



## TERMS AND CONDITIONS

**NVT Group Ltd (hereinafter referred to as NVT)**

### GENERAL TERMS:

#### 1 THE CUSTOMER CONTRACT

1.1 These terms and conditions set out the contractual arrangements under which NVT provides services to its customers. They should be read in conjunction with the customer contract the Company will have issued in relation to the services being provided (“the Customer Contract”) which will confirm the identity of the customer to whom the services will be provided (“the Customer”); the goods/services to be supplied by NVT (“the Services”) and the charges payable to NVT by the Customer for the Services (“the Charges”).

1.2 When a Customer Contract is signed by both NVT and the Customer a contract for the provision of the Services detailed in that Customer Contract will come into force. The structure of the contract will be dependent upon the type of Services being provided by NVT as follows:

1.2.1 where the Services involve the sale of goods, the terms detailed in Schedule 1 will apply (the resulting agreement being “the Sale of Goods Agreement”);

1.2.2 where the Services involve the provision of hardware support and maintenance services, the terms detailed in Schedule 2 will apply (the resulting agreement being “the Hardware Support Agreement”);

1.2.3 where the Services involve the provision of facilities management services, the terms detailed in Schedule 3 will apply (the resulting agreement being “the Managed Service Agreement”);

1.2.4 where the Services involve the provision of disaster recovery services, the terms detailed in Schedule 4 will apply (the resulting agreement being “the Disaster Recovery Agreement”);

1.2.5 where the Services involve the provision of project specific services the terms detailed in Schedule 5 will apply (the resulting agreement being “the Project Implementation Agreement”);

1.2.6 where the Services involve the provision of managed hosting services, the terms detailed in Schedule 6 will apply (the resulting agreement being “the Managed Hosting Agreement”); and

1.2.7 where the Services involve all or a combination of the foregoing agreements, the relevant Schedules will apply and form part of this Agreement.

1.3 These terms and conditions, together with the Customer Contract (duly signed by both NVT and the Customer), any relevant Sale of Goods Agreement, Hardware Support Agreement, Managed Services Agreement, Disaster Recovery Agreement, Project Initiation Agreement, Managed Hosting Agreement and any other documents incorporated by reference in any of the foregoing together constitute “this

Agreement” which in represents the entire agreement between NVT and the Customer.

1.4 The parties acknowledge that in entering into this Agreement they have not relied upon and have no remedy in respect of any statement, representation, warranty or undertaking of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

1.5 No variation to this Agreement will be effective unless made in writing and signed by a director of NVT. No conduct by NVT shall be deemed to constitute acceptance of any alternative terms put forward by the Customer.

1.6 Permission is given by the customer to NVT employees to access system resources via remote services within both active and proactive capacities on a 24 hour basis. This permission is required in order for NVT to meet the obligations of the current contract.

## **2 TERM AND TERMINATION**

2.1 This Agreement shall come into force on the Contract Commencement Date and shall remain in force for the initial period, all as set out in the Customer Contract. Thereafter this Agreement will automatically be renewed for consecutive periods of 12 months unless terminated by either party giving three months prior written notice by recorded delivery letter to the other party, such notice to expire at the end of the initial period or the anniversary of the end of such period. Such notice shall specify the constituent part or parts of this Agreement to be terminated, being the Sale of Goods Agreement, the Hardware Support Agreement the Managed Service Agreement, the Disaster Recovery Agreement, the Project Implementation Agreement or the Managed Hosting Agreement and any part not so specified shall be automatically renewed as aforesaid.

2.2 Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

## **3 CHARGES**

3.1 The Customer will pay NVT the Charges in full on the date or dates set out in the Customer Contract or as otherwise specified in this Agreement without set off, deduction, counterclaim or withholding of any sum for any reason. If no date is set out in the Customer Contract or otherwise in this Agreement or if additional services are provided the Customer will pay NVT within 7 days of receipt of an invoice from NVT (the “Due Date”).

3.2 In addition to the Charges the Customer shall reimburse NVT for any increased costs arising from the Customer cancelling or rescheduling any time fixed for the performance or delivery of the Services on less than 48 hours prior written notice or on more than one occasion in the event that the requisite period of notice has been given. Any increased cost will be charged at NVT’s sole discretion at its then prevailing time and material rates for the Services in question.

3.3 If the Customer fails to make any payment due to the Company, whether under the Customer Contract or otherwise, the Company shall be entitled (without prejudice to any other right or remedy available to it) to suspend any further performance of obligations by the Company to the Customer and/or to appropriate any money received from the Customer against such sums as NVT may determine (notwithstanding any other instructions from the Customer) until receipt of payment in full. For the avoidance of doubt, there shall be no abatement to the Charges during any period of suspension of the Services arising from non-payment by the Customer.

3.4 NVT reserves the right to charge interest on any sum due under the Customer Contract which is

not paid on the due date for payment (after as well as before judgement) at a rate of 4% per annum over the base lending rate of The Royal Bank of Scotland plc from time to time or, if higher, in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 or any amendment or re-enactment thereof from the due date for payment until the date of payment in full.

#### **4 FORCE MAJEURE**

NVT shall not under any circumstances be liable for failure or delay in performing or fulfilling this Agreement (or any part thereof) or otherwise failing to implement its obligations to the Customer if such failure or delay shall be due to any cause beyond its reasonable control including (but not limited to) fire, flood, strikes, riots, acts of terrorism, delays in transportation, shortage of labour or inability to obtain supplies or power.

#### **5 LIABILITY**

5.1 NVT shall not be liable to the Customer for loss of profits, goodwill or any type of special, indirect or consequential loss including loss or damage suffered by the Customer as a result of an action brought by a third party.

5.2 NVT's entire liability to the Customer (if any) in respect of any constituent part of this Agreement being the Customer Contract, the Sale of Goods Agreement, the Hardware Support Agreement, the Managed Service Agreement, the Disaster Recovery Agreement, the Project Implementation Agreement or the Managed Hosting Agreement shall not exceed the sum of the Charges payable by the Customer in relation to such part in the year in which any such liability arises.

#### **6 RESTRICTIONS**

6.1 The Customer will not during the term of this Agreement and for a period of 6 months after expiry or termination, howsoever caused, without the prior written consent of NVT, solicit the Company's staff or consultants who have been employed or engaged in the provision of the Services or the performance of this Agreement. For the purposes of this clause "solicit" means the soliciting of such person with a view to engaging such person (whether directly or indirectly) as an employee, director, sub-contractor or independent contractor.

6.2 In the event that the Customer is in breach of clause 6.1 it shall pay to NVT by way of liquidated damages an amount equal to 20% of the gross annual salary or annualised contract rate (as at the time of the breach) of the person so employed or engaged. This provision shall be without prejudice to any other right or remedy available to NVT. The Customer acknowledges and agrees that the foregoing formula is a reasonable estimation of the loss which would be incurred by the loss of the person so employed or engaged.

#### **7 CONFIDENTIALITY**

7.1 Each of the Customer and NVT undertakes to the other to:

7.1.1 keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement ("Confidential Information");

7.1.2 not, without the prior written consent of the other, disclose the Confidential Information in whole or in part to any other person save those of its employees, agents and sub-contractors involved in the provision or receipt of the Services and who need to know the Confidential Information in question; and

7.1.3 use the Confidential Information solely in connection with the provision or receipt of the Services and not for its own benefit or the benefit of any third party.

7.2 The provisions of clause 7.1 above shall not apply to the whole or any part of the Confidential Information to the extent that it is trivial or obvious, already in the other's possession on the date of its disclosure or in the public domain other than as a result of a breach of clause 7.1.

7.3 Each of the Customer and NVT undertakes to the other to make all relevant employees, agents and sub-contractors aware of the provisions of this clause 7 and to take such steps as shall from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions thereof.

## **8 GENERAL**

8.1 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred upon such party in this Agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other further exercise of any other power or right.

