

**TES-AMM EUROPE LTD.
AND**

[CLIENT NAME] LTD/LIMITED/OTHER

CLOUD MASTER SERVICES AGREEMENT

THIS AGREEMENT is dated DD/MM/YYYY

PARTIES (1) **TES-AMM (EUROPE) LTD.**, 10 Crompton Way North, Newmoor, Irvine North Ayrshire KA11 4HU (“**TES**”/ “**Service Provider**”); and

(2) **CLIENT** [**INSERT NAME OF COMPANY**] [whose registered office is at/with its principal place of business at] [**ADDRESS**] (“**Name of Client**”/the “**Client**”).

BACKGROUND

- A. The Client wishes to receive the Services (as defined below).
- B. TES is a provider of [**INSERT NATURE OF SERVICES BEING PROVIDED**].
- C. The Client wishes to engage the services of TES, and TES agrees to provide the Services to the Client on the terms and subject to the conditions of this Agreement.

AGREED TERMS

1. INTERPRETATION

1.1 In this Agreement, the following expressions will have the following meanings unless the context otherwise requires:

“**Agreement**” means the body of this Agreement together with such Schedules, Annexes, and/or any Statement(s) of Work or Participation Agreement(s) entered into for the provision of Services in the Territory, as each may be amended from time to time;

“**Acceptance**” means Products accepted by TES for the Services in accordance with the procedures set out in the Statement of Work.

“**Affiliate**” means in relation to any Party, a person which, directly or indirectly: (i) is Controlled by that Party; (ii) Controls that Party; or (iii) is Controlled by the same person as that Party, and for this purpose "Control" means the power of a person to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes and "Controlled" shall be construed accordingly.

“Applicable Laws” means in relation to any undertaking and any circumstance, all laws, legislation, regulations, binding codes of practice, or rules or requirements of any relevant government or governmental agency in the applicable Territory which apply to such undertaking or to such circumstance, including, without limitation, all applicable environmental legislation and regulations. and other laws that relate to the control and safe disposal of hazardous substances.

“Applicable Privacy Law” means any applicable data protection law and regulation that applies to the Processing of Personal Data under this Agreement in the applicable Territory.

“Best Industry Standard” means using standards, practices, methods and procedures conforming to the law of the Territory and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking or providing equivalent services.

“Business Day” means a day, other than a Saturday, Sunday or public holiday in the Territory where the Services are performed when banks in such Territory are open for business.

“Business Partner” means any person who either (a) provides Services to the Client for or on behalf of TES, or (b) receives Services from TES for and on behalf of the Client, in the Territory in which the Services are requested.

“Commencement Date” means the date first appearing above, the [last] date of signature of this Agreement, the Start Date of the first Statement of Work to be entered into pursuant to this Agreement, or the date on which the Supplier commences the provision of the Services, whichever is the earlier.

“Client” means the entity receiving the Services.

“Client Personal Data” means Personal Data that is received or collected by TES or a sub-processor of TES from or at the direction of the Client or an Affiliate of the Client and is processed by TES or a sub-processor of TES on behalf of the Client or its Affiliate [, or Customers of the Client, and/or Customers of the Client’s Affiliates] pursuant to this Agreement. **CONSIDER IF NEEDED.**

“Confidential Information” means without limitation, all financial, business, technical or other data and all other information (whether written, oral or in electronic form or on magnetic or other media and whether marked as such or not) concerning the business and affairs of a Party that the other Party obtains, receives or has access to as a result of the discussions leading up to, or the entering into, or the performance of, this Agreement (or its existence), or other matters connected with the Products or Services.

“Data” means all information recorded in or processed by or through medium whatsoever capable of storing or holding software or data in any form or allowing data to pass through it.

“Employees” means with respect to any Statement of Work, the persons wholly or mainly employed by the Service Provider and/or its Affiliates and engaged in the provision of the Services specified in that Statement of Work to the Client and/or its Affiliates under the terms of this Agreement.

“Excluded Products” means products other than the Products, including without limitation, those products specified or defined as ‘Excluded Products’ in the SOW.

“Force Majeure” means any circumstance not within a Party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or

pandemic (including COVID-19); 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; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; and any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking rely on such cause, or Affiliates of that party); non-performance by suppliers or subcontractors (other than Affiliates of the Party seeking to rely on such cause); and interruption or failure of utility service.

“Intellectual Property Rights” or “IPRs” means all intellectual and industrial property rights including patents, know-how, trademarks and trade names (whether registered or unregistered), design rights, signs and service rights, service marks, utility models, applications for and rights to apply for any of the foregoing, , rights to prevent passing off for unfair competition and domain names, copyright (including rights in computer software), database rights (including the database rights in any database), topography rights, know-how, Confidential Information and any other rights in any invention, discovery or process (whether registrable or not), in each case in the country in which this agreement is signed and all other countries in the world, and together with all renewals and extensions of, such rights, and similar or equivalent rights or forms of protection in any part of the world.

“Party” or “Parties” means a party or the parties to this Agreement.

“Personal Data” means any information relating to an identified or identifiable natural person as defined by Applicable Privacy Law.

“Pre-existing IPR” means any pre-existing Intellectual Property Rights or other works of authorship that have not been created pursuant to this Agreement or within the scope of a particular Statement of Work.

“Process and Processing” means any operation or set of operations which is performed upon Personal Data whether by automatic means, including collecting, recording, organising, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, making available, aligning, combining, blocking, erasing and destroying Personal Data as defined by Applicable Privacy Law.

“Premises” means the premises specified in the SOW to where the Products will be delivered or where the Services will be performed.

“Price” means the price for the Services set out in the SOW.

“Products” means the assets delivered to TES upon which the Services are to be performed as detailed in the SOW, including any part or parts thereof, and such other assets as the Parties may from time to time agree in writing but at all times excluding the Excluded Products.

