated, and the right to terminate this Agreement if RDS is not satisfied with the results of such check.

3.9 Replacement of Previous Agreements

Where any Periodic Supply (the "Replacement Supply") under this Agreement is to replace anything being supplied being provided (a "Previous Supply") under a previous contract between the parties or a previous contract between the Customer or a Customer Associated and a third party (a "Previous Agreement") then the parties agree as follows, and any references in the terms of this Agreement to this Agreement superseding, replacing or terminating any other contract between the parties shall be construed subject to this Clause:-

(a) Replacement of supply Customer has separately procured

if the Replacement Supply is replacing anything being supplied directly to the Customer or a Customer Associate by a third party, the Replacement Supply shall be by way of cease and re-provide (unless otherwise explicitly agreed in the terms of this Agreement), so that the Customer shall be responsible for terminating the Previous Agreement, and RDS may also do this and do anything else necessary to cease the Previous Supply as agent;

(b) Replacement of existing supply from RDS with change

if any part of a Replacement Supply is replacing a Previous Supply with something different then on the Activation Date of that Replacement Supply under this Agreement, such Previous Supply shall terminate under the Previous Agreement at the soonest point that RDS is able to practically cease the Previous Supply on or after the Activation Date of the Replacement Supply under this Agreement;

(c) Replacement of existing supply from RDS no change

if any part of the Replacement Supply is to be a continuation of a Previous Supply from RDS, without any cease or other break, then, on the making of this Agreement, such Previous Supply shall automatically be considered to have terminated on, and the Activation Date of the Replacement Supply shall be considered to be the Effective Date of this Agreement, or the Effective Date of the Agreement Change under which such Replacement Supply is to be provided;

(d) Continuation and termination of Previous Agreement

any Previous Agreement with RDS shall stay in effect until all Previous Supplies under that Previous Agreement have been terminated and ceased, and no Previous Supplies under that Previous Agreement shall be considered to have terminated except in accordance with the terms of that Previous Agreement or this Clause.

4. COMMENCEMENT AND DURATION

Unless otherwise agreed in the other terms of this Agreement, and subject to Clause 15(EARLY TERMINATION FOR CAUSE), the following terms shall apply:-

4.1 Commencement

This Agreement shall commence on the Effective Date of this Agreement and shall continue until it is completed or earlier terminated in accordance with its terms. Each Agreement Change shall commence on the Effective Date of the Agreement Change and shall continue until it is completed or earlier terminated in accordance with its terms.

4.2 One-Off Supplies

RDS shall commence providing all One-Off Supplies defined as part of the Base Supplies as soon as is reasonably practicable after the Effective Date of this Agreement, and One-Off Supplies defined as part of an Additional Supply as soon as practicable after the Effective Date of the Agreement Change for such Additional Supplies or after such Additional Supply has otherwise been agreed or determined.

4.3 Periodic Supplies

(a) Commencement

Each Periodic Supply, and the associated Periodic Charges, shall commence upon its Activation Date. Subject to the other terms of this Agreement, RDS shall use reasonable endeavours to achieve Activation of a Periodic Supply as soon as is reasonably practicable, after completion of any Implementation: (1) where it is a Base Supply, after the Effective Date of this Agreement; and (2) where it is an Additional Supply, after the Effective Date of the Agreement Change for such Additional Supplies or after such Additional Supply or otherwise after such Additional Supply has been agreed or determined.

(b) Initial Period

A Periodic Supply shall continue for the Initial Period. The Initial Period for a Periodic Supply shall be measured from the Activation Date of that Periodic Supply.

(c) Trial Period

Where a trial period is stated in a Quotation or Proposal for a Periodic Supply, then: (1) either party may terminate that Periodic Supply at the end of the trial period by at least 30 days prior notice to the other; and (2) if termination does not occur under this Clause, the Initial Period shall commence at the end of the trial period.

(d) Automatic Renewal

Subject to Clause 4.3(e), at the end of its Initial Period, and at the end of any previous Renewal Period under this Clause 4.3(d), a Periodic Supply shall automatically continue for a further annual period (a "Renewal Period"), and shall keep so renewing indefinitely until terminated under any term of this Agreement.

(e) Termination without cause

Subject to Clause 16(CONSEQUENCES OF TERMINATION), and except where otherwise agreed under any other term of this Agreement, either party may terminate a Periodic Supply by giving to the other party 90 days' prior written notice of termination.

(f) Separate Durations

The Customer acknowledges and agrees that each Periodic Supply may not be Activated or have an Activation Date which are the same as or synchronised with any other Periodic Supply, so that different Periodic Supplies may have their own Initial Periods, Renewal Periods, and durations, may be staggered according to when each is Activated or its Activation Date falls, and may expire or terminate on separate dates. Where any separate Periodic Supplies are covered by a single Periodic Charge then they shall be considered to be one Periodic Supply for the purposes of this Clause 4.3, and

the Activation Date for the first of such Periodic Supplies shall be used for the purposes of the term and termination of all such Periodic Supplies.

(g) Sub-Supplies

Where any Supplier terminates any Sub-Supply which is a Periodic Supply, then RDS shall be entitled to terminate the associated Supply (and any dependent Supplies) effective at the same time by notice to the Customer or to replace the Sub-Supply with an alternative. Where the Customer or RDS terminates any Periodic Supply, and termination in accordance with this Agreement would be sooner than RDS is able to terminate all of the associated Sub-Supplies with the Sub-Supplier, then unless expressly agreed otherwise between the parties, provided that the Customer, acting reasonably at all times, has pre-approved the terms of the agreement with the Sub-Supplier, including termination rights, the Periodic Supply shall not terminate until the later of date of termination under this Agreement, and the soonest date that RDS is able to terminate all the associated Sub-Supplies without cause and without incurring any financial payment or accelerated payment. For the avoidance of doubt, it is acknowledged and agreed that the terms of any agreement which RDS has with any Infrastructure Sub-Supplier are fixed and neither RDS or the Customer are able to or are entitled to influence or amend the standard terms proposed by such Infrastructure Sub-Supplier, as such, where the provisions of this Clause 4.3 (g) apply, the relevant Periodic Supply provided by an Infrastructure Sub-Supplier shall continue until the soonest date that RDS is able to terminate the associated agreement with that Infrastructure Sub-Supplier without cause and without incurring any financial payment or accelerated payment.

4.4 Termination of Agreement when no further Supplies

Subject to Clause 16(CONSEQUENCES OF TERMINATION), either party shall be entitled to terminate this Agreement as a whole at any time by notice in writing to the other when all Supplies under it have expired or been terminated or completed.

5. SUPPLIES – GENERAL TERMS

5.1 Agreement to supply and purchase

When this Agreement is made, the Customer agrees to purchase from RDS and RDS agrees to sell and supply to the Customer the Supplies, for the Charges, on and subject to the terms of this Agreement.

5.2 Base Supplies

As at the Effective Date of this Agreement the Supplies comprise the Base Supplies.

5.3 Additional Supplies

The parties agree that Additional Supplies may from time to time arise under the terms of this Agreement or be requested by the Customer or proposed by RDS from time to time. RDS is not obliged to supply any Additional Supplies which are outside the scope of supplies which RDS holds itself out as providing from time to time. RDS may require that an Additional Supply be contracted for under a separate agreement, but if RDS does not so require, then each Additional Supply is provided under this Agreement and shall be an Agreement Change. In any event, all Additional Supplies are agreed to be provided on and subject to the Standard Terms and any other relevant terms of this Agreement. RDS may require that any agreement for an Additional Supply is recorded and agreed in writing before providing that Additional Supply, and may issue a Quotation or Proposal for this purpose for acceptance by the Customer. Where RDS reasonably provides any software, services, goods, works, or materials to the Customer, which are reasonably connected with or an extension of the Base Supplies or any Additional Supplies under this Agreement, or relate to a matter otherwise excluded under this Agreement, then, unless otherwise stated by RDS, these shall also be considered to be Additional Supplies under this Agreement, and RDS may make an Additional Charge for the same.

5.4 One-Off Supplies and Periodic Supplies

The Supplies under this Agreement are also categorised as One-Off Supplies (e.g. supply of specific items of equipment or an implementation project or audit) and Periodic Supplies (e.g. support services and telecoms services which have an associated term and are charged monthly or by reference to some other period).

5.5 Specification

RDS warrants that the Supplies will be substantially in accordance with the Specification, subject to the other terms of this Agreement. RDS does not warrant or agree, however, that any Supplies will be entirely error free or uninterrupted. In the event of any doubt as to the scope of the Supplies or any Specification, or the meaning of words used, they shall be given a reasonable interpretation, according to what would be reasonably expected for the Charges payable, and taking due account of these Standard Terms.

5.6 Sub-Supplies

Where the terms of the Agreement, including any Quotation or Proposal from RDS, refer to the name of a software, materials, goods, or services by reference to a third party company or brand, this means that these will be Third Party Services, Materials and Equipment as applicable which RDS will procure and supply, and in the case of a Third Party Service it will be procured in RDS's own name (by way of sub-contract) and re-supplied under this Agreement, except that if it is a Manufacturer Warranty it will be procured in the name of the Customer. RDS may at any time change the Supplier for any Sub-Supplies, provided that the Sub-Supplies still substantially comply with the Specification in terms of output or functionality, but nothing in this Agreement shall require RDS to use any particular Supplier or Sub-Supplies. RDS will be responsible for any acts or defaults of any Sub-Supplier as if they were acts or defaults of RDS where such acts or defaults would be the responsibility of RDS if RDS had provided such Services or Supplies itself under the terms of this Agreement. For the avoidance of doubt, RDS shall not be responsible for any acts or defaults of any Infrastructure Sub-Supplier..

5.7 Uncertain Scope

In the event of any uncertainty as to the Specification, or what RDS is required to provide or do with respect to any Supply, or how RDS is to carry out any Supply, then

the parties shall work together to determine the same acting reasonably. In the event the Specification is incomplete, uncertain or provisional, or it is incomplete, uncertain or provisional as to what RDS is required to provide or do with respect to any Supply or how RDS is to carry out any Supply, or the Specification is stated in any respect to be further detailed, agreed, confirmed and/or determined after the relevant Effective Date, or the Customer wishes to add to or change any Specification, then the parties shall work together to determine the Specification or any addition or change

acting reasonably, and RDS may elect to apply some or all of the following terms for these purposes: (1) the Customer shall promptly and exhaustively confirm and clarify its requirements for the Supply, including by attending meetings and calls with RDS, answering questions, and providing written information; (2) RDS may produce a document detailing the final agreed Specification, in respect of which the Customer shall promptly either confirm in writing that it is agreed, such agreement not to be unreasonably withheld or delay, and, if the Customer, does not agree the Specification, provide a full written explanation and justification for not doing so with reasons; and (3) RDS may adjust (including increase or add to) any Charges for the Supplies based on the final Specification, including to account for any more or less labour likely to be required to provide the same, in respect of which the Customer shall promptly either confirm in writing that any proposed revised or additional Charges are agreed, such agreement not to be unreasonably withheld or delay, and, if the Customer, does not agree, provide a full written explanation and justification for not doing so with reasons. In the event that any information or instruction provided by the Customer is inaccurate, incomplete, incorrect or ambiguous, or the Customer requests any change or addition to its requirements or any Specification, then RDS shall be entitled to adjust the relevant Specification and associated Charges applying this Clause.

5.8 Manufacturer Warranties

Unless otherwise stated in the terms of this Agreement, any Supplies produced or procured from a third party are not supplied with any Manufacturer Warranty. Where a Quotation or Proposal uses language indicating that a Supply includes some period of maintenance, repair or replacement (e.g. 'includes an X year repair or replacement' or 'X year return to base warranty') this means that the Supply will be accompanied with a standard Manufacturer Warranty accordingly. A Manufacturer Warranty is an agreement directly between the Customer and the Supplier, and RDS itself is not liable for and has no obligation in relation to any Manufacturer Warranty. The Customer shall comply with the terms of each Manufacturer Warranty provided to it, and shall take all steps needed to register or validate the Manufacturer Warranty or any transfer of the Manufacturer Warranty with the Supplier. If RDS carries out any work covered by a Manufacturer Warranty, RDS is doing so on behalf of the Supplier, and any claim concerning such work shall be made to the Supplier.

5.9 Work Arising

Where RDS identifies any repair, maintenance or other work in relation to any Customer Systems, which are not covered by the scope of any already agreed Supplies at that time, and which work in its reasonable professional opinion ought to be done and would have been decided to be done by a person in the position of the Customer or any Customer Associate, then RDS may give a quote to the Customer for such work as a possible Additional Supply, or RDS may, if that is reasonable in the circumstances, undertake such Additional Supply without informing or obtaining the agreement of the Customer, and in such case it shall be deemed to have been made under this Agreement and RDS make an Additional Charge for the same. Where RDS carries supplies or carries out anything at the instruction of the Customer which is not included in the scope of any Supplies at that time, then RDS may make a reasonable Additional Charge for the same, and its shall be considered to be an Additional Supply.

5.10 Quantity Changes

Where the subject matter of any Supplies is a defined quantity, such as Supported Customer Equipment, or the Charges for any Supplies are based on a defined quantity, then if such quantities change, RDS shall be entitled to unilaterally accept such changes and to unilaterally vary the Charges as a result of any change, or RDS may elect to provide a quote for an Agreement Change to be agreed by the Customer before RDS is obliged to accept and implement such change.

5.11 Viruses

RDS does not agree or guarantee that the Supplies will prevent viruses or other harmful or malicious software from getting onto the Customer Systems, or prevent attacks or other computer misuse in relation to the Customer Systems, and, except to the extent these are to be provided as part of the Supplies, the Customer and its Customer Associates will be responsible for maintaining their own protections against viruses and other malicious software and against attacks and computer misuse.

5.12 Integration and compatibility

RDS takes no responsibility for and shall have no Relevant Liability for: (1) the integration of the Supplied Equipment into the Customer Systems; and/or (2) failure of the Supplied Equipment to work with any Supported Customer Equipment (excluding the Supplied Equipment) and/or any other Customer Systems. In the event that the Customer requests RDS's assistance in resolving any issues identified in this Clause, or to repair any damage is caused to any Supplied Equipment or Supported Customer Equipment, or any other equipment as a result of the circumstances envisaged by this Clause, RDS shall be entitled to regard such assistance and repair work as Additional Services and to make an Additional Charge to the Customer.

5.13 Options

Where any optional Supplies are specified in the Agreement, or any statements are made about any other benefits or items which may be added at a later date, and the Customer has not explicitly accepted these when accepting any offer from RDS, then: (1) RDS shall not be obliged to provide the same; and (2) they shall not be legally binding options, so that RDS shall not be obliged to provide the same except by future Agreement Change or separate agreement, and any Charges specified for such options shall cease to be valid and may not be relied upon by the Customer.

6. SUPPLIES – SPECIFIC TERMS

The following terms apply according to the nature of the Supplies covered by this Agreement:-

6.1 Purchased Equipment

If the Supplies include any Purchased Equipment then the following terms apply:-

(a) Identification

Where the Purchased Equipment has already been uniquely identified, then the Purchased Equipment will be that identified equipment. In any other case, the Purchased Equipment will be supplied by RDS from any stock, or procured by RDS from a third party for resale to the Customer. If RDS is to procure the Purchased Equipment from a third party and is unable to do so at all or in time, RDS may substitute an equivalent to the Purchased Equipment, or cancel this Agreement in relation to that Purchased Equipment, without liability to the Customer.

(b) RDS Warranty

RDS warrants that on delivery: (1) the Purchased Equipment will be of the make and model set out in, and comply with, the description set out in the Specification; (2) the Purchased Equipment will be new, unless otherwise stated in the Specification or it is clear from all the circumstances that it is sold as used; and (3) the Purchased Equipment will be free from material damage caused during transportation. Except as provided in the previous sentence, the Customer acknowledges that RDS is not the manufacturer of the Purchased Equipment, and agrees that except as provided in any other term of this Agreement: (1) RDS shall have no Relevant Liability with respect to the condition, quality or fitness for purpose of the Purchased Equipment; and (2) it shall look solely to any Manufacturer Warranty concerning the condition, quality or fitness for purpose of the Purchased Equipment.

