

STANDARD TERMS & CONDITIONS



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1 Introduction

1.1 These terms and conditions are divided into sections for convenience. Section 1 (General) applies to all orders. Section 2 applies where Logicalis supplies Equipment, section 3 applies where Logicalis provides Services other than Maintenance Services, Section 4 applies to Maintenance Services and Section 5 applies where Logicalis supplies Temporary Agency Workers. Where it is appropriate two or more of Sections 1 to 5 may apply.

SECTION 1 GENERAL

2 Definitions

2.1 In these terms and conditions unless the context shall otherwise require the following words and expressions shall have the following meanings:

"Agreement" means the agreement for supply of Equipment and/or Services between Logicalis and the Customer consisting of these terms and conditions, the SOW (if any), the Quotation, Customer's order, Logicalis' order acknowledgment and any other document that Logicalis and the Customer agree in writing forms part of the agreement.

"Assumption" means any assumption (by whatever name called) which Logicalis has made in calculating the Charges and which is stated in the Quotation or the SOW.

"Charges" means those charges payable by Customer as stated in a Quotation or set out in a SoW.

"Commencement Date" means of the date which Logicalis notifies the Customer as being the date on which the Maintenance Services are to commence.

"Confidential Information" means this Agreement, each SoW and all other information in whatever form (including oral) disclosed by one party to the other in respect of which the disclosing party owes an obligation of confidence to a third party or which relates to the disclosing party's operations, processes, plans, intentions, products, know-how, design rights, trade secrets, software, market opportunities, customers, business affairs or financial or contractual arrangements or dealings, provided that each such item of information either contains thereon or is accompanied by (in the case of oral information within fourteen days of disclosure) a written statement that it is confidential, or otherwise is information which a reasonable person would consider to be confidential because of its nature.

"Cover Hours" means the hours described as such in the Quotation.

"Customer" means the person, firm or company who purchases Equipment or Services from Logicalis.

"Customer Dependency" means any obligation of the Customer stated in a SOW where the timely fulfilment of such obligation is necessary for Logicalis to perform the Services either within any time periods stated in the SOW or at all.

"Data Protection Legislation means the Data Protection Act 1988 to 2003, and any legislation implementing the Data Protection Directive 95/46/EC of 24 October 1995, the Privacy and Electronic Communications Directive 2002/58/EC of 12 July 2002, the General Data

Protection Regulation (2016/679) of 25 May, 2018 (when in force) and all applicable laws and regulations relating to the processing of personal data and privacy, and (where applicable).. Words and expressions defined in the Data Protection Legislation shall bear the same meaning in this Agreement.”

“Deliverables” means all materials created by Logicalis specifically for the Customer, including, without limitation, data, diagrams, reports and specifications.

“End of Life” means that the manufacturer is no longer providing repair services or replacement parts for the Maintained Equipment, or that the cost of repairing the Maintained Equipment exceeds the cost of replacement with a newer model.

“Equipment” means any equipment (including any part or parts of it) that Logicalis is to supply to the Customer in accordance with the Agreement.

“Incident” means the record of a reported fault in Maintained Equipment on Logicalis’ Incident Management System.

“Incident Management System” means the system used by Logicalis to record Incidents in respect of Maintained Equipment to which Logicalis is required to respond under this Agreement.

“Initial Term” means, in respect of Maintenance Services, the period stated as such in the Quotation, commencing on the Commencement Date. Unless otherwise stated in the Quotation the Initial Term is one year.

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other Intellectual Property Rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Logicalis” means Logicalis Solutions Limited; (registered in Ireland No: 170959) and/or Logicalis Technology Limited; (registered in Ireland No: 345916), both with their Registered Office: Heather Road, Sandyford Industrial Estate, Dublin 18, whichever is stated in the quotation or proposal.

“Logicalis Group” means Logicalis and any company which is a subsidiary or a holding company of Logicalis, or any company which is a subsidiary of any such holding company, and all companies which in the future become subsidiaries of Logicalis or of any such holding company; ‘holding company’ and ‘subsidiary’ having the meanings given to them in section 7 and 8 of the Companies Act, 2014.

“Logicalis Items” means items, including but not limited to diagnostic software, hardware and software tools, and associated documentation provided by Logicalis to Customer to assist in the delivery of the Maintenance Services. Replacement parts and software patches or upgrades provided by Logicalis are not Logicalis Items.

“Logicalis Service Desk” means the operations centre for Logicalis or for specific equipment support types, Logicalis Group.

“Maintained Equipment” means the equipment listed as such in the Quotation.

“Maintained Software” means the software listed as such in the quotation.

“Maintenance Release” means a release of a version of the Software which includes fixes, patches, changes to existing functionality and other corrections of errors in the Software made by the manufacturer from time to time, primarily to overcome minor defects in the Software. It may include minor enhancements.

“Maintenance Services” means such services as delivered directly by Logicalis, described in, and subject to, the terms set out in section 4 of these Terms and Conditions, as distinct from Manufacturer or Third party delivered Maintenance Services.

“Manufacturer or Third Party Delivered Maintenance Services” means such services that are sold by Logicalis but delivered by the Manufacturer or a Third Party directly to the Customer. Such services will be subject to that Manufacturer or Third Party’s terms and conditions and may require a separate agreement between Customer and the Manufacturer or Third Party. Section 4 of this agreement does not apply to Manufacturer or Third Party Delivered Maintenance Services.

“Manufacturer Support” means any support services provided in respect of Equipment by the manufacturer of the Equipment as a mandatory feature.

“Personal Data” means data which relates, directly or indirectly, to a living individual.

“Pre-existing Materials” means materials which existed before the commencement of the Services.

“Sites” means the premises of the Customer, or of a third party, to which the Equipment is to be delivered and/or at which Services are to be performed.

“Charges” means the price of the Equipment and/or Services as stated in the Quotation.

“Quotation” means a written document issued by Logicalis which sets out the Charges and any terms, in addition to these terms, upon which Logicalis may sell the Equipment and/or Services to the Customer.

“Response Time Objective” means the time taken from the customer contact to the initial technical response, based on priority level. The Response Time Objective will be based on priority level, as stated in the Quotation.

“Services” means any services that Logicalis is to provide to the Customer in accordance with the Agreement.

“Service Year” means a period of twelve months starting on the Commencement Date and each anniversary thereof.

“Software” means any operating system or other software (whether proprietary to Logicalis or not) installed on the Equipment or otherwise supplied by Logicalis.

“Statement of Work or SOW” means a statement of work entered into pursuant to this agreement.

“Third Party Software” means Software that is not proprietary to Logicalis and which is installed on the Equipment or otherwise supplied by Logicalis.

“Working Day” means a day other than a Saturday, Sunday or public holiday in Ireland.

“Working Hours” means 09:00 to 17:30 hours on a Working Day.

2.2 The headings are for ease of reference only and shall not affect interpretation.

2.3 Reference to the singular includes the plural and vice versa, and reference to a gender includes the other gender.

2.4 References to clauses are, unless otherwise stated, references to clauses of this Agreement.

2.5 References to a statutory provision include a reference to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either party, the parties will negotiate in good faith to agree such amendments to these terms and conditions as may be appropriate in the circumstances.

2.6 Where the word “including” is used it shall be construed as meaning including without limitation.

2.7 Reference to any agreement, contract, document or deed shall include that document as varied, supplemented or novated.

2.8 References to a party shall be construed to include its successors and permitted assigns or transferees.

3 Quotations

3.1 All Quotations are valid for fourteen (14) days from date of the Quotation, unless otherwise stated in writing on the Quotation. All Quotations are subject to these terms and conditions.

3.2 In addition to the Quotation Logicalis may, but is not obliged to, issue a SOW containing details of the Services and any applicable exclusions, activities, outputs and Assumptions.

3.3 Unless the Quotation specifies that the Charges are fixed Logicalis may at any time before it has accepted the Customer’s order withdraw the Quotation and re-quote to reflect any increase in the cost to Logicalis which is due to any foreign exchange fluctuation or alteration of duties.

4 Conditions

4.1 These terms and conditions shall apply to the exclusion of any standard terms or conditions of the Customer, whether appearing in an order or in any other document issued by the Customer and notwithstanding any statement to the contrary appearing in such standard terms or conditions. Pre-printed, standard, or posted terms and conditions in any media (including terms where acquiescence requires only a mouse click) shall not be incorporated into nor construed to amend the terms of this Agreement.