“Schedule” means any Schedule (so designated) which is at any time attached to this Agreement, and may include one or more of a SOW, PA, or data protection agreement, in each case by mutual written agreement of the Parties.

“Services” means one or more of IT asset recovery, auditing, testing, reporting, sorting, reconditioning, refurbishing and remarketing, or recycling / onsite data destruction / e-waste recycling/

Battery recycling/repurposing services (including any part thereof) to be provided by TES and/or its Affiliates from time to time as set out in the according Statement of Work.

“**Specification**” means the technical specifications and descriptions for the Products and all information which explains the structure, design and material composition of the Products, including without limitation, details of any hazardous substances or any other potential hazard.

“**Statement of Work**” or “**SOW**” means a statement(s) of work that is signed by both Parties and which references this Agreement and includes Exhibits and/or attachments, confirming, without limitation, the scope of the Services to be provided by TES, the service levels, the price of the Services and any part thereof and any additional terms that may apply to the Services.

“**Work Product**” means work or materials to be provided under a Statement of Work that Service Provider creates or discovers in the course of performance of this Agreement that are embodied in such work or materials. Work Product does not include Pre-existing IPR’s or any work or materials specifically identified in a Statement of Work as being excluded from Work Product.

“**Year**” means a period of 12 months commencing on the Commencement Date or on any anniversary thereof.

1.2 In this Agreement, except where the context otherwise requires:

1.2.1 Clause and Schedule headings are for convenience only and shall not affect the interpretation of this Agreement, and references to Clauses are to Clauses in the main body of this Agreement, and references to Paragraphs are to Paragraphs of the applicable Schedules;

1.2.2 if there is any conflict between a provision in a Schedule and a provision in the main body of this Agreement, the provision in the main body of this Agreement shall prevail unless it is expressly stated in writing in a Statement of Work that the Parties intend to vary the terms of this Agreement solely for the purposes of such Statement of Work. The conflicting provision(s) shall (where used and if applicable) take precedence in the following order:

(i) Data Protection Agreement Schedule [NUMBER]; (ii) this Agreement; (iii) Statement of Work or SOW Schedule [NUMBER]; and (iv) Participation Agreement or PA Schedule [NUMBER].

2. APPOINTMENT

2.1 In appointing TES, the Client has relied upon TES’ representation that it has the resources and the skills, experience and qualifications to enable it to perform the Services to the standards specified in this Agreement.

2.2 The Parties agree that subject to Clauses 5 and 6, nothing in this Agreement will prevent (i) the Client from obtaining from any other source the same or similar services to the Services, or (ii) Client providing to any third-party services which are the same as or similar to the Services. If any exclusivity is agreed in relation to any project carried out under a Statement of Work the terms of such exclusivity will be set out in such Statement of Work.

- 2.3 Each Party's own terms and conditions, and any terms that might otherwise be implied by trade, custom, trade practice or course of dealing are excluded and will not apply to any supply made hereunder.

3. WARRANTIES

Each Party warrants to the other that:

- 3.1 it has all requisite corporate power and full capacity and authority to enter into this Agreement and to carry out the transactions contemplated therein;
- 3.2 the entering into and performance of its obligations under this Agreement have been duly authorised by all necessary corporate action on its part; and
- 3.3 it has obtained all consents, permissions and licences necessary to enable it to perform its obligations under this Agreement.

4. SERVICES

- 4.1 During the Term, TES shall (and shall procure that its Employees shall) provide the Services in accordance with the terms of the applicable SOW.
- 4.2 TES shall (and shall procure that its Employees shall) use commercially reasonable endeavours to perform and provide the Services:
- 4.2.1 to at least the standards set out in the SOW;
- 4.2.2 using due skill, care, and diligence in accordance with Best Industry Practice; and
- 4.2.3 in accordance with all Applicable Laws and the provisions of this Agreement.
- 4.3 TES will obtain and maintain in force all necessary memberships, licences, registrations, approvals, consents or qualifications required by any Applicable Laws necessary to perform its obligations under this Agreement, including without limitation, any environmental permits necessary for the proper performance of the Services.
- 4.4 TES shall maintain its own documented environmental policies and shall operate in accordance with those policies; comply with all environmental laws, regulations, guidelines and codes of practice in force from time to time and each Party shall provide all information reasonably required by the other to allow the other Party to comply with its reporting obligations under all such environmental laws and regulations; and minimize its impact on the environment.
- 4.4 If TES needs to make any changes to the Services and/or the provision of the Services, which:
- 4.4.1 are necessary to comply with any applicable safety requirements and/or Applicable Laws; or
- 4.4.2 do not materially affect the nature or quality of the Services,
- TES will notify the Client of such changes in advance of their implementation and, where any such changes would have a material effect on the Services, obtain the Client's prior approval (such approval not to be unreasonably withheld or delayed).

- 4.5 If TES is prevented from performing, or hindered in the performance of, the Services due to any act or omission of the Client or its employees, agents or contractors, including without limitation, any breach of the Client's obligations under this Agreement, TES will promptly notify the Client of such circumstances and TES will not be liable for any failure to perform, or any delay in the performance of, the Services.
- 4.6 If an Affiliate or Business Partner of either Party desires to be an express contracting Party hereunder, **such Affiliate or Business Partner shall execute a SOW or PA**, as applicable, in a form mutually agreed to by the Parties, which agreement shall provide, at a minimum, that such Affiliate or Business Partner is bound by the applicable terms and conditions of this Agreement and, thereafter, such Affiliate or Business Partner shall be bound to the terms of this Agreement and shall be entitled to benefit from all applicable rights for such Party hereunder; provided, however, that any such PAs shall only modify this Agreement to the extent required by applicable law or to reflect local country offerings, prices and fees. The Parties agree that any changes to the price, or the addition or deletion of [Services/Products] or scope is agreed by the Parties to be incorporated by reference into the PA concurrent with the incorporation of such changes into the Agreement or any SOW. **NOTE: IF THIS IS APPLICABLE THEN A SOW OR PA NEEDS TO BE SCHEDULED TO THE AGREEMENT**