(c) Manufacturer Warranty

The Supplier shall use its reasonable endeavours to transfer to the Customer the benefit of any Manufacturer Warranty for the Purchased Equipment which is held by RDS.

6.2 Replacement Equipment

If the Supplies include any Replacement Equipment then the following terms apply:-

(a) Identification

Where the Replacement Equipment has already been uniquely identified, then the Replacement Equipment will be that identified equipment. In any other case, the Replacement Equipment will be supplied by RDS from any stock, or procured by RDS from a third party for supply to the Customer. If RDS is to procure the Replacement Equipment from a third party and is unable to do so at all or in time, RDS may substitute an equivalent to the Replacement Equipment.

(b) RDS Warranty

RDS warrants that on delivery: (1) the Replacement Equipment will be capable of operating as a replacement for the item to be replaced, with substantially similar or better characteristics, but it may not be the same make and model as the item to be replaced; and (2) the Replacement Equipment will be free from material damage caused during transportation Except as provided in the previous sentence, the Customer acknowledges that RDS is not the manufacturer of the Replacement Equipment, and agrees that except as provided in any other term of this Agreement: (1) RDS shall have no Relevant Liability with respect to the condition, quality or fitness for purpose of the Replacement Equipment; and (2) it shall look solely to any Manufacturer Warranty concerning the condition, quality or fitness for purpose of the Replacement Equipment.

(c) Manufacturer Warranty

The Supplier shall use its reasonable endeavours to transfer to the Customer the benefit of any Manufacturer Warranty for the Replacement Equipment which is held by RDS.

6.3 Loan Equipment

If RDS supplies any Loan Equipment then the following terms apply:-

(a) Identification

Where the Loan Equipment has already been uniquely identified, then the Loan Equipment will be that identified equipment. In any other case, the Loan Equipment will be supplied by RDS from any stock, or procured by RDS from a third party for loan or hire to the Customer. If RDS is to procure the Loan Equipment from a third party and is unable to do so at all or in time, RDS may substitute an equivalent to the Loan Equipment, or cancel this Agreement in relation to that Loan Equipment, without liability to the Customer.

(b) RDS Warranty

RDS warrants that on delivery: (1) the Loan Equipment will be of the make and model set out in, and comply with, the description set out in the Specification; and (2) the Loan Equipment will be free from material damage caused during transportation. Except as provided in the previous sentence, the Customer acknowledges that RDS is not the manufacturer of the Loan Equipment, and agrees that subject to any other term of this Agreement: (1) RDS shall have no Relevant Liability with respect to the condition, quality or fitness for purpose of the Loan Equipment; and (2) it shall look solely to any Manufacturer Warranty concerning the condition, quality or fitness for purpose of the Loan Equipment.

(c) Loan

With respect to all Loan Equipment: (a) RDS hereby loans such Loan Equipment to the Customer for the duration specified in this Agreement, or if no duration is specified, for the duration of this Agreement as a whole or, if shorter, the duration of the Supply under or in respect of which the Loan Equipment is loaned to the Customer; and (b) the Customer's right to use and possession of the Loan Equipment shall automatically cease, and the Customer shall return the Loan Equipment to RDS on demand, if this Agreement or Supply is terminated under any other term, or RDS becomes entitled to terminate this Agreement under Clause 15(EARLY TERMINATION

FOR CAUSE).

6.4 RDS Software and Materials

If the Supplies include the production or supply of any RDS Software or RDS Materials then the following terms apply:-

(a) RDS Warranty

RDS warrants that on delivery the RDS Software and RDS Materials will substantially conform to the Specification, and in the case of the software, be the application and version set out in the Specification. Except as provided in the previous sentence, the Customer acknowledges that RDS shall have no Relevant Liability with respect to the condition, quality or fitness for purpose of the RDS Software or RDS Materials. RDS does not warrant that any RDS Software is free from bugs or errors.

(b) Licence - RDS Software

In relation to any RDS Software which is not an application or system, such as bespoke pieces of code to serve a specific function, then unless an alternative licence has been granted under the terms of this Agreement, RDS grants to the Customer a non-exclusive, non-transferrable (except as part of a permitted assignment of this Agreement), non-sub-licensable, royalty free, licence to install and run (and copy for these purposes) the RDS Software in the Customer Systems for the internal business purposes of the Customer and its Affiliates. In the case of RDS Software which is an application or system, no licence is granted unless a separate express written licence has been entered into between RDS and the Customer. Where a Periodic Charge is specified for the RDS Software, then the licence shall be a Periodic Supply and shall continue for the duration set out in Clause 4.3. Where no Periodic Charge is specified for the RDS Software then the licence shall continue until this Agreement is terminated as a whole, when there are no other Supplies being provided by RDS under this Agreement. As a condition of such licence the Customer shall have no right to and shall not disassemble, de-compile or modify the RDS Software, except as permitted by statute.

(c) Licence - RDS Materials

Unless an alternative licence has been granted under this Agreement, RDS grants to the Customer a non-exclusive, non-transferrable (except as part of a permitted assignment of this Agreement), non-sub-licensable, royalty free, licence to copy any RDS Materials for the internal business purposes of the Customer and its Affiliates. Where a Periodic Charge is specified for the RDS Materials, then the licence shall be a Periodic Supply and shall continue for the duration set out in Clause 4.3. Where no Periodic Charge is specified for the RDS Materials then the licence shall continue until this Agreement is terminated as a whole, when there are no other Supplies being provided by RDS under this Agreement.

6.5 Third Party Software and Materials

If the Supplies include the procurement or supply of any Third Party Software or Materials then the following terms apply:-

(a) RDS Warranty

RDS warrants that on delivery the Third Party Materials and Third Party Software will substantially conform to the Specification, and in the case of the software, be the application and version set out in the Specification. Except as provided in the previous sentence, the Customer acknowledges that RDS is not the producer or manufacturer of the Third Party Software or Third Party Materials, and agrees that subject to the other terms of this Agreement: (1) RDS shall have no Relevant Liability with respect to the condition, quality or fitness for purpose of the Third Party Software or Third Party Materials; and (2) it shall look solely to any Manufacturer Warranty concerning the condition, quality or fitness for purpose of the Third Party Software or Third Party Materials.

(b) Manufacturer Warranty

The Supplier shall use its reasonable endeavours to transfer to the Customer the benefit of any Manufacturer Warranty for the Third Party Software which is held by RDS.

(c) Licensing

Where the Third Party Software or Third Party Materials are supplied as a Service, then they will be sub-licensed by RDS, under a service provider licence between RDS and the Supplier, and in any other case the Third Party Software and Third Party Materials will be licensed under a direct licence between the Supplier and RDS to be procured by RDS. Where the Third Party Software or Third Party Materials are designed or intended by the Supplier to be run on RDS Systems then the Customer will be licensed only to access and operate the Third Party Software or Third Party Materials on RDS Systems and is not licensed to download, install or run its own copy. Where the Third Party Software or Third Party Materials are intended to be held by the Customer, then: (1) in the case of Third Party Software, the Customer will be licensed to install and run such Third Party Software on the Customer Systems subject to such user numbers, instances and other quantitative or environment limits as may be specified by RDS or any Supplier or in this Agreement; and (2) in the case of Third Party Materials the Customer will be licensed to copy the same, subject to such limits as may be specified by RDS or any Supplier. Where a Periodic Charge is specified for the Third Party Software or Third Party Materials, then the licence shall be a Periodic Supply and shall continue for the duration set out in Clause 4.3, and the associated licence will be a subscription licence. Where no Periodic Charge is specified then the licence shall continue until this Agreement is terminated as a whole, when there are no other Supplies being provided by RDS under this Agreement.

(d) Licence Terms

The terms of any licence or sub-licence of any Third Party Software or Third

Party Materials will either be: (1) such licence terms as may be specified elsewhere in this Agreement; or in any other case (2) the standard licence terms or sub-licensing terms of any Supplier of the Third Party Software or Third Party Materials. The Customer and RDS shall comply with the terms of any licence or sub-licence of Third Party Software or Third Party Materials, including any terms applied or required by any Supplier.

6.6 Services

If the Supplies include any Services then the following terms apply:-

(a) RDS Warranty

RDS warrants that it will, and RDS's obligation is to use reasonable endeavours to provide such Services with reasonable care and skill in accordance with the Specification. However, the Customer acknowledges that it is impracticable for RDS to provide any Service which is entirely fault or error free or uninterrupted and RDS does not agree or guarantee to do so.

(b) Working Hours

RDS's obligation to provide any Services shall be to provide them during Normal Working Hours only.

6.7 Services - ICT

If the Supplies include any ICT Services then the following additional terms apply:-

(a) Availability

RDS's obligation is to use reasonable endeavours to provide and make such ICT Service available at such times as may be stated in any Specification, or in any other case, at all reasonable times, subject to any rights to suspend under any other terms of this Agreement, and subject to any terms of any provider of any Third Party Service as to availability and downtime.

(b) Telephone Numbers

All telephone numbers supplied by RDS or any Supplier as part of the Services, shall be and remain the property of RDS and each Supplier, and shall not be transferrable or portable except where required by the OFCOM General Conditions. RDS may make an Additional Charge, for any number portability provided. Telephone numbers may be changed in accordance with any national or local code changes.

(c) IP Addresses

Where RDS or any Supplier provides any IP addresses, all such IP addresses shall be and remain the property of RDS and each Supplier, shall not be transferrable or portable, may not be retained by the Customer or any Customer Associate after termination of any Supplies or this Agreement, and are provided only temporarily for the purposes of using the other Supplies. RDS may, by giving written notice to the Customer, at any time during the term of this Agreement, change any IP addresses.

(d) Tail Circuits and Lines

In the case of an ICT Service which consists of a communications line, the Customer shall be responsible for procuring any Tail Circuit unless provision of such Tail Circuit by RDS is expressly included in the Specification.

(e) Bonding

In the case of an ICT Service which consists of the bonding of one or more communications lines, the Customer shall be responsible for procuring those communications lines to be bonded, and any associated Tail Circuits, unless provision of such communications line or Tail Circuit by RDS is expressly included in the Specification.

(f) Technical Limitations

All ICT Services shall be subject to all applicable technical limitations of the technology used, including those specified by any Supplier, which may not become apparent until after any ICT Services has been commenced and working for some time, such as incompatibilities, and technical or geographical limitations; and RDS shall have the unilateral right to decline to provide or to cancel or terminate any Supplies or any feature of the Supplies, or to change the characteristics of the Supplies, without liability to the Customer, where any such technical limitations are identified.

6.8 Services – Maintenance etc.

Where any Supplies concern any Services in relation to any Supported Customer Systems then the following terms shall apply:-

(a) Supported Customer Systems List

Where there are any Supported Customer Systems, then as at the Effective Date, the Supported Customer Systems comprise the agreed list of equipment, software, systems, and other infrastructure set out in the Specification, or agreed as part of any Implementation, or last communicated by RDS in the event of any doubt. RDS will maintain the list Supported Customer Systems up to date according to any changes made as part of the Services, and according to any changes made or agreed under the other terms of this Agreement or by Agreement Change. The Customer shall not make any change to the Supported Customer Systems except by agreement with RDS, but RDS may, at its sole discretion, on a case by case basis, accept changes to the Supported Customer Systems from time to time, effective on issue by RDS of an updated list of the Supported Customer Systems containing such change. RDS may unilaterally make a reasonable adjustment to any Charges to account for any changes to the list of Supported Customer Systems.

(b) Scope of services

Such Services shall not include any support, issue resolution, maintenance, servicing, or repair except and to the extent expressly stated in any other Specification or any other terms of this Agreement.

(c) Support

Where the Services expressly include support for any Supported Customer Systems then RDS's obligations are (and are limited to) providing reasonable

advice and guidance to the Customer in relation to specific questions it may have concerning the functions of the Supported Customer Systems and the day or day operation and use of the Supported Customer Systems, and provide the latest information freely published by the producer relating to the use of the Supported Customer Systems.

(d) Issue Handling

Where the Services expressly include handling issues, faults or problems in relation to the Supported Customer Systems then RDS's obligations are (and are limited to) using reasonable endeavours to: (1) investigate and determine the nature and cause of specific issues, faults or problems raised by the Customer which are preventing the Customer from using the Supported Customer Systems in its day to day business operations; (2) advise as to how the issue, fault or problem might be resolved. RDS shall have no obligation to repair, fix or resolve any issue, fault or problem except where an express repair obligation has been agreed separately as part of the Service.

(e) Maintenance

Where the services expressly include servicing or maintenance, then RDS's obligations are (and are limited to) the following: (1) carrying out any cleaning or other adjustments to Supported Customer Systems, including cleaning, adjustments, which a reasonable user of the same would be expected to carry out by the manufacturer of the same, in order to continue the day to day use of the Supported Customer Systems; and (2) applying any freely available bug fixes and security patches to any Customer installations of the Third Party Software forming part of the Supported Customer Systems.

(f) Repair

Where the services expressly include repair or otherwise keeping in operating condition any Supported Customer Systems, RDS's obligations are (and are limited to) using reasonable endeavours, in relation to malfunctions in the Supported Customer Systems reported by the Customer, which are preventing normal use of the Supported Customer Systems: (1) in the case of physical equipment forming part of the Customer Supported Systems, to correct the malfunction, to make any necessary adjustments to the Customer Supported Systems, and where any parts or components have malfunctioned, repairing them or supplying and fitting replacements for the same; and (2) in the case of Third Party Software forming part of the Customer Supported Systems, to correct the malfunction itself, where possible by re-installation, re-build or re-configuration of the Third Party Software, and to recover any working file or data which may have been affected where there is a possibility it is still stored on the Supported Customer System, and if the malfunction is in relation to the software coding itself, referring the malfunction to the producer of that software and liaising with the producer concerning its rectification.

(g) Limits and Exclusions

The following exclusions shall apply to the Supplies notwithstanding any other term of this Agreement, unless and to the extent caused by any negligent at or omission of RDS or its representatives in the course of providing the Supplies, and the Customer shall pay an Additional Charge if RDS does anything in relation to an excluded matter below:-

(i) Initial Condition

The Supported Customer Systems are assumed, as at the date the Supplies commence in relation to them, to be in full working order, in good condition and free from defects and damage (normal wear and tear excepted). The Customer shall pay an Additional Charge for any repair or replacement if such assumption is incorrect.

(ii) Training and Consultancy

Support and issue handling for any Supported Customer Equipment shall not include training or consultancy.

(iii) Third Party Software and Equipment

In relation to any Third Party Software and Third Party Equipment which is the subject of any Supplies: (1) RDS is not obliged to do anything which requires any skills, equipment, materials or knowledge that only the producer of the same expected to have; (2) RDS's role is limited by what any advice and support is available for the same published freely on the internet by the producer of the same or by other third parties, by what advice and support the producer of the same may have contracted to provide with RDS or the Customer, by what fixes, patches and updates for the same may have been published freely on the internet by the producer of the same, by what fixes, patches and updates for the same the producer may have contracted to provide to RDS or the Customer, by what spare parts and components are available for the same on the open market, and by what support, repair, maintenance and other services the producer for the same offers or has contracted to provide to RDS or the Customer; (3) RDS shall have no Relevant Liability if the producer of the same does not provide any, or provides defective, advice, support, fixes, patches, updates, parts, components or services needed for RDS to provide any Supplies; (4) where any the supply of advice, support, fixes, patches, updates, parts, components, or services for the same requires a support, maintenance, warranty or other contract with the producer of the same, then RDS will not be able to or obliged do anything without such contract being in place, and unless such contract is something that RDS has agreed to procure in its own name or in the Customer's name as part of the Supplies, the Customer is responsible for procuring such contract; and (5) RDS's role is to liaise with the producer as appropriate, and on behalf of and as agent for the Customer.