8.2 The rights and remedies of the parties to this Agreement are cumulative and are not exclusive of any other rights or remedies provided by law.

8.3 The Customer, having been informed by NVT that they may wish to assign or subcontract any part of this agreement, will not withhold or unreasonably delay giving consent to NVT assigning or sub-contracting the performance of this Agreement or any part thereof

8.4 The Customer shall not be entitled to assign this Agreement (or any part thereof) nor any of their rights and obligations hereunder without the prior written consent of NVT.

8.5 If any provision of this Agreement shall to any extent be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and each of the provisions of this Agreement shall be valid, legal and enforceable to the fullest extent permitted by law.

8.6 Any notice given under this Agreement by either party must be in writing and be effected by registered/recorded mail postage and shall be deemed to be received 48 hours after the date of posting. Notices shall be sent to the address of the relevant party set out in the Customer Contract or to any other address notified in writing to the other for such purpose from time to time.

8.7 Headings to clauses in this Agreement are for the purpose of information and identification only and shall not affect the construction or interpretation of this Agreement.

8.8 The public holidays observed by NVT are the 1st and 2nd January, Easter Monday, first Monday bank holiday in May, 25th and 26th December and/or such other holidays as may be intimated by NVT to the Customer from time to time for this purpose.

8.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## **9 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with Scottish Law and the parties submit to the jurisdiction of the Scottish courts.

## **10 PERSONAL DATA**

10.1 NVT and the Customer warrant that they will each duly observe all of their obligations under the Data Protection Act 1998 and any other relevant legislation which arise in connection with the Services.

10.2 In particular, NVT undertakes to act only upon the instructions of the Customer as data controller and to take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data.

## **SCHEDULE 1:**

### **SALE OF GOODS AGREEMENT**

#### **1 DEFINITIONS**

1.1 In this Sale of Goods Agreement the following words and expressions shall, unless the context otherwise requires, have the following meanings:

“Conditions” means the terms and conditions set out in this Agreement including this Sale of Goods Agreement and any special terms and conditions agreed in writing by NVT;

“Goods” means any goods/equipment which the Customer agrees to buy from NVT;

#### **2 CONDITIONS APPLICABLE**

2.1 These Conditions shall apply to all contracts for the sale of Goods by NVT to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document. Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a director of NVT.

2.2 Catalogues, brochures, sales literature or oral or written representations made by NVT’s employees are not intended to form part of these Conditions.

2.3 All orders for Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Conditions and acceptance of delivery of the Goods shall be deemed conclusive evidence of the Customer’s acceptance of these Conditions.

#### **3 CHARGES AND PAYMENT**

3.1 The Charges for the Goods shall be NVT’s quoted price and it shall be exclusive of VAT, which shall be payable in addition. Unless otherwise stipulated by NVT, the Charges shall be exclusive of carriage, packing and insurance, which shall be payable in addition.

3.2 NVT may at any time before delivery of the Goods by giving notice to the Customer increase the Charges to reflect any increase in the cost to NVT which is due to factors beyond the reasonable control of NVT, including (but without limitation) foreign exchange fluctuations, taxes, the cost of labour, materials and other manufacturing costs, provided that the Customer may cancel the order within 7 days of any such notice from NVT.

3.3 The Customer will pay one half of the Charges on placement of an order and the remaining half on delivery unless otherwise agreed between the parties in writing. Time for payment shall be of the essence.

3.4 If the Customer fails to pay the Charges (or any part thereof) on the due date for payment then, without prejudice to any of the Company’s other rights, NVT may:

3.4.1 suspend or cancel delivery of any Goods to the Customer; and/or

3.4.2 appropriate any payment made by the Customer to such of the Goods (or Goods supplied under any other order or arrangement with the Customer) as NVT may in its sole discretion think fit.

## **4 THE GOODS**

4.1 The Goods shall be supplied in accordance with the description contained in the invoice issued by NVT. NVT may from time to time make changes to the specification of the Goods without notice to the Customer which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.

4.2 All specifications, drawings, samples and information provided by NVT to the Customer shall remain the exclusive property of NVT and shall not be disclosed by the Customer to any third party without NVT's prior written consent.

4.3 All Goods sold may be resold by the Customer only in the packaging supplied by NVT and in no case should any trade mark other than those applied by NVT be marked on or applied in relation to the Goods. No right or licence under any patent, trade mark, copyright or other intellectual property is granted under these Conditions other than the right to use or resell the Goods.

## **5 DELIVERY**

5.1 Delivery of the Goods shall be made to the address for the Customer stipulated in the invoice or such other address as may be agreed in writing between the parties for this purpose. The customer shall make all arrangements to take delivery of the goods whenever they are tendered for delivery.

5.2 Any date quoted for delivery of the Goods is indicative only and NVT shall not be liable for any loss or damage whatsoever due to failure by NVT howsoever caused to deliver the Goods (or any part of them) promptly or at all.

5.3 NVT may deliver the Goods by separate instalments and the failure of NVT to deliver any one or more of the said instalments shall not be deemed to constitute or to manifest an intention to abandon these Conditions in any respect and shall not entitle the Customer to treat these conditions as repudiated.

5.4 The failure or refusal of the Customer to take delivery of the Goods (or any part thereof) shall entitle NVT, without prejudice to any of NVT's other rights, to:

5.4.1 without notice suspend further deliveries of any Goods; and/or

5.4.2 store the Goods until actual delivery and charge the Customer for the cost of storage and insurance and any other incidental costs; and/or

5.4.3 sell the Goods at the best price readily obtainable by the Company and (after deducting all storage, insurance and other selling expenses) charge the Customer for any shortfall below the Charges for such Goods.

## **6 ACCEPTANCE OF GOODS**

6.1 The Customer must carefully examine all Goods immediately on delivery. If any of the Goods are damaged or there are any shortages the Customer must notify NVT of the same in writing, providing reasonable detail of the claim within 24 hours of delivery. If the Customer fails to comply with these provisions the Goods shall be conclusively presumed to be in accordance with these Conditions and free

from any defect, damage or shortage and the Customer shall be deemed to have accepted the Goods.

6.2 The Goods may be covered for defects in accordance with a manufacturer's warranty. Any such claims should accordingly be intimated to the manufacturer directly by the Customer. The Customer should seek confirmation from NVT as to whether such a warranty exists in relation to the Goods.

6.3 On receipt of a valid claim in accordance with clause 6.1 NVT may (at NVT's sole discretion) repair or replace the damaged Goods (or the appropriate part thereof), deliver the missing Goods, or refund the Charges (or the appropriate part thereof) and the Company will have no further liability to the Customer.

## **7 RISK AND PROPERTY**

7.1 The Goods shall be at the Customer's risk as from delivery and where delivery is ex works the time of delivery shall be deemed to be the time when NVT notifies the Customer that the Goods are available for collection.

7.2 In spite of delivery having been made, title to the Goods shall remain with NVT and property in the Goods shall not pass from NVT until the Customer shall have paid the Charges in full and there are no other sums whatsoever due by the Customer to NVT.

7.3 Until property in the Goods passes to the Customer the Customer shall hold the Goods on a fiduciary basis and as bailee for the Company in a secure place of custody exercising due care to prevent loss and damage. Subject to clause 7.4, the Customer shall store the Goods (at no cost to NVT) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

7.4 Notwithstanding that the Goods (or any of them) remain the property of NVT the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for the account of NVT. Any such sale or dealing shall be a sale or use of NVT's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings. Until property in the Goods passes from NVT the entire proceeds of sale or otherwise of the Goods shall be held in trust for NVT and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as NVT's money.

7.5 Until such time as property in the Goods passes from the Company to the Customer the Customer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Company. If the Customer fails to do so NVT may enter upon any premises owned occupied or controlled by the Customer or those of any third party where the Goods are situated and repossess the Goods. On the making of such request the rights of the Customer under clause 7.4 shall cease.