4.2 In the case of any conflict or inconsistency between the documents forming this Agreement the documents shall take priority in the following order:

4.2.1 any document not listed in clauses 4.2.2 to 4.2.6 which the parties agree in writing form part of this Agreement;

4.2.2 these terms and conditions;

4.2.3 the order acknowledgement;

4.2.4 the SOW

4.2.5 the order;

4.2.6 the Quotation.

5 Basis of Sale

5.1 Each order or acceptance of a Quotation by the Customer shall be deemed to be an offer by the Customer subject to these terms and conditions. Subject to clause 5.2 a binding contract shall come into existence between Logicalis and the Customer when Logicalis issues a written order acknowledgement to the Customer, the parties sign a SOW or Logicalis delivers the Equipment or supplies the Services to the Customer (whichever occurs earlier).

5.2 Notwithstanding clause 5.1 a written order acknowledgment shall not create a contract between Logicalis and the Customer if any Assumption on which the Quotation is based proves to be untrue and the Quotation expressly allows Logicalis to re-quote in such circumstances.

5.3 Subject to clause 33, no order which has been acknowledged by Logicalis may be cancelled by the Customer, except with the agreement in writing of Logicalis and provided that the Customer indemnifies Logicalis in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Logicalis as a result of cancellation.

6 Charges

6.1 Logicalis shall charge and the Customer shall pay the Charges in Euro, or such other currency as agreed, without deduction, set off or counterclaim. The Customer shall also

reimburse Logicalis for all reasonable and proper expenses incurred by Logicalis in connection with the supply of Equipment or provision of Services including but not limited to travel and accommodation expenses. Where an expenses policy is included or referred to in the SOW expenses will be charged by Logicalis as set out in that policy. The Charges or expenses for which the Customer is liable under this Agreement, shall become due thirty (30) days after the date of Logicalis' invoice for the same. The Customer's obligation to pay the Charges is not dependent on the Deliverables meeting any acceptance criteria stated in the SOW. Time of payment is of the essence of this Agreement.

6.2 Where the order includes both Equipment and Services the Agreement shall be deemed to be a separate agreement for the supply of Equipment and the Supply of Services. Any default or delay by Logicalis in the supply of Equipment shall not relieve the Customer of its obligation to take and pay for Services and any default or delay by Logicalis in the supply of Services shall not relieve the Customer of its obligation to take and pay for Equipment.

6.3 If the Customer fails to pay the Charges in full by the due date Logicalis may, without prejudice to any other right or remedy available to Logicalis:

6.3.1 Terminate the Agreement or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;

6.3.2 Appropriate any payment made by the Customer to such of the Equipment or Services (or the Equipment or Services supplied under any other contract between the Customer and Logicalis) as it thinks fit (despite any purported appropriation by the Customer);

6.3.3 Suspend all Services until payment has been made in full;

6.3.4 Make a storage charge for any undelivered Equipment at its current rates from time to time.

6.4 If the Customer fails to pay the Charges in full by the due date Customer shall indemnify Logicalis against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by Logicalis in recovering sums due in each case without prejudice to any other rights or remedies available to Logicalis.

6.5 All sums payable to Logicalis under the Agreement shall, notwithstanding any other provision of the Agreement, become due immediately:

6.5.1 on its termination by a notice in writing served by Logicalis under clause 8.1 or 8.2; or

6.5.2 If Logicalis commences legal proceedings to recover any sums due from Customer under this Agreement

6.6 Logicalis' fees and charges are exclusive of Value Added Tax (VAT), if applicable, which shall be payable by Customer on receipt of a valid VAT invoice.

6.7 Logicalis' fees and charges are exclusive of any and all taxes (other than taxes on Logicalis' net income), duties, charges, levies and assessments imposed on the purchase, carriage or import of the products all of which shall be payable by the Customer.

6.8 Logicalis may issue and Customer agrees to accept invoices by email or other electronic means of communication.

7 Liability

7.1 Neither party excludes or limits liability to the other party for:

7.1.1 Death or personal injury due to its negligence; or

7.1.2 Fraudulent misrepresentation; or

7.1.3 Breach of the obligations implied by section 12 Sale of Goods Act 1893 (as inserted by Section 10 of the Sale of Goods and Supply of Services Act, 1980) ; or

7.1.4 Any other liability which may not be excluded by law.

7.2 Logicalis' liability for a breach of warranty will be limited to:

7.2.1 in the case of Equipment supplied, to any one of the following (as Logicalis may determine);

- (a) The replacement of the Equipment or the supply of equivalent Equipment;
- (b) The repair of the Equipment,
- (c) The payment of the reasonable costs of replacing the Equipment or of acquiring equivalent Equipment; or
- (d) The payment of the reasonable cost of having the Equipment repaired; and

7.2.2 In the case of Services supplied the supplying of the Services again.

7.3 Subject to clause 7.1, the total liability of Logicalis in respect of loss or damage to any property arising out of or under this Agreement shall not exceed €1,000,000 (one million euro) in aggregate;

7.4 Subject to clauses 7.1 and 7.3, the total liability of Logicalis in respect of any or all events giving rise to any loss or damage arising out of or related to Maintenance Services in any Service Year shall not exceed a sum equal to the amount of the Charges payable by the Customer in respect of the Maintenance Services in the Service Year in respect of which the loss or damage arose or €1,000,000 (one million euros) whichever is the lesser.

7.5 Subject to clauses 7.1 and 7.3, the total liability of Logicalis in respect of any or all events giving rise to any loss or damage arising out of or related to the supply of Equipment or the provision of Services (other than Maintenance Services) shall not exceed a sum equal to the amount of the Charges payable by the Customer for the Equipment or Services in

respect of which the loss or damage arose or €1,000,000 (one million euros) whichever is the lesser.

7.6 Subject to clauses 7.1 and 7.3, the total liability of Logicalis in respect of any or all events giving rise to any loss or damage which is not limited by clause 7.4 or clause 7.5 shall not exceed a sum equal to the amount of the Charges payable by the Customer under this Agreement or €1,000,000 (one million euros) whichever is the lesser.

7.7 Subject to clause 7.1, Logicalis will not be liable for any loss of profits, revenues, business, goodwill, anticipated savings, data or any special, indirect, consequential or economic loss, howsoever arising (in negligence or otherwise), in relation to or otherwise in connection with the Equipment or Services, this Agreement or any act or omission by Logicalis.

7.8 If for any reason the exclusion of liability in clause 7.7 above is void or unenforceable, Logicalis' total liability for all loss or damage under this Agreement shall be as provided in clause 7.6.

7.9 No action (including mediation or litigation) may be brought under this Agreement more than two years after the circumstances giving rise to the action have come, or with reasonable diligence should have come, to the notice of the party bringing the action.

8 Termination

8.1 Either party may terminate this Agreement forthwith by notice in writing to the other party where the other party has committed a material breach and where such breach is capable of remedy and the other party has failed to remedy such breach within thirty (30) days of receiving notice specifying the breach and requiring its remedy.

8.2 Either party may terminate this Agreement forthwith by notice in writing to the other party if the other party stops carrying on a significant part of its business or indicates in any way that it intends to do so, or if the other party is unable to pay its debts as they fall due within the meaning of Section 509(3) and Section 570 of the Companies Act, 2014 or if any action, application or proceeding is made with regard to it for:

8.2.1 A voluntary arrangement or composition or reconstruction of its debts;

8.2.2 The appointment of an examiner to it or a petition is made with a court of competent jurisdiction for the appointment of an examiner, or notice of intention to apply to a court of competent jurisdiction for the appointment of an examiner is given by it or by its directors;

8.2.3 Its winding-up or dissolution (other than for the purpose of a bona fide reconstruction or amalgamation);

8.2.4 The appointment of a liquidator, official assignee in bankruptcy, trustee, receiver or similar officer;

8.2.5 The recovery of items supplied to it by a supplier retaining title to those items;

8.2.6 Any similar action, application or proceeding in any jurisdiction to which it is subject; and/or

8.2.7 Distress or execution to be levied upon the Customer's property or assets

8.3 Without prejudice to any rights or remedies arising as a result of such termination Logicalis shall be entitled to be paid in accordance with the Agreement for:

8.3.1 All payments due to Logicalis prior to the date of termination provided that Logicalis has delivered the Equipment or performed the Services; and

8.3.2 The value of all Equipment ordered by Logicalis before the date of termination and for which Logicalis has paid or of which it is legally bound to accept delivery, provided that Logicalis shall deliver such Equipment to Customer on the terms of this Agreement; and

8.3.3 All charges that Logicalis has incurred in respect of Services not yet provided to Customer and a reasonable administration charge in respect of the termination of those Services but subject thereto Logicalis shall refund the Customer any charges paid in advance for Services that Logicalis does not provide.