(iv) **Renewal**

RDS shall have no obligation to renew or provide replacements for the Supported Customer Equipment, other than replacement parts and components covered by any Services which is a repair as specified above.

(v) **Excessive Wear and Tear**

RDS shall have no obligation to correct, repair or otherwise take any action in relation to wear and tear beyond reasonable fair wear and tear.

(vi) **Manufacturer Warranty**

RDS shall have no obligation to correct, repair, replace or take any other action in relation to any Supported Customer Equipment where such work is covered by a Manufacturer Warranty.

(vii) **Pre-Existing Defect**

RDS shall have no obligation to correct, repair, replace or take any other action in relation to any pre-existing defect, fault, damage, condition, problem, or matter present in the Supported Customer Systems at the time the Supported Customer Systems first became subject to a Service under this Agreement, except to the extent that RDS have identified the same and expressly agreed to take action in relation to the same in writing in a Specification to this Agreement.

(viii) **Beyond Economic Repair and End-of-Life**

RDS shall have no obligation to correct, repair, replace or take any other action in relation to any Supported Customer System that it is not reasonably possible to correct, has reached the end of its working life or becomes beyond economic repair or for which fixes, patches, updates, parts or replacement components are no longer available from the producer, or which is no longer supported or repaired by the producer.

(ix) **External Systems**

RDS shall have no obligation to correct, repair, replace or take any other action in relation to anything external to the Supported Customer Systems, including electrical systems, and any equipment or software which is not detailed in this Agreement as Supported Customer Systems.

(x) **External Events**

RDS shall have no obligation to correct, repair, replace or take any other action in relation to any defect, fault, damage, condition, problem, or matter resulting from any cause external to the Supported Customer System, including any movement, transportation or relocation of the Supported Customer System, any error or omission in the operation of any Supported Customer System, and any modification, adjustment or repair to the Supported Customer System, the subjection of the Supported Customer System to unusual physical or electrical stress, the neglect or misuse of the Supported Customer Systems, or any failure or fluctuation of electrical power, air conditioning, humidity control or other environmental controls.

(xi) **Investigation and work towards the above**

If RDS carry out any investigation, diagnosis or other work, and it is discovered that any of the excluded matters in this Clause above applies, then the Customer shall pay an Additional Charge in relation to such work.

6.9 Miscellaneous Containmentment

Any reference to "miscellaneous containmentment" or similar in any Specification or other term of this Agreement is to a Charge which the Customer is paying in advance to cover minor contingent costs which RDS may incur in relation to any Implementation. RDS may retain this Charge whether or not such costs are incurred. This Charge does not mean that RDS may not make further Additional Charges if any such costs exceed the amount paid.

7. IMPLEMENTATION

7.1 Implementation Services

RDS will provide any Implementation Services specified as part of the Supplies, including any work which is attributed in this Agreement to RDS or a Supplier.

7.2 Customer Responsibility

Except for the Implementation Services provided by RDS, the Customer shall be responsible for and shall carry out all other Implementation necessary or reasonably required in relation to the Supplies, including to enable to RDS, and any Supplier to correctly carry out any Implementation Services, and including terminating any contracts between the Customer and any third party that need to be terminated in order for RDS to provide any of the Supplies. To the extent not covered by the Implementation Services, the Customer shall be responsible for putting in place and doing anything required by RDS to enable an Implementation or Supply, including satisfying any specific dependencies, expressly stated in this Agreement, and providing or procuring anything expressly stated to be the responsibility of the Customer in this Agreement.

7.3 Implementation Procedures

All Implementation Activities shall be carried out in accordance with any standard procedures of RDS and any Supplier, and the Customer shall comply with such procedures as may be communicated to the Customer. The Customer acknowledges and agrees that any Implementation of any Supplies and any other work in connection with the Supplies, may result in the temporary interruption or degradation of the Customer Systems or access to it.

7.4 Surveys, Audits and Meetings

The Customer shall permit RDS generally to carry out, and shall co-operate with RDS in carrying out such surveys, audits and other information gathering activities with the Customer as may be stated in the other terms of this Agreement or as

may be reasonably requested by RDS, including in order to be able to determine the plan and carry out the Implementation of each Supply and to perform each Supply once Implemented, and to determine the precise scope, elements, design, configuration, layout and details of a Supply and any subject matter of a Supply, including the details of any Customer Systems, and any Supported Customer Systems, the scope any network or equipment to be supplied or installed, and the scope and configuration of any ICT Services to be provided as part of a Supply. Where any Quotation or Proposal is stated to be "subject to survey" or similar phrase, RDS shall be entitled to terminate this Agreement at any time until any and all surveys have been carried out and the Customer has agreed any consequences of such surveys, including under the following Clauses.

7.5 Site Preparation and Extra Engineering Costs

RDS shall not be obliged to Implement or Activate any Supply at or for any Location until: (1) RDS and each Supplier has visited and surveyed the Location to establish whether any Site Preparation is required; (2) such Site Preparation has been approved by the Customer; and (3) such Site Preparation has been carried out and completed by or to the reasonable satisfaction of RDS and each Supplier. Where any Site Preparation is determined by RDS or a Supplier to be required, then, at the sole discretion of RDS, either the Customer shall carry out the Site Preparation, or RDS or any Supplier may elect to carry out the Site Preparation as an Additional Supply for which the Customer shall pay an Additional Charge (also known as 'Extra Engineering Costs'), or a mixture of both. Following a survey, RDS and the Supplier will specify if and what Site Preparation is required for the Location, and the Additional Charge for such Site Preparation for it to be carried out by RDS or any Supplier. Any Charges quoted by RDS for Site Preparation, before any survey has taken place, are an estimate only and are subject to survey. A reasonable extension of time for performance of this Agreement shall be allowed if Site Preparation is required, to account for the time for survey and carrying out of the Site Preparation. The Customer shall procure that all Site Preparation is able to be carried out, including obtaining all rights of access to, alteration to, and licences to place and keep any equipment on, any part of a Location where such Site Preparation is required. If requested by RDS, the Customer shall pay the Additional Charge for any Site Preparation in advance of the Site Preparation being carried out. "Site Preparation" includes any preparation, changes, building, construction, engineering, modifications, additions, or other works to a Location or any Customer Systems, required, as determined by RDS or any Supplier, in their sole and absolute discretion, including to enable any Supplies to be delivered, installed, sited, provided or operated in accordance with this Agreement and with a minimum amount of work on the part of RDS and its Suppliers, including the provision and installation of conduits, wiring, power supplies and outlets, and a suitable environment for any Supplies, and including to make the Location safe to work at such as the removal of asbestos.

7.6 Condition Audit

Where any Supplies are to be provided in relation to any Supported Customer Systems or at or in relation to any Location, RDS shall not be obliged to commence any provision of such Supplies until it and each Supplier has visited and inspected such Supported Customer Systems and Location with a view to: (1) identifying the Supported Customer Systems and Location exhaustively and ascertaining their condition as at or around the relevant Effective Date; and (2) identifying whether there are conditions and circumstances which may affect the Supplies or impede their performance, or result in additional costs and expenses of providing the Supplies at such location are likely to be incurred than were assumed or would reasonably have been assumed by RDS in calculating any Charges. Where any additional Customer System is found which is of the same kind as the Supported Customer Systems, or any Supported Customer System is not found, or any Supported Customer System is found to be in a condition which would be excluded by this Agreement, or any or any such conditions, circumstances, costs and expenses are identified, then RDS may unilaterally make, as an Agreement Change to account for or rectify the same the same, including an appropriate addition or removal in relation to the Supported Customer Systems, and a reasonable increase to any Charges and reasonable Additional Charges.

7.7 Implementation Plan

(a) **Preparation**

RDS may determine a reasonable plan for Implementation of any Supplies, and the Customer shall co-operate with and assist RDS to draw up a reasonable plan for Implementation of any Supplies, prior to carrying out any Implementation or at any time during any Implementation. RDS may delay the provision of any Supplies until such plan is agreed or determined. Where asked to approve any plan, the Customer shall co-operate promptly and not unreasonably withhold or delay any approval.

(b) **Following**

The parties shall use reasonable endeavours to carry out all Implementation in accordance with any agreed or determined plan, as updated.

(c) **Early Performance**

Where RDS wishes to carry out any Implementation at any particular time, including earlier than provided for in any plan, then it may do so, and the Customer shall use reasonable endeavours to accommodate and comply with such request.

(d) **Customer Dependencies**

Each Implementation and any Supplies, and their time for commencement or performance, shall be subject to and conditional on: (1) the Customer performing its responsibilities and tasks, in accordance with any plan and this Agreement, including meeting any dependencies; and (2) the Customer not requesting changes to any Specifications. Accordingly RDS shall not be liable for any failures or delays caused or likely to be by such conditions not being met, and RDS be entitled to a reasonable extension of time for performance as a consequence of such conditions not being met, and to vary any plan accordingly.

(e) **Progress Reporting**

Each party shall on reasonable request keep the other updated as to the progress on those elements of any Implementation or associated plan for which it is responsible.

7.8 Acceptance and Go Live

The following terms shall apply where requested by RDS or where the Customer and RDS have agreed any acceptance testing as part of an Implementation:-

(a) **Conduct of tests**

Where RDS considers that any Supplies are complete, the Customer shall promptly carry out such reasonable testing of those Supplies and, as a customer is reasonably expected to be capable of carrying out, to verify that they conform to the requirements of this Agreement, and are ready for use. Where any tests are agreed RDS, the Customer shall also carry out those tests. Except to the extent covered by an Implementation Service, RDS may make a reasonable Additional Charge for any support, advice and assistance it may provide in relation to such tests.

(b) **Results of tests**

The Customer shall promptly confirm in writing the results of such tests carried out by it, and the Customer shall give RDS a reasonable opportunity to correct any non-conformities with the Agreement, and shall re-test the same.

(c) **Acceptance**

The Customer shall promptly on request confirm whether or not it accepts the Supplies are subject to testing, and if it does not accept the same, provide its full reasons for not doing so. The Customer shall not unreasonably withhold or delay acceptance of any Supplies if they materially comply with the requirements of this Agreement or if they substantially pass any tests agreed with RDS. If the Customer or Affiliate of the Customer commences using any Supplies in its business, or confirms or agrees that it is to commence using any Supplies in its business, it shall be deemed to have accepted them and acknowledges that they have passed all tests.

(d) **Consequence of Acceptance**

Where any Supply is accepted or deemed to have been accepted by the Customer, then the Customer shall not have any right to terminate this Agreement, or have the right to claim damages or any other remedy, with respect to any non-conformity of the Supply with the requirements of this Agreement that was or would have been revealed by any testing carried out by the Customer or by any testing that a reasonable customer would carry out to verify that the Supply conform to the requirements of this Agreement.

(e) **Go-Live**

The parties shall not unduly delay the commencement of use of the Supplies in the business of the Customer and its Affiliates, and shall document the date that this first occurred. If the commencement of use of any Supplies in the business of the Customer or its Affiliates requires any act or step to be taken by RDS, then RDS may withhold such act or step until the Supplies have been accepted.

8. PERFORMANCE OF THE SUPPLIES

8.1 Requesting Supplies and Helpdesk

Where any Supplies are provided in response to a report or other request from the Customer, then the Customer shall submit such report or other request to RDS using such methods and contact details as RDS may specify from time to time, or as may be specified in any other terms of this Agreement. Where specified by RDS, if any Supplies are provided in response to a request from the Customer, all such requests, including reports of malfunctions or other problems with any Supported Customer Systems, must be made via telephone, the internet or email to RDS's helpdesk using contact details which RDS will supply promptly on request. RDS will maintain a call logging system giving traceability of all issues reported to the Help-Desk. RDS may specify reasonable limits on who may contact RDS on behalf of the Customer with respect to this Agreement and the Supplies.

8.2 Method of performing Supplies

Except as otherwise agreed or stated in the other terms of this Agreement, RDS may deliver and perform the Supplies in such manner as it may unilaterally determine in its sole and absolute discretion, including by any of the following methods as determined by RDS which the Customer shall co-operate with:-

(a) **Telephone**

By telephone, including orally provided advice and instructions.

(b) **Email**

By e-mail, including emailed advice and instructions.

(c) **Remote Access**

By way of remote network access to the Customer Systems, or to any RDS Systems sited at a Location. This shall be by way of remote access software over the internet, or such other method as RDS may decide.

(d) **On-Site**

Where the Supplies cannot be provided remotely, then RDS will provide such Supplies by way of visit to any Location or other premises of the Customer (or its Affiliates or suppliers) or any premises where the Supported Customer Systems are located or installed. Except where expressly stated in this Agreement, the Base Charges to not include, and the Customer shall pay an Additional Charge for any such visit and any Supplies provided during such visit. The parties shall work together with a view to enabling the Supplies to be provided remotely wherever reasonably possible. Where any requirement for any Supplies (for example, a repair or adjustment to Supported Customer Systems) is discovered whilst an RDS representative is at any Location or other premises for any other reason,

then the RDS representative will use reasonable efforts, if possible and it has the time and equipment, to provide the same during such visit.

(e) **Transportation of equipment**

If any Supply (for example, a repair or adjustment to Supported Customer Systems) requires face to face access to any Customer System or other physical property, then RDS may require that the relevant Customer System or other property be transported to RDS's premises or those of a Sub-Supplier for the purposes of providing such Supplies, and unless otherwise agreed the Customer shall pay an Additional Charge for any such transportation and return of such Customer System or other property.

8.3 Normal Working Hours

Except as otherwise agreed between the parties under the terms of this Agreement, and except for any ICT Service, RDS shall have no obligation to provide any Supplies outside its Normal Working Hours on Working Days. Any service levels or timescales for delivery or performance (including response or resolution times) shall, if measured in hours or days, be deemed to be Normal Working Hours and Working Days only. RDS may make an Additional Charge for delivering or performing any Supplies outside its Normal Working Hours, including where requested by the Customer or where RDS reasonably decides that such Supplies need to be provided outside Normal Working Hours in the circumstances. If the Customer requests any Supply (including any report of a defect in or malfunction of any Supported Customer Systems) outside Normal Working Hours, then such request shall be deemed to be made at the beginning of Normal Working Hours on the next Working Day.

8.4 Service Levels

With respect to any Third Party Services and faults, outages, and problems with them, their remedy and resolution will be subject to the standard Reaction Times, service levels and other terms applied against RDS by the relevant Supplier, and references to any Reaction Time or other service level against any Third Party Service is to a Reaction Time or other service level of that Supplier. Reaction Times shall be considered targets which RDS will use reasonable endeavours to meet, but the Customer acknowledges and agrees that RDS gives no guarantee that the Reaction Times will be met. All Reaction Times shall be measured over Normal Working Hours, so that hours shall be Normal Working Hours, and days shall be Working Days. Where a response time is specified, a response means an acknowledgement of an issue, fault or problem reported, and where possible, an indication of how it will be managed, but a response time does not mean the time in which a fix, repair or resolution will be achieved. "Reaction Time" means any reaction time set out in the terms of this Agreement or otherwise, for dealing with any event or circumstance, including any time for any acknowledgement, response, investigation, fix or other action to be taken or work to be done

8.5 Location

(a) **Specified Location**

Where a Location is specified in the other terms of this Agreement for delivery or performance of the Supplies, RDS will deliver them to and perform them at that Location, and arrange for transportation accordingly. The Customer shall take delivery and accept performance of the Supplies immediately when it is tendered, and if the Customer refuses to do so, RDS may (at its option) leave any Supplied Equipment anywhere on or adjacent to the premises, and delivery will be deemed to have occurred, or return the Supplied Equipment back and make a reasonable charge for storage for each day until delivery is made, as an Additional Charge.