7.6 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of NVT. Without prejudice to the other rights of the Company, if the Customer does so, all sums whatsoever owing by the Customer to NVT shall forthwith become due and payable in full.

7.7 The Customer shall insure and keep insured the Goods to the full value of the Charges against 'all risks' to the reasonable satisfaction of NVT until the date that property in the Goods passes from NVT and shall whenever requested by NVT produce a copy of such policy of insurance.

## **8 INSOLVENCY OF THE CUSTOMER**

8.1 If the Customer fails to make payment of the Charges or commits any other breach of these Conditions or if any distress or execution shall be levied upon any of the Customer's goods or if the

Customer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Customer or if the Customer is unable to pay its debts as they fall due or if being a limited company, any resolution or petition to wind up the Customer (other than for the purpose of a bona fide amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or assets or if the Customer shall suffer any analogous proceeding under foreign law, all sums outstanding in respect of the Goods shall become payable immediately. NVT may at NVT's sole discretion and without prejudice to any of NVT's other remedies:

- 8.1.1 suspend all future deliveries of the Goods to the Customer; and/or
- 8.1.2 terminate this Sale of Goods Agreement without liability on NVT's part; and/or
- 8.1.3 exercise any of its rights pursuant to clause 7.5.

## **SCHEDULE 2:**

### **HARDWARE SUPPORT AGREEMENT**

#### **1 DEFINITIONS**

1.1 In this Hardware Support Agreement the following words and expressions shall, unless the context otherwise requires, have the following meanings:

"Business Hours" means 9am to 5.30pm Monday to Friday excluding those public holidays observed by NVT;

"Equipment" for the purposes of this Hardware Support Agreement means the items of computer hardware listed in the Customer Contract or any schedule of hardware attached thereto;

"Excepted Services" means those services referred to in clause 3 below which do not fall within the Services;

"Site" means the Customer's address or, if different, the location(s) at which the Equipment is installed and operated specified in the Customer Contract or such other addresses agreed in writing between the parties for this purpose.

#### **2 SERVICES**

NVT shall supply the support Services as detailed in the Customer Contract and any attached service level agreement to the Customer upon the terms and conditions of this Hardware Support Agreement and in consideration of the payment of the Charges by the Customer.

#### **3 EXCEPTED SERVICES**

3.1 The Services shall not include the correction of any fault or defect due to:

3.1.1 the Customer's failure to maintain a suitable environment for the Equipment at the Site including, without limitation, failure to maintain a constant power supply, air conditioning or humidity control;

3.1.2 the Customer's neglect or misuse of the Equipment or its failure to operate the Equipment in accordance with any applicable instruction manuals or for the purposes for which it was designed;

3.1.3 the alteration, modification or maintenance of the Equipment by any party other than NVT without

NVT's prior consent;

3.1.4 the transportation or relocation of the Equipment save where the same has been performed by or under the direction of the Company;

3.1.5 the use of defective or inappropriate supplies with the Equipment;

3.1.6 any defect or error in any software used upon or in association with the Equipment;

3.1.7 any accident or disaster affecting the Equipment including, without limitation, fire, flood, water, wind, lightning, transportation, vandalism or burglary; or

3.1.8 the Customer's failure, inability or refusal to afford the Company's personnel proper access to the Equipment.

3.2 The Services shall not include:

3.2.1 the relocation or transportation of the Equipment;

3.2.2 electrical work external to the Equipment;

3.2.3 rental charges for replacement Equipment;

3.2.4 the provision of supplies for use in association with the Equipment including, without limitation, any part specified as a consumable by the manufacturer of the Equipment such as ITB/OPC belts, laser drums, fuser units, monitor CRT, laptop screens and batteries, and any LCD or flat screen device, UPS and CMOS batteries, AC power leads, AC adapters, ribbons, toner, paper, labels, mouse units, print-heads and developer units;

3.2.5 replacement of magnetic tape media and replacement of parts for inkjet or bubble jet printers which are out of warranty;

3.2.6 services relating to equipment not specified as Equipment; or

3.2.7 telephone support not expressly included within the Customer Contract or services requested by the Customer out of Business Hours.

3.3 NVT shall (but shall not be obliged to) upon request by the Customer provide all or any of the Excepted Services but shall be entitled to charge for the same at its then prevailing time and materials charges.

## **4 THE CHARGES**

4.1 The Charges shall remain fixed for a 12 month period or for the initial period set out in the Customer Contract (whichever is the shorter).

4.2 NVT shall be entitled to vary the Charges by giving four months' notice to the Customer, but such notice shall not take effect before the expiry of the period fixed pursuant to clause 4.1.

4.3 The Charges shall not include the Excepted Services.

## **5 OBLIGATIONS OF NVT**

5.1 During the continuance in force of this Hardware Support Agreement NVT shall:

5.1.1 discharge its obligations pursuant to this Hardware Support Agreement with reasonable care and skill;

5.1.2 procure that the Services are rendered by appropriately experienced and trained personnel;

5.1.3 procure that all of its employees, agents or sub-contractors given access by the Customer to the Site follow all reasonable and lawful directions and regulations of the Customer and comply with any security, health and safety or other policies that apply to such Site; and

5.1.4 respond to faults during Business Hours within any response period set out in the Customer Contract or as otherwise intimated in writing by NVT provided such faults have been reported by the Customer during Business Hours to the service centre of NVT on the telephone number and in accordance with any procedure intimated in writing by NVT, including notification by the Customer of the identification number of the relevant item of Equipment.

5.2 In the performance of the Services NVT will only supply and use goods/materials within the scope of published specifications from appropriate manufacturers and suppliers and subject to any conditions of sale relating thereto by the relevant manufacturer or supplier.

5.3 Save as expressly provided in this Hardware Support Agreement no statutory or other warranty, condition, description or representation of any kind whatsoever on the part of NVT including, but without limitation, any warranty as to the merchantability or fitness for any purpose of the goods/materials supplied or the Services, is given or to be implied by NVT, nor is any such warranty, condition, description or representation to be implied from anything said or written in negotiations between NVT or their respective representatives prior to this Hardware Support Agreement.

5.4 NVT reserves the right to supply new, second-hand or reconditioned replacement parts in the performance of the Services. If in the opinion of NVT the cost of repair of the Equipment or parts thereof is in excess of 75% of the cost of replacing such Equipment or parts or the Equipment or parts thereof have become obsolete NVT shall be entitled to refund to the Customer the Charges paid by the Customer for future support services for the Equipment or a proportional part thereof and there shall be no further liability or obligation by NVT and the Customer in connection therewith.

## **6 OBLIGATIONS OF THE CUSTOMER**

6.1 During the continuance in force of this Hardware Support Agreement the Customer shall:

6.1.1 provide NVT and its employees, agents and sub-contractors with such access to the Site as NVT shall from time to time reasonably require in order to discharge its obligations hereunder;

6.1.2 make available at the Site such facilities as NVT shall reasonably require in order to discharge its obligations hereunder including, but without limitation, adequate work space, office furniture and equipment;

6.1.3 take all reasonable precautions to protect the health and safety of NVT's employees, agents and sub-contractors while on the Site;

6.1.4 make available the Equipment and supply all documentation and other information necessary for NVT to diagnose any fault in the Equipment;

6.1.5 take good care of the Equipment, housing it in suitable premises under suitable conditions and shall follow such instructions on these matters and on operating the Equipment as NVT shall give from time to time;

6.1.6 ensure that no part of the Equipment is modified without the prior written approval of NVT or is subjected to unusual physical or electrical stress, accident, neglect, misuse or other damage;

6.1.7 ensure that no attachment, repair, adjustment or transportation of the Equipment is made without NVT's prior written approval (which shall not be unreasonably withheld);

6.1.8 ensure that no stationery, magnetic media or other consumable is used in relation to the Equipment which does not meet the Manufacturer's specification or is otherwise defective.

