

TERMS AND CONDITIONS OF SUPPORT

GENERAL TERMS AND CONDITIONS OF SUPPORT

1.0 INTERPRETATION AND APPLICATION OF TERMS

The definitions and rules of interpretation in this Clause 1.0 apply in these Terms.

- 1.1 These General Terms and Conditions of Support are the terms and conditions on which the Services will be provided to Customer. Any terms and conditions specific to the Services offering are set-out in the Specific Terms and Conditions of Support (Schedule 1) of these Terms.
- 1.2 Unless expressly stated to the contrary, all defined terms in these Terms shall have the meaning set out in Clause 1.10 (Definitions and Interpretations) of these Terms.
- 1.3 Clause headings are included for convenience only, have no legal effect and shall be ignored when constructing these Terms.
- 1.4 References to Clauses are to the clauses of the General Terms and Conditions of Support of these Terms, references to Paragraphs are to the paragraphs of the Specific Terms and Conditions of Support as set-out in Schedule 1 of these Terms.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- 1.6 In the event of any conflict among the terms and conditions of a Contract, the following order of precedence shall be observed:
- 1.6.1 the applicable Support Service Quotation or T&M Offer;
- 1.6.2 the Specific Terms and Conditions of Support (as set-out in Schedule 1) of these Terms;
- 1.6.3 the General Terms and Conditions of Support of these Terms;
- 1.7 Company and Customer may hereinafter individually be referred to as "Party" and collectively as the "Parties".
- 1.8 For the avoidance of doubt the Parties agree that any document that purports to amend the terms of these Terms, a Support Service Quotation, a Support Service Order, a T&M Offer or a T&M Order and which is not in compliance with these Terms or the Contract (including without limitation any Purchase Order or Purchase Order confirmation or similar document that carries terms not expressly included in these Terms or the Contract) shall be of no effect.
- 1.9 Company may revise these Terms from time to time by changing it on Company's website. By continuing to purchase Services Customer accepts the terms and conditions of these Terms. It is Customer's responsibility to check the Terms each time Customer places a Purchase Order for Services. These Terms were last updated on 21 October 2020.
- 1.10 Definitions:

Account	means the account created for Customer with Company for invoicing purposes;
Advance Hardware Replacement	means a spares management service providing replacement Parts to Customer for supported Equipment before the Faulty Part is returned.
Support SLA	means the service levels set out in each Support Service Order that apply to the performance of the relevant Support Services or relevant parts thereof;
Business Day	means Monday to Friday, excluding UK bank and other UK public holidays, unless otherwise agreed in writing;
Case	is the term used to identify any request logged on Company's incident management system for Customer;
Charges	means the fees (recurring and/or non-recurring) for the Services;
Company	means Prodec Networks Limited, a company registered in England and Wales (Registration No. 03645275) and having its registered office at Unit 7, The Pavilions, Ruscombe Business Park, Ruscombe, Reading, RG10 9NN;
Confidential Information	means all information (in whatever format) designated as such by either Party together with such information which relates to the business, affairs, networks, products, developments, trade secrets, know-how, security information and personnel of either Party and which may reasonably be regarded as the confidential information of the disclosing Party;
Contract	means a Support Service Order or T&M Order;
Start Date/End Date	means the dates specified in the Equipment List from which Customer's entitlement to receive the Support Services for a given piece of Equipment shall commence and cease;

Customer	means the customer entity identified on the Contract;
Deliverable	means a tangible or intangible good or service produced by Company for Customer.
Equipment	means those units, components or sub-assemblies referred to in the Equipment List(s) for which the Support Services will be provided;
Equipment List	means the list of Equipment defined in a Support Service Order;
Faulty Part	means the part of the Equipment identified as faulty and replaced by a Part supplied by Company;
Field Service Engineer	means the Company assigned engineer who will execute the Onsite Support and/or T&MW;
Good Industry Practice	means the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier or operator engaged in a similar undertaking to Company under the same or similar circumstances;
Hours of Cover	means the hours during which Customer is entitled to receive Support Services and is detailed in the Equipment List of the applicable Support Service Order;
Incident	means the event causing Customer to log a Case with Company under the terms of the Services;
Indicative Support Service Quotation	means a written document provided by Company for indicative purposes only and which may detail the Equipment, Sites, Charges, Start/End Dates, Support SLA and Hours of Cover for Support Services requested by Customer from time to time;
Legitimate Part	means a Part or Faulty Part which is recognised as being official and legitimate by the Manufacturer and capable of being registered for support services with the Manufacturer if necessary;
Onsite Services	means the contracted services for Onsite Support and/or Advance Hardware Replacement;
Manufacturer	means the company responsible for making or producing the Equipment and/or Parts;
Nominated Contacts	means the name, email address and phone number of the individuals provided to Company by Customer to contact in relation to providing the Support Services;
Non-Legitimate Part	means a Part or Faulty Part which is not recognised by the Manufacturer or is counterfeit and is not capable of being registered for support services with the Manufacturer;
Normal Business Hours	means the hours of 8.00am to 6.00pm (WET or WEST as appropriate), Monday to Friday, excluding UK bank and other UK public holidays;
Parts	means spare parts and/or whole units and/or sub-modules of Equipment supplied by Company to provide the Onsite Services;
Purchase Order	means an official document issued by Customer committing to pay Company for the sale of specific Services to be delivered in the future;
Request For Service	means a formal request by Customer for the provision of Time and Materials Work;
Services	means Support Services and/or T&MW as applicable;
Site	means the Equipment location as defined in the applicable Support Service Order or the location where the T&MW is to be performed as specified in the applicable T&M Order;
Specific Deliverable	means a specific Deliverable agreed in writing and identified as such in a Contract and unless a Specific Deliverable is agreed the Contract does not contain any Deliverable;
Remote Support	means remote support provided by Company for the supported Equipment;
Onsite Support	means the provision of a suitably qualified Field Service Engineer on-site to facilitate the replacement of Faulty Parts for supported Equipment;
Support Desk	means the Company's support desk;
Support Period	means the period between the Start Date and End Date during which the Support Services shall be provided and the Charges shall be calculated for each piece of Equipment on the Equipment List;

Support Service Order	means an individual contract for the provision of Support Services incorporating these Terms and the relevant Support Service Quotation;
Support Service Quotation	means a written document provided by Company constituting a firm offer and detailing the Equipment, Sites, Charges, Start/End Dates, Support SLA and Hours of Cover for Support Services requested by Customer from time to time;
Support Services	means the contracted services for Remote Support and/or Onsite Services;
Terms	means these General Terms and Conditions of Support together with any schedules or addendums to the aforementioned and documents referred to herein;
T&M Offer	means a written document provided by Company detailing the T&MW to be undertaken and the applicable Charges;
T&M Order	means an individual contract for the provision of T&MW incorporating these Terms and the relevant T&M Offer;
Time and Materials Work or T&MW	means any work conducted for Customer by Company in accordance with Clause 11.0 (Time and Materials Work) of the General Terms and Conditions of Support which falls outside of the scope of the Support Services, as provided by these Terms, either through its nature or time of execution and as further detailed in Schedule 1(C) of these Terms;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as may be amended, added to, replaced or superseded from time to time;
Unsupported Equipment Service Request	means a request for Support Services for equipment not on the Equipment List or for Support Services for Equipment outside of the Hours of Cover or Support SLA;
VAT	means Value Added Tax;
WEST	means Western European Summer Time; and
WET	means Western European Time.