(b) **No Location Specified**

In any other case, the Supplies and this Agreement will be delivered and performed at such location, and by such method, as RDS may unilaterally decide in its sole and absolute discretion, including by way of remote network access to the Customer Systems. If RDS elects to deliver and perform the Supplies at any place other than RDS Premises, then RDS may make an Additional Charge for doing so. If RDS elects to carry out any inspection, maintenance, correction or repair, of any movable Supported Customer Systems at any RDS Premises, RDS may make an Additional Charge for the transportation of such Supported Customer Systems and any associated Replacement Equipment to and from RDS Premises.

(c) **Health and Safety**

RDS shall ensure that its representatives comply with all safety and security rules in force at any Location which are brought to the attention of such representatives by the Customer, provided that it shall not be liable if, as a result of such compliance, it is in breach of any of its obligations under this Agreement.

8.6 General time for delivery and performance

Each party shall use reasonable endeavours to deliver and perform this Agreement and the Supplies in accordance with any dates or times stated in the other terms of this Agreement (including in any relevant quotation or proposal) or otherwise within a reasonable time. Where any Service is a reactive service or call-off service, in determining a reasonable time account shall be taken of the severity of the impact which any delay in providing the Supply may have on the business and operations of the Customer and any Customer Associates. All stated dates and times for delivery and performance of this Agreement and Supplies are estimates only and time for delivery and performance of this Agreement or Supplies by RDS is not of the essence but RDS shall use reasonable endeavours to achieve any agreed timescales and to inform the Customer as soon as reasonably possible if any significant delay is expected and in any event within 14 days of it becoming aware that a significant delay is likely. RDS shall not be in breach of this Agreement for any non-performance or delay in performance of this Agreement or Supplies unless and until the Customer has given to RDS notice of the non-performance or delay and RDS has failed to perform within a further 14 Working Days following receipt of such notice. Where any action needs to occur or be carried out on the part of the Customer or a third party before any Supply can commence or be delivered or performed (e.g. a Supplier needs to deploy, install and go-live with any third party

interconnect or ICT Service), then any time for performance of this Agreement shall automatically be extended by the time taken for such action to be completed, but if that third party is a Supplier then

RDS will use reasonable endeavours to use any contractual rights it has to get the Supplier to perform such action.

8.7 Scheduling of performance

Performance of this Agreement will be scheduled, managed and carried out in accordance with RDS's and each Supplier's standard practices. At RDS's request, the Customer must co-operate with RDS to schedule all activities comprised in performance of this Agreement, and agree with RDS a reasonable plan for this, including a statement of the tasks of both parties, with dates for performance of those tasks. When RDS is ready to perform or supply any particular Supply, or carry out any particular action, that needs the involvement of the Customer (such as access to premises and taking delivery), then unless a specific date has otherwise been agreed, RDS may contact the Customer to agree the specific dates on which this is to take place, but in the absence of agreement RDS may determine these dates and times. If the Customer does not comply with any specific date or time for delivery or performance, or defers any such specific date or time, or RDS is unable to deliver or perform as a result of the Customer failing to do anything which is its responsibility under the terms of this Agreement or which it is reasonable for RDS to expect the Customer to do, RDS may make an Additional Charge consisting of: (1) a reasonable charge for any storage of any Supplies or materials which would otherwise have been delivered; (2) an Additional Charge for any wasted cost and expense incurred in relation to preparations made for delivery or performance (including bookings of staff, transport and equipment, and charges from Suppliers); and (3) an Additional Charge for any additional cost and expense incurred by RDS (including storage costs and charges from Suppliers).

8.8 Instalments

RDS shall be entitled to deliver and perform the Supplies in instalments.

8.9 Inspection

The Customer shall inspect the Supplies immediately following completion of delivery or performance, and RDS shall not have any Relevant Liability for any non-conformity, damage, defects, shortages or losses in respect of those Supplies discoverable on reasonable inspection unless the Customer notifies RDS of the same within 48 hours from the point of completion of delivery or performance. Except for what the Customer may have notified to RDS in the above period, the Customer shall be deemed to have accepted the Supplies after such 2 day period has expired.

8.10 Packaging

All packaging for any Supplied Equipment may be retained by RDS and must be returned to RDS if RDS so requests; but in any other case the Customer is responsible for the disposal of all packaging for the Supplied Equipment.

8.11 Risk

Risk in any Supplied Equipment shall pass to the Customer when it comes into the physical possession of the Customer. Risk in any Customer Systems shall at all times be and remain with the Customer. RDS shall not be liable for any theft, loss or damage to the Customer Systems unless caused by any negligent act or omission of RDS or its representatives.

8.12 Title

Title to any specific item of Purchased Equipment or Replacement Equipment shall pass to the Customer when the last of the following conditions is met: (1) that item has been delivered to the Customer, or in the case of Replacement Equipment which is a part, it has been fitted; (2) if Purchased Equipment, the Customer has paid RDS all Charges and VAT (including Charges for price, delivery and installation) for that item; (3) if Replacement Equipment, the Customer has paid RDS all Charges and VAT for the Services under which that item was supplied. Until such time, title to the Purchased Equipment or Replaced Equipment shall remain with and is reserved by RDS. Until title to any item of Purchased Equipment and Replacement Equipment has passed to the Customer: (1) the Customer is loaned that item only, and the terms of Clause 11.7(Loan Equipment) below shall apply to such item as if it were Loan Equipment; and (2) RDS shall be entitled to maintain an action for all Charges and VAT (including the price) even if title has not passed to the Customer. If the Customer rejects or otherwise returns any item of Purchased Equipment or Replacement Equipment then title to such item shall pass back to RDS immediately. If RDS supplies any Replacement Equipment in replacement for any item, then title to the item replaced shall pass to RDS immediately, so that all spare parts and replacement components removed shall become the property of RDS, unless otherwise agreed in the other terms of this Agreement.

8.13 Delivery receipt

The Customer shall sign any delivery or other note proffered by RDS or any representative to acknowledge receipt and completion of performance of any Supplies.

8.14 Legal Duties

RDS shall not be obliged to do or permit anything under this Agreement which would or is likely to cause RDS to be in breach of any law or regulatory rule or condition applicable to RDS. The Customer agrees that RDS shall be entitled, when required by law or regulatory rule or condition, to disclose to government agencies passwords, decryption codes, and any other information, without notice to the Customer. Where RDS is subject to any obligations or duties under any law, with respect to the usage of the Supplies by the Customer or any Customer Associates, including under the Communications Act 2003, and the Digital Economy Act 2010, then nothing in this Agreement shall prevent RDS from, and RDS shall be entitled to do anything necessary to comply with, such laws or regulatory rule or condition. Where there is any doubt, RDS may take such action without incurring any Relevant Liability to the Customer, until ordered by a court to do otherwise.

8.15 Monitoring

RDS shall be entitled to inspect and monitor from time to time all usage being made of the Supplies, including communications being sent and received and data being hosted and processed using any Supplies, to the extent reasonably necessary perform and verify compliance with this Agreement or comply with any law or regulatory rule or condition.

8.16 Suspension Right

RDS may unilaterally interrupt or degrade all or any of the Supplies if any of the following conditions applies: (1) if RDS or any Supplier is obliged to do so or needs to do so to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority; (2) to carry out any material repair, maintenance, upgrade or renewal of any RDS Systems; (3) in order to deal with and resolve any actual or suspected security breach, virus, emergency, or attack on RDS Systems or Customer Systems; (4) where RDS suspects that the Supplies may be being used fraudulently or illegally or in other violation of this Agreement; (5) in order to take any action that RDS or any Supplier reasonably considers necessary as a reasonable and prudent provider of the Supplies; (6) if any Supplier exercises any right of suspension, interruption, or degradation, it may have against RDS at law or under any contract with RDS for any Sub-Supplies other than due to breach or non-payment by RDS; (7) if the Customer materially breaches or RDS has reasonable grounds for suspecting, that the Customer or any Customer Associate may be materially breaching this Agreement; (8) if any Payment remains outstanding for 14 days after the due date for such Payment. Where the any suspension is due to any fault of the Customer, then RDS will give the Customer 7 days prior warning of any proposed suspension, unless RDS or any Supplier is at immediate risk of suffering liability. The Customer must continue to pay the Charges and all other Payments in full during and with respect to any period of suspension, interruption or degradation imposed by RDS. RDS will lift any suspension, interruption or degradation without undue delay, when the grounds for imposing it have been proven to not apply, have ceased or have been remedied RDS's reasonable satisfaction, or the suspected breach has been proven by the Customer not to have occurred. In the case of an overdue Payment, RDS will lift the suspension, without undue delay, after the Payment is made in full in cash or cleared funds. The lifting of any suspension and reinstatement of the suspended Supplies will be in accordance with any timescales of RDS or any the Supplier. Where the suspension, interruption or degradation is due to the fault of the Customer, RDS may make a reasonable Additional Charge for re-instatement and may as an Additional Charge re-charge any Supplier Charges incurred as a result of any such suspension or subsequent re-instatement. Where RDS suspends, interrupts or degrades any Supplies when it was not entitled under this Clause, then RDS will in any case not have any Relevant Liability to the Customer if such action was taken with reasonable grounds to suspect that a condition applies. This Clause and any action under it will be without prejudice to any party's rights to terminate this Agreement, which may still be exercised during or after any period of suspension.

8.17 Problems with the Supplies themselves

The Customer shall notify RDS promptly of any faults or problems or experienced with any Supplies, including any instances of Supplies not conforming to the terms of this Agreement ("Supply Faults"). The Customer shall provide full details of the Supply Fault, including any evidence or examples. The Customer shall give RDS a reasonable opportunity to investigate, diagnose and remedy any Supply Faults, including through re-performance of any Services. Where the Supply Fault relates to a Sub-Supply the investigation and rectification of the same shall be subject to the Supplier's standard fault handling procedures, service levels and working hours. For the avoidance of doubt, whilst RDS will use reasonable endeavours to rectify Supply Faults with its Infrastructure Sub-Suppliers, RDS will not have any Relevant Liability to the Customer with respect to Supply Faults of its Infrastructure Sub-Suppliers. RDS may have a Relevant Liability to the Customer with respect to Supply Faults if its Sub-Suppliers do not investigate, diagnose, or remedy the Supply Faults. RDS may elect to remedy any Supply Fault with any Sub-Supply by way of replacing that Sub-Supply with an alternative, which may incur a delay and interruption to enable migration. RDS may require that only reasonably skilled and competent IT staff of the Customer report and manage Supply Faults with RDS. If no Supply Fault is proved then RDS may make a reasonable Additional Charge for investigating, diagnosing and remedying the suspected Supply Fault. If any fault or problem is found to relate to any Customer Systems, and is not a Supply Fault, then the Customer shall be responsible for the investigation and remedy of that fault or problem. In the event of any disagreement between the parties as to the categorisation or severity of any Supply Fault, this may be determined by referral to an independent arbitrator appointed by the Centre for Dispute Resolution (CEDR), with the costs shared equally between the parties

9. CHARGES

9.1 Obligation to Pay

The Customer shall pay all Charges (including Base Charges and Additional Charges), VAT and other Payments specified in this Agreement, in accordance with the terms of this Agreement. The following rules in this Clause 9(CHARGES) shall apply except to the extent agreed otherwise in any other terms of this Agreement. Payment of such Charges, VAT and other Payments, and time for payment, shall be of the essence of this Agreement. If any Supplies are only partially completed for any reason, then RDS may make a reasonable charge for the Supplies delivered to date. Any Charges paid by the Customer are non-refundable, but this shall be without prejudice to any refund which the Customer may be entitled to for breach of this Agreement by RDS.

9.2 Taxes

Unless otherwise stated, all Charges are exclusive of VAT and all other taxes payable or chargeable by RDS in connection with the Supplies or Charges (other than taxes on the income of RDS, including taxes on the import of any Sub-Supplies or the export of any Supplies). Such VAT and other taxes shall be payable in addition by the Customer at the legally applicable rate, and may be invoiced at any time. If the Customer is required to make any withholding or deduction from any Payment to RDS for any reason whatsoever, including on account of any VAT or other taxes, then

the Payment shall be grossed-up so that RDS receives the same amount as it would have done had no such withholding or deduction occurred.

9.3 Periodic Charges

(a) Commencement

Where any Periodic Charge is stated for any Periodic Supply, then such Periodic Charge shall commence on the Activation Date or other date on which such Periodic Supply, and if more than one Supply is covered by the Periodic Charge, then on the Activation Date or other date on which the first of such Supplies commences.

(b) Pro-Rating

If any Periodic Charge or change to a Periodic Charge starts part way through the period for that Periodic Charge, then the amount of the Periodic Charge for that period will be a pro-rata amount of the full Periodic Charge according to how much of the period remains after such start. If any Periodic Supplies terminate part way through the period of a Periodic Charge, then, without prejudice to Clause 16.3 (Early Termination Charge - Periodic Supplies), the Periodic Charge for that period will be the full amount for the whole period, but without prejudice to any refunds to which the Customer may be entitled due to a breach of this Agreement by RDS.

(c) Continuation

The Periodic Charge for a period shall be the same as the Periodic Charge for the immediately preceding period, unless otherwise stated, and unless varied in accordance with a term of this Agreement.

9.4 Call and Usage Charges

All Call and Usage Charges shall be calculated using all associated tariff specific terms published by RDS and/or any the Supplier, including as to what is or is not included in any Periodic Charge, and by reference to data recorded or logged by RDS and any the Supplier, and not by reference to any data recorded or logged by the Customer. All Call and Usage Charges shall be calculated using the minimum units and rounding rules applied by RDS and/or any the Supplier from time to time.

9.5 Purchased Time Charges

Where for a particular One-Off Supply, the Customer has agreed to purchase or been quoted a specific amount of man-hours or man-days work from RDS ("**Purchased Time**"), as extended by agreement between the parties, then the Charge will be a Time and Materials Charge, but: (a) RDS's obligations in relation to that Supply shall be limited to providing the amount of work a reasonable person would expect RDS to be able to provide for the applicable Purchased Time, with no guarantee that the Supply will be completed within the Purchased Time, and so that RDS may stop work on that Supply once the Purchased Time has been used up; and (b) the Customer is only obliged to pay for the Purchased Time and any extensions agreed a by the parties. Once any Purchased Time has been consumed, then unless the parties have agreed an extension to that Purchase Time, the Customer shall pay an Additional Charge for any further work on that Supply on a purely Time and Materials Basis.

9.6 Fixed Charges

Where for a particular One-Off Supply this Agreement expressly states that the Charge is fixed, then, subject to this Clause and Clause 5.7 (Uncertain Scope), such Charge shall be fixed for what is covered by the Specification for that One-Off Supply only, except that: (1) if such Specification is not certain or complete as to what exactly the requirements are or how exactly the requirements are to be implemented, RDS may make a reasonable Additional Charge for all work reasonably required to fully and finally clarify and determine the same, and for all additional work which will reasonably need to be carried out to implement Specification as it is further clarified and determined, over what would be reasonable output of labour that could be reasonably expected to be purchased on the open market for the amount of the fixed Charge; and (2) if any change to the Specification is required by the Customer RDS may make an Additional Charge for all work reasonably required to clarify and determine the scope of the change, and for all additional work which will reasonably need to be carried out to implement that change.

9.7 Estimated and unstated Charges

Where any Charge is stated to be an estimate, it is only an approximate price, and any information given is only a general guide to the cost of the Supplies, which can be more or less than the estimate given. Where any Quotation or Proposal states that more costs may need to be incurred or similar language, then this means that the Charge is an estimate. Where the amount of a Charge is an estimate or is not stated, for instance it is an Additional Charge for which the amount is not stated, then the Charge shall be a reasonable charge in the circumstances, which may at RDS's option be calculated in whole or in part as a Time and Materials Charge.

9.8 Time and materials charges

Where any Charge is or is to be calculated on a time and materials basis, or to be a Time and Materials Charge, the amount of the Charge shall include: (1) the time of all labour reasonably and properly incurred by RDS, applying the Labour Rates; and (2) all costs and expenses (including costs of spare parts, materials, goods, services, Third Party Software and Third Party Materials) incurred, plus a mark-up of 15%, or applying any standard list prices of RDS at the time the Charge was incurred. RDS's labour time is measured in 15 minute increments and shall be rounded up to the nearest 15 minutes, and for each separate or discrete Supply calculated on a time and materials basis a minimum of 1 hours' time will be Charges, so that if RDS's labour time is less than 1 hour it shall be rounded up to 1 hour.