6.2 The Customer warrants and undertakes to NVT that it has full power to enter into this Hardware Support Agreement and permit NVT to perform the services in relation to the Equipment.

6.3 The Customer acknowledges that NVT has not been party to the preparation, specification or selection of any software used on the Equipment and that the Customer is responsible for ensuring that any such software comprises all specification suited to the Customer's intended purposes and that the terms of any licence required to operate such software are satisfactory to it.

6.4 The Customer undertakes to indemnify and hold harmless NVT against any loss or damage NVT may suffer as a result of any breach by the Customer of any provision of this Hardware Support Agreement or caused by the Equipment or its use.

## **7 CHANGE CONTROL PROCEDURE**

7.1 If at any time either party requires to change the Services and in particular the Equipment that party may request or recommend such change by notice in writing ("a Change Request"). Each Change Request shall contain (as appropriate):-

7.1.1 the originator and date of the request or recommendation for the change;

7.1.2 the reason for the change;

7.1.3 full details of the change, including any proposed service levels relating to the change;

7.1.4 the price (if any) of the change and a schedule of payments, if appropriate;

7.1.5 a timetable for implementation; and

7.1.6 details of the likely impact (if any) of the change on other aspects of the Service.

7.2 Neither the Customer nor NVT shall unreasonably withhold its agreement to any Change Request provided that NVT shall not be obliged to agree to any change which would result in a material reduction in the volume of the Services required or the Equipment covered by this Hardware Support Agreement or a decrease in the Charges.

7.3 A Change Request signed by both parties shall constitute an amendment to this Hardware Support Agreement.

## **SCHEDULE 3:**

### **MANAGED SERVICE AGREEMENT**

#### **1 DEFINITIONS**

1.1 In this Managed Service Agreement the following words and expressions shall, unless the context otherwise requires, have the following meanings:

“Equipment” means the items of computer hardware listed in the Customer Contract or any schedule of hardware attached thereto;

“IP Rights” means any patents, trade marks, service marks, trade names, design rights, copyright, database rights, rights in know-how and other intellectual property rights of whatever nature arising anywhere in the world whether registered or unregistered and including applications for the grant of any such rights;

“Network” means the modems, leased circuits and other telecommunications hardware and software set out in the Customer Contract or any schedule of hardware/software attached thereto;

“Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014; “Site” means the location(s) at which the Services are to be provided by NVT to the Customer set out in the Customer Contract or otherwise agreed in writing between the parties for this purpose;

“System” means the Equipment, the Third Party Licensed Programs, the Network and all components thereof as the same may be modified added to or replaced during the term of this Managed Service Agreement;

“Third Party Licensed Programs” means the software programs which are licensed to the Customer, including all documentation relating thereto and any modifications enhancements adaptations or other alterations that may be made to such programs, all as set out in the Customer Contract or any schedule of software attached thereto;

“Transferring Employees” means those employees of the Customer who are listed in the Customer Contract or any schedule of employees attached thereto and who are identified therein as being employees who will transfer to the employment of NVT under the Regulations.

## **2 SERVICES**

NVT shall supply the Services as detailed in the Customer Contract and any attached service level agreement to the Customer upon the terms and conditions of this Managed Service Agreement and in consideration of the payment of the Charges by the Customer.

## **3 THE CHARGES**

3.1 The Charges shall remain fixed for the Initial Period set out in the Customer Contract.

3.2 Not less than four months prior to the expiry of the Initial Period set out in the Customer Contract and the expiry of each anniversary of the Initial Period expiry date NVT shall intimate the proposed Charges for the forthcoming year of the Managed Service Agreement to the Customer. The Company and the Customer shall negotiate in good faith with a view to agreeing such Charges and, failing agreement, either party shall be entitled to terminate the Managed Service Agreement in accordance with the termination procedures set out in this Agreement. If the Customer does not object to the proposed Charges or, having failed to reach agreement on such Charges, fails to terminate the Managed Service Agreement in accordance with this Agreement, the proposed Charges set out by the Company pursuant to this Clause shall become fixed for the forthcoming year of this Managed Service Agreement.

## **4 OBLIGATIONS OF NVT**

4.1 During the continuance in force of this Managed Service Agreement NVT shall:

4.1.1 discharge its obligations pursuant to this Managed Service Agreement with all due skill, care and diligence in accordance with good industry practice;

4.1.2 at all times act and procure that its employees, agents and sub-contractors act in an appropriate manner during the performance of the Services;

4.1.3 comply with all applicable laws, enactments, orders, regulations and other similar instruments in the provision of the Services;

4.1.4 procure that the Services are rendered by appropriately experienced and trained personnel with all due skill, care and diligence;

4.1.5 procure that all of its employees, agents or sub-contractors given access by the Customer to the Site follow all reasonable and lawful directions and regulations of the Customer and comply with any security, health and safety or other policies that apply to such Site; and 4.1.6 take reasonable care of the Equipment used in the performance of the Services, using the same in accordance with any applicable manufacturer's instructions or licences.

## **5 OBLIGATIONS OF THE CUSTOMER**

5.1 During the continuance in force of this Managed Service Agreement the Customer will:

5.1.1 co-operate with NVT and provide NVT with such information and assistance as NVT may reasonably require in order to facilitate the due and punctual performance by the Company of its obligations under this Managed Service Agreement and shall notify NVT of any changes which may impact on the delivery of the Services;

5.1.2 provide access for NVT and its employees, agents and sub-contractors to the Site, including the provision of such keys, codes, security and identification passes as may be required for the exercise of such access (provided always that nothing in this clause will be deemed to create any tenancy or other permanent rights over the Site); and

5.1.3 provide (at the Customer's cost) such access to the System as NVT may reasonably require (including, but not limited to, administrative access) for the purpose of performing the Services together with all power, lighting, heating, ventilation and communications necessary for the use of the System at the Site.

## **6 SERVICE DELIVERY MANAGEMENT**

6.1 NVT and the Customer shall jointly appoint a management committee to facilitate the provision of the Services, consisting of a duly authorised representative of each party. The parties shall ensure that their representative has the necessary authority to take decisions and issue instructions relating to all matters arising out of this Managed Service Agreement.

6.2 The identity of the members of the management committee shall be agreed between the parties at the commencement of this Managed Service Agreement. Any change which either party wishes to make with regard to its representative on the management committee shall be notified to the other party in writing.

6.3 NVT shall provide the Customer with a report at such times and in such form as may be agreed between the parties from time to time to enable the management committee to monitor and record the performance of the Services. The submission and receipt of such report will not prejudice the rights of either

party under this Managed Service Agreement.

## **7 CHANGE CONTROL PROCEDURE**

7.1 If at any time either party sees a need to change the Services that party may request or recommend such change by notice in writing (“a Change Request”). Each Change Request shall contain:

7.1.1 the originator and date of the request or recommendation for the change;

7.1.2 the reason for the change;

7.1.3 full details of the change, including any proposed service levels relating to the change;

7.1.4 the price (if any) of the change and a schedule of payments, if appropriate;

7.1.5 a timetable for implementation; and 7.1.6 details of the likely impact (if any) of the change on other aspects of the Service.

7.2 Subject to clause 7.4 neither the Customer nor NVT shall unreasonably withhold its agreement to any change provided that the Customer shall not be obliged to agree to any change increasing the Charges or requiring the Customer to incur material expenditure and NVT shall not be obliged to agree to any change which would result in a material reduction in the volume of the Services required or the Equipment covered by this Managed Service Agreement or a decrease in the Charges.

7.3 A Change Request signed by both parties shall constitute an amendment to this Managed Service Agreement.

7.4 If a Change Request instigated by the Customer results in a material reduction in the volume of the Services required (whether due to a cessation or partial cessation of business by the Customer or otherwise) the Customer shall indemnify NVT against any costs or liabilities arising from any reduction in the number of personnel required to carry out the Services as a result of that Change Request, including redundancy costs and payments in lieu of notice.