2.0 SUPPORT SERVICES

- 2.1 From time to time, as requested by Customer, Company may issue an Indicative Support Service Quotation to Customer. This is provided for indicative purposes only and does not constitute a firm offer by Company capable of acceptance by Customer. Should Customer wish to proceed with the Support Services detailed in the Indicative Support Service Quotation Customer shall request a Support Service Quotation from Company.
- 2.2 From time to time, as requested by Customer, Company shall issue a Support Service Quotation to Customer. The Support Service Quotation constitutes an offer by Company to provide the Support Services subject to the terms of the Support Service Quotation and these Terms. Customer may accept the Support Service Quotation by issuing a Purchase Order referencing the Support Service Quotation. Upon Customer's acceptance of the Support Service Quotation the Support Service Quotation shall be considered a Support Service Order incorporating these Terms.
- 2.3 The Support Services shall only be used by Customer for Customer's internal business purposes and shall not be used to provide services to a third party.
- 2.4 Support Service Quotations referencing pounds sterling shall remain valid for thirty (30) days unless stated otherwise. Support Service Quotations referencing currencies other than pounds sterling shall remain valid for ten (10) Business Days, unless stated otherwise. Company reserves the right to withdraw the Support Service Quotation at any time prior to a Support Service Order coming into effect in accordance with Clause 2.2.
- 2.5 The items of Equipment to which the Support Services apply are set out in the Equipment List in the applicable Support Service Order.
- 2.6 Equipment may only be deleted from the Equipment List during the term of a Support Service Order upon mutual written agreement between the Parties.

3.0 COMPANY RESPONSIBILITIES

- 3.1 Company shall provide the Support Services for the Support Period indicated in the Equipment List of the applicable Support Service Order.
- 3.2 Company warrants that notwithstanding any statutory rights accruing to Customer it will use every degree of care and skill to be reasonably expected of an experienced support provider in the provision of the Services.
- 3.3 The Support Desk will coordinate the Support Services and will be the point of contact for Customer for all issues relating to the Services in accordance with the Specific Terms and Conditions of Support of these Terms.

4.0 CUSTOMER RESPONSIBILITIES

- 4.1 Customer shall use all reasonable endeavours to ensure that Customer provides and maintains a secure and suitable environment for the Equipment as specified by the Manufacturer of the Equipment.
- 4.2 Customer shall provide to Company in a timely manner all documents, information, items and materials in any form (whether owned by Customer or third party) required under a Contract or otherwise reasonably required by Company in connection with the Services and ensure that they are accurate and complete.
- 4.3 Before requesting any assistance from Company under the Support Services, Customer shall use all reasonable endeavours to implement the following:
- 4.3.1 any applicable operator tasks and procedures on problem determination, analysis and recovery (of which Customer is aware or made aware of by Company) have been carried out;
- 4.3.2 all safeguards that might reasonably be considered to be appropriate for all programs, software data or configuration information contained in, on or in relation to the Equipment have been implemented.
- 4.4 Customer shall notify Company of the identity and contact details of the Nominated Contacts within fourteen (14) days of the Start Date. Any subsequent changes to the Nominated Contacts shall be made at least seven (7) days prior to the new Nominated Contact being permitted to log calls with Company.
- 4.5 Customer shall ensure that the Nominated Contacts are suitably skilled and knowledgeable in the operation of the Equipment, through the provision of training where appropriate.
- 4.6 Customer shall take sole responsibility for the maintenance of procedures to enable the reconstruction of any lost or altered files, data, programs or configuration. Customer has sole responsibility for performing all back-up procedures so that data integrity can be maintained.
- 4.7 Customer shall pay for all Charges in accordance with Clause 8.0 (Charges and Payment) of the General Terms and Conditions of Support of these Terms.

5.0 ONSITE SERVICES EXCLUSIONS

- 5.1 Company shall not be responsible for:
- 5.1.1 faults in the Equipment arising for reasons other than fair wear and tear. Without limitation as to the generality of this Clause 5.1.1 Company shall not be responsible for any faults arising from the following causes:
- 5.1.1.1 accident, neglect or misuse;
- 5.1.1.2 failure, fluctuation or fault of electricity supply, air-conditioning, humidity control or other environmental conditions;
- 5.1.1.3 fire or water damage;
- 5.1.1.4 the fitting of parts, software or accessories that are not compatible with the Equipment;
- 5.1.1.5 modifications and / or alterations to the Equipment by Customer or other third party which have not been agreed by Company through a mutually acceptable change control process, where such agreement shall not unreasonably be withheld or delayed; and
- 5.1.1.6 any use, modification or alteration of the Equipment other than that for which it was designed or which is contrary to the instructions of the Manufacturer.
- 5.1.2 the provision of operating supplies, materials or accessories including but not limited to disks, tapes, printer ribbons, tape heads, print heads, anything identified by the Manufacturer as consumable and any other item which might reasonably be considered to be consumable;
- 5.1.3 performing electrical works external to the Equipment or providing the Onsite Services in relation to accessories, alterations to, attachments to the Equipment or other devices not specified in the Support Service Order;
- 5.1.4 performing the Onsite Services outside of the Hours of Cover. If Customer wishes for the Onsite Services to be provided outside of the Hours of Cover, or wishes for Onsite Services for equipment not on the Equipment List, Customer may make an Unsupported Equipment Service Request in accordance with Clause 12.0 (Unsupported Equipment) of the General Terms and Conditions of Support of these Terms;
- 5.1.5 software updates, upgrades or technical advice.
- 5.2 For any services Customer would like provided outside of the scope of the Onsite Services Customer may make a Request For Service to Company in accordance with Clause 11.0 (Time and Materials Charges) of the General Terms and Conditions of Support of these Terms.

6.0 REMOTE SUPPORT

- 6.1 Where Remote Support is indicated within the Support Service Order, Customer may request technical support from the Support Desk for the applicable Equipment.
- 6.2 Remote Support may include the provision of software updates, upgrades, configuration files or technical advice.

7.0 SUPPORT DESK

- 7.1 The Support Desk may be contacted +on **+44 (0) 808 164 3617**:
- 7.1.1 for Support Services during the Hours of Cover indicated in the applicable Support Service Order whereby
- 7.1.1.1 Priority means the Hours of Cover are Normal Business Hours; and

7.1.1.2 Priority 24/7 means the Hours of Cover are 24*7*365;

or

7.1.2 to make an Unsupported Equipment Service Request; or

7.1.3 to make a Request for Service.

7.2 The Support Desk may also be contacted by email to **support@prodec.co.uk**.

7.3 Customer will need to have the following information available when raising a Case with the Support Desk:

7.3.1 the full postcode of the Site where the Equipment is located;

7.3.2 the Customer name and Site name;

7.3.3 the Site address of the Equipment together with the Site contact name and number;

7.3.4 the model number and, if known, the serial number of the Equipment, or alternatively the asset number;

7.3.5 where applicable, Customer's internal helpdesk reference number that Customer requires Case to be linked to for audit purposes;

7.3.6 the details of the requirement or fault;

and the Support Desk will allocate a Case number.

7.4 Remote Support may be provided during the initial call to the Support Desk but in the event of a peak in activity or specific technical requirements the appropriate technical services engineer will be alerted and will contact Customer contact provided when logging the Case.

8.0 CHARGES AND PAYMENT

8.1 The Support Period for the Support Services and the related Charges for each piece of Equipment are set out in the Equipment List of the applicable Support Services Order. All Charges shown include all delivery and packaging costs unless otherwise agreed.

8.2 All Charges exclude VAT, unless otherwise agreed.

8.3 In the event currency conversion is required for currency other than pounds sterling, the conversion shall be calculated at the Company internally published weekly rate in force at the time of conversion.

8.4 Unless otherwise agreed all Charges shall be invoiced annually in advance.

8.5 Unless otherwise agreed, the payment terms in respect of invoices submitted in accordance with this Clause 8.0 shall be net thirty (30) days from the date of the relevant invoice and the amounts payable shall be exclusive of VAT but inclusive of all other taxes, imposts and fees. If VAT is payable it shall be separately identified on the invoice and shall be payable by Customer subject to receipt of a valid VAT invoice from Company.

8.6 Time for payment of the Charges shall be of the essence of the Contract.

8.7 In the event of late payment of any undisputed invoice, Company reserves the right, without prejudice to any other available remedy, to suspend provision of the Services in whole or in part giving seven (7) calendar days written notice to Customer and then until payment has been made. Customer acknowledges that Company will not be responsible for any consequences, financial or otherwise, which may flow from the suspension of the Services.