9.9 Travel Expenses

The Charges do not include, and RDS may make an Additional Charge for any out-of-pocket, travel, accommodation and subsistence costs incurred in by RDS where any representatives are to provide or perform any Supplies at any premises other than an RDS Premises.

9.10 Transport Costs

The Charges do not include, and RDS may make an Additional Charge for, any costs

of transporting any Supplied Equipment or Supported Customer Systems to or from any Location for any reason, including for the purposes of delivery, collection, or re-delivery, including costs of carriage, packing, insurance in transit, and export and import taxes.

9.11 Sub-Supplier Contingent Charges

If RDS incurs a charge from a Supplier which it would not have incurred but for any act or omission of the Customer or any Customer Associate, RDS may re-charge the same to the Customer as an Additional Charge.

9.12 Spare Parts

The Base Charges do not include the cost of any spare or replacement parts, including for any Supported Customer Equipment, and the Customer shall pay for all such spare or replacement parts at cost plus a 15% mark-up, as an Additional Charge.

9.13 Quantities

Where any Charge is based on a quantity, such as a number of end-users, or other metric, then: (1) any quantity stated in this Agreement shall be a minimum, so that if such quantity reduces, or the Customer does not use such quantity, the Customer shall still pay the Charges as if such reduction or lack use had not occurred, unless otherwise agreed as an Agreement Change; and (2) if the quantity increases, the Customer shall pay RDS's currently applicable unit rate for each unit of increase, at the time of increase, and such increase shall be the new minimum.

9.14 Exclusions

The Base Charges do not include anything excluded from the Base Charges or the Supplies by the terms of this Agreement or which RDS may do or supply in connection with anything excluded from or not expressly included in the Supplies under this Agreement, for which RDS shall pay an Additional Charge.

10. PAYMENT

10.1 Application

Except to the extent other payment terms are stated for any Charges in the other terms of this Agreement, the Customer shall pay all Charges and VAT strictly in accordance with the following terms. Payment and time for payment of all Charges is of the essence. If any invoicing point or time for payment is linked to the occurrence of any event or circumstance, and such event does not occur for any reason, other than a breach of this Agreement by RDS, then RDS may still invoice and payment shall still be made as if such event or circumstance had occurred at the time it would otherwise been expected to have occur.

10.2 Invoicing – Periodic Charges

Periodic Charges and VAT thereon are payable in advance of the period to which they relate. RDS may invoice any Periodic Charges and VAT thereon up to 30 days prior to the start of the period to which they relate or at any time thereafter. Where any Periodic Charge starts part way through the stated period for such Periodic Charge, then the amount payable for such part period may be invoiced at any time up to 30 days prior to such start date or at any time thereafter. Where any Periodic Charge is stated to be annual, RDS may alternatively, at its option, invoice in monthly instalments. Where a period for a Periodic Charge is a month, then RDS may at its option each select the "month" to be a calendar month, or to base the month on the day of the month on which the Activation Date fell. Where a Proposal or Quotation states that a single one-off payment is to be made up front or similar language for a Periodic Supply, this means that the total of the Periodic Charges for the Initial Period for that Periodic Supply may be invoiced in advance at the start of that Initial Period, and for any continuation thereafter, RDS may invoice in annual, quarterly or monthly instalments as determined by RDS.

10.3 One-Off Charges

RDS may invoice any One-Off Charges at such times as RDS may determine, and up to 30 days in advance of the Supplies to which they relate being commenced, or the circumstances to which they relate occurring, or at any time thereafter. If any One-Off Charges are Time and Materials Charges or expenses Charges then RDS may, at its option, invoice at the end of each calendar month for all labour, costs and expenses incurred in that calendar month.

10.4 Invoicing method

RDS may issue its invoices by post, fax or email. If RDS wishes to issue an invoice by email, the Customer shall specify the email account to be used on request, or RDS may use the Customer's email address for notices or any email address of the Customer stated in any other terms of this Agreement.

10.5 Invoicing errors and delays

If RDS by mistake or in error issues an invoice which is an undercharge or omits to issue an invoice for any Charges at all, RDS may subsequently issue an invoice for the under or un-invoiced Charges at any time up to 6 years after the date the original invoice was issued or could first have been issued by RDS, and no such undercharge or failure to charge, shall constitute a waiver of the Charges.

10.6 Time for payment of invoices

RDS's invoices and demands for Payments shall be paid within 30 days of date of invoice or demand.

10.7 Cash Payment Only

No Payment shall be considered to have been paid unless and until it has been received by RDS in full, in cash or cleared funds.

10.8 Payment Method

Unless otherwise agreed, all Payments shall be made by bank transfer to such bank account as RDS may nominate from time to time, or by such other method as RDS holds itself out as accepting for the purposes of this Agreement from time to time. Where "DD" or "Direct Debit" is specified for any Charge or other Payment, then: (1) Customer must pay such Payment (including any taxes) by Direct Debit; (2) the Customer must promptly provide all necessary bank account information to RDS; (3) the Customer must promptly sign, set up and maintain for as long as any Payments are or may become due under this Contract, all necessary authorisations (including any forms requested by RDS), to enable RDS to collect Payments by

Direct Debit, and to enable the RDS to specify the amount of the Payments from time to time when collecting the Payments; and (4) RDS may carry out any Payment collection within the payment period for such Payment specified in this Agreement; and (5) RDS may make an Additional Charge, specified by RDS from time to time (of at least £5), per Payment made by the Customer by any other method other than Direct Debit.

10.9 Chargebacks

If any Payment received by RDS is subject to a charge back or otherwise reversed, without the agreement of RDS, and other than where the Customer was legally entitled to such refund under this Agreement, then this shall be considered to be a repudiatory breach of this Agreement by the Customer, title to all Purchased Equipment and Replacement Equipment shall pass immediately back to RDS, and Clause 8.12 shall apply again.

10.10 Currency

All Charges and VAT shall be paid in the currency in which they are stated by RDS in its invoice. If no currency is stated, all Payments shall be made in pounds sterling.

10.11 Allocation of payments

RDS may allocate any payment received from the Customer to such debt (under this Agreement or any other contract) as RDS may decide, and any statement from the Customer as to which debt a payment relates to shall not be binding on RDS.

10.12 No Set-Off

The Customer shall pay all Payments without any set-off, deduction, withholding, or counter-claim, including on account of any tax.

10.13 Non-Payment

If the Customer fails to pay any Payment by its due date, including where such Payment, then: (1) the Late Payment of Commercial Debts (Interest) Act 1998 shall apply to such Payment, which shall be deemed to be a "qualifying debt" under that act; (2) RDS shall be entitled to suspend its performance of this Agreement, and any licences granted under this Agreement, until such amount is paid, and RDS shall have a reasonable time to re-commence performance after such suspension once such payment has been made; (3) RDS shall be entitled to terminate this Agreement under Clause 15.4(Non-Payment); and (4) the Customer shall indemnify RDS against all fees, costs and expenses incurred by RDS (including court, legal and expert fees), in claiming, enforcing and collecting such Payment from the Customer.

11. CUSTOMER GENERAL OBLIGATIONS

11.1 Assistance

The Customer shall permit RDS to do what RDS reasonably considers it needs to do to provide the Supplies and perform this Agreement, to exercise any rights under this Agreement, to investigate any actual or suspected faults or problems, to investigate and remedy any complaints or claims and to provide any remedy in respect of any breach of this Agreement or any other Relevant Liability, and to monitor and verify the Customer's compliance with this Agreement. The Customer shall provide the following without undue delay where RDS requests the same and reasonably considers that it needs the same for such purposes:-

(a) Information

any information, documentation, and data relevant to the Supplies, including relating to any Location, the Supported Customer Systems or any other Customer Systems and their application and use, any environment, any suspected fault or problem, and any events or changes relevant to the Supplies;

(b) Instructions

any instructions, confirmations, and agreements from the Customer; and RDS may rely on any instructions, confirmations, and agreements given by any representatives of the Customer, whether orally or in writing, in relation to this Agreement or Supplies, as being given with the authority of the Customer;

(c) Co-operation

assistance and co-operation, including cooperation in relation to the investigation, diagnosis and correction of any faults, and including the provision of individuals to receive any Supplies and support and facilitate the provision of any Supplies at any Location;

(d) Physical Access

safe physical access to all Locations and all Supplies and Supported Customer Systems, at such times as RDS may require, and shall (1) provide staff to facilitate such access; (2) make all necessary arrangements to enable RDS to access such premises with no inconvenience or additional cost, including with its vehicles, and to enable RDS to bring any things on to or take away anything from such premises; (3) provide all facilities reasonably required by RDS at such premises, including power, and including use of desks, offices, printing facilities and internet connections; (4) obtain any permissions from any third parties to access, install equipment on, and make alterations to any Locations; (5) prepare such Locations in accordance with RDS's reasonable requirements, including to enable the Supplies to be provided with a minimum of inconvenience or additional time or cost, such as by taking up or removing any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, and providing a suitable environment and power supplies; and (6) take all such steps as may be necessary to ensure the safety of any RDS representatives who visit any Location;

(e) Remote Access and Tools

remote administrator access(including remote desktop access) via a network to any RDS Systems located at any Location and to any Supported Customer Systems (and any other relevant Customer Systems), including all

appropriate log-ins, and the ability to install use, install, operate, and maintain on the RDS Systems and Supported Customer Systems (and any other relevant Customer Systems) such software and monitoring tools as RDS may determine from time to time to provide the Supplies, and the ability for such tools to operate, collect data, and send this to RDS. For example, software imaging may be used to ensure speed of deployment and consistency of set-up and operation. The method of connection between the Customer Systems and RDS's systems shall be as reasonably decided by RDS, such as by remote access software over the internet, or by way of any other network connection.

11.2 Supported Customer Systems

(a) Care and usage

With respect to any Supported Customer Systems, the Customer shall: (1) keep them at the Location specified in the terms of this Agreement; (2) keep them in a suitable environment, and in accordance with any recommendations of RDS or any Supplier; (3) ensure that they are used in a proper manner by competent trained users only, or by persons under their direct supervision, in accordance with any instructions and recommendations of RDS or any Supplier; (4) ensure that they are not operated with any other equipment or software that may interfere with or have a detrimental effect on it in the reasonable opinion of RDS; (5) take good care of them, and ensure that they are kept in a suitable environment (with external covers or housings in place); (6) install and allow to be installed any Updates to any Supported Customer Systems; (7) allow RDS to inspect them and provide all agreed Supplies in relation to them, as and when required by RDS; (8) report to RDS promptly any visible or apparent deterioration in the performance or condition of them, and any collisions with anything else, and whether or not such collisions result in visible damage; (9) maintain any Customer Systems Agreements in relation to them; and (10) except to the extent provided by RDS as part of the Supplies, if they are to be connected to a network to telecommunications service, provide all apparatus to comply with all the network or telecommunications service provider's requirements and, at its own expense, arrange the provision of any network to telecommunications service provider equipment especially required for the Customer's purposes.

(b) Modification

The Customer shall promptly inform RDS of anything (including any change) that occurs in relation to any Supported Customer Systems. The Customer shall not, nor permit or allow any person other than RDS and its representatives, to maintain, service, update, repair, adjust, tamper with, remove, replace, or alter any Supported Customer Systems (other than portable appliance testing), without the consent of RDS in writing. If RDS gives such consent, or such work is carried out with or without such consent:

(1) the Customer shall ensure that such work is carried out to a good standard, in accordance with any manufacturer recommendation, any applicable code of practice or legal standard, and with reasonable care and skill; (2) RDS shall have the right to inspect the quality of any such work done against the foregoing recommendations and standards; (3) if in the opinion of RDS the work done does not meet the foregoing recommendations and standards, the Customer shall permit RDS to repeat, rectify and correct such works with a view to meetings such recommendations and standards, for which an Additional Charge shall be paid by the Customer; and (4) if in the opinion of RDS the work done does not meet the foregoing recommendations and standards, and RDS is not permitted to rectify the work above, RDS shall be entitled, at its option, to remove such Supported Customer Systems from this Agreement.

(c) Out of Support

If any Supported Customer System or version of it ceases to be supported by any manufacturer or producer of the same, including where it is declared out of support, or because the Customer did not maintain or renew any Customer Systems Agreement, then RDS may suspend or terminate the Services for that Supported Customer System or version. If any producer or manufacturer reduces the level of support available for any Supported Customer System or version of it then RDS may reduce the Services under this Agreement accordingly.

11.3 Customer Systems Generally

Except to the extent such activity forms part of the Supplies under this Agreement, but only so far as is reasonably appropriate in connection with the Supplies and the performance of this Agreement, and only so far as the Customer Systems are used with, is connected to or may affect any Supplies, the Customer shall: (1) procure and maintain all Customer Systems and all associated licences for the same; (2) ensure that all Customer Systems comply with the relevant specifications provided by RDS from time to time and are compatible with the Supplies; (3) ensure that all Customer Systems are maintained in good repair, condition and working order, and that all network connections and telecommunications links from the Customer Systems to RDS Systems are provided and maintained; (4) ensure that all Customer Systems are available for RDS to carry out testing, diagnosis and fault resolution; and (5) ensure that the Customer Systems have installed and operated on them appropriate anti-virus, firewall and other software to protect the security of the Customer Systems, which is kept up to date with an on-going subscription service; and (6) promptly inform RDS of and consult with RDS concerning any changes or proposed changes it wishes to make, or starts planning to make, affecting such Customer Systems (including changes to, addition to or replacement of software, hardware, or networks or communications systems, or moving to any new location). Updates and changes to any Supported Customer Systems or the Supplies, or any element of them, may from time to time necessitate the upgrade, enhancement to or replacement of the Customer Systems, including to enable any Update to operate correctly, such as a later

version of any operating system. In this case, the Customer must procure and implemented such upgrades, enhancements or replacements of the Customer Systems, and RDS shall be entitled to charge an Additional Charge for any services with respect to any such upgrade, enhancement or replacement work of the other Customer Systems if RDS agrees to provide the same as an Additional Supply.

11.4 Customer Systems Agreements

(a) Details

The Customer shall provide to RDS full details and copies of all Customer Systems Agreements in force from time to time (and all variations to them). For each element of the Supported Customer Systems, the Customer shall procure from and maintain with each producer or manufacturer of the same a licence, support, maintenance, and warranty agreement for the term of the associated Supplies under this Agreement.

(b) RDS Agency

Where the Supplies envisage or provides that RDS will arrange or exercise rights under any Customer Systems Agreement, the Customer hereby authorises, and shall ensure that any Customer Associate authorises, RDS to enter into and exercise such rights under such Customer Systems Agreement, as agent for and on behalf of the Customer and/or Customer Associates, and shall confirm such authority in writing on request.

(c) Customer Role

The Customer shall ensure that each counter party under a Customer Systems Agreement shall accept, deal with and co-operate with RDS as the Customer's representative for the purposes of the Supplies and Supported Customer Systems. The Customer shall be responsible for managing, maintaining, complying with, enforcing and paying all amounts payable under each Customer Systems Agreement, and if RDS does any of the same, whether as part of the Supplies or otherwise, then the Customer shall pay an Additional Charge to RDS for doing so, and shall reimburse RDS all amounts paid under the Customer Systems Agreement.

(d) No liability of RDS

RDS shall have no Relevant Liability to the Customer for any breach of a Customer Systems Agreement by the counter party to it, and RDS does not guarantee or give any promise as to the quality, description, standard or performance of, and excludes any implied terms in relation to, anything supplied under a Customer Systems Agreement. The Customer shall indemnify and keep RDS indemnified from and against any and all claims, losses, costs, proceedings, claims, actions, damages and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by RDS arising out of or in connection with any Customer Systems Agreement.