8.4 On the termination of this Agreement each party shall return to the other party any equipment, documents or other materials belonging to the other party which it has no legal right to retain.

8.5 Except for Clauses 7, 8, 9, 10, 11, 12, 16, 17.6, 21.2, 23, 24.2 and 26 which shall remain in full force and effect, termination of this Agreement shall relieve both parties from further performance of their respective obligations hereunder but shall not affect the accrued rights of either party in respect of this Agreement or any breach.

8.6 For the purposes of Clause 8.1 a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question substantially in all respects other than as to time of performance.

9 Intellectual Property Rights

9.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Logicalis. Logicalis hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Logicalis terminates the Agreement under clause 8, this licence will automatically terminate.

9.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Logicalis obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Logicalis to license such rights to the Customer.

9.3 Customer agrees not to directly or indirectly infringe the Intellectual Property Rights of Logicalis or its suppliers and to ensure that such rights are not infringed by its employees or contractors.

10 Intellectual Property Rights Indemnity

10.1 Logicalis agrees to indemnify the Customer from and against any damages finally awarded against the Customer in any claim, suit, action or proceeding (collectively called “Action”) brought against the Customer to the extent that such Action is based on a claim that any Equipment or Services provided by Logicalis under this Agreement infringes any Intellectual Property Rights provided that:

10.1.1 The indemnity does not apply:

- (i) Where the Customer has the benefit of an indemnity against infringement of Intellectual Property Rights from the manufacturer of the Equipment;
- (ii) To Equipment that is not manufactured by Logicalis or Services that are not performed by Logicalis unless Logicalis has the benefit of an indemnity against infringement of Intellectual Property Rights from the manufacturer of the Equipment or the provider of the Services;
- (iii) To Third Party Services or Third Party Software.

10.1.2 The Customer fully co-operates with Logicalis in defending or settling the Action, does not at any time admit liability and makes its employees available to give such statements, advice and evidence as the indemnifying party may reasonably request;

10.1.3 Logicalis is notified promptly in writing of any Action by the party claiming the indemnity and is given complete authority and information required for the conduct of the defence or settlement of the Action; and

10.1.4 Logicalis shall have the sole control of the conduct of any Action and all negotiations for its settlement, compromise or resolution.

10.2 Logicalis shall have no liability to indemnify the Customer against any Action insofar as any such Action is in respect of:

10.2.1 Any use in combination with the Equipment or Services of any item not supplied by Logicalis (except where such combination, connection, operation or use is recommended, specified or approved by Logicalis) where such combined use directly gives rise to the Action; or

10.2.2 Any modification carried out by or on behalf of the Customer to any product or service if such modification has not been authorised by Logicalis in writing; or

10.2.3 The Customer’s unreasonable refusal to use or supply modified Equipment or Services provided pursuant to Clause 10.3; or

10.2.4 Any infringement or alleged infringement of any intellectual property right arising only by reason of Logicalis compliance with the express written instructions of the Customer.

10.3 If at any time any allegation is made that any Equipment or Services infringe any patent, copyright, trade secret or other proprietary right, or if in the reasonable opinion of Logicalis such an allegation is likely to be made, Logicalis may at its own expense:

10.3.1 Procure the right for the Customer to continue to use the said Equipment or Services; or

10.3.2 Make such alterations modifications or adjustments to the said Equipment or Services that they become non-infringing without materially reducing performance or function; or

10.3.3 Replace the said Equipment or Services with non-infringing substitutes which are substantially their equal in performance and function; or

10.3.4 If none of the above is practicable refund the price of the said Equipment or Services

10.4 The Customer agrees to indemnify Logicalis from and against any claim, suit, action or proceeding brought against Logicalis and based on a claim that any items provided by the Customer to Logicalis under this Agreement infringes any Intellectual Property Rights. The provisions of clauses 10.1.1 to 10.1.4, 10.2 and 10.3 shall apply mutatis mutandis.

11 Publicity

11.1 Customer agrees that Logicalis may use the name of the Customer and details of Deliverables, Equipment and Services supplied by Logicalis to the Customer for marketing purposes including: using the Customer's name on lists of Logicalis' customers; announcing new Orders placed by or contracts awarded by the Customer and the preparation and publication of case studies both on Logicalis' web site and in printed format.

11.2 Save in respect of trademarks owned by the Customer or any third parties, Intellectual Property Rights in any documents, pictures, charts or other visual or audible material (whether in physical or electronic form) created by Logicalis for marketing purposes will vest in Logicalis.

11.3 Customer may withdraw its consent to the use of its name by Logicalis for marketing purposes by sending written notice to Logicalis marked for the attention of 'Marketing'. Such withdrawal of consent will not apply to material published by Logicalis before the notice of withdrawal of consent is received.

12 Solicitation

12.1 This clause applies if clause 53 (Temporary Agency Workers) does not apply. The Customer shall not, without the prior written consent of Logicalis, at any time from commencement of the Agreement to the expiry of twelve months after the completion of the Services, solicit or entice away from Logicalis or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Logicalis and engaged in the provision of the Services.

13 Notices

- 13.1 Any notice given by a party under this Agreement shall:
 - 13.1.1 be in writing and in English;
 - 13.1.2 be signed by, or on behalf of, the party giving it; and
 - 13.1.3 be sent to the relevant party at the party's registered office or at such other address as may be notified for the purpose of the service of notices hereunder.
- 13.2 Notices may be given, and are deemed received:
 - 13.2.1 by hand: on delivery;
 - 13.2.2 by pre-paid Recorded Signed For post: at 9.00 am on the second Working Day after posting;
 - 13.2.3 by pre-paid International Signed For post: at 9.00 am on the seventh Working Day after posting; or
 - 13.2.4 by email: only if sent to the email address designated for the receipt of notices by the receiving party (which in the case of Logicalis is inhouse.legal@uk.logicalis.com) on receipt of a manual or automated acknowledgment of receipt if sent during Working Hours (or if outside Working Hours at 9 a.m. on the next Working Day following its transmission).
- 13.3 All references to time are to the local time at the place of deemed receipt.

14 Force Majeure

- 14.1 Neither party will be liable for any act, omission, or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its control including acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental action after the date of this Agreement, acts or omissions of the other party, fire, communication line failures, power failures, earthquakes or other disasters (called "Force Majeure").
- 14.2 The party unable to fulfil its obligations due to Force Majeure will immediately:
 - 14.2.1 Notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure; and
 - 14.2.2 Use all reasonable endeavours to avoid or remove the cause and perform its obligations.
- 14.3 Where a Force Majeure event continues for more than 4 consecutive weeks, either party may immediately terminate this Agreement on written notice to the other.

15 Cost of Compliance with Law

- 15.1 If the direct cost to Logicalis of the performance of this Agreement shall be increased or reduced by reason of the making after the commencement of this Agreement of any relevant law or any relevant order, regulation or bye-law having the force of law that shall be applicable to the Agreement (other than any tax upon profits or revenue), the amount of such increase or reduction shall be notified to Customer and shall take effect upon proof by Logicalis of the amount of any such increase or reduction, which increase or reduction shall be added to or deducted from the Charges stated in Clause 6.

16 Know-How

16.1 Nothing herein shall be so construed as to prevent Logicalis from using data processing techniques, ideas, know-how and the like gained during the performance of the Services in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information or infringement of any valid Intellectual Property Rights of Customer.