8.7.1 Customer shall notify Company in writing of any invoice disputes within five (5) Business Days of the date of the invoice, specifying in reasonable detail the basis of the dispute. Company agrees to investigate such matter and where the dispute is valid, correct the invoiced amount.

8.8 Payments which are not received when the amount invoiced is properly due and payable will be considered overdue and will remain payable by Customer. Company reserves the right, without prejudice to any other right or remedy available to Company, to exercise Company's statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998.

8.9 Company reserves the right not to accept new Contracts whilst the Account is in arrears.

8.10 All vendor backed Support Services are subject to change at any time due to being underwritten by the vendor. For multi-year Support Periods Company reserves the right to change the Charges on any anniversary of the Start Date as a result of changes in the vendor pricing to Company used to provide the Support Services (and solely to the extent necessary to address such changes in pricing without any increase in Company's margin).

9.0 TERMINATION

9.1 Without limiting any other remedy available to it, either Party may terminate a Contract with immediate effect by giving written notice to the other Party at any time if:

9.1.1 the other Party commits a material breach of any provision of the Contract and (if such breach is remediable) fails to remedy that breach within thirty (30) days of a request to do so; or

9.1.2 the other Party repeatedly breaches any of the terms of the Contract 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 the Contract; or

9.1.3 an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other Party; or

- 9.1.4 an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party, or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 9.1.5 a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets; or
- 9.1.6 the other Party makes any arrangement or composition with its creditors; or
- 9.1.7 the other Party ceases, or threatens to cease, to trade; or
- 9.1.8 the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of the debt.
- 9.2 Without affecting any other right or remedy available to it, Company may terminate a Contract on giving not less than ninety (90) days' notice to Customer.
- 10.0 CONSEQUENCES OF TERMINATION**
- 10.1 Any termination of a Contract howsoever occasioned shall not prejudice or affect any right of action or remedy which shall have accrued up to the date of termination.
- 10.2 In respect of the termination of a Contract, Company shall cease providing the Services from the date of termination of that Contract.
- 10.3 Termination of a Contract is without prejudice to the continuance of any other Contract existing.
- 10.4 On termination of any Contract Company shall be entitled to recover from Customer any devices or equipment owned by Company that have been loaned to Customer or stored in the Sites for the purpose of providing the Services.
- 10.5 On termination of any Contract any outstanding invoices shall immediately become due and payable.
- 10.6 In the event of Customer terminating any Support Service Order in accordance with Clause 9.1.1 any amounts paid by Customer to Company relating to periods after termination will be refunded forthwith provided that Customer indemnifies Company in full against any third party support costs that cannot be cancelled but have been incurred by Company and Customer repays any discount or other benefit Customer may have received which was based on the initial Support Period.
- 10.7 In the event of Customer terminating any T&M Order in accordance with Clause 9.1.1 any amounts paid by Customer to Company relating to T&MW not completed prior to termination will be refunded forthwith.
- 10.8 In the event of Company terminating any Support Service Order in accordance with Clause 9.2 any amounts paid by Customer to Company relating to periods after termination will be refunded forthwith.
- 10.9 In the event of Company terminating any T&M Order in accordance with Clause 9.2 any amounts paid by Customer to Company relating to T&MW not completed prior to termination will be refunded forthwith.
- 11.0 TIME AND MATERIALS WORK**
- 11.1 Where Customer would like Company to provide services outside of the scope of the Support Services, Customer shall submit a Request for Service in accordance with Schedule 1(C) – Specific Terms & Conditions of Support.
- 11.2 Where Company are willing and able to provide the requested Time and Materials Work the specific terms of provision are set-out in of Schedule 1(C) – Specific Terms & Conditions of Support of these Terms.
- 12.0 UNSUPPORTED EQUIPMENT**
- 12.1 If commercially and technically feasible to do so Company will accept an Unsupported Equipment Service Request from Customer.
- 12.2 When Customer places an Unsupported Equipment Service Request and where Company are able to provide the Support Services requested, Company will provide an offer to Customer, subject to the terms and conditions of these Terms, detailing the applicable Charges ("**Unsupported Equipment Offer**"). The Charges are calculated to include the return of the Faulty Part(s) (where a replacement Part is being provided), further charges will apply in the event the Faulty Part is not returned.
- 12.3 An Unsupported Equipment Offer shall remain valid for five (5) Business Days unless stated otherwise.
- 12.4 Upon Customer's emailed acceptance of an Unsupported Equipment Offer the Unsupported Equipment Offer shall be considered a Support Service Order, and Company will despatch the required Part and/or Field Service Engineer to the stated destination on a reasonable endeavours' basis.
- 12.5 Within two (2) Business Days of Customer's acceptance of the Unsupported Equipment Offer, Customer will raise a Purchase Order to cover the Charges detailed in the Unsupported Equipment Offer.
- 12.6 The return of the Faulty Part(s) (where applicable) must be in accordance with Paragraph 4.0 (Parts, Faulty Parts and Returns) of Schedule 1(A) - Specific Terms & Conditions of Support.
- 13.0 SERVICE LEVELS**
- 13.1 Throughout the Support Period Company shall provide the Onsite Services in accordance with any Support SLAs set out in the applicable Support Service Order and the definitions in the table below.

Support SLA	Support SLA Definition	Onsite Services Type***
2HrP24x7	2Hr24x7 Part to Site	Advance Hardware Replacement
4HrEP24x7	4Hr24x7 Engineer & Part to Site	Advance Hardware Replacement & Onsite Support
4HrE24x7	4Hr24x7 Engineer to Site	Onsite Support
4HrEPNBH	4Hr Normal Business Hours Engineer & Part to Site	Advance Hardware Replacement & Onsite Support
4HrENBH	4HrNormal Business Hours Engineer to Site	Onsite Support
4HrP24x7	4Hr24x7 Part to Site	Advance Hardware Replacement
4HrPNBH	4Hr Normal Business Hours Part to Site	Advance Hardware Replacement
5BDEP	5 Business Days Engineer & Part to Site	Advance Hardware Replacement & Onsite Support
5BDP	5 Business Days Part to Site	Advance Hardware Replacement
8HrEP24x7	8Hr24x7 Engineer & Part to Site	Advance Hardware Replacement & Onsite Support
8HrE24x7	8Hr24x7 Engineer to Site	Onsite Support
8HrP24x7	8Hr24x7 Part to Site	Advance Hardware Replacement
NBDEP	Next Business Day Engineer & Part to Site*	Advance Hardware Replacement & Onsite Support
NBDE	Next Business Day Engineer to Site*	Onsite Support
NBDP	Next Business Day Part to Site*	Advance Hardware Replacement
NDP	Next Day Part to Site**	Advance Hardware Replacement
NDEP	Next Day Engineer & Part to Site**	Advance Hardware Replacement & Onsite Support
NDE	Next Day Engineer to Site**	Onsite Support
2BDP	2 Business Days Part to Site*	Advance Hardware Replacement
2BDEP	2 Business Days Engineer & Part to Site*	Advance Hardware Replacement & Onsite Support
NBDR	Next Business Day Response	Remote Support only

* Requests must be received before 14:00 WET/WEST to meet the required Service Level. The Service Level for requests received after 14:00 WET/WEST will commence from the next Business Day. Company cannot be held responsible for any delays caused by customs.

** Requests must be received before 14:00 WET/WEST to meet the required Service Level. The Service Level for requests received after 14:00 WET/WEST will commence from the next day. Company cannot be held responsible for any delays caused by customs.

*** For Advance Hardware Replacement please refer to Schedule 1(A) – Specific Terms & Conditions of Support. For Onsite Support please refer to Schedule 1(B) – Specific Terms & Conditions of Support.