5. CLIENT'S OBLIGATIONS

- 5.1 The Client will comply with all of its obligations in the SOW in a reasonable and timely manner.
- 5.2 Without prejudice to the foregoing, the Client will at all times:
- 5.2.1 provide access to such materials, employees and location(s) as TES shall reasonably require in connection with the performance of the Services;
 - 5.2.2 provide TES with timely and reasonable instructions and directions in relation to the carrying out of the Services;
 - 5.2.3 respond promptly to requests for information or directions which TES requests in order to carry out the Services;
 - 5.2.4 notify and consult with TES immediately in the event that the Client becomes aware of any problems or potential problems arising in relation to the performance of the Services;
 - 5.2.5 not, at any time, obstruct the provision by TES of the Services or do any act which would jeopardise or increase the cost to TES of the provision of the Services;
 - 5.2.6 obtain and maintain in force all memberships, licences, registrations, approvals, consents or qualifications necessary to perform its obligations under this Agreement or otherwise in respect of the Services; and
 - 5.2.7 comply with all Applicable Laws.
- 5.3 The Client will not supply Excluded Products to TES without TES' prior written approval and agreement on the services required and the price to be charged.
- 5.4 Without prejudice to Clause 5.2, before delivery of the Products takes place the Client will notify TES in writing of any hazardous substance, or any other potential hazard contained in

or relating to the Products and thereafter information concerning any changes in such substances or hazard that it is (or ought reasonably to be) aware of.

- 5.5 TES may at any time request a Specification for the Products if the Client has notified TES of a hazard or substance in accordance with Clause 6.4 or where TES believes that the Products contain hazardous substances or other potential hazard. If the Client is unable to produce a Specification for the Products on request, then TES may at the Client's sole cost (such cost to be agreed with the Client) carry out testing of the Products on the Client's behalf to produce a Specification. TES shall not be in breach of its obligations under this Agreement and may reject the Products if the Client does not either supply a Specification or allow TES to produce a Specification for the Product in accordance with this Clause 5.5.

6. PRICE AND PAYMENT

- 6.1 The Price for the Services will be the prices agreed between the Parties as set out in the SOW and is exclusive of any value added tax or other applicable sales tax or duty.
- 6.2 The amount payable for the Services may not be varied other than by mutual agreement of the Parties. Where the Services have been undertaken by TES for a Fixed Price, TES shall submit a valid tax invoice for the agreed Price within thirty (30) days after the relevant Statement of Work has been completed by TES to the client.
- 6.4 TES and the Client will review the Price from time to time in accordance with the SOW. TES will be entitled to an Consumer Price Index (CPI) increase annually or an increase of the Price following any agreed changes in the SOW.
- 6.5 Invoicing and payment will be as set out in the SOW. Depending on the nature of the Services, TES may invoice the Client for the Price payable for the Services on an agreed invoicing date as set out in the SOW. Payment is due in the currency set out in the SOW.
- 6.6 Payment will not be deemed to have been received until TES has received cleared funds.
- 6.7 All payments due under this Agreement are exclusive of VAT, if any, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid against receipt of a valid VAT invoice in respect thereof.
- 6.8 All sums due and payable under this Agreement will become payable immediately upon termination of this Agreement.
- 6.9 Unless otherwise agreed by the Parties in writing, all payments to be made under this Agreement will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim.
- 6.10 If the Client fails to pay on the due date any amount which is payable to TES under this Agreement, then, without prejudice to Clause 14 (Term and Termination):
- 6.10.1 that amount will bear interest at the current statutory rate from time to time in the Territory where TES is based from the due date until payment is made in full, both before and after any judgment; and
- 6.10.2 TES will be entitled to suspend performance of the Services, or any part of the Services, until the outstanding amount has been received from the Client in cleared funds.

- 6.11 If the Client reasonably and in good faith disputes the amount of any invoice (a "**Disputed Invoice**") under a Statement of Work, TES shall issue a notice in writing setting out in reasonable detail its objection to the Disputed Invoice (including the amount in dispute) on or before the due date for payment of such Disputed Invoice. The Client shall respond in writing to TES following receipt of any such objection. If the Parties cannot reach agreement following receipt of the Client's response, the matter may be submitted for dispute resolution and/or mediation in accordance with Clauses 18 and 19.

7. RISK, TITLE, AND INSURANCE

- 7.1 Save where transportation is provided by TES, the Client will bear the risk of loss or damage to the Products during their delivery to and from the Premises.
- 7.2 TES will bear the risk of loss or damage to the Products whilst the Products are located in the Premises.
- 7.3 TES will have no liability for the risk of loss or damage to Products, and title shall not pass to TES in Products (i) in the Client's possession or under its control; or (ii) to the extent Products are simply to be assessed and returned to the Client in accordance with the SOW.
- 7.4 Unless otherwise stated in the SOW title in the Products will transfer to TES:
- 7.4.1 on unloading of the Product at the Premises, where the Client allocates the Products for destructive recycling;
- 7.4.2 where TES is required to assess the Products (but not return them to the Client in accordance with the SOW) to determine if they are suitable for resale/remarketing or destructive recycling:
- 7.4.2.1 if a buyback deal, at the point TES determines the Products are suitable for resale/remarketing; or
- 7.4.2.2 if a revenue share deal, flash title in the Products will occur at the point of resale of the Products of part of the Products if TES determines the Products are suitable for resale/remarketing; or
- 7.4.2.3 at the point TES allocates the Products for destructive recycling, if TES determined the Products are only suitable for destructive recycling.
- 7.5 TES acknowledges and agrees that this Agreement does not operate (and the Client by entering into this Agreement (or otherwise) does not purport) to transfer to TES any right, title or interest into any software or other Intellectual Property Rights in or to the Products. TES undertakes:
- 7.5.1 to obtain itself; or
- 7.5.2 in the event of on-sale or disposal of the Products (or any part thereof) by TES to a third party, to provide in its contracts with such third parties, that such third parties shall obtain, the necessary rights and licences in and to any software or other IPRs in or to the Products (or any part thereof) from the lawful owner of such software or other IPRs.