17 Confidential Information

- 17.1 Each party undertakes in relation to the other party's Confidential Information;
- 17.1.1 To maintain the same in confidence and to use it only for the purposes for which it was disclosed and for no other purpose and in particular, but without prejudice to the generality of the foregoing, not to make any commercial use thereof or use the same for the benefit of itself or of any third party other than pursuant to this Agreement or a Statement of Work or a further agreement with the other party;
 - 17.1.2 to apply thereto no lesser security measures and degree of care than those which the receiving party applies to its own confidential information, but in any event not less than reasonable care to protect the Confidential Information;
 - 17.1.3 not to copy or reduce to writing any part thereof except as may be reasonably necessary for the proper use of the Confidential Information for the purposes for which it was disclosed, and that any such copies or reductions to writing shall be the property of the disclosing party; and
 - 17.1.4 not to disclose the same to its employees except in confidence to such of its employees who need to know the same and shall ensure that any employee to whom Confidential Information is disclosed is made aware of and complies with its obligations hereunder.
- 17.2 The restrictions on the disclosure of Confidential Information contained herein shall not apply to;
- 17.2.1 information which was in the public domain at the time it was disclosed or which subsequently enters the public domain other than by a breach of the provisions of this Agreement or a Statement of Work by the recipient party;
 - 17.2.2 information which was already known to the recipient party prior to its receipt thereof from the disclosing party and which was not previously acquired by the receiving party from the disclosing party under an obligation of confidence, or which is independently discovered by the recipient party;
 - 17.2.3 information which is disclosed to the recipient party by a third party without restriction on disclosure or use; or
 - 17.2.4 any disclosure of Confidential Information required by law, by any rule or regulation of any stock exchange of which the recipient party is a member, by any Court procedure or by any rule or regulation of any governmental or quasi-governmental authority having jurisdiction over the recipient party. Provided that, so far as it is practicable to do so the recipient party shall consult with the disclosing party prior to such disclosure and shall in any event inform the disclosing party of the nature, content and timing of the disclosure of its Confidential Information.

- 17.3 The disclosure of Confidential Information shall not confer on the recipient party any right or licence to it or to any copyright or other intellectual property rights in it.
- 17.4 Each party shall, upon receipt of a written request from the other, return to the other all Confidential Information (including any and all copies thereof in whatever form) received by it under this Agreement and/or expunge to the extent reasonably possible any Confidential Information from any computer or any other storage device or storage media in its possession save that a party may retain copies of any documents or material prepared by it or on its behalf where this is necessary to comply with regulatory or statutory requirements and excluding copies of the Confidential Information created as a result of the normal operation of the receiving party's backup and/or archival systems, providing that access to such copies is restricted to those persons whose function is primarily related to the receiving party's information technology infrastructure.
- 17.5 Each party warrants that it has the right to disclose its Confidential Information to the other party and the right to authorise the other party to use the same on the terms of this Agreement.
- 17.6 Each party acknowledges that damages alone would not be an adequate remedy for any breach of the provisions of this Clause and, accordingly, without prejudice to any and all other rights or remedies that either party may have against the other each shall be entitled without proof of special damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Clause.

18 Data Protection

- 18.1 Each party shall provide the other party with reasonable assistance in complying with its obligations under applicable Data Protection Legislation as they apply to this Agreement.
- 18.2 In so far as Logicalis processes any Personal Data on behalf of the Customer, Logicalis shall:
- 18.2.1 process the Personal Data only for the purposes of performing this Agreement or in accordance with any written instructions received from the Customer from time to time;
 - 18.2.2 not otherwise modify, amend or alter the contents of the Personal Data;
 - 18.2.3 at all times comply with the provisions of the Seventh Data Protection Principle set out in Section 2.1(b) of the Data Protection Act, 1988 as reflected in Principle 6 of the GDPR and, in so doing, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - 18.2.4 not transfer Personal Data to a country or territory outside of the European Economic Area unless that country or territory provides an adequate level of protection for Personal Data or adequate safeguards to protect that Personal Data have been put in place;
 - 18.2.5 take reasonable steps to ensure the reliability of any of Logicalis' personnel who have access to the Personal Data;

18.2.6 ensure that only those of Logicalis' personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this Agreement;

18.2.7 notify the Customer if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data; or
- (ii) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;

18.2.8 provide the Customer with reasonable co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including by:

- (i) providing the Customer with details of the complaint or request;
- (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation but in accordance with the Customer's instructions;
- (iii) providing the Customer with any Personal Data it holds in relation to a Data Subject making a complaint or request;

18.2.9 provide the Customer with appropriate information by which to demonstrate Logicalis' compliance with the obligations set out in the GDPR, and will allow for and contribute appropriately to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer to the extent necessary to demonstrate compliance with GDPR.

18.3 The Customer acknowledges that Logicalis is reliant on the Customer alone for direction as to the extent Logicalis is entitled to use and process the Personal Data. Consequently, Logicalis shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to Logicalis' actions to the extent that such actions result from instructions or lack of instructions received from the Customer.

18.4 The Customer warrants to Logicalis that, where necessary, it has obtained consent from Data Subjects to the processing of Personal Data in the manner contemplated by this Agreement.

19 General

19.1 This Agreement is complete and constitutes the entire agreement between the parties with respect to the subject matter hereof and any and all written or oral agreements, arrangements, representations (other than fraudulent misrepresentations) or understandings of any kind that may have been made prior to the date of this Agreement shall be deemed to have been superseded by the terms of this Agreement. No statement or representation made by either party has been relied upon by the other party in agreeing to enter into this Agreement.

19.2 All implied terms, conditions or warranties are excluded to the fullest extent permitted by law.

19.3 This Agreement shall not be amended or modified except by a written instrument signed by the parties.

19.4 The Customer cannot assign any or all of its rights under the Agreement without the prior written consent of Logicalis, which may be withheld at Logicalis' absolute discretion. Logicalis may at any time assign all or any of its rights or obligations under this Agreement to another company in the Logicalis Group.

19.5 Any failure or delay by either party to enforce or take action on any of its rights under this Agreement shall not be construed as a waiver of the same.

19.6 Severability

19.6.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated. In the event that a provision of this Agreement that is fundamental to the accomplishment of the purpose of the Agreement is held invalid, Logicalis and the Customer shall immediately commence good faith negotiations to remedy such invalidity.

19.6.2 The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement and the Agreement shall continue in full force and effect except for any such invalid and unenforceable provision.

19.7 Logicalis and the Customer acknowledge and agree that this Agreement shall not constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal business organisation of any kind and neither Logicalis nor the Customer shall have the right to bind the other without the other's express prior written consent.

19.8 Logicalis may retain or set off any amount owed to it or to any other company in the Logicalis Group by Customer against any amount due to Customer under this or any other Agreement

20 Law

20.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland. The United Nations Convention on the International Sale of Goods is hereby expressly excluded from application to this Agreement.

20.2 Customer and Logicalis hereby irrevocably submit to the jurisdiction of the Courts of Ireland. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of Logicalis to take proceedings against Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

SECTION 2 SALE OF EQUIPMENT

21 Quantity and Description

21.1 The quantity and description of the Equipment shall be as set out in Logicalis' acknowledgement of order or (if there is no acknowledgment of order) Quotation.

- 21.2 All samples, drawings, descriptive matter, specifications and advertising issued by Logicalis or the manufacturer, and any descriptions or illustrations contained in any catalogues, brochures or web sites are issued or published for illustrative purposes only and they do not form part of the Agreement.
- 21.3 Any typographical, clerical or other error or omission in any sales literature, web site, Quotation, price list, acceptance of offer, invoice or other document or information issued by Logicalis shall be subject to correction without any liability on the part of Logicalis.
- 21.4 Logicalis' employees, contractors and agents are not authorised to make any contractually binding representations concerning the Equipment. In entering into the Agreement, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Logicalis. However, nothing in these conditions limits Logicalis' liability for fraudulent misrepresentation.

22 Delivery and Risk

- 22.1 Logicalis shall, subject to clauses 22.3 and 22.4 arrange and pay for:

22.1.1 Delivery of the Equipment to the Sites; and

22.1.2 Insurance of the Equipment until it is delivered to the Sites.

- 22.2 Risk in the Equipment shall pass to the Customer when the Equipment has been delivered to the Sites.
- 22.3 Where the Customer has paid for the Equipment in whole before delivery Logicalis will not arrange or pay for insurance under clause 22.1 and the Customer is responsible for arranging and paying for any insurance that it requires.
- 22.4 If the Sites are outside of Ireland delivery will, unless otherwise stated in the Quotation, be Ex Works.
- 22.5 Logicalis may make an additional charge to the Customer to cover the cost of delivery of the Equipment.
- 22.6 Logicalis shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in Logicalis' acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order.
- 22.7 Delivery shall be made during the hours of 9.00 a.m. to 5.30 p.m. Monday to Friday (excluding bank or public holidays). Logicalis may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 22.8 Logicalis may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of clause 6. Each instalment shall be a separate contract and no cancellation or termination by either

party of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.