- 13.2 The following shall not be included in any calculation of Company’s performance against any Support SLA for any Onsite Services:
- 13.2.1 Any Case, or delay in effecting resolution of any Case, that is solely and directly caused by Customer’s failure to comply with their obligations as set out in the Contract provided that Company shall inform Customer of the reason for the Case or delay as soon as reasonably practicable;
 - 13.2.2 Any delay in Company providing Onsite Services due to any failure by any third party (excluding all third parties which Company has contracted with to deliver the Onsite Services) to act on or to act in a timely fashion in respect of any Case and provided Company has correctly followed the procedures set out in the third party contract in respect of such failure;
 - 13.2.3 Any delay in Company providing Onsite Services due to any Force Majeure Event (as defined in Clause 23.0) provided that Company has acted in accordance with these Terms;
 - 13.2.4 Any Onsite Services provided for an Unsupported Equipment Service Request;
 - 13.2.5 Any Case that is caused by an excluded fault as set out in Clause 5.1.1; and
 - 13.2.6 Any exclusions identified in the applicable Specific Terms and Conditions of Support schedule.
- 13.3 Company will collect and analyse service delivery performance information related to all aspects of the Onsite Services on a regular basis to facilitate continual improvement of Support SLAs and in accordance with:
- 13.3.1 Support SLA measurement will be from the time the Support Desk confirms a hardware fault in the Equipment to the time of delivery of the Part to the Site, or the arrival of the Field Service Engineer at the Site (as applicable);
 - 13.3.2 The time stamps used for Company confirmation of a hardware fault and the notified delivery/arrival time will be Company’s incident management system.
- 13.4 In the event that a Part supplied is faulty on delivery, Company shall arrange a replacement Part (together with a Field Service Engineer if applicable) as soon as is reasonably practicable.
- 13.5 Company agrees that Support SLAs may only be changed to improve and increase their benefit to Customer and may not be lowered without Customer’s prior written consent.
- 14.0 INTEGRITY OF PARTS**
- 14.1 Subject to Clause 14.4 Company will only utilise Legitimate Parts for the delivery of the Advance Hardware Replacement.
 - 14.2 Company will check the integrity of all Parts on any Manufacturer’s online facility to confirm only Legitimate Parts are used prior to operational use in the delivery of the Advance Hardware Replacement.

- 14.3 Subject to Clause 14.4, in the unlikely event that the integrity of a Part is brought into question, Company will, at its own cost, replace the Part.
- 14.4 In the event Advance Hardware Replacement is requested on old or rarely available End-of-Service-Life (“EoSL”) equipment and where such Advance Hardware Replacement can only be delivered through the use of Non-Legitimate Parts, Company will advise Customer accordingly prior to contracting to provide Advance Hardware Replacement for the EoSL equipment.
- 14.5 Customer reserves the right to accept or decline Advance Hardware Replacement in the event of Clause 14.4.

15.0 STEP IN RIGHTS

- 15.1 Company acknowledges and agrees that if Company is in material default of its obligations under a Contract or there is a serious risk that Company will meet any of the grounds specified in Clause 9.0 (Termination) Customer may, at its sole discretion and subject only to notifying Company in writing of its intention to do so, arrange itself or for a third party to provide all or any of the Services.
- 15.2 Customer shall not be obliged to make any payment for that element of the Services in relation to which it has exercised any right of step in during the period that Customer itself or a third party is providing such elements of the Services.
- 15.3 Customer’s rights under this Clause 15.0 will cease on the earlier of the cessation or resolution of the matter giving rise to the right of step in, or thirty (30) days from when the step in right was exercised. Customer shall notify Company in writing of the date it plans to end exercising its step in right. Company shall, on receipt of the notice, develop a plan to be approved by Customer, to enable the Services to be provided in accordance with the Contract. Company shall co-operate in all reasonable respects with Customer and any third party supplier engaged by Customer under this Clause 15.0.
- 15.4 The provisions of this Clause 15.0 are without prejudice to any other right or remedy of Customer.

16.0 SUBCONTRACTING

- 16.1 Company may sub-contract all or any of its obligations under a Contract to any third party including any Company group companies without the prior written consent of Customer.
- 16.2 Company shall be and at all times remain liable for the acts and omissions of any sub-contractors in relation to a Contract.
- 16.3 In the event Company sub-contracts any of its rights or obligations pursuant to this Clause 16.0, Company shall procure that its approved sub-contractors:
- 16.3.1 enter into a confidentiality agreement in substantially the terms of the confidentiality provisions of these Terms.
- 16.3.2 are authorised, licensed, qualified, approved and permitted to provide the sub-contracted Services as required by any regulatory body or other relevant person.

17.0 REGULATORY COMPLIANCE

- 17.1 Company shall provide the Services in accordance with all applicable legislation as from time to time subsists and, in the case of industry specific legislation applicable to Customer, as is notified to Company by Customer prior to the commencement of the Services.
- 17.2 Company shall provide the Services in accordance with all applicable regulatory bodies’ requirements and guidelines as from time to time subsist and as are notified to Company by Customer prior to the commencement of the Services and from time to time to reflect regulatory changes.
- 17.3 To the extent that any of the legislation or requirements referred to in this Clause 17.0 is advisory rather than mandatory, the standard of compliance to be achieved by Company shall be in accordance with Good Industry Practice.

18.0 CONFIDENTIALITY

- 18.1 The term Confidential Information does not include any information that:
- 18.1.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party in breach of this Clause 18.0);
- 18.1.2 was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
- 18.1.3 was, is, or becomes, available to the receiving Party on a non-confidential basis from a person who, to the receiving Party’s knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
- 18.1.4 was known to the receiving Party before the information was disclosed to it by the disclosing Party;
- 18.1.5 the Parties agree in writing is not confidential or may be disclosed; or
- 18.1.6 is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 18.2 Each Party shall keep the other Party’s Confidential Information confidential and shall not:
- 18.2.1 use any Confidential Information except for the purpose of exercising or performing its rights and obligations under a Contract (“Permitted Purpose”); or
- 18.2.2 disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 18.0.

- 18.3 A Party may disclose the other Party's Confidential Information to those of its employees or sub-contractors who need to know that Confidential Information for the Permitted Purpose, provided that:
- 18.3.1 it informs those employees or sub-contractors of the confidential nature of the Confidential Information before disclosure; and
- 18.3.2 at all times, it is responsible for the employees' or sub-contractors' compliance with the confidentiality obligations set out in this Clause 18.0.
- 18.4 A Party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of the disclosure as possible.
- 18.5 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information, other than those expressly stated in the Contract, are granted to the other Party, or are to be implied from the Contract.
- 19.0 LIMITATION OF LIABILITY**
- 19.1 The following provisions set out the entire financial liability of Company (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to Customer in respect of:
- 19.1.1 any breach of the Contract howsoever arising; and
- 19.1.2 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with the Contract.
- 19.2 Unless expressly set out in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 19.3 Nothing in these conditions excludes or limits the liability of Company for:
- 19.3.1 death or personal injury caused by Company's negligence; or
- 19.3.2 fraud or fraudulent misrepresentation.
- 19.4 Subject to Clause 19.2 and Clause 19.3:
- 19.4.1 Company shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- 19.4.1.1 loss of profits; or
- 19.4.1.2 loss of business; or
- 19.4.1.3 depletion of goodwill or similar losses; or
- 19.4.1.4 loss of anticipated savings; or
- 19.4.1.5 loss of goods; or
- 19.4.1.6 loss of contract; or
- 19.4.1.7 loss of use; or
- 19.4.1.8 loss or corruption of data or information; or
- 19.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 19.4.2 Subject to Paragraph 3.2 of Schedule 1(B) and Paragraph 5.1 of Schedule 1(C) (where applicable), Company's total liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with any Contract between the Parties in relation to direct physical damage to tangible property of Customer caused by a default by Company shall not exceed a combined aggregate of £500,000.
- 19.4.3 and subject to Clause 19.4.2, Company's total liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 125% of the Charges paid and payable to Company for each successive twelve (12) month period of the Contract (commencing from the Start Date, or commencement of the T&MW, or any anniversary of it) under which the liability arose.
- 19.5 In the course of providing the Services, Company may rely on software and hardware produced or supplied by third parties. Customer acknowledges that in such circumstances Company relies on the description given by the relevant Manufacturer of the performance and functionality of its product, provided that Company shall take reasonable steps to satisfy itself that the relevant item performs in accordance with the Manufacturer's description and it is suited to the purpose for which Company intends it to be used. Company's sole responsibility shall be use of reasonable skill and care in supplying such products and to use reasonable efforts to resolve any problem caused by the non-compliance with any Manufacturer's description by liaising with the relevant Manufacturer. Other than the foregoing, Company does not give any warranties, terms, conditions or representations (whether express or implied) in respect of any software or hardware provided by Company as part of the Services and the implied terms of satisfactory quality and fitness for purpose are hereby excluded.