- 7.6 The Client hereby warrants that it has all right, title and interest in and to the Products and that no third party has any right, title or interest in or to the Products. The Client will indemnify, and keep indemnified, TES, its respective Affiliates, and their respective officers, directors and employees, from and against all costs, expenses, liabilities, losses, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which TES incurs or suffers resulting from or arising from any breach of this Clause 9.8.
- 7.7 During the term of this Agreement TES shall at its own cost maintain with an insurance company of good repute the insurances specified below for normal risks covered by such policies to cover its liabilities under this Agreement:
- 7.7.1 public liability insurance in the sum of **USD 1,000,000** per claim and **USD 1,000,000** in aggregate;
- 7.7.2 professional indemnity in the sum of **USD 250,000 per claim and USD 250,000** in aggregate;
- 7.7.3 employer liability insurance as may be applicable to cover TES operations in the location services are to be delivered.

TES shall provide evidence of payment of such insurance policy premium(s) to the Client on request.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Client retains all Intellectual Property Rights, whether owned or licensed, in any software, hardware, firmware, software, documents, copy, data, text, trademarks, brands, logos, information, specifications, drawings and materials provided by the Client to TES from time to time ("**Client IPRs**"). The Client warrants that it has the right to use, exploit and/or provide to TES all Client IPRs and the Client IPRs do not infringe the rights of any third party. The Client hereby grants TES a non-exclusive and royalty-free licence for the duration of this Agreement or until terminated to use the Client IPRs solely for the purpose of and to the extent necessary TES to perform its obligations under this Agreement.
- 8.2 All Data generated by TES in the performance of the Services and shall be and remain the property of the Client and TES shall not obtain any Intellectual Property Rights or any other rights therein. TES shall not use such Data for any purpose other than the performance of the Services and shall keep such Data confidential in accordance with its confidentiality undertakings in Clause 9.
- 8.3 If the SOW provides for the use of Software by the Client, then TES hereby grants to the Client during the continuance in force of this Agreement, a non-exclusive, non-transferable [, and royalty-free] licence to use the Software solely for the purpose of the Client's use of the Services to which the Software relates and for no other purpose. The licence provided in this Clause 8.3 is subject to the terms and conditions that may be notified to the Client or in the absence of any such terms and conditions, to the following:
- 8.3.1 the Client may only use the Software as set out in this Clause 8.3 and for no other purpose;
- 8.3.2 this licence is for the benefit of the Client only and unless otherwise agreed in writing by TES the Client shall not transfer or sub-licence the use of the Software;
- 8.3.3 TES provides no warranty or representation as to access or availability of the Software;

- 8.3.4 TES may restrict the Client's access to the Software or revoke this licence at any time without notice to the Client; and
- 8.3.5 the Client agrees to comply with any reasonable instruction in relation to the use of the Software provided by TES from time to time.
- 8.4 Except as the Parties may expressly agree under a SOW, all Work Product prepared for Client by Service Provider in the course of performance of this Agreement shall, to the extent possible, be deemed to be "works made for hire", and the Client shall have sole ownership of the copyright and mask work right in such Work Product. To the extent that any such Work Product may not, by operation of law, be "works made for hire," Service Provider hereby exclusively assigns to Client the ownership of the copyright and mask work rights in such Work Product and the Client shall have the right to obtain and hold in its own name copyrights, registration of copyrights, mask work rights, and whatever similar protection may be available.
- 8.5 Each Party (the **Indemnifying Party**) will indemnify, and keep indemnified, the other Party from and against all costs, expenses, liabilities, injuries, losses, damages, claims, demands, proceedings and judgments which the other Party incurs or suffers in respect of or as a result of any claim or action that the use of the Intellectual Property Rights provided by, or on behalf of, the Indemnifying Party pursuant to this Agreement infringes the Intellectual Property Rights of any third party.
- 8.6 For the purpose of the indemnity provided by TES in accordance with Clause 9.5, TES' Intellectual Property Rights shall include the Software licensed to the Client in accordance with this Agreement, but this indemnity obligation explicitly excludes any other software that may be used in the Services and TES provides no warranty and accepts no liability in respect of such software.
- 8.7 Each Party acknowledges and agrees that as between them nothing in this Agreement shall confer on either Party any right title and interest in any Pre-existing IPR owned by the other or its Affiliates.
- 8.8 Each Party undertakes to do all further acts and execute all such further documents as the other may reasonably require to vest in or further assure the rights herein expressed to be granted or agreed to be granted.

9. CONFIDENTIALITY

- 9.1 Both Parties agree:
- 9.1.1 not to make or publish any statement relating to, or disclose to any person, firm, company or organisation any Confidential Information (whether written or oral) of the other which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance of, this Agreement;
- 9.1.2 not to make or publish any statement relating to, or disclose any Confidential Information of the other in whole or in part to any other person without the other's prior written consent, save to those of its employees, agents and sub-contractors involved in the implementation of the Agreement and who have a need to know the same; and