## **8 EMPLOYEES**

8.1 The parties acknowledge and agree that the provision by NVT of the Services may constitute a relevant transfer pursuant to the Regulations and that the Transferring Employees shall become employed by NVT with effect from the commencement date detailed in the Customer Contract (“the Commencement Date”) in accordance with the Regulations.

8.2 All salaries and other emoluments, including holiday pay, tax, PAYE and national insurance payments and all other liabilities, costs, expenses and outgoings relating to the employment of the Transferring Employees shall be borne by the Customer up to (but excluding) the Commencement Date and by NVT from the Commencement Date and all necessary apportionments shall be made and discharged by the Customer and NVT, as the case may be, forthwith following the Commencement Date.

8.3 NVT shall indemnify the Customer and keep the Customer fully and effectively indemnified on demand from and against all costs, expenses, damages, compensation, fines and other liabilities arising out of or in connection with any claim:

8.3.1 by any Transferring Employee or any other employee of NVT arising from and relating to his employment or the termination of his employment with NVT on or after the Commencement Date and/or arising from an act, fault or omission of NVT in relation to any such Transferring Employee or other employee, subject always to the provisions of clause 7.4; and

8.3.2 arising from any change in or variation to the working or other conditions or terms of employment of the Transferring Employees after the Commencement Date.

8.4 The Customer shall indemnify NVT and keep NVT fully and effectively indemnified on demand from and against all costs, expenses, damages, compensation, fines and other liabilities arising out of or in connection with any claim by any Transferring Employee arising from and relating to his employment with the Customer prior to the Commencement Date and/or arising from an act, fault or omission of the Customer in relation to any such Transferring Employee prior to the Commencement Date.

8.5 If any contract of employment between the Customer and a person who is not a Transferring Employee has effect as if originally made between NVT and such person by virtue of the Regulations then:

8.5.1 NVT may within 14 days of becoming aware of the application of the Regulations to any such contract, give notice to terminate such contract; and

8.5.2 the Customer shall indemnify NVT and keep the Company fully and effectively indemnified on demand from and against all costs, expenses, damages, compensation, fines and other liabilities (whether arising out of or in connection with such termination or in respect of wages, salaries, holiday pay, bonuses, PAYE and national insurance contributions and pension contributions due in respect of such person) and against any sums payable to or in relation to such person in respect of his employment from the Commencement Date to the date of such termination.

8.6 The Customer shall have the right to require NVT to redeploy away from work being performed for the Customer any person employed by NVT in the performance of the Services if such person commits any act or omission which would justify the immediate termination without notice of that person's engagement by the Company. For the avoidance of doubt, the Customer shall not have the right to require the dismissal of any person employed by NVT.

## **9 PERSONAL DATA**

9.1 NVT and the Customer warrant that they will each duly observe all of their obligations under the Data Protection Act 1998 and any other relevant legislation which arise in connection with the Services.

9.2 In particular, NVT undertakes to act only upon the instructions of the Customer as data controller and to take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data.

## **10 INTELLECTUAL PROPERTY RIGHTS**

10.1 The parties agree that all Intellectual Property ("IP") Rights arising during the term of this Managed Service Agreement in respect of alterations, modifications and enhancements of the System made by NVT or in respect of any other software developments made by or procured by the Company on behalf of the Customer ("the Bespoke Rights") shall belong to NVT.

10.2 Without prejudice to clause 10.1 NVT hereby grants free of charge to the Customer a royalty free, non-exclusive personal licence (with no right to grant sub-licences) to use the Bespoke Rights solely for the purposes of the operation of the System.

10.3 The Customer shall indemnify and hold harmless the Company against all damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the use of the System by NVT in the performance of the Services infringes any IP Rights of the said third party.

## **11 EFFECT OF TERMINATION**

11.1 Upon termination of this Managed Service Agreement for whatever reason:

11.1.1 NVT shall take all reasonable steps to agree with the Customer a plan for the orderly hand-over of the Services to the Customer (or its nominee) such that the Services can be carried on with the minimum of interruption and inconvenience to the Customer;

11.1.2 until such time as a plan for the hand-over of Services pursuant to clause 11.1.1 above has been implemented NVT may (but shall not be obliged to) continue the provision of the Services to the Customer in accordance with the terms and conditions of this Managed Service Agreement save that it shall be entitled to be paid for such Services and all other actions necessary to implement this clause at its then prevailing time and materials charges; and

11.1.3 all outstanding Charges shall remain due and payable by the Customer to NVT in accordance with the terms of this Managed Service Agreement.

## **12 DISPUTE RESOLUTION**

12.1 Any dispute between the parties in relation to this Managed Service Agreement that is not resolved by the management committee appointed pursuant to clause 6.1 will be escalated to a director of NVT and the Customer to discuss the problem and negotiate in good faith to resolve the dispute. The specific format for such discussions and negotiations will be left to the discretion of the two directors. No further proceedings for the resolution of any dispute may be commenced until the earlier of:

12.1.1 the date on which the two directors conclude in good faith that a resolution to the dispute through continued negotiations is not likely; or

12.1.2 thirty days from the date the dispute was escalated to the directors.

## **SCHEDULE 4:**

### **DISASTER RECOVERY AGREEMENT**

#### **1 DEFINITIONS**

1.1 In this Disaster Recovery Agreement the following words and expressions shall, unless the context otherwise requires, have the following meanings:

“Acceptable Call” means a telephone call to NVT from a representative of the Customer duly authorised to invoke the Services pursuant to clause 2.2 confirming the happening of an Event;

“Allocated Space” means the area of the Site allocated to the Customer by NVT for the provision of the Services;

“Business Hours” means 9am to 5.30pm Monday to Friday, excluding those public holidays observed by NVT;

“Engineering Failure” means an event preventing the use of the Customer’s computer facilities which should be properly remedied by engineering maintenance;

“Equipment” means the equipment to be provided by NVT pursuant to the provision of the Services and detailed in the Customer Contract or any schedule of equipment attached thereto;

“Event” means an event preventing the use of the whole or a part of the Customer’s computing facility (other than an Engineering Failure);

“Invocation Procedure” means the procedure to be followed by the Customer when invoking the use of the Services as set out in clause 2 and in any detailed procedure document delivered to the Customer by NVT from time to time;

“IP Rights” means any patents, trade marks, service marks, trade names, design rights, copyright, database rights, rights in know-how and other intellectual property rights of whatever nature arising anywhere in the world whether registered or unregistered and including applications for the grant of any such rights;

“Planned Works” means events scheduled by NVT at the Site and notified to the Customer which could interrupt the provision of the Services including equipment maintenance or installation or building works;

“Position” means a desk, chair and telephone;

“Site” means the location(s) at which the Services are to be provided by NVT to the Customer set out in the Customer Contract or notified by NVT to the Customer from time to time (but so that not more than 50 Positions shall be comprised at any such Site in any eight hour period);

“Testing Time” means such period of time at the Site provided by the Company to the Customer for the purposes of testing the Services.

## **2 SERVICES**

2.1 NVT shall supply the Services as detailed in the Customer Contract to the Customer upon the terms and conditions of this Disaster Recovery Agreement and in consideration of the payment of the Charges by the Customer.

2.2 The Customer shall from time to time supply NVT with a list of personnel authorised to invoke the use of the Services, together with up to date contact details for such personnel. Subject to clause 2.3, on the occurrence of an Event and the written acknowledgement by NVT of receipt of an Acceptable Call, the Services shall immediately be made available to the Customer.

2.3 In the event that NVT receives an Acceptable Call during any period in which:

2.3.1 Planned Works are being conducted; or

2.3.2 the Site is being used by another customer of NVT for a pre-arranged period of Testing Time; NVT shall use all reasonable endeavours to make the Services available as soon as reasonably practicable and in any event within 12 hours of the receipt of the Acceptable Call.