20.0 ASSIGNMENT

20.1 Neither Party may assign these Terms nor a Contract without the others prior written consent, such consent shall not be unreasonably withheld.

21.0 NON-SOLICITATION

21.1 During the term of the Contract and for a period of twelve months following its termination for any reason, neither Party will employ or offer employment to any person employed by the other Party, other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other Party.

22.0 TUPE

22.1 The Parties do not envisage that any employees will transfer between Company and Customer or vice versa. If circumstances change and it becomes likely that a transfer of employee(s) may arise, then the Parties will meet and use reasonable endeavours to agree appropriate and commercially reasonable terms to govern such transfer in accordance with the TUPE.

23.0 FORCE MAJEURE

23.1 Neither Party is liable for any breach of a Contract (other than the obligation to make payments due under it) to the extent that the breach was caused by a matter beyond its reasonable control including (without limit) any (a) acts of God, fire, flood, drought, earthquake, storm or other natural disaster; (b) epidemic or pandemic; (c) interruption or failure of utility service or transport or telecommunications network; (d) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (e) nuclear, chemical or biological contamination or sonic boom; (f) difficulties, delays or failure in manufacture, production or supply by third parties of any goods to SCT under the Contract; (g) acts or omissions of government, or other competent authority, including without limitation imposing an export or import restriction, quota or prohibition; (h) collapse of buildings, fire, explosion or accident; (i) industrial disputes of any kind; and (j) acts or omissions of persons for whom it is not responsible (including, in particular, other service providers) (a **"Force Majeure Event"**).

23.2 If a Party is prevented, hindered or delayed in or from performing any of its obligations under a Contract by a Force Majeure Event (**"Affected Party"**), the time for performance of such obligations shall be extended accordingly.

23.3 The Affected Party shall:

23.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) Business Days' from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, it's likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

23.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

24.0 ENTIRE AGREEMENT AND VARIATIONS

24.1 The Contract constitutes the entire agreement between the Parties on the subject matter contained herein and supersedes all representations and prior agreements (written and oral). Each Party confirms that it has not relied upon any representation, statement or warranty not recorded in the Contract. The only remedy available in respect of any misrepresentation shall be a claim for damages for breach of contract under the Contract. This Clause 24.0 shall not apply to any statement, representation or warranty made fraudulently in respect of which the remedies available shall be those available under the governing law. No variation of the Contract will be valid unless confirmed in writing by the authorised signatories of both Parties.

24.2 Nothing in the Contract and no action taken by the Parties pursuant to the Contract shall constitute or be deemed to constitute between the Parties a partnership, associate, joint venture or other co-operative entity.

25.0 WAIVER

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

26.0 SEVERANCE

26.1 If any term or condition of the Contract is deemed invalid, void, or for any reason unenforceable, that term or condition will be deemed severable and will not affect the validity and enforceability of any remaining term or condition.

27.0 SURVIVAL

27.1 On termination or expiry a Contract, the following Clauses shall continue in force: Clause 9.0 (Termination), Clause 10.0 (Consequences of Termination), Clause 18.0 (Confidentiality), Clause 19.0 (Limitation of Liability), Clause 23.0 (Force Majeure), Clause 25.0 (Waiver), Clause 26.0 (Severance), Clause 27.0 (Survival), Clause 29.0 (Notices), Clause 30.0 (Dispute Resolution) and Clause 31.0 (Governing Law).

27.2 Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

28.0 THIRD PARTIES

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

29.0 NOTICES

29.1 Any notice given to a Party under or in connection with the Contract shall be in writing and shall be:

29.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service to Company at Finance Director's Office, Unit 7 The Pavilions, Ruscombe Business Park, Twyford, Berkshire, RG10 9NN; or

29.1.2 delivered by hand or by pre-paid first-class post or other next Business Day delivery service to Customer at its registered office (if a company) or its principal place of business (in any other case).

29.2 Any notice shall be deemed to have been received:

29.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

29.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

29.3 This Clause 29.0 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30.0 DISPUTE RESOLUTION

30.1 This Clause 30.0 shall not apply to any undisputed unpaid Charges which, for the avoidance of any doubt, shall be deemed to be a material breach and shall be dealt with under Clause 8.7 or Clause 9.1.1 at Company's discretion.

30.2 If a dispute arises between Company and Customer in relation to any other matter the representatives for each Party shall, in the first instance, attempt to agree a resolution for such dispute. If after thirty (30) consecutive days (or such other time as the Parties may agree in writing) such representatives, each acting reasonably, are unable to resolve the dispute, Company and Customer shall arrange for a senior representative to attend one or more meeting solely in order to resolve the matter in dispute. Such meetings shall be conducted in such manner at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question and each Party shall act in good faith.

30.3 If the senior representatives are unable to resolve the matter in question within 30 consecutive days (or such other time as the Parties may agree in writing) then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure or any other model mediation procedure as agreed between the Parties. To initiate a mediation either Party may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or agreed equivalent mediation organisation asking them to nominate a mediator. The mediation shall commence within 28 consecutive days of the Mediation Notice being served. Neither of the Parties will terminate such mediation until each has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of the other agreed model mediation procedure). Neither Party will commence legal proceedings against the other until 30 consecutive days after such mediation of the dispute in question has failed to resolve the dispute. Each Party will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or, in the absence of such determination, such costs will be shared equally.

30.4 In the event that the dispute is not resolved in accordance with Clause 30.2 or Clause 30.3, the dispute may be referred by either Party to the English courts and the Parties submit to the non-exclusive jurisdiction for that purpose.

31.0 GOVERNING LAW

31.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

31.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 (A) – SPECIFIC TERMS & CONDITIONS OF SUPPORT

ADVANCE HARDWARE REPLACEMENT

1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Support on which Company will provide to Customer the Advance Hardware Replacement. All words and phrases used in these Specific Terms and Conditions of Support have the same meanings as those in the General Terms and Conditions of Support.
- 1.2 Advance Hardware Replacement provides Parts when a hardware fault is identified with the Equipment by Customer and the Faulty Part requires replacement. Advance Hardware Replacement does not provide Parts for upgrades, preventative or periodic maintenance purposes. If Customer requires Company to supply parts for upgrades, preventative or periodic maintenance purposes a Request For Service should be made in accordance with Clause 11.0 (Time and Materials Work) of the General Terms and Conditions of Support.
- 1.3 Company requires a minimum of thirty (30) days' notice prior to the Start Date. In the event that thirty (30) days' notice cannot be provided Company shall provide Advance Hardware Replacement on a reasonable endeavours basis only for the first thirty (30) days.
- 1.4 **"Replacement Value"** means the non-return value (based on a Legitimate Part and not to exceed the Manufacturer's list price at the original point of sale) identified in the weekly outstanding RMA report issued to the customer.