- 9.1.3 to use the Confidential Information of the other solely in connection with the performance of the Agreement and not otherwise or for the benefit of any third party.
- 9.2 Each Party will procure that its employees, agents and sub-contractors will maintain the Confidential Information in strict confidence and will not use the same at any time for any purpose except in performance of their duties pursuant to this Agreement.
- 9.3 Each Party will, at its own expense, take all reasonable and appropriate steps to enforce any duty of confidence owed to it by any employee, agent or sub-contractor, insofar as such enforcement appears to be necessary for the protection of the confidentiality of the Confidential Information.
- 9.4 The provisions of Clauses 9.1 to 9.3 above will not apply to the whole or any part of the Confidential Information which is:
 - 9.4.1 lawfully obtained after the Commencement Date free of any duty of confidentiality otherwise than directly or indirectly from the other Party to this Agreement;
 - 9.4.2 already in the other Party's possession other than as a result of a breach of this clause 9;
 - 9.4.3 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 9);
 - 9.4.4 necessarily disclosed pursuant to a statutory or regulatory obligation but then only to the extent of such required disclosure;
 - 9.4.5 disclosed to the professional advisers, lawyers, auditors and bankers of each Party under terms of confidentiality and those professional advisers, lawyers, auditors and bankers are bound by a duty of confidence; or
 - 9.4.6 disclosed with prior written consent of the other Party.
- 9.5 The Parties acknowledge and agree that there can be no adequate remedy at law for breach of this Clause 9, and that such breach would cause irreparable harm to the non-disclosing Party and therefore, the non-disclosing Party shall be entitled to seek immediate injunctive relief in addition to whatever remedies it might have at law or under this Agreement.
- 9.6 Subject to Clause 9.4, the provisions of this Clause 9 will continue to apply after the termination of this Agreement for 2 years.
- 9.7 Each Party warrants that it has not made or published any statement relating to or disclosed any Confidential Information prior to the date of this Agreement which would constitute a breach of Clause 9.1 if it had occurred after the date of this Agreement.

10. MANAGEMENT OF THE SERVICES

- 10.1 TES and the Client will manage and review the Services in accordance with the procedures set out in the SOW.
- 10.2 Without prejudice to the foregoing, TES and the Client will each nominate a key representative who will be authorised to make decisions relating to this Agreement and who

will be responsible for organising and conducting regular meetings throughout the duration of this Agreement.

- 10.3 Subject to the Client providing TES with reasonable prior written notice and on reasonable frequency during the term of the Agreement, TES will allow the Client's staff and nominated third parties access during TES's regular office hours on a Business Day to those books, records, systems and procedures maintained by TES in connection with the provision of the Services (but excluding data and information which is the Confidential Information of TES or is legally privileged) for the purpose of reviewing the operation of the Services and/or the verification of any invoice or statement relating to the Services provided to the Client by TES. TES will provide reasonable assistance to any authorised persons conducting the review. The Client will not and will procure that its nominated third parties will not, disrupt or interfere with the business or operations of TES in conducting any such review.

11. CHANGES TO THE SERVICES

- 11.1 At any time during the continuance in force of this Agreement either Party may by written notice request and/or recommend variations to any part or parts of the Services.
- 11.2 TES will notify the Client in writing of the estimated length of time required to investigate the variation requested or recommended by either Party within 10 Business Days (or such longer period as may be agreed) of either:
- 11.2.1 the receipt by TES of the Client's written variation request and/or recommendation; or
- 11.2.2 the notification by TES to the Client of TES' variation request and/or recommendation.
- 11.3 Subject to Clause 11.5, TES will then submit to the Client as soon as reasonably practicable (and in any event within 10 Business Days) a written quotation for such variation specifying the increase or decrease (if any) which will be required to the Price and the changes (if any) which will be required to this Agreement to implement the proposed change.
- 11.4 Subject to Clauses 4.5 and 12, no variations to the Services will take effect unless and until they are agreed in writing between the Parties and TES will, unless otherwise agreed in writing, continue to perform the Services and be paid as if such variation had not been recommended or requested.
- 11.5 Notwithstanding Clause 11.4, if TES is unable to comply with any request for the variation of the Services, it will notify the Client in writing within 30 Business Days after receiving a request. The Client will have the right, at its cost, to purchase the varied Services elsewhere as is necessary to cover its requirements.

12. FORCE MAJEURE

- 12.1 Neither Party to this Agreement will be in breach of this Agreement or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to Force Majeure.
- 12.2 If a Party's performance of its obligations under this Agreement is affected by Force Majeure:

- 12.2.1 it will give written notice to the other Party, specifying the nature and extent of the Force Majeure, within 10 Business Days of becoming aware of the Force Majeure and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure;
- 12.2.2 subject to the provisions of Clause 12.3, the date for performance of such obligation will be deemed suspended but only for a period equal to the delay caused by such event; and
- 12.2.3 it will not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 12.3 If the Force Majeure in question continues for more than 3 consecutive months, either Party may give notice in writing to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than 10 Business Days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date.

13. LIMITATION OF LIABILITY

- 13.1 Nothing in this Agreement shall operate to limit or exclude either Party's liability to the other for:
 - 13.1.1 personal injury or death resulting from that Party's negligence;
 - 13.1.2 breach of applicable environmental legislation, regulations and codes of practice, breach of Applicable Laws, or breach of Applicable Privacy Laws;
 - 13.1.3 any liability which cannot be excluded or excluded by law; or
 - 13.1.4 fraud (including fraudulent misrepresentation or fraudulent concealment).
- 13.2 Subject to Clause 13.1, neither Party shall be liable to the other whatsoever (whether in contract, tort (including negligence) breach of statutory duty, restitution under any indemnity or otherwise) for any indirect, incidental, special, consequential or punitive damages incurred or suffered by the other Party arising out of or in connection with this Agreement (including without limitation, any loss of revenue, loss of actual or anticipated profits, loss of business, loss of opportunity, loss of goodwill, loss of, damage to or corruption of data or any indirect or consequential loss or damage howsoever caused), even if that Party (or an authorised representative of that Party) was advised in advance of the possibility of such damage. This limitation of liability shall remain in full force and effect regardless of whether either Party's remedies hereunder are determined to have failed of their essential purpose.
- 13.3 Subject to Clauses 13.1 and 13.2, each Party's maximum aggregate liability under this Agreement whatsoever (including without limitation under any SOW) whether in contract, tort (including negligence), breach of statutory duty, restitution under any indemnity or otherwise will be limited to the greater of:
 - 13.3.1 **USD 1,000,000 (one million US Dollar); or**
 - 13.3.2 the Price for the Services provided by TES during the Term of this Agreement.