22.9 If Logicalis is unable to deliver Equipment to the Sites (provided that delivery may not be before the earlier of the delivery date stated in the Customer's order or in the Quotation) because Customer refuses to accept delivery or due to any other act or omission of customer;

22.9.1 Risk in the Equipment shall pass to the Customer on the date on which Logicalis offers to deliver the Equipment;

22.9.2 The Customer shall bear all costs of any further delivery or attempted delivery of the Equipment;

22.9.3 Without prejudice to any other right or remedy available to it Logicalis may:

- (a) Store the Equipment and make a reasonable charge for storage;
- (b) Having given reasonable prior notice to the Customer terminate the Agreement and sell the Equipment.

22.10 The Customer shall be responsible (at the Customer's cost) for preparing the Sites for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required for delivering and installing the Equipment. If Logicalis is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out or because the preparation is inadequate, Logicalis may levy additional charges to recover its additional costs arising from this circumstance.

22.11 Where Logicalis delivers the Equipment it shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies Logicalis (or its carrier, if applicable) of such damage, shortage or loss within five working days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with Logicalis' stipulations. Any remedy under this clause 22.11 shall be limited, at the option of Logicalis, to the replacement or repair of any Equipment which is proven to Logicalis' satisfaction to have been lost or damaged in transit or issuing a credit note against any invoice raised for such Equipment.

23 Title

23.1 Ownership of the Equipment shall pass to the Customer when Logicalis has received in full in cleared funds all sums due to it in respect of:

23.1.1 The Equipment; and

23.1.2 All other sums which are or which become due to Logicalis from the Customer on any account.

23.2 Until ownership of the Equipment has passed to the Customer under clause 23.1, the Customer shall:

23.2.1 Hold the Equipment on a fiduciary basis as Logicalis' bailee;

23.2.2 Store the Equipment (at no cost to Logicalis) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Logicalis' property;

23.2.3 Not destroy, deface or obscure any identifying mark on or relating to the Equipment; and

23.2.4 Keep the Equipment insured for its full price against all risks to the reasonable satisfaction of Logicalis, and hold the proceeds of such insurance on trust for Logicalis and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

23.3 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 8.2 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Logicalis on the due date.

23.4 Logicalis may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

24 Invoices (Equipment)

24.1 Logicalis may issue its invoice for the price of the Equipment on the earlier of:

24.1.1 The date of delivery of the Equipment to Logicalis from its supplier or the manufacturer; or

24.1.2 The date of shipment of the Equipment (whether from Logicalis, the manufacturer or Logicalis' supplier) for delivery to the Customer or to a third party nominated by the Customer.

24.2 Where the Quotation includes a discount for trade-in or other items of equipment to be returned to Logicalis the full Charges of the Equipment will be invoiced by Logicalis and is payable by the Customer and Logicalis will issue a credit on receipt of the trade-in items within the times and otherwise in accordance with any terms state in the Quotation.

24.3 Logicalis may issue and Customer agrees to accept invoices by email or other electronic means of communication.

25 Warranty (Equipment)

25.1 Logicalis shall pass to the Customer so far as it is legally able to do so, any warranty provision applicable to the Equipment and provided by the original manufacturer of the Equipment. Customer acknowledges that Logicalis is not the manufacturer of the Equipment and is therefore unable to provide any additional warranty.

26 Software

26.1 The Customer acknowledges that:

26.1.1 Logicalis gives no warranties in relation to the Third Party Software;

26.1.2 The licences for all Third Party Software will be between the Customer and the manufacturer and the Customer will comply with all licence terms;

26.1.3 The Customer is buying only the media on which the Third Party Software is recorded and the accompanying user manuals;

26.1.4 Nothing contained in these terms and conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals.

26.2 Where the Customer has registered with the manufacturer or other third party to obtain support for Third Party Software (whether or not such registration was originally effected by Logicalis) it is the responsibility of the Customer to maintain such registration and to give notice of any relevant changes to the manufacturer or other third party.

27 Manufacturer Support

27.1 Where the order includes Equipment Logicalis will (unless the Customer elects to take Maintenance Services for a term of at least one year from the date of delivery of the Equipment to the Customer) charge the Customer for Manufacturer Support where provided by the manufacturer of the Equipment.

27.2 Logicalis' charges for Manufacturer Support are payable annually in advance within thirty (30) days after the date of Logicalis' invoice for the same.

28 Export Control

28.1 Equipment and Software supplied to Customer by Logicalis under this Agreement is normally supplied for use or resale solely within the European Union. Customer acknowledges that the export of Equipment or Software from any country within the European Union may be subject to export control laws and regulations of the country in which the Equipment or Software was manufactured (including but not limited to the Export Administration Regulations of the United States). Customer undertakes not directly or indirectly to export Equipment or Software, or the product of any Software, from any country within the European Union in contravention of such laws or regulations and agrees that it shall be solely responsible for obtaining and complying with any export licence or other permission that may be required by any law or regulation of the country of manufacture. Customer shall fully indemnify Logicalis against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a full indemnity basis), losses and damages arising directly or indirectly from the export by Customer of Equipment or Software from any country within the European Union in breach of the export control laws or regulations of any country.

29 Producer Obligations

29.1 The Customer acknowledges that Logicalis is not a producer for the purposes of the European Union (Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2012 SI 513/2012 (as amended by European Union (Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2016 SI 42/2016 and the European Communities (Waste Electrical and Electronic Equipment) Regulations 2011 SI355/2011 and the Waste Management (Waste Electrical and Electronic Equipment) Regulations 2005 (SI 340/2005) and that the manufacturer is solely responsible for the producer obligations imposed by those Regulations.

SECTION 3 SERVICES

30 Provision of Services

30.1 Logicalis shall use reasonable endeavours to meet any performance dates specified in the SOW or Quotation, but any such dates shall be estimates only.

30.2 Logicalis may make any changes to the Services:

30.2.1 Needed to comply with applicable law or safety requirements; or

30.2.2 Which do not materially affect the nature or quality of the Services;

And will notify the Customer in advance of such changes.

30.3 Where individuals are named in the SOW Logicalis will use all reasonable endeavours to ensure that those personnel are made available to perform the Logicalis' obligations under this Agreement but Logicalis may replace any personnel who are temporarily or permanently unable to perform the Services due to ill health, holidays, termination of employment or leave of absence permitted or mandated by statute.

31 Invoices (Services)

31.1 Logicalis may issue its invoice for Services monthly in arrears. Where the Services are provided for a fixed price Logicalis may make an additional charge at its standard daily fee rates for additional work necessitated by any Assumptions proving to be incorrect, because of the Customer failing to fulfil or delaying the fulfilment of any Customer Dependencies, because of the inaccuracy of any information provided by Customer or under the terms of clause 32 (Customer Obligations). Subject thereto the Charges (subject to any agreed variation and any additional charges that become payable under the terms of this Agreement for expenses or otherwise) be as set out in the SOW or Quotation. Where Services are provided on a time-and-materials basis:

31.1.1 The charges payable for the Services shall be calculated in accordance with Logicalis' daily fee rates as set out in the SOW or the Quotation;

31.1.2 Logicalis' daily fee rates are calculated on the basis of work performed between the hours of 9.00 am and 5.30 pm Monday to Friday (excluding bank and public holidays);

31.1.3 The minimum charge is for one half of a day even if the time actually worked is less;

31.1.4 Logicalis shall be entitled to make an additional charge at enhanced rates for time worked outside the hours referred to in clause 29.1.2;

31.1.5 Where required by Logicalis at the end of each week the Customer shall sign a time sheet verifying the number of hours worked by Logicalis personnel during that week. Failure to sign the time sheet does not absolve the Customer of its obligation to pay the charges in respect of the hours worked;

31.1.6 Any estimate contained in the SOW is for information purposes only and is not legally binding.

31.2 Where any Assumption is shown to be incorrect and this has an impact on Logicalis' costs, Logicalis shall be entitled to make such reasonable adjustment to the Charges as is necessary so as to place Logicalis in the same financial position as it would have been in if the Assumption had been correct.

31.3 Logicalis will not be required to provide or give any refund for any Services which have been ordered by the Customer but which have not been taken within twelve months of the date of the Customer's order unless the provision of the Services is delayed by the default of Logicalis and the Services would otherwise have been taken within that period.

32 Warranty (Services)

32.1 Logicalis warrants that it will:

32.1.1 Carry out the Services with reasonable care and skill.

32.1.2 Obtain and maintain all licences, permits and other consents required for its performance of the Services;

32.1.3 Comply with all applicable laws and regulations.

33 Control and Supervision of Services

33.1 Logicalis and the Customer shall each designate an authorised person who shall be responsible for directing the specific activities of their respective employees and contractors and shall have sufficient authority to represent the Customer and Logicalis respectively on all technical, administrative and supervisory matters arising in connection with the performance of the respective Services. Either party may replace its authorised person upon reasonable notice to the other party.