2.4 In the event that the Customer suffers an Engineering Failure NVT may (at its sole discretion) make the Services available to the Customer, provided always that NVT shall be entitled to terminate the provision of the Services on 12 hours notice if the Site is required by another customer of NVT who has suffered an Event. For the avoidance of doubt, any such termination of the Services shall not result in termination of this Disaster Recovery Agreement.

2.5 The Customer acknowledges that NVT has a number of additional customers who may require to use the Services, all of whom have equal rights with regards to such usage. In the event that more than one customer needs to use the Services at the same time the Company shall use all reasonable endeavours to accommodate each customer at the Site, initially by an equitable sharing of available resources and, at the earliest possible opportunity, by the installation of additional equipment. If the

customers are unable to agree to an equitable sharing of resources then the decision of NVT in that respect shall be final.

### **3 TESTING TIME**

3.1 The Customer acknowledges that the Services are not being made available to the Customer to meet the Customer's individual requirements and that it is the responsibility of the Customer to ensure that the Services meet any such requirements by carrying out appropriate testing. For this purpose the Customer shall be entitled to an annual allowance of Testing Time as detailed in the Customer Contract or as otherwise agreed between the parties.

3.2 Use of Testing Time shall be during Business Hours at a time agreed between the Customer and NVT following the provision of not less than one month's prior written notice by the Customer. Testing of multiple Positions will be limited to a maximum of 3 consecutive days.

3.3 Any period of Testing Time remaining unused by the Customer in any year of this Disaster Recovery Agreement shall not be carried forward into any subsequent year, except with the prior written consent of NVT. Any Testing Time used in excess of the Customer's annual allowance or carried out other than during Business Hours shall be charged at NVT's then prevailing rate for additional Testing Time.

3.4 Testing Time shall be considered of lower priority than the use of Services by another customer of NVT following an Event. If another such customer requires to use the Services the Customer shall terminate testing activity and make the Site available to NVT on 4 hours notice.

### **4 CHARGES**

4.1 Subject to Clause 8 the Charges shall remain fixed for the initial period set out in the Customer Contract.

4.2 Not less than four months prior to the expiry of the initial period set out in the Customer Contract and the expiry of each anniversary of the Initial Period expiry date NVT shall intimate the proposed Charges for the forthcoming year of the Disaster Recovery Agreement to the Customer. NVT and the Customer shall negotiate in good faith with a view to agreeing such Charges and, failing agreement, either party shall be entitled to terminate the Disaster Recovery Agreement in accordance with the termination procedures set out in the Customer Agreement. If

the Customer does not object to the proposed Charges or, having failed to reach agreement on such Charges, fails to terminate the Disaster Recovery Agreement in accordance with this Agreement, the proposed Charges set out by NVT pursuant to this Clause shall become fixed for the forthcoming year of this Disaster Recovery Agreement.

4.3 In addition to the Charges the Customer shall reimburse NVT for all reasonable expenses incurred by NVT during the Testing Time, Invocation Procedure, or in establishing the Allocated Space, including installation of the Equipment or any other equipment or communications systems therein.

4.4 Unless specifically agreed otherwise by NVT in writing all telecommunications costs associated with the use of the Services shall be borne by the Customer.

### **5 EQUIPMENT**

5.1 During the continuance in force of this Disaster Recovery Agreement NVT shall maintain the Equipment (and for this purpose NVT reserves the right of access to the Equipment during any period in which the Services are being used to carry out such maintenance). NVT shall be entitled at its sole discretion to replace any item of Equipment with an equivalent or better item which will remain compatible with the Equipment.

5.2 If the Customer becomes aware of any fault in the Equipment it shall promptly notify NVT of the same and shall not without the prior written consent of NVT carry out or attempt to carry out any repair. Upon receipt of such notification NVT shall use all reasonable endeavours to procure that such fault is rectified as soon as reasonably possible.

5.3 The Customer may install additional equipment at the Site with the prior written consent of NVT provided always that the Customer is responsible for:

5.3.1 the installation and removal of such equipment and the cost of any damage to the Site or NVT's facilities during such process;

5.3.2 the insurance of such equipment; and

5.3.3 the maintenance of such equipment (and for this purpose authorised maintenance personnel will be provided with reasonable access to the Site during Business Hours with the prior written consent of NVT).

5.4 The Customer shall be responsible for the maintenance on its own premises of such computer terminals and other equipment as may be necessary to enable the Customer to use the Services remotely from the Site. It shall be the Customer's responsibility to ensure that such equipment is compatible with the Equipment. The Customer undertakes to maintain in place a comprehensive maintenance agreement or agreements with a reputable company in order to comply with the provisions of this clause 5.4.

5.5 Where the Customer is using software or programmes prepared or supplied (in whole or in part) by a third party the Customer warrants that the Customer and NVT will have the appropriate licence or authority to run such software or programmes on the Equipment. The Customer shall have sole responsibility for ensuring that any such software or programmes are in a form suitable for use with the Services and appropriate for the Customer's individual requirements and the Company shall have no responsibility for any errors or faults arising in relation thereto.

5.6 Where the Customer or NVT receive re-routed services (such as telephony services) from third party suppliers in the course of the use by the Customer of the Services NVT shall have no responsibility for such services or the time taken to provide them.

## **6 PREMISES**

6.1 NVT shall provide the Customer with such access to the Allocated Space as may be necessary to utilise the Services or to carry out testing during any period of Testing Time, provided that nothing in this Disaster Recovery Agreement will be deemed to be the grant of a tenancy or any other permanent rights over the Site.

6.2 Access to the Allocated Space will be on a non-exclusive basis and the Customer acknowledges that NVT will retain the management, control and possession of the Site and shall be entitled to enter into and use the Site and all parts thereof at any time.

6.3 Notwithstanding the terms of clause 6.2 (and subject to Clause 2.5) NVT shall not permit any third party to have access to the Allocated Space during any period of utilisation of the Services without the prior consent of the Customer (such consent not to be unreasonably withheld or delayed) or where such access is required to enable the Company to comply with any statutory obligation.

6.4 NVT may at its sole discretion relocate the Allocated Space to another part of the Site but shall notify the Customer in advance of such relocation and shall bear any reasonable expenses of the Customer in connection therewith.

## **7 OBLIGATIONS OF THE CUSTOMER**

7.1 During the continuance in force of this Disaster Recovery Agreement the Customer will:

7.1.1 not use the Site or the Allocated Space for any purpose other than to enable it to receive the benefit of the Services;

7.1.2 not cause any damage to the Site, the Allocated Space, the fixtures and fittings thereon or the Equipment and shall reimburse the Company for all costs incurred in making good any such damage to the Company's reasonable satisfaction (fair wear and tear excepted);

7.1.3 not make any alterations, additions or improvements to the Site or the Allocated Space or display any notice or advertisement on the outside of the Site or which is otherwise visible from the outside of the Site or any part thereof, nor permit or suffer anyone else to do so;

7.1.4 promptly pass to NVT any notice received by it concerning the Site or the Allocated Space and comply with all statutory rules and regulations authorising or regulating the way in which the Site or the Allocated Space is to be used;

7.1.5 observe all reasonable and lawful directions and regulations of NVT and comply with any security, health and safety or other policies that apply to the use of the Site or the Allocated Space;

7.1.6 not keep or permit or suffer to be kept on the Site or the Allocated Space any material of a dangerous, combustible, inflammable or explosive nature or do or permit or suffer to be done in, about or upon the Site or the Allocated Space anything which shall be a nuisance or annoyance or cause damage or inconvenience or disturbance to NVT or other occupiers of the Site;

7.1.7 permit NVT and all persons authorised by the Company to have access to the Allocated Space for the purposes of carrying out inspections or repairs and for such other purposes as may be required;

7.1.8 not act in any way which may be reasonably expected to result in the insurance of the Site or any Equipment being rendered void or voidable or which may reasonably be expected to cause the premium for such insurance to be increased nor allow anyone else to do so;

7.1.9 not erect, install or permit to be erected or installed on the Site or the Allocated Space or any part thereof any equipment of any description without the prior written consent of NVT except as otherwise specifically provided in this Disaster Recovery Agreement;

7.1.10 use all reasonable endeavours to replace hardware, reinstate facilities or otherwise remove all hindrances to allow the return by the Customer to its own facilities at the earliest possible opportunity; and

7.1.11 grant NVT and its authorised agents such access to the Customer's premises as NVT shall from time to time reasonably require in order to discharge its obligations hereunder and to remove any equipment installed by NVT at such premises (provided that NVT shall have no liability for reinstatement or redecoration if it has taken reasonable care in removing such equipment).