The limitation of liability in this Clause 13.3 shall not apply to claims made under the indemnities at Clauses **[COMPLETE]**.

13.4 Where either Party (the **Indemnifying Party**) is liable to indemnify the other Party (**Innocent Party**) under this Agreement, such indemnity will apply provided that:

13.4.1 the Innocent Party promptly gives notice of any claim to the Indemnifying Party;

13.4.2 the Innocent Party provides to the Indemnifying Party on request such information and assistance in relation to such claim as the Indemnifying Party may reasonably require, subject to the Indemnifying Party indemnifying the innocent Party against all costs reasonably incurred by it in the provision of such information or assistance;

13.4.3 the Innocent Party does not make any settlement, compromise or prejudicial admission in relation to such claim without the prior consent of the Indemnifying Party (such consent not to be unreasonably withheld or delayed); and

13.4.4 the Innocent Party takes all reasonable steps to mitigate its loss.

14. TERM AND TERMINATION

14.1 This Agreement shall be deemed to commence on the Commencement Date and shall continue for **INSERT NUMBER** years/months (the “Initial Period”), unless terminated earlier in accordance with this Agreement, until the later of:

14.1.1 the last day of the Initial Period or thereafter, on any anniversary of the Commencement Date (“Term”); and

14.1.2 the date when all Statements of Work entered into during the Term have terminated or expired.

14.2 Each Statement of Work shall commence on the date specified as such in the SOW and accordingly TES shall commence the provision of the Services and the development of Work Products on such date.

14.3 On the expiry of the Initial Period, the Agreement shall (subject to earlier termination in accordance with this Clause 16) continue automatically until terminated by either Party giving not less than ninety (90) days' written notice to the other, such notice to expire in each case on or after the end of the Initial Period.

14.4 Either Party may by written notice served on the other terminate this Agreement immediately in whole or in part with respect to individual Services or Territory/countries, without any cancellation charge, whilst there are active SOWs or PAs if the other Party:

14.4.1 is in material or persistent breach of any of its obligations under the terms of this Agreement and, where the breach is capable of remedy, the other Party fails to remedy such breach within thirty (30) days' service of a written notice specifying the breach and requiring it to be remedied;

14.4.2 becomes insolvent, summons a meeting of or enters into any arrangement with its creditors, makes a proposal for or becomes subject to any voluntary arrangement, is unable to pay its debts, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, passes a resolution for its winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all of its liabilities), or has a petition presented for winding up (which is

not dismissed with fourteen (14) days of its service), has a provisional liquidator appointed or has an administrator appointed in respect of it;

- 14.4.3 has any distraint, execution or other process levied or enforced on any of its property or ceases [or threatens to cease] to trade; or

any event analogous to any of the above events occurs to the other Party under the jurisdiction to which that Party is subject (sub-clauses 14.4.1, 14.4.2 and 14.4.3 collectively referred to as “Cause”).

- 14.5 Each Party shall, without prejudice to any other rights and remedies which it may have be entitled to terminate any SOW or PA immediately on written notice in the event that the other Party commits a material or persistent breach of the terms of that SOW or PA, which is either not capable of being remedied or if it is capable of being remedied, the other Party fails to remedy within thirty (30) days after receiving written notice requiring it to do so.
- 14.6 Each Party may terminate this Agreement or any SOW (provided that such SOW is not expressly stated to be for a fixed term) or PA at any time upon sixty (60) day’s written notice to the other. In the event of termination by the Client under this clause the Client will pay TES for work done up to the date of termination provided that TES shall be obliged to reasonably mitigate its losses during such period. Such payment shall be on the basis of a pro-rata payment of the Price for the then current SOW or PA at the date of termination.
- 14.7 The rights to terminate this Agreement given by this Clause 14 will not prejudice any other right or remedy of either Party in respect of the breach concerned (if any), or any other breach.

15. CONSEQUENCES OF TERMINATION

- 15.1 Upon termination of this Agreement howsoever arising:
- 15.1.1 TES may invoice the Client for any Services performed under this Agreement up to the date of termination and the Client will pay such invoice in accordance with this Agreement;
- 15.1.2 each Party will promptly return to the other Party all tangible property, materials and Confidential Information of the other in its possession, custody or control, and cease use of the other Party’s Intellectual Property Rights and Confidential Information, and either return or destroy all records, documentation, data and any other information and all copies thereof which are owned by or licensed to the other Party; and
- 15.1.3 TES and the Client will agree what should happen to any unprocessed Products in TES possession at the date of termination. Where the Parties are unable to reach such agreement, TES shall return such Products to the Client at the Client’s cost and expense.
- 15.2 TES shall provide all co-operation and assistance reasonably required by the Client (at the Client’s cost unless terminated by the Client pursuant to Clause 14.3) to enable the Client to appoint and transfer to another supplier.
- 15.3 Termination of this Agreement for any reason will not prejudice or affect any right of action or remedy already accrued to either Party, and any provisions which are expressly or by implication intended to survive such termination will remain in full force and effect.