2.0 COMPANY'S RESPONSIBILITIES

- 2.1 Company shall, on diagnosis or confirmation of a hardware failure by the Support Desk in relation to Equipment specified by serial number or other unique identifying mark on the Equipment List, deliver to Site a replacement Part of equivalent or higher specification within the contracted Support SLA.
- 2.2 Company shall advise Customer by e-mail of an expected time for delivery of the Part(s).
- 2.3 Company shall advise Customer by e-mail when the Part(s) have been delivered and will provide proof of delivery.
- 2.4 Company shall be responsible for any damage, shortage, delivery of incorrect Part or loss in transit, provided that Customer notifies it to Company (or its carrier, if applicable) within twenty-four (24) hours of receiving proof of delivery and that the Part has been handled in accordance with Company's stipulations and retained in the original packaging. Any remedy under this Paragraph 2.4 shall be limited, at the option of Company, to the replacement or repair of any Part which is proven to Company's satisfaction to have been lost or damaged in transit, or delivered incorrectly.
- 2.5 Company shall test all returned Faulty Parts to determine the nature of the fault. In the event that no fault is found (**"NFF"**) Company will record the findings in the Company incident management system. Company reserves the right to review the Charges should the level of NFFs become (in Company's reasonable opinion) excessive.

3.0 CUSTOMER'S RESPONSIBILITIES

- 3.1 Customer is responsible:
 - 3.1.1 for the installation and configuration of the Part(s) supplied, unless Onsite Support has been contracted, and Customer acknowledges that under Advance Hardware Replacement Company does not assume responsibility for the installation or reinstallation of any Parts or Equipment, or for any consequences that may result from such installation or reinstallation; and
 - 3.1.2 for the return of the Faulty Part(s) in accordance with Paragraph 4.0 (Parts, Faulty Parts and Returns) below.
- 3.2 From time to time Customer may have cause to cancel the requested delivery of a Part (**a "Cancelled Delivery"**). Company will record the number of Cancelled Deliveries in the Company incident management system. Company reserves the right to apply additional Charges should the level of Cancelled Deliveries become (in Company's reasonable opinion) excessive.
- 3.3 Customer shall be deemed to have accepted the Part when Customer has had twenty-four (24) hours from receipt of proof of delivery to inspect the Part and has not exercised in writing its right of rejection in accordance with Paragraph 2.4.

4.0 PARTS, FAULTY PARTS AND RETURNS

- 4.1 Customer shall return the Faulty Part(s), or in the event the Part(s) is(are) not used Customer shall return the Part(s), to Company within ten (10) Business Days of receiving the Part(s), except in the event that Company requests the return of a critical Faulty Part/Part, in which instance Customer shall use all reasonable endeavours to return the Faulty Part(s)/Part(s) to Company within three (3) Business Days. Customer acknowledges that failure to comply with this may result in Service Level failures for which Company will not be held accountable.
- 4.2 The Faulty Part(s) (or Part(s) if applicable) shall be returned where reasonably practicable in the original packing of the Part(s). Where re-use of the original packing would not provide adequate protection, or the original packing is not available for the Faulty Part(s), suitable alternative packing shall be used.

- 4.3 Where the Faulty Part is not retained by a Field Service Engineer the address for the return of the Faulty Part(s) shall be as advised by Company.
- 4.4 If the Faulty Part/Part is not delivered to Company within ten (10) Business Days of the delivery of the Part, Company shall be entitled to invoice Customer for the full replacement value of the Part.
- 4.5 Risk in the Part(s) shall pass to Customer on delivery of Part(s) to Site.
- 4.6 Where vendor support services are registered to a Faulty Part, Customer shall ensure that the vendor support services are transferred from the Faulty Part within thirty (30) days of receipt of the applicable Part ("**Clean Status**").
- 4.7 If the Faulty Part does not achieve a Clean Status in accordance with Paragraph 4.6, Company shall be entitled to invoice Customer for the Replacement Value of the Part and return the Faulty Part to Customer.
- 4.8 Where the Part is supplied for Equipment identified in the Equipment List, title to the Part shall not pass to Customer until the applicable Faulty Part is received by Company and is in a clean status. In the event that the Faulty Part is not returned to Company in accordance with Paragraph 4.1 or the Faulty Part does not achieve a Clean Status, and Company invoices Customer in accordance with Paragraph 4.4 or Paragraph 4.7 (as applicable), then title to the Part shall pass to Customer on payment in full.
- 4.9 Where the Part is supplied under an Unsupported Equipment Service Request, title to the Part shall not pass to Customer until:
 - 4.9.1 Customer has paid all Charges in relation to the Unsupported Equipment Service Request; and
 - 4.9.2 the applicable Faulty Part is received by Company and is in a Clean Status. In the event that the Faulty Part are not returned to Company in accordance with Paragraph 4.1 or the Faulty Part does not achieve a Clean Status, and Company invoices Customer in accordance with Paragraph 4.4 or Paragraph 4.7 (as applicable), then payment for the Part must be received in full.
- 4.10 Risk in the Faulty Part shall pass to Company upon Company's receipt of the Faulty Part. Title to the Faulty Part shall pass to Company on the later of:
 - 4.10.1 Company's receipt of the Faulty Part; or
 - 4.10.2 the Faulty Part achieving a Clean Status.
- 4.11 Company will check the integrity of all returned Faulty Parts on any Manufacturer's online facility to confirm that they are Legitimate Parts. Except where Company is supplying Non-Legitimate Parts in accordance with Clause 14.4 of the General Terms and Conditions of Support of these Terms, then in the event that a Faulty Part is identified as being a Non-Legitimate Part Company shall be entitled to invoice Customer for the Replacement Value of the Part supplied.

5.0 CISCO® EQUIPMENT

- 5.1 In the event any of the Equipment has existing contracts in place for Cisco Smart Net Total Care® or Customer Support Service ("**PSS**") at the Start Date, Customer shall be liable for any additional charges relating to takeover costs incurred by Company. In the event that the existing contracts cannot be transferred to Company, Customer acknowledges that Advance Hardware Replacement Services will not be available from Company until those contracts have expired.
- 5.2 Unless specifically stated otherwise in the Support Service Order, all Charges relating to Cisco Smart Net Total Care® and PSS excludes IPS Signature and engine updates (where applicable).
- 5.3 Where PSS is listed in the applicable Support Service Order Customer is entitled to software downloads for the applicable Equipment, within the purchased feature-set, via www.cisco.com.
- 5.4 All serial numbers for Cisco® Equipment must be provided before Equipment is placed on a Cisco Smart Net Total Care® or PSS contract.
- 5.5 Cisco® and Cisco Smart Net Total Care® are registered trademarks, or trademarks, of Cisco Systems, Inc. and/or its affiliates in the United States and certain other countries.

6.0 CUSTOMER OWNED STOCK

- 6.1 From time to time Company may agree to hold at Company's premises and/or forward stocking locations spare parts owned by Customer to be utilised by Company in the provision of the Advance Hardware Replacement ("**Customer Owned Stock**"). In this event Customer agrees and accepts that the Customer Owned Stock remains the property of Customer at all times and is held by Company at Customer's risk. Under no circumstances shall Company be liable in the event of theft or loss of, or damage to, the Customer Owned Stock and Customer shall ensure that Customer has appropriate and sufficient insurance in place as Customer deems necessary.

SCHEDULE 1 (B) – SPECIFIC TERMS & CONDITIONS OF SUPPORT

ONSITE SUPPORT

1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Support on which Company will provide to Customer the Onsite Support. All words and phrases used in these Specific Terms and Conditions of Support have the same meanings as those in the General Terms and Conditions of Support.
- 1.2 Company requires a minimum of thirty (30) days' notice prior to the Start Date. In the event that thirty (30) days' notice cannot be provided Company shall provide Onsite Support on a reasonable endeavours basis only for the first thirty (30) days.