11.5 Backups

Except to the extent covered by the Supplies, the Customer shall ensure that: (1) all Customer Data (including any processed in any Customer Systems, and including any software forming part of the Customer Systems) is fully and frequently backed up; (2) reasonable backup schedules for the Customer Data are in place and are working; (3) equipment used to store or maintain backups of Customer Data is stored in a safe, secure place; (4) threats to security of the Customer Data are taken seriously and appropriate measures put in place to reduce the risk of loss, damage (malicious or otherwise), corruption or theft of Customer Data and back-ups; (5) passwords are used for access to the Customer Data and Supported Customer Systems, and if written down, are securely stored and looked after; (6) only authorised staff have access to the Supported Customer Systems; (7) backups of the Customer Data are kept off site, either on physical media or via the web, in the event of flood, fire, or other physical damage to the premises; and (8) access to backups is given to RDS when required.

11.6 Systems

(a) The Customer shall use all RDS Systems and Supplies with reasonable care and skill.

(b) RDS shall use the Customer Systems and Supplies with reasonable care and skill.

11.7 Loan Equipment

(a) Care

In relation to any Loan Equipment, the Customer shall: (1) only use the Loan Equipment for its internal business purposes, and where it is supplied to access or use any other Supply, then only for such purposes; (2) provide a suitable environment for the Loan Equipment in accordance with RDS's and any Supplier's reasonable recommendations; (3) operate the Loan Equipment in accordance with any applicable instruction manuals, with trained competent staff; (4) not itself and not allow any other person to modify, service, maintain or repair the Loan Equipment, and allow RDS to do so on request without undue delay, for which RDS may make an Additional Charge as an Additional Supplies where such work is not covered by any other Supplies; (5) keep the Loan Equipment at all times at the Location at which RDS delivered or installed it, and the Loan Equipment can only be moved to another place with the written approval and/or supervision of RDS; (6) not part with possession or control of the Loan Equipment, or purport to sell the Loan Equipment, or allow a lien or encumbrance to be created over it, or allow it to become a fixture; (7) permit RDS at any time on demand to inspect the Loan Equipment, and to carry out any repair, maintenance or adjustments to the Loan Equipment; (8) ensure that all notices of ownership of the Loan Equipment remain on it; and (9) allow RDS to replace the Loan Equipment at any time, which replacement shall become the Loan Equipment.

(b) Loss or Damage

If any Loan Equipment is lost, stolen, confiscated, damaged or destroyed at any time after completion of delivery to the Customer until completion of collection by RDS, for any reason (other than the negligence of RDS or its representatives), then the Customer shall promptly notify RDS, and shall pay

to RDS, as an Additional Charge any one or more of the following as RDS may demand: (1) the cost of repair of the Loan Equipment; (2) the cost of replacing the Loan Equipment with a new replacement; (3) the costs the recovery of such Loan Equipment, including transportation; and (4) the cost of the provision, transportation and installation of any replacement for the Loan Equipment.

(c) Recovery

On expiry or termination of this Agreement or loan at any time, on the occurrence of any breach of this Clause 11.7, or if the Customer suffers an Insolvency Event, or any amount under this or any other agreement between the parties becomes overdue, RDS's consent to the Customer's use and possession of the Loan Equipment shall terminate, and the Customer shall return the Loan Equipment to RDS on demand. The Customer irrevocably licences RDS (and its authorized representatives) to enter onto any premises (with or without vehicles) where for the purposes of inspecting, locating or repossessing the Loan Equipment.

11.8 Obtain licences

The Customer shall obtain and shall maintain and comply with the terms of all licences, consents, and permissions necessary for RDS to deliver and perform the Supplies and this Agreement, except for any licences which RDS is expressly to procure or grant as part of the Supplies, provided RDS has advised Customer of the need for such Licence, consent or permission.

11.9 Passwords

The Customer is responsible for management of all passwords issued to it or created by it in connection with the Supplies, and shall be responsible for any use and misuse of such passwords, or any fraud committed using such passwords, unless by RDS or its representatives.

11.10 Acceptable Use Policy

The Customer shall comply with any Acceptable Use Policy, and acknowledges that its capacity, bandwidth and access may be restricted from time to time in accordance with any such policy, and in any event where determined by RDS or any Supplier, to ensure that all customers have a fair and reasonable share of available bandwidth and capacity. "Acceptable Use Policy" means any policy or terms published by RDS or any Supplier from time to time concerning the acceptable, fair and/or prohibited use of any Services, as such policies may be unilaterally changed from time to time by RDS or any Supplier.

11.11 No Misuse

The Customer shall be answerable for all use made of the Supplies and the content of all Customer Data processed using the Supplies, including by any Affiliate of the Customer and any other Customer Associate, but expressly excluding i) the use of the Supplies; and ii) the content of all Customer Data processed using the Supplies; by RDS and any Supplier. The Customer shall not and shall ensure that no other person within its reasonable control shall use the Supplies for or in connection with: (1) sending, receiving or publishing any indecent, offensive, obscene, defamatory or otherwise unlawful materials; (2) sending or receiving any unsolicited email, advertising or promotional material; (3) violating any law, rule or regulation; (4) the commission of any offence or crime; (5) downloading, sharing, transmitting or publishing content that infringes the rights of others, including without limitation, any Intellectual Property Rights of third parties; (6) any fraud (including using or attempting to use the Supplies with the intent of avoiding payment by any means or device); (7) any activity which does or is likely to result in RDS or any the Sub-Supplier having any liability to a third party, incurring any fine or penalty, committing any offence, or suffering damage to a reputation. RDS shall not and shall ensure that no other person within its reasonable control shall use the Supplies for or in connection with: (1) sending, receiving or publishing any indecent, offensive, obscene, defamatory or otherwise unlawful materials; (2) sending or receiving any unsolicited email, advertising or promotional material; (3) violating any law, rule or regulation; (4) the commission of any offence or crime; (5) downloading, sharing, transmitting or publishing content that infringes the rights of others, including without limitation, any Intellectual Property Rights of third parties; (6) any fraud (including using or attempting to use the Supplies with the intent of avoiding payment by any means or device); (7) any activity which does or is likely to result in Customer or any Customer Associate having any liability to a third party, incurring any fine or penalty, committing any offence, or suffering damage to a reputation. This provision is of the essence of the Agreement, and a breach of this Clause, however minor, shall be deemed to be a repudiatory and material breach of the Agreement.

11.12 No-Resale of Supplies

All Supplies shall only be used for the internal business purposes of the Customer, and any Affiliates of the Customer expressly authorised by this Agreement. Except to authorised Affiliates of the Customer, and except for any Purchased Equipment or Replacement Equipment, the Customer shall not be entitled to resell any of the Supplies provided under this Agreement, or use any Supplies as a bureau service or allow any third party to use or receive the benefit any Supplies, and all Supported Customer Systems shall only be covered by the Supplies if they are solely and exclusively used by the Customer and any Affiliates of the Customer expressly authorised by this Agreement.

11.13 Customer Associates

The Customer shall ensure that all Customer Associates shall comply with the obligations of the Customer under this Agreement, and all acts and omissions of the Customer Associates shall be deemed to be acts and omissions of the Customer. The Customer shall indemnify and hold harmless RDS against any and all claims made by and liability which RDS may have to any Customer Associate, together with all cost and expenses (including all legal costs) incurred in handling, defending and settling any claims in respect of any such liability.

11.14 Non-Solicitation

Neither party shall whilst any Supplies under this Agreement are incomplete or are continuing Solicit the employment or engagement in any capacity of any Employee

of the other party, except for general untargeted recruitment advertising. Neither party shall whilst any Supplies under this Agreement are incomplete or continuing Engage any Employee of the other party, except where resulting solely from general untargeted recruitment advertising. Neither party shall for a period of 180 days after all Supplies under this Agreement have been completed and/or terminated Solicit the employment or engagement in any capacity of any Employee of the other party. Neither party shall for a period of 180 days after all Supplies under this Agreement have been completed and/or terminated Engage any Employee of the other party. If any of the events prohibited above occurs in relation to an Employee, and that Employee leaves the employment of RDS or Customer as relevant then the party in default shall pay to

the other an amount equal to £10,000, within 14 days of written demand, representing what the parties agree is a reasonable estimate of the costs and expenses of recruiting and training a replacement. For the purposes of this Clause: (a) an "Employee" means, at any given time, any individual who is an officer or employee of either party, who is or has at any time been involved in the negotiation, management or performance of this Agreement, and whose identity has been provided to or who has had any contact with the other party in the course of the negotiation, management or performance of this Agreement; (b) "Solicit" includes (without limitation) solicit, procure, entice, induce, or endeavour to achieve, either on its own account, or on behalf of any other entity, and in any capacity whatsoever; and (c) "Engage" means, to enter into, or communicate an offer or enter into, a contract for employment of or services.

11.15 Personal Data

11.16 The Customer warrants that to the best of its knowledge any processing of data relating to individuals as part of the Supplies by RDS, in accordance with the terms of the Agreement, will not result in RDS incurring any liability to the individual who is the subject of the personal data or any civil or criminal action, fine or penalty.
NOT USED

11.17 Customer responsible for follow up action

It is the responsibility of the Customer to decide whether to implement, and to actually implement, the following ("Remedial Measures"): (1) any measures, recommendations, or advice given by RDS as part of the Supplies; and (2) any measures against, and measures to mitigate, reduce or eliminate, cyber security and other risks, weaknesses or concerns identified in or as a result of any Supplies. RDS and its representatives do not give, accept or assume, and expressly exclude and disclaim, any obligation, warranty, promise, responsibility, remedy, duty of care or liability (including, without limitation for negligence and negligent misstatement) whatsoever for or in relation to: (1) any failure to implement, or the quality of any implementation of, any Remedial Measures, recommendations, or advice; or (2) any loss or damage suffered or incurred by the Customer or any other legal entity as a result of any failure to implement, or the quality of any implementation of, any Remedial Measures.

11.18 Customer Dependencies

This Agreement is dependent on any information (including answers and data) which is provided to RDS in connection with this Agreement or the Supplies being accurate, complete and a correct response to any question or request from RDS, including any information provided by or on behalf of the Customer and Customer Associates. In addition, any inaccurate, incomplete or incorrect information, may result in RDS not seeking further information which it would have done had the information given been accurate, complete and correct. RDS and its representatives do not give, accept or assume, and expressly exclude and disclaim, to or in relation to the Customer and all Customer Associates, any obligation, warranty, promise, responsibility, remedy, duty of care or liability (including, without limitation for negligence and negligent misstatement) whatsoever: (1) for or in relation to any inaccurate, incomplete or incorrect information being provided to RDS; (2) for or in relation to any consequence of inaccurate, incomplete or incorrect information being provided to RDS; or (3) to verify any information provided to RDS.

12. DATA CONFIDENTIALITY AND SECURITY

12.1 Confidentiality

The Recipient undertakes to keep confidential the Confidential Data of the Discloser.

12.2 Permitted use of data

Subject to the next sentence, the Recipient is permitted to use, but shall only use, the Confidential Data of the Discloser to the extent reasonably required for the internal business purposes of: (1) exercising excising its rights under this Agreement; (2) performing, administering, enforcing, and dealing with disputes relating to this Agreement; (3) administering its business and that of its Affiliates; and (4) where the Recipient is the Customer, using the Supplies in accordance with the terms of this Agreement and any applicable licences. In the case of Confidential Data which is Personal Data, the Recipient shall only process the same in accordance with the reasonable instructions of the Discloser, and, in the case of RDS, processing as envisaged by the Supplies shall be deemed to be instructions of the Discloser.

12.3 Data Security

Except where a different standard is stated in the other terms of this Agreement, the Recipient shall take appropriate technical and organisational measures against unauthorised or unlawful processing of, and against accidental loss or destruction of, or damage to, the Confidential Data of the Discloser. Having regard to the state of technological development and the cost of implementing any such measures, such measures must ensure a level of security appropriate to the harm that might

result from such unauthorised or unlawful processing or accidental loss, destruction or damage, and the nature of the data to be protected.

12.4 Non-Disclosure

The Recipient undertakes not to supply or make available the Confidential Data of the Discloser to any third party, except that the Recipient is permitted to supply or make available such Confidential Data to the following persons, if they need to know the same for the purposes of doing anything which is reasonably connected to the permitted use under Clause 12.2, and if they are bound, at the time of such supply or making available, to a contractual or legal obligation in relation to such Confidential Data to keep the same confidential: (1) any representative of the Recipient, including any Supplier; (2) any Affiliate of the Recipient; (3) any auditor, financier, insurer or professional advisor; and (4) any person with the consent of or at the instruction of the Discloser.

12.5 Publicity

RDS may publicise the fact that it has been engaged by the Customer to provide the Supplies and is licensed to copy and reproduce any logos of the Customer for this purpose.

12.6 FOIA

(a) Relevant Definitions

"FOIA" means the Freedom of Information Act 2000. "EIR" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the UK Information Commissioner or relevant government department in relation to such regulations.

(b) RDS's Assistance

Where the Customer is subject to the requirements of the FOIA and the EIRs, RDS shall do the following, for which RDS may make an Additional Charge: (1) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs; (2) transfer to the Customer all requests for information under FOIA or EIR relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt; (3) provide the Customer with a copy of all information belonging to the Customer requested in the request for information which is in RDS's possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such information; and (4) not respond directly to any such request for information unless authorised in writing to do so by the Customer.

(c) Disclosure of Commercially Sensitive Information

RDS acknowledges that the Customer may be required under the FOIA and EIRs to disclose information (including information which is commercially sensitive to RDS) without consulting or obtaining consent from RDS. The Customer shall take reasonable steps to notify RDS of a request for information under FOIA or EIR to the extent that it is permissible and reasonably practical for it to do so and shall take reasonable steps to apply any available exemptions, including any exemptions for commercially sensitive information.

12.7 Exclusions from confidentiality

Except in relation to Personal Data which the Recipient is processing on behalf of the Discloser as data processor, the provisions of Clauses 12.1(Confidentiality), 12.2(Permitted use of data), 12.3(Data Security), and 12.4(Non-Disclosure) shall not apply to, and no legal duty of confidentiality shall apply to, any Confidential Data which: (1) is or comes into public knowledge, other than through a breach of this Agreement of the Recipient or any person to whom the recipient discloses the Confidential Data under Clause 12.4(Non-Disclosure); (2) can be shown by the Recipient to the reasonable satisfaction of the Discloser to have been known by the Recipient and to be at its free disposal before disclosure by the Discloser; (3) comes lawfully into the possession of the Recipient from a third party who is free to make a non-confidential disclosure of the same, without any obligation of confidentiality being imposed upon the Recipient in respect thereof by such third party; (4) is required by law or court order to be disclosed; or (5) is necessarily disclosed in connection with any legal proceedings relating to this Agreement.

12.8 Return

Subject to the other terms of this Clause 12, on termination or expiry of this Agreement or any Supplies, howsoever occurring, the Recipient shall within a reasonable time securely erase all copies of the Confidential Data of the Discloser held or controlled by it, relating to this Agreement or such Supplies as the case may be, and shall confirm on request that this has been done. The Recipient may keep a copy of the Confidential Data of the Discloser where and so long as it reasonably needs to keep such copy for evidential, tax and other legitimate purposes, or to perform any surviving or continuing obligations under this Agreement, provided that it shall confirm on request at any time what Confidential Data it is retaining and for how long. If RDS is processing any Customer Data as part of the Supplies, then, for an Additional Charge, RDS will provide a copy of such Customer Data to the Customer, or enable the Customer to date a copy of such Customer Data, provided that if no request is made within 30 days RDS may proceed to erase the Customer Data.

13. INTELLECTUAL PROPERTY

13.1 Ownership

All IPR in and to RDS Data, RDS Systems, Supplies is acknowledged and agreed by the Customer to be and remain the sole and absolute property of RDS, its Affiliates, and their representatives. All IPR in and to the Customer Data is acknowledged and agreed by the Customer to be and remain the sole and absolute property of the Customer and Customer Associates.