16. [CLIENT]/[CUSTOMER DATA] **NOTE: IF THIS IS APPLICABLE THEN ALSO CONSIDER ATTACHING A DATA PROTECTION AGREEMENT AS A SCHEDULE TO THE AGREEMENT. CURRENT VERSION COVERS UK/EEA ONLY.**

A. Relationship between data processor and data controller.

16.1 In relation to [Client]/[Customer] Data, the following terms shall apply:

16.1.1 the IPRs in the Client/ Customer Data shall vest in the Client and shall be provided to the Client as and when requested;

16.1.2 the Parties acknowledge that TES is the data processor and the Client is the data controller of personal data disclosed or processed by TES in connection with the Services or by or on behalf of the Client and which is held or processed under this Agreement. TES will only process personal data to the extent, in such a manner, and for such a period of time, as is necessary for the purposes specified in [Schedule [NUMBER]] (Data Protection Agreement) and in accordance with the Client's instructions and shall not process the personal data for any other purpose. The Client acknowledges that TES will act on those instructions and in accordance with [Schedule [NUMBER]] as regards the processing of personal data as reasonably necessary for the provision of the Services;

16.1.3 notwithstanding the above, TES shall:

16.1.3.1 not disclose the personal data to any third party in any circumstances other than in compliance with the Client's written instructions or in compliance with a legal obligation;

16.1.3.2 promptly upon termination or expiry of this Agreement and, at any other time, on request by the Client return to the Client all personal data together with all copies thereof in any media in its power, possession or control;

16.1.3.3 co-operate with and assist the Client as necessary promptly and at no charge to enable data subjects to exercise their rights under Applicable Privacy Laws, including without limitation in connection with any subject access requests received from data subjects;

16.1.3.4 co-operate with and provide such information and access to any facilities, premises or equipment from or on which Personal Data is, has been, or is to be processed pursuant to this Agreement as the Client may reasonably require to enable it to monitor compliance by TES with its obligations in this Clause 16.

16.2 TES shall ensure that any and all Products, where such Products are not new and unused, shall be subjected (prior to any use or onward distribution of any kind (including sale or transfer for value) to stringent process and treatments to ensure that:

16.2.1 all personal data of whatever kind stored on the Products (including but not limited to personal information, emails, sms, mms, cookies, images, video files, bookmarks, music,

contacts, calendar entries and like data, or data stored, uploaded, side loaded purchased or installed by an end user) are cleansed from such Products;

- 16.2.2 any SIM cards or removable memory storage cards are removed and destroyed immediately;
 - 16.2.3 any personalisation's are deleted and the internal memory is flashed; and
 - 16.2.4 any marks identifying a previous owner and any Client or Client marks are permanently removed, and TES may not use or onward distribute any Products featuring a Client or Client mark.
- 16.3 The Parties shall each comply with all obligations imposed on a controller under Applicable Privacy Law, including that each shall comply with all obligations imposed on a controller under Applicable Privacy Law, including not to transfer any of the Personal Data shared between the Parties outside the [UK] OR [EEA] unless the transferor ensures that (i) the transfer is to a country approved under Applicable Privacy Law as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the Applicable Privacy Law; or (iii) the transferor otherwise complies with its obligations under the Applicable Privacy Law by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the Applicable Privacy Law applies to the transfer.

17. ANTI-BRIBERY AND ANTI-CORRUPTION

- 17.1 Each Party warrants that, in connection with the performance of this Agreement, it will at all times (and where applicable, ensure that its employees will at all times):
- 17.1.1 comply with all applicable anti bribery and corruption laws;
 - 17.1.2 not engage in any activities that are punishable under criminal law (including any criminal economic activities), or that are in violation of applicable Laws or standards in connection to the initiation and performance of this Agreement;
 - 17.1.3 comply with all applicable anti-money laundering laws concerning or relating to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto during the term of this Agreement;
 - 17.1.4 provide any information and documents reasonably required by the other Party to comply with any applicable anti-money laundering or counter-terrorism financing including any applicable laws imposing "know your customer" or other identification checks or procedures that the other Party is required to comply with in connection with this Agreement;
 - 17.1.5 not, directly or indirectly, offer, promise or give any financial or other advantage to, nor request, agree to receive or accept such an advantage from, any other person, intending to obtain or retain business or any advantage in the conduct of its business; or
 - 17.1.6 be excluded from any sanctions list of any Territory or jurisdiction where this Agreement is being performed, nor subject to a corresponding embargo, and shall ensure that the execution of this Agreement does not otherwise violate export control regulations.

- 17.2 In the event that either Party (or any of its employees) has breached any provision of this Clause 17, and to the extent permitted by Applicable Laws, it shall indemnify the other Party and hold such Party harmless from and against any claims, costs, fines, losses, damages, liabilities and expenses, howsoever arising out of or in connection with such breach; and it may, without prejudice to any other rights it may have, (a) withhold any or all payment or Services (as applicable) due to, or to be performed for the breaching Party and/or (b) give notice under Clause 14 to terminate this Agreement with immediate effect and/or suspend this Agreement with immediate effect.

18. DISPUTE RESOLUTION

- 18.1 In the event of any dispute or difference arising between the Parties in respect of any matter connected with this Agreement (the “**Dispute**”), TES and the Client will work together in good faith to try to resolve the Dispute.
- 18.2 In order to resolve a Dispute, the key representatives of the Parties will:
- 18.2.1 meet as often as the Parties reasonably deem necessary to gather and exchange all information regarding the Dispute and which is relevant to its resolution; and
- 18.2.2 discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceedings.
- 18.3 If the key representatives of the Parties are unable to resolve the Dispute within [20] Business Days, either Party may refer the Dispute for consideration by the senior management (or equivalent) of TES and the Client who will act in good faith to try to resolve the Dispute.
- 18.4 Neither Party will commence any court proceedings in relation to any Dispute arising out of this Agreement until after both Parties have attempted to settle any Dispute using the procedures referred to in this Clause 18 and Clause 19.
- 18.5 Nothing in this Clause 18 or Clause 19 will prevent any Party from seeking immediate injunctive relief to protect any Intellectual Property Rights or Confidential Information.

19. ARBITRATION

- 19.1 If the Parties are unable to resolve a Dispute in accordance with Clause 18, the Parties will attempt to settle the Dispute by arbitration in the English language in accordance with the Arbitration Rules and Procedures of the International Chamber of Commerce then in effect, by one or more commercial arbitrator(s) with substantial experience in the industry and in resolving complex commercial contract disputes. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement.
- 19.2 If either Party refuses at any time to participate in the arbitration procedure or if the Dispute is not resolved within twenty (20) Business Days of commencement of the arbitration procedure, then either Party may commence proceedings to refer the Dispute to the relevant courts.