## **8 CHANGE CONTROL PROCEDURE**

8.1 If at any time either party requires to change the services and in particular the number of Positions covered by this Disaster Recovery Agreement that party may request or recommend such change by notice in writing ("a Change Request"). Each Change Request shall contain (as appropriate):-

- 8.1.1 the originator and date of the request or recommendation for the change
- 8.1.2 the reason for the change;
- 8.1.3 full details of the change, including any proposed service levels relating to the change;
- 8.1.4 the price (if any) of the change and a schedule of payments, if appropriate;
- 8.1.5 a timetable for implementation; and
- 8.1.6 details of the likely impact (if any) of the change on other aspects of the Service.

8.2 Neither the Customer nor NVT shall unreasonably withhold its agreement to any Change Request provided that the Company shall not be obliged to agree to any change which would result in a material reduction in the volume of the Services required, the number of Positions covered by this Disaster Recovery Agreement or a decrease in the Charges.

8.3 A Charge Request signed by both parties shall constitute an amendment to this Disaster Recovery Agreement.

## **9 DATA**

9.1 NVT and the Customer warrant that they will each duly observe all of their obligations under the Data Protection Act 1998 and any other relevant legislation which arise in connection with the Services.

9.2 The Customer shall be responsible at all times for establishing all audit controls, edit functions, operational procedures and/or back up file copies as may be appropriate to its use and necessary in order to maintain the integrity of its data. If any data is incorrectly processed or lost the Customer acknowledges that it is solely responsible for the costs of reproducing and/or reprocessing the same. It shall be the Customer's responsibility to load their operational systems, applications and data onto the Equipment.

9.3 NVT will not be liable if any data submitted or accessed by the Customer is incorrectly processed or accidentally lost or destroyed due to a fault in the Equipment or for any loss to or interference with programmes or data during the course of transmission of the same from any remote site to the Site or vice versa.

9.4 The Customer accepts sole responsibility for the removal of data from the Equipment and the Site following any period of Testing Time or usage of the Services. NVT shall not be liable for any breach of confidentiality caused by third parties gaining access to any data which the Customer fails to so remove.

## **10 INTELLECTUAL PROPERTY ("IP") RIGHTS**

The Customer shall indemnify and hold harmless NVT against any claim by any third party (including all damages and costs) that the storage or processing of any of the Customer's programmes or data on the Equipment infringes the IP Rights of such third party.

## **11 TERMINATION**

11.1 If the Customer fails to make payment of the Charges or commits any other breach of this Disaster Recovery Agreement or if the Customer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Customer or if the Customer is unable to pay its debts as they fall due or if being a limited company, any resolution or petition to wind up the Customer (other than for the purpose of a bona fide amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any

part of the Customer's business or assets or if the Customer shall suffer any analogous proceeding under foreign law, all sums outstanding in respect of this Disaster Recovery Agreement (including all Charges due to the expiry of the Initial Period set out in the Customer Contract) shall become payable immediately and NVT may at NVT's sole discretion and without prejudice to any of NVT's other remedies terminate this Disaster Recovery Agreement with immediate effect.

## **SCHEDULE 5:**

### **PROJECT IMPLEMENTATION AGREEMENT**

#### **1 SERVICES**

1.1 NVT shall supply the Services as detailed in the Customer Contract and any project initiation document attached thereto ("the PID") to the Customer upon the terms and conditions of this Project Implementation Agreement and in consideration of the payment of the Charges by the Customer.

1.2 Any PID shall form part of this Project Implementation Agreement as if set out in full herein.

#### **2 CHANGE CONTROL PROCEDURE**

2.1 If at any time either party sees a need to change the Services that party may request or recommend such change by notice in writing ("a Change Request"). Each Change Request shall contain:

2.1.1 the originator and date of the request or recommendation for the change;

2.1.2 the reason for the change;

2.1.3 full details of the change, including any proposed service levels relating to the change;

2.1.4 the price (if any) of the change and a schedule of payments, if appropriate;

2.1.5 a timetable for implementation; and

2.1.6 details of the likely impact (if any) of the change on other aspects of the Services.

2.2 Subject to clause 2.4 neither the Customer nor NVT shall unreasonably withhold its agreement to any change provided that the Customer shall not be obliged to agree to any change increasing the Charges or requiring the Customer to incur material expenditure.

2.3 A Change Request signed by both parties shall constitute an amendment to this Project Implementation Agreement.

2.4 If a Change Request instigated by the Customer results in a material reduction in the volume of the Services required the Customer shall indemnify NVT against any costs or liabilities arising from any reduction in the resources allocated to carry out the Services as a result of that Change Request.

#### **3 CHARGES**

3.1 The Customer will pay NVT the Charges (or any relevant portion thereof) immediately upon acceptance of any milestones set out in the PID. Acceptance shall be conclusively evidenced by the Customer's signature of the PID against the relevant milestone or by the satisfactory completion of any acceptance testing procedure set out in the PID.

3.2 In addition to the Charges the Customer shall be responsible for any increased costs arising from:

3.2.1 an agreed Change Request;

3.2.2 any failure by the Customer to comply with the terms of this Project Implementation Agreement including any failure to provide access or resources;

3.2.3 any increased cost to NVT in performing the Services arising from any matter not disclosed by the Customer to the Company during any due diligence exercise carried out by NVT for the purposes of preparing the Customer Contract and the PID and fixing the Charges; and

3.2.4 any increased cost to NVT in performing the Services arising from any matter which would not have been reasonably foreseeable to NVT as a result of any due diligence exercise carried out by NVT for the purposes of preparing the Customer Contract and the PID and fixing the Charges, restricted to one half of the increased cost save in the case of wilful non-disclosure by the Customer.

## **4 OBLIGATIONS OF THE CUSTOMER**

4.1 During the continuance in force of this Project Implementation Agreement the Customer will:

4.1.1 co-operate with NVT and provide NVT with such information and assistance as NVT may reasonably require in order to facilitate the due and punctual performance by the Company of its obligations under this Project Implementation Agreement and shall notify NVT of any changes which may impact on the delivery of the Services; and

4.1.2 provide (at the Customer's cost) such access for the Company and its employees, agents and sub-contractors to those resources of the Customer identified in the Customer Contract or PID as necessary to facilitate the provision of the Services.