13.2 No Transfer

Each party agrees that no IPR or property in any IPR is, is intended to be, or shall

be transferred or assigned (whether expressly or by implication) under this Agreement.

13.3 No Licence

Except as provided an express term of this Agreement, each party agrees that no licence with respect to any IPR is, is intended to be, or shall be granted under this Agreement, and all implied licences are hereby excluded.

13.4 Customer Licence

The Customer hereby grants to RDS a non-exclusive, non-transferrable (except as part of a permitted assignment of this Agreement), royalty free licence to copy and modify the Customer Data for the purposes specified in Clause 12.2(Permitted use of data), and warrants that it has the right to grant such licence.

14. TUPE AND EMPLOYEES

14.1 Definitions

In this Clause:-

"**Assumed Employees**" means any Relevant Employee who is specifically listed or identified as being an Assumed Employee in the other terms of this Agreement, and who enters the employment of a New Employer;

"**Existing Employee**" means, in relation to a party, any individual who is at the Effective Date of this Agreement, or who was or becomes at any time (whether before or after the Effective Date of this Agreement), an employee of an Existing Employer;

"**Existing Employee Representative**" means any trade union, employee association, works council or other relevant body, organisation or person(s) representing any Existing Employees or of which any Existing Employee was a member;

"**Existing Employer**" means any person other than a New Employer, including: (a) the Customer; (b) any Affiliate of the Customer; (c) any representative of the Customer or any Affiliate of the Customer; or (d) any third party who provides or provided any services to the Customer or any Affiliate of the Customer;

"**New Employer**" means RDS,;

"**Non-Assumed Employees**" means any Existing Employee other than an Assumed Employee;

"**Transfer Time**" means the point in time that the contract of employment of any Existing Employee transfers to a New Employer; and

"**TUPE Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006, and any other law applicable to either party which has or may have the effect of transferring a contract of employment or any liabilities or obligations owed to an employee from one person to another.

14.2 Employee Liability Indemnity

The Customer shall indemnify and hold harmless New Employer from and against: (a) the Relevant Employment Liabilities (as defined below); (b) the cost of performing and satisfying the Relevant Employment Liabilities and any judgements in respect of the Relevant Employment Liabilities; and (c) any costs (including court fees, professional fees, legal costs, and VAT thereon) awarded against or suffered or incurred by it in relation to any claim made against it with respect to or alleging any Relevant Employment Liability and the defence of any such claim, whether or not such claim is valid. The Customer shall also indemnify and hold harmless RDS against any liability which RDS may assume or have assumed in contract or by way of deed to any New Employer in respect of any of (a) to (c) above. The "**Relevant Employment Liabilities**" are the following, and all claims, costs, expenses and liabilities in relation to or resulting from the same, and so that each of the following sub-Clauses shall apply without prejudice to any of the other sub-Clauses below:-

(a) Employment by Existing Employer

the employment or the termination of the employment of or alteration to the terms of employment of any Existing Employee by an Existing Employer, at any time, whether before or after the Effective Date of this Agreement;

(b) Salary of Existing Employees

any salary, remuneration, wage, expense, national insurance contribution, tax, sick pay, maternity pay, bonus or commission, pension contribution, retirement benefit, cost of any life assurance and hospital scheme or arrangement, any cost or liability in respect of holiday, and any cost of performing a contract of employment (together the "**Employee Costs**") payable to or incurred in respect of any Existing Employee, EXCEPT for any Employee Costs in any relation to any Assumed Employee that relate to any period during which the Assumed Employee is an employee of a New Employer;

(c) Transferred Duties and Liabilities

all duties, obligations, claims and liabilities (whether statutory or otherwise) which are transferred to a New Employer (or for which a New Employer is made jointly or severally liable) by the TUPE Regulations, and any breach of such duties or obligations by an Existing Employer or a New Employer, including duties, obligations, and liabilities to or in respect of an Existing Employee or under or in connection with, or for breach of, any contract of employment of any Existing Employee, and including any duties, obligations or liabilities owed to any Existing Employee Representative or under any collective agreement or associated order relating to any Existing Employee, EXCEPT FOR any Employee Costs in any relation to any Assumed Employee that relate to any period during which the Assumed Employee is an employee of the New Employer;

(d) Transferred Acts and Omissions

any act or omission which is deemed to have been an act or omission of the New Employer under the TUPE Regulations, and any duty, obligation or liability arising as a result of such act or omission, including any act or omission of or in relation to: any employer of an Existing Employee in respect of any Existing Employee, a contract of employment of an Existing

Employee, or an Existing Employee Representative, or a collective agreement or associated order relating to any Existing Employee;

(e) Deemed dismissals

any liability for redundancy payment, unfair dismissal, or wrongful termination, or other liability, to any Existing Employee, where any contract of employment of that Existing Employee is treated as having been terminated by the TUPE Regulations, or the Existing Employee is treated as having been dismissed under the TUPE Regulations;

(f) New Employer redundancies

any costs and expenses of carrying out any redundancy process, and any redundancy payments payable to any Non-Assumed Employee, or any employee of the New Employer, where such employee's employment contract is terminated for redundancy, and such redundancy is for an economic, technical or organisational reason reasonably resulting from or connected with the transfer of the contracts of employment of any Non-Assumed Employees to RDS;

(g) RDS Dismissal of Non-Assumed Employees

any liability for unfair dismissal or wrongful termination to any Non-Assumed Employee, where the contract of employment of such Non-Assumed Employee is terminated sooner than 90 days after such Existing Employee become an employee of a New Employer;

(h) Liabilities to Existing Employee Representatives

any duty or obligation owed by the Existing Employer or a New Employer to, and any liability of any Existing Employer or a New Employer to any Existing Employee Representative, including any duties, obligations and liabilities owed under a collective agreement or associated order, any liability for breach of any foregoing duty or obligation (whether committed by the Existing Employer or RDS);

(i) Compliance

any breach by any Existing Employer of any duties or obligations under the TUPE Regulations, and any duties and obligations which a New Employer has under the TUPE Regulations, EXCEPT FOR obligations to consult with any Existing Employee Representative in respect of the actual or potential transfer of the Assumed Employees.

14.3 Re-Employment of Non-Assumed Employees

If the contract of employment of any Non-Assumed Employee transfers to a New Employer: (1) the Customer agrees that in consultation with RDS, it will, within seven days of being so requested by RDS or New Employer, make to such Non-Assumed Employee, an offer in writing to re-employ such Non-Assumed Employee under a new contract of employment, and shall not withdraw such offer until the Non-Assumed Employee as confirmed whether he or she accepts or declines such offer; (2) the Customer agrees that the offer under sub-Clause (1) above will be such that the provisions of the new contract as to the capacity and place in which the Non-Assumed Employee will be employed, and as to the other terms and Standard Terms of his or her employment, will not differ from the corresponding provisions of his or her contract of employment that transferred to the New Employer; and (3) upon that offer being made to and accepted by a Non-Assumed Employee, RDS will enable the Non-Assumed Employee to resign from his or her employment with the New Employer with immediate effect to take up such offer of re-employment.

14.4 Compliance with TUPE Regulations

The Customer agrees that it shall comply with and has (where it should have done so at any time) complied with its duties and obligations under the TUPE Regulations promptly, including to supply information to and consult with RDS, any New Employer and/or any Existing Employees or Existing Employee Representatives. RDS agrees that it will give, and will arrange for the New Employer to give, to the Customer such information at such time as is required by section 13(4) of the TUPE Regulations.

15. EARLY TERMINATION FOR CAUSE

15.1 Material Breach

Without prejudice to Clause 15.4, a party shall be entitled to terminate this Agreement if the other party commits a material breach of this Agreement, and, if such breach is remediable, fails to remedy such breach within thirty (30) days of notice of such breach. For the purposes of this Clause, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to any time for performance which is not of the essence.

15.2 Persistent Breach

Without prejudice to Clause 15.4, a party shall be entitled to terminate this Agreement if the other party 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.

15.3 Insolvency

A party may terminate this Agreement if any of the following events occurs in relation to the other party (or if a partnership, any partner of such partnership): (1) it ceases or threatens to cease to carry on business or operations; (2) it is made bankrupt or enters into bankruptcy; (3) it passes a resolution for or commences winding-up, liquidation or dissolution (otherwise than for the purposes of solvent amalgamation or reconstruction); (4) a court order is made to give it protection or postponement against any of its creditors or relief from any of its debts; (5) it makes any arrangement or composition with any of its creditors; (6) a liquidator, administrator, administrative receiver, receiver or security holder, is appointed over or takes possession of any of its assets or undertaking; (7) any creditor (whether or not a secured creditor) takes possession of, or levies distress, execution or enforcement or some other process upon, or asserts a lien over, all or

part of the property, assets or undertaking of it; or (8) a petition is presented, legal action is commenced, resolution is passed or notice is given to achieve any of the above in relation to it; or (9) any equivalent or similar event occurs in relation to it in any other jurisdiction in the world.

15.4 Non-Payment

If the Customer fails to pay any Charge or VAT which is payable under this Agreement within 30 days after the due date for payment under this Agreement, then RDS shall be entitled to terminate this Agreement, and the Customer shall be deemed to be in repudiatory breach of this Agreement.

15.5 Terms associated with termination

The rights to terminate this Agreement given by this Clause 15 shall not prejudice any other right of either party to terminate this Agreement. Where a party has a right to terminate this Agreement with immediate effect, that party may instead specify the date on which termination is to take effect. Where the Customer rejects any Supplied Equipment the Customer, the Customer's shall not be entitled to terminate this Agreement in relation to any other Supplies, which shall remain in full force and effect.

16. CONSEQUENCES OF TERMINATION

16.1 Termination of Supplies

On termination of this Agreement, all Supplies (including all licences granted by RDS) shall cease, subject to Clause 16.2.

16.2 Cessation of Periodic Supplies

Where this Agreement expires or terminates, or where any specific Periodic Supplies expire or are terminated for any reason, the affected Periodic Supplies which are Services which actually terminate on the soonest date that RDS is able to practically cease the Periodic Supplies, which may be after the contractual expiry or termination date, and the Customer shall continue to pay all Charges up to the time of such practical cessation.

16.3 Early Termination Charge - Periodic Supplies

If any Periodic Supply terminates or is terminated before the end of any applicable Initial Period, for any reason, other than a valid termination of this Agreement by the Customer under Clause 15, and when this Clause is applied by any other term of this Agreement, then the Customer shall pay to RDS: (1) the Charges already invoiced in respect of such Periodic Supply; (2) an amount equal to 100% of Charges which would have been or payable had such Periodic Supply continued up to the earliest point they could have been terminated under this Agreement without cause (being at least the end of the Initial Period), less a discount of 4% for early payment, plus VAT, within 30 days of written demand.

16.4 Early Termination Charge - One-Off Supplies

16.5 If this Agreement or any Supplies are terminated, for any reason other than a valid termination of this Agreement by the Customer under Clause 15, and there are any One-Off Supplies that have not been completed, then RDS shall be entitled to be paid the Charges which would have been payable for such One-Off Supplies if they had been completed

16.6 Migration Support

16.7 On termination of any Periodic Supplies by either party, for any reason, other than a valid termination of this Agreement by RDS for cause under this Agreement RDS will, if requested before or within 14 days after such termination, provide as an Additional Supply, a reasonable service, subject to these Standard Terms including the provisions related to payment, to assist the Customer to migrate from the Periodic Supplies to a replacement supplier. For the avoidance of doubt, this Additional Supply will be chargeable. Notwithstanding the foregoing, where the Customer terminates for cause in accordance with Clause 15.1 or 15.2, RDS will provide the migration service set out in this Clause 16.5 without charge except for Additional Supplies which are required to supplement the migration support which will be chargeable as an Additional Charge.

16.8 Accrued rights and obligations

Termination of this Agreement or any Supply shall not affect any accrued liabilities, rights or obligations or liability of the parties as at the date of termination or arising as a result of termination or any circumstances giving any right to terminate.

16.9 Survival of Terms

16.10 Termination of this Agreement shall not affect the following Clauses, which shall continue in full force and effect without limit of time: 9(CHARGES), 10(PAYMENT), 11(CUSTOMER GENERAL OBLIGATIONS), 12(DATA CONFIDENTIALITY AND SECURITY), 13(INTELLECTUAL PROPERTY), 14(TUPE AND EMPLOYEES), and 16(CONSEQUENCES OF TERMINATION) to 21(MISCELLANEOUS).

17. EXCLUSION AND LIMITATION OF SUPPLIER'S LIABILITY

17.1 Scope of liability to which this Clause applies

References to any "Relevant Liability" in this Agreement mean any liability (of any nature) of RDS and any remedy against RDS: (1) under or for breach of this Agreement (including contractual negligence); (2) for any tort (including non-contractual negligence and negligent misstatement) connected with this Agreement or a Supply, including for breach of any duty of care connected with the Agreement or a Supply; (3) under or for breach of any legislation or statutory duty in connection with this Agreement or a Supply; (4) for any misrepresentation connected with this Agreement or a Supply; (5) under or for breach of any common law, including any common law duty, connected with this Agreement or a Supply; (6) vicariously for the acts of any agents or sub-contractors of RDS connected with this Agreement or a Supply; (7) in restitution or to pay restitution damages connected with this Agreement or a Supply; and (8) of whatever nature (whether or not already covered by the foregoing, and under whatever jurisdiction) in respect of any event, circumstances, fact, act or omission connected with this Agreement or a Supply. References to a "cause of action" include any act, omission, event, incident, circumstance, or fact which comprises, is the basis of, or gives rise to any Relevant Liability. References to "connected with" include for breach of, under a term of, in connection with, arising in relation to, or arising in the course of performance of.

17.2 Liability not excluded or limited

RDS does not limit or exclude any Relevant Liability to the Customer: (1) for fraud

or fraudulent misrepresentation; (3) to refund any Charges for breach of the implied terms as to title under Section 12 of the Sale of Goods Act 1979 or Section 2 and 7 of the Supply of Goods and Services Act 1982; (4) for death or personal injury caused by negligence; and (5) for deliberate breach of confidence under Clause 12.1(Confidentiality). RDS does not limit or exclude any Relevant Liability to the Customer to the extent that the governing law of this Agreement does not permit such limitation or exclusion.

17.3 Liability excluded entirely

Subject to Clause 17.2, RDS's Relevant Liability to the Customer for the following is excluded entirely, including where direct or indirect, foreseeable or unforeseeable, and each item shall be separate and severable : loss of bargain; loss of profits; loss of revenue; loss of anticipated savings; loss of contract; loss of production; loss of custom; loss of reputation; loss of business; loss of opportunity; loss of goodwill; loss of use; loss of production; business interruption; liability to a third party (except in respect of those reasonable costs or charges relating to the cost of migrating to a new Sub-Supplier that are necessitated by RDS terminating its relationship with a Sub-Supplier or Infrastructure Sub-Supplier for reasons relating to their failure to provide a satisfactory standard of service provided that the Customer provides RDS with satisfactory evidence of any such reasonable costs or charges that it incurs); liability for all causes of action in which RDS's liability is due to the action or inaction of an Infrastructure Sub-Supplier; extra costs; incidental costs; wasted cost; reliance costs; increase costs of working; wasted administration, management and staff time; and fines and civil penalties. RDS's Relevant Liability to the Customer for all indirect, special, incidental, punitive or consequential loss or damage, and for all loss or damage which was not reasonably foreseeable, is excluded entirely. In this Clause 17.3, subject to applicable law and Clause 21.7, RDS shall be solely responsible for determining whether or not the standard of "reasonable", "satisfactory" or "sufficient" has been attained.

The Customer's liability to RDS for the following is excluded entirely, including where direct or indirect, foreseeable or unforeseeable, and each item shall be separate and severable : loss of bargain; loss of anticipated savings;; loss of production; loss of reputation;; loss of goodwill; loss of use.