2.0 COMPANY'S RESPONSIBILITIES

- 2.1 Company shall, on diagnosis or confirmation of a hardware failure by the Support Desk in relation to Equipment specified by serial number or other unique identifying mark on the Equipment List, send to Site a Field Service Engineer within the contracted Support SLA.
- 2.2 Company shall advise Customer by e-mail of an expected time of arrival at Site of the Field Service Engineer.
- 2.3 Where the Equipment is covered by Advanced Hardware Replacement and Company has provided the Part(s), the Field Service Engineer shall install the Part(s) and where possible remove the Faulty Part(s) from Site.

3.0 CUSTOMER'S RESPONSIBILITIES

- 3.1 Customer shall give or arrange for Company's Field Service Engineers unfettered and safe access to the Equipment as is reasonably required to provide the Onsite Support, including, but not limited to, ensuring that electrical and power supplies meet the appropriate electrical standards, and confirming any health, safety, security access and/or any protection requirements at the Site.
- 3.2 Customer shall ensure that any fixtures and fittings at the Site which could reasonably be anticipated to be damaged in the provision of the Onsite Support are either moved or are adequately protected. Where necessary a Risk Assessment Method Statement ("**RAMS**") shall be carried out prior to the Onsite Support being undertaken. Company shall not be liable for any damage caused where the Customer required actions identified by the RAMS have not been completed and/or where adequate protection has not been put in place.
- 3.3 Where emergency or monitoring systems and alarms (including but not limited to smoke or fire alarms, theft prevention systems and fire suppressant systems) ("**Emergency Controls**") may be impacted or triggered in the provision of the Onsite Support Customer shall isolate the applicable Emergency Controls. Company shall not be liable for any activation of Emergency Controls where Customer has not put suitable isolation processes in place.
- 3.4 From time to time Customer may have cause to cancel the requested arrival of a Field Service Engineer (a "**Cancelled Request**"). Company will record the number of Cancelled Requests in the Company incident management system. Company reserves the right to review the Charges should the level of Cancelled Requests become (in Company's reasonable opinion) excessive.

4.0 WORKING AT HEIGHT

- 4.1 If the Equipment is located in an external or raised location necessitating the Field Service Engineer to work at height, then the appropriate infrastructure or resources shall be provided by Customer to facilitate the provision of Onsite Support in accordance with applicable health and safety directives and regulations (the "**Appropriate Provisions**"), unless agreed otherwise in writing by the Parties.
- 4.2 If the Appropriate Provisions are not provided the Field Service Engineer will not be permitted to provide the Onsite Support for the applicable Equipment. Where Advance Hardware Replacement is contracted for the same Equipment the Support Services will be limited to the Advance Hardware Replacement only and Company shall not be liable for any costs, charges or losses sustained or incurred by Customer that arise directly or indirectly as a result.
- 4.3 In the event that Company is unable to provide Onsite Support as a result of Customer failing to have the Appropriate Provisions in place this shall be excluded from any calculation of Company's performance against Support SLAs for any Onsite Support elements of the Support Services.
- 4.4 In the event that Company is unable to provide Onsite Support as a result of Customer failing to have the Appropriate Provisions in place the Charges shall still apply.

SCHEDULE 1(C) – SPECIFIC TERMS & CONDITIONS OF SUPPORT

TIME AND MATERIALS WORK

1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Support on which Company will provide to Customer the Time and Materials Work. All words and phrases used in these Specific Terms and Conditions of Support have the same meanings as those in the General Terms and Conditions of Support.
- 1.2 **“Authorised Requestor”** means Customer’s representative who is responsible and accountable for requesting T&MW from the Support Desk;
- 1.3 **“Customer’s System”** means variously, Customer’s computer and telephony equipment, operating system, computer network infrastructure hardware and/or associated telecom links and networks;
- 1.4 **“Project Based Engineering”** means the provision of a suitably qualified Field Service Engineer on-site to provide defined T&MW which could include, but not limited to, implementation or configuration of networking equipment;
- 1.5 **“Professional Services”** means the provision of services to provide defined T&MW which could include, but not limited to, network audits, health checks, staging services, project management services, decommissioning, recycling and disposal.
- 1.6 **“Professional Services Consultant”** means the appropriately qualified individual Company provides to perform the Professional Services.
- 1.7 **“Site Contact”** means the authoritative onsite representative at the Site nominated by Customer to liaise with the Field Service Engineer and/or Professional Services Consultant providing the T&MW and responsible for confirmation of completion as the case may be;
- 1.8 **“Site Report”** means the form issued by the Field Service Engineer and/or Professional Services Consultant to the Site Contact for signature at Site confirming the status of the T&MW at the end of the particular visit. Subject to actual events prevailing the status may be recorded as: i) completed (all tasks completed successfully); (ii) partially completed (listing both completed and outstanding tasks); and (iii) visit aborted stating the material reason(s) for such status.

2.0 TIME AND MATERIALS WORK

- 2.1 Each specific Request For Service shall:
- 2.1.1 be communicated via email to the Support Desk by the Authorised Requestor as further detailed in Paragraph 2.4 below;
- 2.1.2 be assessed by the Support Desk who will confirm to the Authorised Requestor if the T&MW requested is feasible to be carried out by Company or not. Company reserves the right to reject a Request For Service should the requested T&MW fall outside the scope of this Schedule 1(C) and/or the capabilities of Company or if Company does not have sufficient resources available;
- 2.1.3 if deemed feasible and agreed to be undertaken by Company in accordance with Paragraph 3.0 of this Schedule 1(C), will be performed in response to Customer’s written requirement and carried out over a recorded duration. The Charges for such T&MW shall be determined by the scope of work, the duration and the skill level of the Field Service Engineer or Professional Services Consultant utilised.
- 2.2 For skill-matching, scheduling and charging purposes, all approved T&MW will :
- 2.2.1 be categorised as Project Based Engineering or Professional Services;
- 2.2.2 be aligned to the appropriate Field Service Engineer or Professional Services Consultant skill level;
- 2.2.3 have the type of response confirmed being either Project Based Engineering or Professional Services;
- 2.2.4 have the Charges confirmed in accordance with Paragraph 3.1.
- 2.3 The scope of the T&MW covers:
- 2.3.1 providing remote Field Service Engineer expertise in response to Customer’s technical request for IT administration and ‘how do I’ queries regarding Customer’s System;
- 2.3.2 undertaking on-site installations, repairs, refits and recoveries in relation to Customer’s System;
- 2.3.3 providing larger managed programmes of work at Sites covering: site surveys and auditing, multi-site implementations and operational handover, equipment staging and configuration, decommissioning and disposal, project management services.
- 2.4 The Authorised Requestor shall be responsible for confirming to Company:
- 2.4.1 the full requirements of the work that Customer wishes Company to undertake at the specified Site(s);
- 2.4.2 the availability and location of Customer’s equipment spares if essential and appropriate to the request;