34 Customer Obligations

34.1 The Customer agrees:

34.1.1 To respond within reasonable timeframes to requests for information or input on relevant documents. Examples of reasonable timeframes are: Response to emails requesting information – four (4) working days; Response to design documents – seven (7) working days.

34.1.2 To provide Logicalis with reasonable access to such of the Customer's employees and contractors, infrastructure topology diagrams and equipment as shall be necessary for timely completion of the Services;

34.1.3 To give not less than 10 (ten) working days' notice of any requested changes to a previously agreed timetable;

34.1.4 To provide full, safe access to and adequate working space at all Sites necessary for the proper and timely completion of the Services;

34.1.5 To provide any other facilities specified by Logicalis as necessary to enable Logicalis to provide the Services.

34.2 If Customer does not meet any of the above requirements and as a result Logicalis incurs additional costs in the provision of the Services, Logicalis shall be entitled to charge Customer for the additional time and materials incurred at Logicalis' the rates stated in Logicalis' Quotation or the SOW or if the SOW is on a fixed price basis at Logicalis' then current list prices.

35 Cancellation

35.1 Customer shall pay a Cancellation Fee to Logicalis in the event that Customer cancels or rearranges an acknowledged order or a signed SOW without giving at least fifteen (15) working days written notice prior to the day on which work was due to commence (the "Commencement Date"). The Cancellation Fees shall be calculated as follows:

35.1.1 0-2 Working days before the Commencement Date: 100% of the Charges of the days cancelled, plus any expenses incurred;

35.1.2 3-7 Working days before the Commencement Date: 50% of the Charges of the days cancelled, plus any expenses incurred;

35.1.3 8-14 Working Days before the Commencement Date: 30% of the Charges of the days cancelled, plus any expenses incurred.

SECTION 4 MAINTENANCE SERVICES

36 Application of other Clauses

Clauses 30 and 32.1 shall apply to the Maintenance Services.

37 Charges for Maintenance Services

37.1 Logicalis may issue its invoice for Maintenance Services in advance at the intervals stated in the Quotation.

37.2 Logicalis may vary the Charges for the Maintenance Services with effect from the first and each subsequent anniversary of the Commencement Date by giving the Customer not less than 60 (sixty) days written notice provided that if the Customer has paid in advance for a fixed price multi-year term Logicalis may not vary the Charges for the Maintenance Services during the multi-year term save in respect of any variation to the Maintenance Services, change to the Sites or increase or reduction in the Maintained Equipment or Maintained Software.

37.3 Where Logicalis incurs additional costs in connection with the extension or renewal of a contract with a third party or re-certification of Maintained Equipment by a third party as a result of Customer failing to provide Logicalis with such information as is required by

clause 48.1.5, Logicalis may make an additional charge to the Customer to recover such additional costs.

38 Additional Services

38.1 If additional maintenance services not covered by this Agreement such as but not limited to loan equipment are requested by Customer Logicalis may charge for these at its then current time and materials rates whether or not the Customer issues a purchase order. Logicalis may invoice for such additional services on completion of the services or, for services that are on-going, monthly in arrears.

39 Fault Reporting and Diagnosis

39.1 In the event of the Customer detecting any fault in the Maintained Equipment or Maintained Software the Customer shall notify the Logicalis Service Desk during Cover Hours specifying the Contract number the Maintained Equipment or Maintained Software concerned the serial number(s) and Site address and whatever information is available regarding the fault including any results of any Customer performed diagnostics.

39.2 Following the reporting of a fault by the Customer, Logicalis will raise an Incident on Logicalis' Incident Management System (IMS).

39.3 The Logicalis Service Desk will assess the nature of the fault giving rise to the Incident and attempt to provide a resolution:

39.3.1 Initially, Logicalis and Customer may if necessary conduct a discussion over the telephone or an exchange of emails to attempt to carry out diagnosis and resolution of the fault in question.

39.3.2 Logicalis may also use remote access to the Maintained Equipment or Maintained Software in order to carry out diagnosis of faults; subject always to Logicalis complying with pre agreed security controls.

39.4 Logicalis shall be responsible for notifying the Customer of the Incident reference number, managing the Incident until final resolution, entering updates on the IMS regarding the status of the Incident, resolving the fault remotely and or dispatching an engineer and/or replacement parts to Site, as required and depending on the Service applicable to the affected item of Maintained Equipment or Maintained Software as defined in the Quotation.

39.5 Logicalis shall use all reasonable endeavours to meet the Response Time Objective stated in the Quotation.

39.6 Following resolution of the fault giving rise to an Incident, Logicalis Service Desk shall be responsible for obtaining the Customer's agreement that the fault has been resolved to the Customer's satisfaction. Logicalis will record who at the Customer agreed that the fault had been resolved in the call log comments. Subject to the Customer having returned Maintained Equipment to Logicalis pursuant to clause 39 the log will then be closed.

39.7 If Logicalis diagnoses that the problem lies with Customer it will confirm this with the Customer to update and close the Incident.

39.8 Regular Updates

Updates on the status of an Incident will be provided to Customer as follows:

- (a) At times agreed with Customer;
- (b) At a significant change in the progress of an Incident (e.g. when Engineer ETA determined);
- (c) At the point when the Incident has been escalated;
- (d) If Response Time Objective has been or will be missed;
- (e) Once an Incident is 'closed'.

40 Points of Contact

40.1 Logicalis Service Desk shall be the primary point of contact for the Customer in relation to the Maintenance Services.

40.2 The normal point of contact in relation to the Maintenance Services for the Logicalis Service Desk will be the approved Customer contact. The Customer will provide a focal point for all Customer users to raise faults and will be responsible for undertaking first line diagnosis of all faults raised with them. Only authorised Customer staff will raise faults with Logicalis Service Desk.

41 Hardware Replacement

41.1 Hardware Replacement service applies to Maintained Equipment and Maintained Software only where stated in the Quotation.

41.2 Logicalis shall use all reasonable endeavours to meet the Response Time Objective stated in the Quotation.

41.3 Logicalis retains the right to charge the Customer for the replacement part or an equivalent piece of equipment with similar specification should the Maintained Equipment in question not be returned to Logicalis within five (5) Working Days of delivery of the replacement part.

41.4 The Customer shall retain all packaging for the replacement part provided in accordance with this clause and re-utilise the same, or provide packaging of similar performance for the return of Maintained Equipment. The Customer shall take all due care to pack the faulty Maintained Equipment in such a way as to protect it from damage during transit.

41.5 Logicalis shall pass to the Customer so far as it is legally able to do so, any warranty applicable to the replacement part and provided by the original manufacturer of the replacement part.

42 On Site Maintenance Services

42.1 This clause applies to Maintained Equipment where Logicalis is to provide On Site Maintenance Services, as shown in the Quotation.

42.2 Logicalis shall use all reasonable endeavours to despatch an engineer so as to arrive at the Site within the Response Time Objective.

42.3 Any part of the Maintained Equipment which develops a fault will at Logicalis' option either: -

42.3.1 Be repaired; or

42.3.2 Be replaced by parts with equivalent functionality on an exchange basis, whereby the removed part will become the property of Logicalis and the replacing part will become the property of the Customer (if the Customer does not allow the removed part to be taken by Logicalis then Logicalis reserves the right to charge the Customer for the replacing part); or

42.3.3 Be replaced by parts with equivalent functionality on a loan basis, whereby Logicalis will continue to own the replacing part and will repair and reinstall the original part as soon as is reasonably possible.

42.4 If a service call is made and Logicalis is unable to gain access to the Maintained Equipment or there is no fault to be found with such Maintained Equipment Logicalis reserves the right to charge for any call-out at Logicalis' then standard time and materials rates.

42.5 Maintenance Releases

42.5.1 Logicalis shall provide Maintenance Releases to the Customer when they are required to remedy a fault in the Maintained Equipment or Maintained Software or are requested by the Customer provided that such Maintenance Releases have been made available to Logicalis by the manufacturer of the Maintained Software.

43 Maintained Software

43.1 Telephone Support

43.1.1 Logicalis will provide support by telephone to attempt to resolve technical questions on the routine use and operation of the Maintained Software.