20. NATURE OF AGREEMENT

20.1 Entire Agreement

This Agreement (including all Schedules, Annexes, Statements of Work, and PA's entered into under this Agreement) contains all of the terms which the Parties have agreed in relation to the transactions provided for by this Agreement, and represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto, whether made orally or in writing and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing. However, this provision shall not operate to limit or exclude any liability for fraud.

20.2 Assignment and Subcontracting

20.2.1 Neither Party may assign, transfer, mortgage, charge or otherwise dispose of, in any manner whatsoever, the benefit of this Agreement or sub-contract or delegate its performance under this Agreement without the prior written consent of the other, save that nothing in this Agreement shall prevent or restrict TES from assigning all or any part of its rights or obligations under this Agreement to any of its Affiliates or to a successor to or acquirer of all or substantially all of its business operations.

20.2.2 Notwithstanding any assignment or sub-contracting of any part of TES' rights or obligations under this Agreement, TES shall remain liable for such obligations under this Agreement and will be responsible for the acts and omissions of any sub-contractors and/or assignees.

20.3 Severability

If any provision or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other provision or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

20.4 Waiver

20.4.1 Any failure or delay by either Party in exercising any right, power or remedy under this Agreement will not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by a Party of any right, power or remedy under this Agreement will not in any circumstances preclude any other or further exercise of it, or the exercise of any right, power or remedy.

20.4.2 Subject as expressly provided in this Agreement, the rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

20.4.3 Any waiver of a breach of, or default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.

20.5 Variation

No variation of this Agreement (or any document referred to in it) will be valid unless in writing (which for this purpose excludes email) signed by a director or duly authorised representative of each of the Parties.

20.6 Relationship of the Parties

Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall create, or be deemed to create, a partnership or joint venture between the Parties, nor shall the execution, completion and implementation of the Agreement confer on any Party any power to bind the other Party to perform obligations for a third party, or otherwise impose any obligations to any third parties on the other Party, or to pledge the credit of the other Party.

20.7 Announcements

Except as required by Applicable Law, and without prejudice to Clause 10 of this Agreement, neither Party shall issue any announcement or other communication to any third party concerning its dealings with the other in relation to this Agreement in any promotional, advertising or other materials, without the other Party's prior express written consent. Similarly, neither Party shall at any time during or after the term of this Agreement, without the prior written consent of the other Party, issue, publish, or arrange for any press release of any kind or nature whatsoever, which involves the use of, or contains any reference to any trademark or service mark, trade or service name, or logo of the other Party.

21. NOTICES

21.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, first class post, special delivery post, airmail, courier or email, addressed to the respective addresses set out below:

In the case of **TES** to:

Address:

Attention of:

Email address:

Copy by email to:

In the case of the **Client** to:

Address:

Attention of:

Email address:

Copy by email to:

21.2 A notice given in accordance with clause 22.1 will be deemed to have been duly served:

21.2.1 if delivered by hand or courier service, when delivered at the proper address for service;

- 21.2.2 if sent by first class post or special delivery post to and from addresses within the Territory within which the Services are being performed, 2 Business Days after being posted; or
- 21.2.3 if given by airmail to and/or from addresses outside of Territory within which the Services are being performed, five (5) Business Days after the date of posting, provided that, where in the case of delivery by hand, such delivery occurs either after 4.00 p.m. on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 a.m. on the next following Business Day (such times being local time at the address of the recipient).

If sent by email, notices will be deemed received on the next Business Day following a delivery receipt from the above email address. If a delivery receipt is not received within one (1) hour of sending the notice then the notice should be sent again between 0900 and 1730 by hand or recorded delivery.

22. COUNTERPARTS

22.1 This Agreement may be executed (including by facsimile signature or electronically scanned copies) in one or more counterparts, with the same effect as if the Parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement.

22.2 Facsimiles and PDFs of a Party's authorized representative's signature shall be deemed to be binding upon such Party. The Parties agree and acknowledge that this document may be signed by means of an electronic signature, provided that such signature and any related signing process comply fully with all applicable laws.

23. RIGHTS OF THIRD PARTIES

Unless expressly provided to the contrary in this Agreement for the Parties Affiliates, the Parties to this Agreement do not intend that any of its terms will be enforceable by any person not a Party to it whether by virtue of statute or otherwise howsoever arising.

24. LAW AND JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of [SPECIFY COUNTRY] or [the Territory] where the TES entity which issued the SOW is located without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods, and each Party irrevocably agrees that the courts of [SPECIFY COUNTRY] or [such Territory] shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

AGREED by the Parties through their duly authorised signatories.

Signed for and on behalf of **TES-AMM (SINGAPORE) PTE. LTD.**

.....

Name:

Position:

Date:.....

Signed for and on behalf of **CLIENT [Legal Entity name]**

.....

Name:

Position:

Date:.....

IMPORTANT NOTE:

THE FOLLOWING SCHEDULES HAVE BEEN REMOVED FROM THIS MSA AND ARE AVAILABLE AS STAND-ALONE DOCUMENTS FOR ADDITION TO THE MSA, AS APPROPRIATE, GIVEN THE CIRCUMSTANCES OF EACH ENGAGEMENT:

- CLIENT STATEMENT OF WORK/SOW
- PARTICIPATION AGREEMENT /PA
- UK/EEA DATA PROTECTION ACT/DPA-OPTION 1
- UK/EEA DATA PROTECTION ACT/DPA-OPTION 2
- NON-UK/EEA DATA PROTECTION WORDING FOR INSERTION AT CLAUSE 18 IN PLACE OF EXISTING WORDING