17.4 Financial limits on liability

(a) Property Damage Cap

Subject to Clause 17.2, the Relevant Liability of RDS to the Customer for all incidents of theft of and loss or damage to the tangible property of the Customer or of any third party occurring in any calendar year shall be limited to £1,000,000 for each of the following cases (so that each case shall be construed as a separate and severable limit): (1) for all such incidents in aggregate; (2) for all such incidents in aggregate which are based on at least one common fact or finding of fact; and (3) for each individual such incident.

(b) On-Time Supplies

Subject to Clause 17.2, the Relevant Liability of RDS to the Customer in connection with a Discrete Supply shall be limited to 100% of the Charges for such Discrete One-Off Supply for each of the following cases (so that each case shall be construed as a separate and severable limit): (1) for all causes of action in aggregate; (2) for all causes of action in aggregate which are based on at least one common fact or finding of fact; and (3) for each individual cause of action. A "Discrete One-Off Supply" means each One-Off Supply which has its own Charge, and so that if a group of One-Off Supplies are covered by a common Charge, then all such Supplies shall be considered to be a Discrete One-Off Supply. This Clause shall not apply to the type of loss covered by Clause 17.4(a).

(c) Periodic Supplies

Subject to Clause 17.2, the Relevant Liability of RDS to the Customer in connection with any Discrete Periodic Supply shall be limited in each calendar year to 100% of the Periodical Charges payable for such Discrete Periodic Supply with respect to that calendar year in each of the following cases (so that each case shall be construed as a separate and severable limit): (1) for all causes of action occurring in that calendar year in aggregate; (2) for all causes of action occurring in that calendar year in aggregate which are based on at least one common fact or finding of fact; and (3) for each individual cause of action occurring in that calendar year. A "Discrete Periodic Supply" means each Periodic Supply which has its own Charge, and so that if a group of Periodic Supplies are covered by a common Charge, then all such Periodic Supplies shall be considered to be a Discrete Periodic Supply. This Clause shall not apply to the type of loss covered by Clause 17.4(a).

(d) Overall Cap

Subject to Clauses 17.2 and 17.3, all Relevant Liability of RDS to the Customer shall be limited to £500,000 for each of the following cases (so that each case shall be construed as a separate and severable limit): (1) for all causes of action in aggregate; (2) for all causes of action in aggregate which are based on at least one common fact or finding of fact; and (3) for each individual cause of action in aggregate. This Clause shall not apply to the type of loss covered by Clause 17.4(a).

(e) Customer Cap

Subject to clause 17.2, all liability of Customer to RDS shall be limited to £500,000 in each of the following cases (so that each case shall be construed as a separate and severable limit): (1) for all causes of action in aggregate; and (2) for each individual cause of action. Nothing in this clause 17.4 (e) shall limit any liability on the part of the Customer to make a Payment to RDS.

(f) General Claims limitation periods

RDS shall have no Relevant Liability with respect to any cause of action which has not been the subject of a claim notified by the Customer to RDS within the sooner of the following as applicable: (1) the period set out in Clause 8.9(Inspection); (2)

in the case of Supplied Equipment, 90 days from delivery; (3) 180 days of when the Customer first had knowledge of any fact on which the cause of action is based; and (4) in any case, 2 years from when the first of the facts occurred on which the cause of action is based.

17.5 Mitigation

Both parties shall have a duty to mitigate all loss and damage for which the other party is liable for.

17.6 Application of limitations

Each stated exclusion and limit on our liability to you shall be separate and severable, and shall be applied independently of, and in parallel with, each other exclusion or limit, so that if any exclusion or limit shall exclude or limit any liability to a greater extent than another, it shall take precedence. If RDS has any Relevant Liability to any Customer Associate, then the amount of such Relevant Liability

shall count towards and reduce the financial limits and caps on Relevant Liability under Clause 17.4(Financial limits on liability). In the case of multiple claims of Relevant Liability of RDS to the Customer or any Customer Associate, then RDS shall be entitled to determine the order in which such claims are satisfied.

17.7 Insurance

During the Term of this Agreement, RDS shall take out and maintain insurance policies to the value sufficient to meet its liabilities under this Agreement. Upon Customer's reasonable request, RDS will provide the Customer with evidence that such insurance is in place.

18. RELIEF EVENTS

18.1 Limitation of RDS's responsibility

The Supplies do not include, and RDS shall not be obliged to carry out, any investigation, diagnosis, fixing, repair, rectification, remedy, resolution, or correction of any Relief Event or anything caused by a Relief Event. RDS shall not be in breach of this Agreement or have any Relevant Liability to the Customer for any delay in performance, defective performance, interruption, hindrance, reduction in capacity, degradation or non-performance of this Agreement or any Supplies, or for any loss or other consequence whatsoever, to the extent directly or indirectly caused wholly or partly by any Relief Event. The Customer shall be responsible for and assume the risk of all loss or damage caused by and all consequences of any Relief Event. The Customer acknowledges that RDS cannot guarantee the availability of any Supplies or Supported Customer Systems or any other Customer Systems or that it will not be subject to a Relief Event.

18.2 Relief Event

Each of the following is a "Relief Event": (1) any event of force majeure, act of god, or event beyond the reasonable control of RDS; (2) war, threat of war, terrorism, riot, rebellion, civil commotion, public demonstration, blockade, or sabotage; (3); (4) strikes, lock-outs and industrial disputes, not involving RDS's or any Supplier's employees; (5) lightning, storm, flood, drought, or other adverse weather; earthquake or other natural disaster; electrical power surges, fire or explosion; (6) any theft, loss, damage, malfunction, breakdown, interruption, non-availability, fault, error, degradation or failure of any software, systems, networks, services, equipment, plant or machinery whether of the Customer or any third party, including Customer Systems; (7) any circumstances or conditions at any Location or in relation to any Supported Customer Systems or other Customer Systems, which are different to when such Location or Customer Systems was inspected before any Supplies and Charges were agreed, or which were not reasonably discoverable by the scope of inspection carried out before any Supplies or Charges were agreed, or were not known to RDS and were not reasonably foreseeable; (8) shortages or delayed availability of or unavailability of any resources, including of fuel, utilities, goods, labour, parts, equipment and raw materials; (9) the act of any government or government authority; (10) loss of or interruption to power or other utilities; (11) (12) any breach, delay in performance, failure to promptly perform, or non-performance (for any reason) of the Customer's obligations under this Agreement by the Customer or any Customer Associate, or any tasks assigned to it under any plan for performance of this Agreement, and any failure of the Customer to give prompt and proper instructions when requested or to authorise any repair or other work, any other act or omission of the Customer any Customer Associate, and any change to any Customer Systems not previously agreed with RDS; and (13) failure or exhaustion of consumable items, including ribbons, cartridges, and batteries.

18.3 Rights of RDS

If any Relief Event occurs, RDS unilaterally may do any one or more of the following, at its sole discretion, exercisable by notice to the Customer: (1) remove any Supported Customer Systems from this Agreement and the Supplies; (2) suspend any Supplies which are affected by a Relief Event for so long as they continue to be so affected, and/or extend or vary the dates and time for delivery and performance of such Supplies; (3) if agreed with the Customer, or unilaterally for Relief Events under Clause 18.2(Relief Event), undertake any investigation, diagnosis, inspection, repair, rectification, replacement, clean-up, and other work that is a consequence of a Relief Event and to rectify or resolve a Relief Event, for which RDS may make an Additional Charge; (4) if a Relief Event makes the provision of the Supplies more costly than would have otherwise been the case, or causes any additional costs to RDS, unilaterally vary the Charges or make an Additional Charge, to recover such increase or additional cost; (5) for Relief Events under Clause 18.2(Relief Event), charge to the Customer any additional or wasted costs and expenses of performing this Agreement and providing the Supplies caused by the same, as an Additional Charge; (6) make reasonable amendments to this Agreement and the Charges as a consequence, which the Customer shall not unreasonable withhold agreement to; and (7) if RDS reasonably considers that it will not be able to substantially continue or complete performance of this Agreement or any particular Supplies as a result of a Relief Event, or such performance is substantially prevented for more than 30 days due to a Relief Event, RDS may terminate this Agreement or such Supplies without liability to the Customer. If RDS is able to perform some but not all of its contracts or obligations (with the Customer or third parties) as a result of a Relief Event, RDS may decide which contracts and obligations to perform, and in what order, and all such contracts or obligations shall be deemed to be subject to Relief Event until RDS elects to commence performing them.

19. CONTRACT VARIATION

19.1 Changes to Technology and Supplier

Provided that the Supplies are not materially and adversely affected, RDS shall be entitled, at any time and from time to time, to change the technology it uses for, and any Supplier from whom it obtains, any Supplies, and to temporarily suspend those Supplies to enable such change to be implemented.

19.2 Changes to rates

RDS shall be entitled to unilaterally vary its Labour Rates, and any other tariffs or

rates stated in this Agreement (including those used to calculate any Call and Usage Charges or Charges based on quantities) at any time and from time by such amount as RDS may determine in its sole and absolute discretion. Such variation may occur without notice to the Customer, except that for Labour Rates for which specific figures are stated in the other terms of this Agreement, or for which specific figures have been provided to the Customer to apply any particular Additional Supply, for which a variation to Labour Rates can only occur on agreement between the parties. For any labour on any given day, the Labour Rates applicable on that day shall be applied.

19.3 NOT USED

19.4 Changes in law

Where any law, regulatory rule or condition, or standard applicable to RDS, Customer, Customer Associate or Supplies, Customer Systems, changes, such that the scope of the Supplies changes or needs to change or RDS's costs and expenses in providing the Supplies changes or need to change then the parties shall work together in good faith to agree any variation..

19.5 NOT USED

20. NOTICES

20.1 Requirements

Any notice under this Agreement shall not be valid unless it complies with the following terms: (1) the notice shall be in writing; (2) the notice shall be served by delivery in person, fax, email, pre-paid first-class post with signed-for or recorded delivery; and (3) the notice shall be sent to the registered office of or last known principal place of business of the other party, or to the postal address, fax number, or email address of the other party stated in this Agreement to be its address for notices, or if no address for notices is given, to any place of business of that party or fax or email number published by that party. A party may at any time specify or change its address for notices at any time by notice to the other party.

20.2 Deemed Service

Any notice under this Agreement, if correctly addressed, shall be deemed to have been served and received as follows: (1) if delivered personally, at the time it is handed over in person to any representative of the other party; (2) in the case of fax, at the time of successful completion of transmission to the recipient's fax machine; (3) in the case of e-mail, at the time of successful completion of delivery to the mail server of the intended recipient, even if it does not get transferred to the recipient's mailbox or the recipient does not subsequently access their mailbox; (4) in the case of first class post with signed-for or recorded delivery, on the second Working Day following the day of posting.

20.3 Other Communications

If RDS sends any invoice, or a party sends any other communication, using any method and address specified above for notices, then such invoice or other communicate shall be deemed to be received in the same way as any notice sent using such method and address.

21. MISCELLANEOUS

21.1 Transfer of this Agreement by the Customer

The Customer shall not, and shall not be entitled to, transfer, assign, charge, declare a trust over or otherwise dispose of this Agreement or any benefits, rights or obligations under this Agreement, without the prior written consent of RDS. RDS will not unreasonably withhold consent to an assignment of the benefit of this Agreement to any person who is acquiring all or substantially all of the business and assets of the Customer, at the same time as such acquisition, subject to such terms as RDS may reasonably require, including the recording of such an assignment in a novation agreement.

21.2 Transfer of this Agreement by RDS

RDS shall be entitled to transfer, assign, charge, declare a trust over or otherwise dispose of this Agreement or any debts, benefits, rights or obligations under this Agreement, without the prior written consent of the Customer.

21.3 Sub-contracting and delegation by the Customer

The Customer shall not, and shall not be entitled to, sub-contract or delegate the exercise or performance of any of its rights or obligations under this Agreement.

21.4 Sub-contracting by RDS

RDS may exercise and perform its rights and obligations under this Agreement through any agents or sub-contractors of RDS appointed by it in its absolute discretion for that purpose, but RDS shall remain responsible for the obligations to be performed by any agent or sub-contractor.

21.5 No agency or partnership

Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties, or make any party the agent of the other, except that RDS shall be the agent of the Customer where expressly or impliedly part of the Supplies.

21.6 Waiver

If a party allows the other party extra time to perform this Agreement, or waits

before enforcing this Agreement, the first mentioned party may still require performance of or enforce this Agreement at a later time and at any time. No omission or delay on the part of a party in exercising any right, power or privilege under this Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under this Agreement.

21.7 Severable terms

Each of the provisions of this Agreement is separate and severable. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, or is deemed by any law to be void or unenforceable in whole or in part, such provision shall be deemed to be amended in the minimum way that will it valid and enforceable, and the remainder of this Agreement shall continue in full force and effect.

21.8 No third party rights

This Agreement shall not benefit or be enforceable by any person other than the RDS and the named Customer, whether under this Agreements (Rights of Third Parties) Act 1999 or otherwise, except that Clause 14(TUPE AND EMPLOYEES) shall be enforceable by RDS, its Affiliates, and Suppliers.

21.9 Variation

Except as otherwise stated in this Agreement, no variation of this Agreement is effective unless it is made in writing and is signed by duly authorised representatives of each party.

21.10 Rights Cumulative

The rights and remedies of RDS contained in this Agreement are cumulative and shall be in addition to every other right or remedy provided by law or otherwise.

21.11 Interpretation

In the terms of this Agreement: (1) references to any gender include every gender; (2) references to the singular include the plural and vice versa; (3) references to any statute or other legislation includes all instruments, orders, notices, regulations, directions and other secondary legislation made, issued or given under it or deriving validity from it, and includes any future amendment, replacement or re-enactment of all or part of such statute, legislation, or secondary legislation, for the time being in force; (4) references to any person include individuals, partnerships, companies and other bodies corporate, and government officers and bodies; (5) references to "include" or "including" shall be read as being followed by the words "(without limitation)"; (6) headings are for convenience only and shall not affect interpretation; (7) any reference to a Clause shall be to a clause of these Standard Terms, unless otherwise stated; (8) reference to a "representative" in relation to any person means any employee, director, agent, licensor to, supplier to, contractor of, or sub-contractor of, that person, and any representative of such representative; (9) "writing", and any similar expression, includes email, facsimile transmission and comparable means of communication; (10) references to a "month" shall be to a calendar month, unless the month is expressed to start on a date other than the 1st of a calendar month, in which case a month shall be period running from (and including) that date to (but excluding) the same date in the next calendar month (or if that date does not exist, to (and including) the last day of that next calendar month); (11) a reference to "software" means any materials representing an instruction to a computer, including any applications, code, libraries, programs, applets, components, macros, objects, assemblies, executables, functions, algorithms, database queries, procedures, and table designs, and any CSS, HTML, XML, or other mark-up, in each case whether in source code, byte-code, object code form, and whether compiled or interpreted, and all materials which are resources used by that software; and (12) a reference to "materials" includes any text, audio, video, image, graphic, design, drawing, photograph, software, data, information, ideas, advice, reports, and other works, in any form or format whatsoever.

21.12 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this agreement by (a) fax or (b) e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. Where counterparts are used, this Agreement shall become legally binding when each party has executed a counterpart and delivered it to the other. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart within 7 days of request. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

21.13 Governing Law

This Agreement, and any cause of action, dispute or claim arising out of or in connection with this Agreement or its subject matter, including non-contractual causes of action, disputes and claims, shall be governed by, and construed in accordance with, the law of England and Wales.

21.14 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction in relation to any cause of action, dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation, including non-contractual causes of action, disputes and claims. The Customer agrees that any judgement obtained in a court of England and Wales may be enforced against it in any other jurisdiction in the world.

END OF STANDARD TERMS

Schedule 1: Support and Maintenance

The following companies are entering into support and maintenance agreement as per the terms and conditions above, for the purpose of this Agreement such list to be updated from time to time by mutual agreement between the parties in writing.

1. Customer – INSERT NAME
2. Monthly support and maintenance £ INSERT + VAT for the period of INSERT months.