43.2 Maintenance Releases

43.2.1 Logicalis shall provide Maintenance Releases to the Customer when they are required to remedy a fault in the Maintained Software or are requested by the Customer provided that such Maintenance Releases have been made available to Logicalis by the manufacturer of the Maintained Software.

44 Exceptions

44.1 Logicalis shall not be obliged to provide Maintenance Services to remedy faults in the Maintained Equipment or Maintained Software caused by:

44.1.1 Installation or repair of the Maintained Equipment or Maintained Software (including electrical work) by someone other than Logicalis or in a manner contrary to instructions set out in the documentation relating to the Maintained Equipment or Maintained Software;

44.1.2 Failure to comply with the conditions of use of the Maintained Equipment or Maintained Software or environmental conditions as set out in the manufacturer's documentation;

44.1.3 Accident, power surge or failure, fire or water damage, lightning strike, neglect, misuse or abuse of the Maintained Equipment or Maintained Software other than by Logicalis;

44.1.4 The relocation, modification or addition to any of the Maintained Equipment or Maintained Software without the approval of Logicalis or a defect caused by equipment not supported by Logicalis or by any other service not performed by Logicalis;

44.1.5 Use or connection of the Maintained Equipment or Maintained Software to or with software or equipment not suitable for such use or connection or which interferes with the proper functioning thereof;

44.1.6 Maintained Equipment is End of Life. Logicalis will use reasonable endeavours and in accordance with the original manufacturers recommendations to advise the Customer when Maintained Equipment is coming towards the end of its life to give the Customer an opportunity to bring the Maintained Equipment up-to-date.

44.2 Logicalis may be unable to provide Maintenance Services if the Customer does not provide the serial number of the faulty Maintained Equipment

44.3 The Maintenance Services do not include:

44.3.1 Supply of consumables;

44.3.2 Replacement of impact or inkjet print heads;

44.3.3 Replacement of laser printer fuser units or transfer/pick up rollers;

44.3.4 Replacement of flat screens, displays or liquid crystal displays;

44.3.5 Repair or replacement of additional items installed in PCs or servers unless the item is listed on the Quotation or fitted as standard by the manufacturer;

44.3.6 Failures caused by faulty media

44.3.7 Software provided by others, unless a fully operational copy is made available to Logicalis with the consent of the copyright owner of the software or its licensee where such licensee is authorised to make such copy available.

44.3.8 Cathode Ray Tubes.

44.3.9 LCD panels.

44.3.10 Plasma Display Glass

44.3.11 Lamps (it is the Customer's obligation to hold a spare lamp on site but Logicalis will use reasonable endeavours to provide a loan unit if the Customer does not hold a spare lamp on Site)

44.3.12 Screen Material

44.3.13 Software changes to the system.

44.3.14 Any labour charges incurred for upgrades

44.4 If on investigation Logicalis reasonably determines that a fault is as a result of any of the matters referred to in clause 42.1 the Customer shall pay Logicalis for all time and materials reasonably expended by Logicalis in investigating the same.

44.5 Logicalis shall not be obliged to provide Maintenance Services at any Site if Logicalis reasonably considers that the conditions at the Site represent a risk to the health or safety of any Logicalis personnel.

44.6 Logicalis is only obliged to provide Maintenance Services in respect of Maintained Software which is at a supported revision level as stated in the Quotation.

44.7 Logicalis is not obliged to support the Maintained Software if the Customer is not using the versions of the operating system software as specified by Logicalis from time to time or if the Customer fails to maintain the Maintained Software in accordance with the Maintained Software manufacturer's specified release level unless specifically agreed in writing in advance by Logicalis and/or for the Maintained Software manufacturer.

44.8 The Maintained Software Maintenance Services do not include;

44.8.1 Attendance at Site;

44.8.2 System administration work;

45 Access to the Sites

45.1 Where Logicalis requires access to the Sites in order to remedy a fault or suspected fault in the Maintained Equipment or Maintained Software it shall arrange such access via the

45.2 Customer. The Customer shall provide the Logicalis Service Desk with all necessary information to enable Logicalis' representative to gain access to the relevant Site, including Site rules and security arrangements, the name and telephone number of a

contact at the Site, parking arrangements, specific access requirements for the Site and any out of hours access arrangements which apply.

46 Remote Monitoring

- 46.1 Remote Monitoring shall apply where so stated in the Quotation.
- 46.2 Logicalis will agree with the Customer:
 - 46.2.1 Which aspects of the Equipment will be monitored; and
 - 46.2.2 Which events and alarms Logicalis will monitor; and
 - 46.2.3 Who, within the Customer's organization, is to be notified by Logicalis of agreed events and alarms on what days and at what times of day and how such notification should be provided by Logicalis.
- 46.3 Logicalis may deploy a local polling appliance at the Sites to facilitate web based monitoring of the Equipment.
- 46.4 The Logicalis Service Desk will generate a ticket for every alarm generated, or service-affecting event monitored, that requires an action. The ticket will note the aspect of Equipment affected, the nature of the alarm or event and the escalation path.
- 46.5 Logicalis will provide the Customer with reports generated by Logicalis' monitoring tools.
- 46.6 Logicalis will perform initial diagnostics to identify the nature of the fault. Where Logicalis provides hardware support under this or another contract between the Customer and Logicalis, Logicalis will determine if the fault should be handled directly by the MSC. If so, Logicalis will perform the required actions to rectify the hardware fault. Where Logicalis is not responsible for providing hardware support the Customer and Logicalis, the customer will be responsible for fault management and responding to incidents and events following notification.

47 Escalation

- 47.1 Logicalis has a published escalation procedure and shall implement this escalation procedure in agreement with the Customer.

48 AV and Video Maintenance Service

- 48.1 Where the Maintained Equipment includes items of AV or Video equipment the provisions of this clause 45 shall, in addition, apply to such equipment.
- 48.2 The AV and Video Maintenance Service shall include 2 preventative maintenance visits per annum, at such time during Working Hours and on such dates as the parties shall agree from time to time. During such visits Logicalis: -
 - 48.2.1 shall carry out routine inspection and testing of each item of Maintained Equipment; and
 - 48.2.2 Shall carry out such repairs, replacement of parts, cleaning, lubrication or adjustment of each item of Maintained Equipment as Logicalis shall consider necessary.

48.3 Logicalis will use its reasonable endeavours to lend the Customer replacement equipment should the fault in the Maintained Equipment not be rectifiable Site. Whilst the loan equipment may not be a direct replacement for the Maintained Equipment Logicalis will use its reasonable endeavours for it to provide a reasonable working solution. All loan equipment shall remain the property of Logicalis and will be provided free of charge and shall be utilized by the Customer for the total period that the faulty Maintained Equipment is removed while being repaired until reinstalled by Logicalis. The Customer shall indemnify Logicalis in respect of any damage to, theft or loss to the loan equipment and shall ensure that the loan equipment is insured for its full value against all risks and shall hold the proceeds of insurance on trust for Logicalis.

49 Additions and Deletions

49.1 Subject to clause 46.3 the Customer may at any time add Maintained Equipment or Maintained Software to this Agreement by giving Logicalis notice in writing and providing Logicalis with such information concerning the Maintained Equipment or Maintained Software as Logicalis may reasonably require including but not limited to:

49.1.1 The make and model of the Maintained Equipment;

49.1.2 The serial number of the Maintained Equipment;

49.1.3 The Site at which the Maintained Equipment is located;

49.1.4 Any available service records relating to the Maintained Equipment;

49.1.5 The description and release number of the Maintained Software;

49.1.6 Details of the software licence applicable to the Maintained Software.

49.2 There may be a period of up to 30 days from the date of receipt of notice under clause 46.1 until Logicalis is able to provide Maintenance Services for Maintained Equipment or Maintained Software added to this Agreement. During this period Logicalis will use its reasonable endeavours to provide the Maintenance Services. Logicalis may make an additional charge for the added Maintained Equipment or Maintained Software from the date that it is added to this Agreement.

49.3 Logicalis reserves the right not to add new Maintained Equipment to this Agreement if thirty (30) or more days have passed since the expiration of the original warranty period or the expiration of a previous maintenance agreement covering the Maintained Equipment, until the Maintained Equipment has been inspected by Logicalis to determine whether the Maintained Equipment is still in good operating condition. All time and materials required to place the Maintained Equipment in good operating condition will be charged by Logicalis at Logicalis' current rates. Required repairs must be made prior to the beginning of cover under this Agreement.