- 2.4.3 the address details of the Site(s);
 - 2.4.4 the name and contact details of the Site Contact;
 - 2.4.5 that Site access and permission to work arrangements have been put in place with the nominated Site Contact;
 - 2.4.6 that all necessary consents, including consents for any necessary alterations and provisions to buildings and power, are in place and, if appropriate any formal arrangements for minor works that may need to be completed at any Site in order to facilitate the T&MW;
 - 2.4.7 any health, safety, security access and/or any protection requirements at the Site;
 - 2.4.8 that the Site Contact has been comprehensively briefed on the purpose of the T&MW and is able to facilitate required physical access and any prerequisites as may be required, including the acknowledgement and acceptance that PC's, servers and communication links may require to be out of service for a period of time.
- 2.5 Company shall provide Field Service Engineering or Professional Services Consultants resource to perform the T&MW at Sites and shall carry out the T&MW in a professional manner using such personnel as Company considers suitably qualified to undertake the work and who shall at all times remain under the direction and control of Company. Field Service Engineers and/or Professional Services Consultants will be matched and allocated to the T&MW requested by Customer based on the skill level definitions set out below:
- 2.5.1 **Level 1:** Minimum 2+ years' experience, voice/data networking products and technologies;
 - 2.5.2 **Level 2:** Minimum 3+ years' experience, fault finding, configurations and installations;
 - 2.5.3 **Level 3:** Minimum 5+ years' experience, complex fault finding, design and configuration, project management, leadership skills;
 - 2.5.4 **Consultant:** 6+ years' field, pre-sales, design and configuration, complex project and leadership experience.
- 2.6 Customer will pay to Company the Charges as set out in Paragraph 7.0 of this Schedule 1(C).
- 2.7 The T&MW will be provided at agreed Sites and, unless mutually agreed otherwise in writing, there shall be unfettered access available during Normal Business Hours or at any other time as mutually agreed at each Site when the allocated Field Service Engineer and/or Professional Services Consultant is scheduled to attend.
- 2.8 While Company shall use its reasonable endeavours to achieve any estimates made by Company regarding any timescales or any results projected in connection with the T&MW, it is agreed that any such estimates are not entirely within Company's control and are dependent upon the accuracy and completeness of the information supplied to Company as well as the degree of assistance given by Customer and the way in which any results of the T&MW are used. Accordingly, Company does not guarantee that the T&MW will be completed within the timescales or achieve the projected results and time is not of the essence.
- 3.0 REQUESTING TIME AND MATERIALS WORK**
- 3.1 In accordance with Paragraph 2.0, when Customer places a Request For Service, and where Company is willing to provide the requested T&MW, Company will provide a T&M Offer to Customer subject to these Terms. The T&M Offer shall be valid for thirty (30) days unless stated otherwise.
- 3.2 Upon Customer's issuance of a Purchase Order accepting the T&M Offer the T&M Offer shall be considered a T&M Order.
- 3.3 Company reserves the right to withdraw the T&M Offer at any time prior to a T&M Order coming into effect in accordance with Paragraph 3.2.
- 3.4 Company will not commence any T&MW nor provide any Field Service Engineers or Professional Services Consultants until Company have received Customer's emailed acceptance of the T&M Offer and Customer's Purchase Order placed in accordance with the T&M Offer.
- 4.0 COMPANY RESPONSIBILITIES**
- 4.1 Company shall:
- 4.1.1 arrange for all Field Service Engineers and Professional Services Consultants to carry appropriate identification documents, conduct themselves in a professional manner and that their appearance is appropriate and business like for the tasks to be performed at Sites.
 - 4.1.2 provide Customer with status reports on a mutually agreed frequency;
 - 4.1.3 promptly notify Customer in writing of any substantive out of scope work required to complete the T&MW and where appropriate Company shall provide a T&M Offer in accordance with Paragraph 3.0 for the additional work required.
 - 4.1.4 provide a warranty of ten (10) Business Days from the date of completion of the T&MW. Company's sole liability (and Customer's sole remedy against Company) in respect of any materially defective T&MW for

which Company is responsible under the warranty shall be the re-performance of the T&MW at Company's cost.

5.0 CUSTOMER RESPONSIBILITIES

- 5.1 Customer shall ensure that any fixtures and fittings at the Site which could reasonably be anticipated to be damaged in the provision of the T&MW are either moved or are adequately protected. Where necessary a Risk Assessment Method Statement ("**RAMS**") shall be carried out prior to the T&MW being undertaken. Company shall not be liable for any damage caused where the Customer required actions identified by the RAMS have not been completed and/or where adequate protection has not been put in place.
- 5.2 Where emergency or monitoring systems and alarms (including but not limited to smoke or fire alarms, theft prevention systems and sprinkler systems) ("**Emergency Controls**") may be impacted or triggered in the provision of the T&MW Customer shall isolate the applicable Emergency Controls. Company shall not be liable for any activation of Emergency Controls where Customer has not put suitable isolation processes in place.
- 5.3 If the T&MW necessitates the Field Service Engineer or Professional Services Consultant to work at height, then the appropriate infrastructure or resources shall be provided by Customer to facilitate the provision of the T&MW in accordance with applicable health and safety directives and regulations (**the "Appropriate Provisions"**), unless agreed otherwise in writing by the Parties.
- 5.4 If the Appropriate Provisions are not provided the Field Service Engineer or Professional Services Consultant will not be permitted to provide the T&MW and Company shall not be liable for any costs, charges or losses sustained or incurred by Customer that arise directly or indirectly as a result.

6.0 EXECUTION

- 6.1 The T&MW carried out at each Site shall be signed off by the Site Contact using a Site Report provided by the Field Service Engineer or Professional Services Consultant. The Site Report will be categorised as follows:
- 6.1.1 **Complete** – all requested T&MW tasks completed successfully;
- 6.1.2 **Partial** – some of the requested T&MW tasks completed successfully. If due to:
- 6.1.2.1 Company default ("**Partial – Company Default**") revisit at Company cost (endeavour to revisit within five (5) Business Days);
- 6.1.2.2 Customer default ("**Partial – Customer Default**") notification to Customer (visit Charges applies) and Customer to notify Company when problem resolved. Customer to notify/request revisit;
- 6.1.3 **Aborted** – Site visited but no T&MW tasks undertaken/completed. If due to:
- 6.1.3.1 Company default ("**Aborted – Company Default**") revisit at Company cost (endeavour to revisit within five (5) Business Days);
- 6.1.3.2 Customer default ("**Aborted – Customer Default**") notification to Customer (visit Charges applies) and Customer to notify Company when problem resolved. Customer to notify/request revisit.
- 6.2 Abortive visit criteria (examples):
- 6.2.1 Access (whether full or partial) is rejected for whatever reason by the Site Contact.
- 6.2.2 The Site is closed for whatever reason at the time/date scheduled.
- 6.3 All visits to Sites that qualify for a Charge (i.e. Complete or Partial – Customer Default or Aborted – Customer Default) shall be invoiced by Company to Customer as detailed in the applicable T&M Order.

7.0 CHARGES FOR TIME AND MATERIALS WORK

- 7.1 All stated Charges are exclusive of VAT.
- 7.2 The Charges for the specified T&MW are set out in the applicable T&M Order.
- 7.3 The Charges in the T&M Order apply only to work carried out during Normal Business Hours. Work performed outside of Normal Business Hours shall be uplifted in accordance with Paragraph 7.6 and Paragraph 7.7 as appropriate.
- 7.4 Travel time to and from Site will be charged to Customer in accordance with Paragraph 7.3, Paragraph 7.6 and Paragraph 7.7 as appropriate.
- 7.5 Company will use reasonable endeavours to provide Customer with outside of Normal Business Hours resource when so requested, but makes no guarantee as to the availability of such resource.
- 7.6 For T&MW performed outside Normal Business Hours and which is between Sunday 23:59 WET/WEST and Saturday 23:59 WET/WEST, excluding UK bank and other UK statutory holidays, the Charges will be uplifted by 50%.
- 7.7 For T&MW performed outside Normal Business Hours and which is between Saturday 23:59 WET/WEST and Sunday 23:59 WET/WEST or on UK bank and other UK statutory holidays the Charges will be uplifted by 100%.

7.8 Charges will be invoiced in accordance with Clause 8.0 (Charges and Payment) of the General Terms and Conditions of Support.

8.0 CANCELLATION

8.1 Subject to Paragraph 8.2, any request to cancel Professional Services and/or Project Based Engineering prior to the T&MW commencing shall be subject to the following cancellation fees:

8.1.1 Cancellation with one (1) or less clear Business Day's notice prior to planned commencement of T&MW requires payment of the Charges in full.

8.1.2 Cancellation with two (2) or less clear Business Days' notice prior to planned commencement of T&MW requires payment of 50% of the Charges.

8.1.3 Cancellation with more than two (2) clear Business Days' notice prior to planned commencement of T&MW requires no payment of Charges.

8.2 In the event Customer requests to cancel the T&MW less than ten (10) Business Days' prior to the T&MW commencing, and where the T&MW included provision of goods or materials by Company, Customer shall pay the Charges relating to those goods or materials in full in addition to the cancellation fees detailed in Paragraph 8.1.