49.4 Logicalis reserves the right not to add new Maintained Software to this Agreement if the Maintained Software is not at the manufacturers' specified release level.

49.5 No Maintained Equipment or Maintained Software may be deleted from this Agreement during the Initial Term. Thereafter the Customer may at any time delete Maintained Equipment or Maintained Software from this Agreement by giving Logicalis not less than 90 days' notice in writing. Logicalis will make a pro rata adjustment to the Charges for the Maintenance Services for the period from the date the Maintained Equipment or Maintained Software has been removed to the end of the then current term but reserves the right (i) to re-calculate its charges based on the amount of Maintained Equipment or Maintained Software then supported under the Agreement and taking account of any volume discounts that are no longer applicable due to the reduced volume of Maintained Equipment or Maintained Software being supported; and (ii) to make a reasonable administration charge; and (iii) to recover from the Customer the balance of any third party support charges incurred by Logicalis in respect of the Maintained Equipment or Maintained Software and not previously charged to the Customer. Any refund then due to the Customer will be credited to the Customer once the deletion has been processed by Logicalis.

50 Logicalis Items

50.1 Logicalis Items remain the exclusive property of Logicalis. Customer may use such Logicalis Items only for activities related to the Maintenance Services and may not modify, remove or transfer the Logicalis Items or make them, or any resultant diagnostic or system management data, available to other parties without Logicalis' written consent. Upon termination of this Agreement Customer will, at Logicalis' option, destroy or return all Logicalis Items in its possession

51 Customer Obligations (Maintenance Services)

51.1 The Customer shall:

51.1.1 report faults promptly to Logicalis;

51.1.2 provide remote access facilities and procure that such facilities can be used without restriction or fee by Logicalis to gain remote access to the Maintained Software;

51.1.3 Be responsible for all customs duties, import duties and other governmental taxes, fees, charges and assessments of whatever nature payable in respect of the import into or export from the Republic of Ireland of the Maintained Equipment or any replacement parts for the Maintained Equipment;

51.1.4 Give Logicalis details of serial numbers for all Maintained Equipment to be supported under this Agreement;

51.1.5 Where this Agreement is to extend beyond the Initial Term, to provide Logicalis in good time before the end of the Initial Term and each subsequent anniversary of the Commencement Date, with such information as Logicalis shall reasonably require to enable Logicalis to renew or extend any contract between Logicalis and a third party which relates in whole or in part to the Maintenance Services.

51.1.6 Ensure that proper environmental conditions are maintained for the Maintained Equipment and Maintained Software, and maintain in good condition the

accommodation of the Maintained Equipment, the cables and fittings associated therewith and the electricity supply thereto;

51.1.7 Ensure that the Maintained Equipment and Maintained Software is operated by competent staff;

51.1.8 Advise Logicalis in writing of any modification to the Maintained Equipment or Maintained Software;

51.1.9 Keep and operate the Maintained Equipment and Maintained Software in accordance with the manufacturer's operating instructions, ensuring that the external surfaces of the Maintained Equipment are kept clean and in good condition;

51.1.10 Notify Logicalis if the Maintained Equipment or Maintained Software is to be moved from its installed Sites, specifying the date and thereafter to comply with any reasonable instructions from Logicalis in relation to such Maintained Equipment stipulated prior to such relocation. Maintenance Services in relation to Maintained Equipment moved from its original Sites will be provided at Logicalis' discretion and may be subject to an activation period of up to 30 days during which period Logicalis will use its reasonable endeavours to provide the Maintenance Services and to additional charges to be agreed between the parties. Logicalis' provision of Maintenance Services will not be unreasonably withheld but Logicalis may terminate support for Maintained Equipment moved outside of the mainland of Great Britain.

51.1.11 Bring to the attention of Logicalis the Customer's policies and procedures in respect of security and health and safety and notify Logicalis of any potential health or safety risks that may exist at any Site;

51.1.12 Make available to Logicalis free of charge all facilities and services reasonably requested by Logicalis to facilitate Logicalis' performance of the Support Maintenance Services;

51.1.13 Keep back-up copies of configurations and software applications relating to the Maintained Equipment and data relating to or used in conjunction with the Maintained Software and make the same available to Logicalis when necessary in connection with the performance of the Maintenance Services;

51.1.14 Except in the case of an emergency not to permit any third party to maintain or attempt to repair the Maintained Equipment unless approved in writing by Logicalis;

51.1.15 Have a representative present when Logicalis provides Maintenance Services at a Site.

52 Health and Safety

52.1 Customer shall give Logicalis reasonable notice of any known hazard to the safety or health of persons at any Site, identifying those hazards and giving full details of any precaution to be taken by Logicalis whilst at such Site. Logicalis shall not be obliged to

render any Service under this Agreement that poses a potential for harm to Logicalis' representatives.

53 Warranty

53.1 Logicalis warrants that any Maintained Software updates provided by Logicalis as part of the Maintenance Services will not fail to execute their programming instructions due to defects in materials and workmanship when properly installed and used on the hardware product for which it was intended. Logicalis will use reasonable endeavours to repair or provide workarounds in respect of any such defects in the Maintained Software updates.

53.2 Logicalis does not warrant that the Maintained Software will operate without interruption or error.

54 Term

54.1 This Agreement shall be deemed to have commenced on the Commencement Date and (subject to earlier termination hereunder) shall continue in force for the Initial Term and shall continue thereafter until terminated by either party giving to the other not less than three months' notice in writing expiring on the last day of the Initial Term or the following or any subsequent anniversary of the Commencement Date whichever is the later. The Customer may also terminate this Agreement by giving Logicalis notice in writing not more than one month after receipt of notification from Logicalis of an increase in the Charges for the Maintenance Services pursuant to clause 35.2.

54.2 This Agreement may be terminated forthwith by Logicalis in respect of any items of Maintained Equipment which can no longer be maintained in good working order by the provision of replacement or spare parts or is damaged beyond economic repair other than through the fault of Logicalis (as to whether either or which events have occurred the Company's decision shall be final and binding on the Customer). In the circumstances of this sub-clause termination of the provision of Maintenance Services by Logicalis shall apply only in respect of the Maintained Equipment affected as referred to above. If there is other Maintained Equipment not so affected in respect of which Maintenance Services are provided under this Agreement the Charges shall be reduced pro rata from the next annual renewal date. The provisions of this Agreement shall continue to apply in respect of any remaining Maintained Equipment.

55 Call Recording

55.1 Logicalis shall be entitled to record any telephone calls made to or from the Logicalis Service Desk in order to monitor the quality of service, the parties' compliance with this Agreement or for training purposes.

SECTION 5 TEMPORARY AGENCY WORKERS

56 Temporary Agency Workers

56.1 This Clause applies only where Logicalis acts as an Employment Agency Business to provide one or more temporary agency workers to the Customer.

56.2 The Customer may request Logicalis to replace a temporary agency worker if the Customer is on reasonable grounds dissatisfied with the temporary agency worker.

56.3 If the Customer engages a temporary agency worker supplied by Logicalis either (1) directly, or (2) through another employment agency business, within:

56.3.1 The duration of the assignment; or

56.3.2 14 weeks from the start of the first assignment; or

56.3.3 8 weeks from the day after the last day the temporary agency worker worked on the assignment

The Customer shall be liable, to either: (1) an Extended Period of Hire as set out in clause 53.5 below, or (2) a Transfer Fee calculated in accordance with clause 53.4 below. The Transfer Fee shall be due unless before the start of the assignment the Customer notifies Logicalis in writing that it opts for the Extended Period of Hire.

56.4 The Transfer Fee shall be the same as the total amount charged by Logicalis under the current or last preceding assignment of the temporary agency worker (whichever shall be the greater).

56.5 The Extended Period of Hire shall be the same length as the current or last preceding assignment of the temporary agency worker (whichever shall be the greater).

56.6 Where the Protection of Employees (Temporary Agency Work) Act, 2012, (the “Act”) apply:

56.6.1 The Customer shall provide Logicalis with such information as it reasonably requires to enable it to comply with its obligations under the Act;

56.6.2 From first day of an assignment the Customer shall allow agency workers supplied by Logicalis to have access to the same collective facilities and amenities as it makes available to its workers generally; and

56.6.3 From the twelfth week of the assignment the Customer shall, to the extent specified by the Act, allow agency workers supplied by Logicalis to enjoy the same basic working and employment conditions as the Customer’s workers generally enjoy.