## **SCHEDULE 6:**

### **MANAGED HOSTING AGREEMENT**

#### **1 DEFINITIONS**

In this Managed Hosting Agreement the following words and expressions shall, unless the context otherwise requires, have the following meanings:

“AUP” means NVT's standard acceptable use policy, a copy of which is provided with the Customer Contract and the terms of which may be updated by NVT from time to time on written notice to the Customer;

“Data Centre” means a data centre operated by NVT or a member of its group of companies;

“DPA Regulations” means the Data Protection Act 1998 and any other relevant legislation, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the EU Data Protection Directive 95/46/EC together with all the relevant mandatory guidelines issued by the UK Information Commissioner (as updated or amended from time to time);

“Energy Charges” means any taxes levies costs and expenses whether direct or indirect arising out of or attributable to any requirement on NVT or any of its suppliers or customers to comply with any Energy Law or otherwise in connection with energy use or consumption or emissions of greenhouse gases;

“Energy Law” means any applicable Law (including but not limited to the EU Emissions Trading System,

the UK Climate Change Levy, the Energy Act 2011 and Climate Change Act 2008) which make provision for energy charges or levies or which imposes or increases any taxes, charges or levies of any nature in respect of use of power or energy consumption (whether directly or indirectly);

“Law” means any applicable law whether local, national or international including statute, statutory instrument, EU regulation having direct legal effect, and guidelines and codes which have legal effect;

“Network” means the Customer’s connection to the internet as provided by NVT or an NVT third party supplier;

“Recurring Service Charge” means those charges identified as recurring charges as set out in the Sales Order Form;

“Sales Order Form” means a document bearing that heading which has been duly signed on behalf of both the Customer and NVT, containing service, pricing and other arrangements specific to the Customer’s contract with NVT;

“Third Party Services” means services provided to the Customer by any supplier other than NVT or a NVT agent;

“Variable Service Charge” means those variable charges as set out in the Service Order Form;

## **2 SERVICES**

NVT shall supply the Services as detailed in the Customer Contract and any attached service level agreement to the Customer upon the terms and conditions of this Managed Hosting Agreement and in consideration of the payment of the Charges by the Customer.

## **3 THE CHARGES**

3.1 The Charges shall remain fixed for the Initial Period set out in the Customer Contract.

3.2 Not less than four months prior to the expiry of the Initial Period set out in the Customer Contract and the expiry of each anniversary of the Initial Period expiry date NVT shall intimate the proposed Charges for the forthcoming year of the Managed Hosting Agreement to the Customer. The Company and the Customer shall negotiate in good faith with a view to agreeing such Charges and, failing agreement, either party shall be entitled to terminate the Managed Hosting Agreement in accordance with the termination procedures set out in this Agreement. If the Customer does not object to the proposed Charges or, having failed to reach agreement on such Charges, fails to terminate the Managed Hosting Agreement in accordance with this Agreement, the proposed Charges set out by the Company pursuant to this Clause shall become fixed for the forthcoming year of this Managed Hosting Agreement.

## **4 OBLIGATIONS OF THE PARTIES**

4.1 During the continuance in force of this Managed Hosting Agreement NVT shall:

4.1.1 discharge its obligations pursuant to this Managed Hosting Agreement with all due skill, care and diligence in accordance with good industry practice;

4.1.2 comply with all applicable laws, enactments, orders, regulations and other similar instruments in the provision of the Services;

4.2 **Authority to sign the Agreement.** Each party confirms to the other that we have the authority to enter into and meet our respective obligations under this Agreement. NVT will not be bound by any Sales

Order Form until it is accepted and signed by NVT and notified to the Customer in writing.

4.3 **Relevant licenses.** NVT confirms that it owns or is licensed to use the systems, products, and materials necessary to provide the Services to the Customer.

4.4 **Compliance with acceptable use policy.** The Customer will comply with the AUP during the term of the Agreement.

4.5 **Third Party Services.** The Customer responsible for ordering:

4.5.1 all lines or circuits the Customer require from third party carriers to receive the Services; and

4.5.2 any necessary cross-connects from NVT and paying NVT's cross-connect charges.

The Customer will ensure that third party carriers install those circuits in the Customer's name. The Customer will be solely responsible for those circuits and for all payments due to the carriers. The Customer will notify the carrier directly when the Customer wish to end or change those circuits.

4.6 **Resale of the Services.** The Customer may use the Services for the Customer's own benefit or for the purposes of using the Services to provide the Customer's business services to third parties but may not resell or sublet the Services to any third party.

4.7 **Insurance.** It is the Customer's responsibility to obtain insurance including professional indemnity insurance, as may be required by the Customer for provision of the Services by NVT. If NVT asks the Customer to do so, the Customer must provide NVT with the relevant certificates of insurance. NVT will take out and maintain professional indemnity, public liability and building insurance and will provide the Customer with the relevant certificates of insurance on written request by the Customer.

## 5 CHARGES AND THEIR PAYMENT

5.1 **Implementation/Setup Charges.** When the Customer signs this Agreement, NVT will invoice the Customer for any set up or implementation fee listed in the Sales Order Form, together with any costs incurred through the purchase of any equipment that the Customer has agreed to pay for in accordance with and as set out in the Sales Order Form. That invoice will be payable within 7 days of the date on which it is issued to the Customer.

5.2 **Recurring Service Charge.** When the Customer signs this Agreement, NVT will also invoice the Customer for the Recurring Service Charge listed in the Sales Order Form. That invoice will similarly be payable within 7 days of the date on which it is issued to the Customer. Following NVT's initial invoice, NVT will invoice the Customer for each further instalment of the Recurring Service Charge monthly in advance, each further invoice being payable within 30 days of the date on which it is issued to the Customer.

5.3 **Variable Service Charges.** NVT will invoice the Customer monthly in arrears for any Variable Service Charges that become payable as a result of the Services that NVT provides. Those Variable Service Charges will be calculated in accordance with the rates set out in the Sales Order Form.

5.4 **Additional Services.** If NVT provides any other services to the Customer, the Charges payable will be agreed in advance between NVT and the Customer, in writing.

5.5 **Third Party Services.** The Customer is solely responsible for paying any charges for the lease or use of telecommunications lines or any other Third Party Services.

5.6 **Taxes.** The Charges do not include applicable taxes (including VAT) or import/export duties or shipping and delivery charges. If any of those duties or charges are incurred, they will be added to any

relevant invoice and will be payable by the Customer or, if payable on a withholding tax basis, will be payable by the Customer to the relevant authority direct.

**5.7 Service Provider Software Licensing.** Where NVT provides software via a rental model using Service Provider Licensing Agreements, NVT reserve the right to pass on to the Customer any price increase imposed by the relevant Software Provider where the software provided is solely used for the provision of the Services to the Customer. Where any such increase does not apply solely to the Customer, then NVT may make a reasonable apportionment of such charge to the Customer. NVT will give the Customer advance written notice of any such increase, together with any equivalent price increase notice received from the supplier concerned.

**5.8 Suspension of Services for non-payment.** In addition to NVT's rights under clause 3.3 of the foregoing General Terms and Conditions, if the Customer does not pay an invoice (which is not disputed in good faith) :

5.8.1 within 7 days of the Due Date, NVT may terminate this Agreement and restrict the Customer's access to any equipment that the Customer owns which is located on NVT's premises;

5.8.2 within 14 days of the Due Date, NVT will be entitled, at any time thereafter (until payment is made), to disable the Services. If NVT does disable the Services and the Customer wishes to have the Services re-enabled, NVT will charge the Customer a re-connection fee calculated in accordance with the Sales Order Form; and

5.8.3 within 30 days of the Due Date, NVT may terminate this Agreement and end the Services permanently and charge the Customer a de-installation charge calculated in accordance with the Sales Order Form. If NVT end the Services in that way, the Customer will still be responsible for the Customer's obligations under this Agreement, including the obligation to pay Charges.

NVT will contact the Customer at least 3 times outlining details of the Customer's overdue invoices before taking any of the actions listed in this paragraph 5.8.

**5.9 Increase in Charges.** In addition to any annual change in the Charges imposed under paragraph 3.2, NVT may increase its Charges to reflect any change in the law or tax rules that affect operators of data centres, including any Energy Charges incurred by NVT in the provision of the Services. If a change of that kind is implemented, NVT will give the Customer written notice of any resulting increase in the Charges (including any increase in Energy Charges) and the date on which it will become effective.

## **6 ACCEPTANCE**

**6.1 Acceptance Criteria.** Where the Sales Order Form specifies that acceptance tests are applicable to the provision of Services, then no later than 10 days from the date the Customer Contract is signed, the parties will prepare and will use reasonable endeavours to agree proposed acceptance criteria for acceptance tests for the Services.

**6.2 Acceptance Tests.** NVT shall carry out the agreed acceptance tests on the Services within 10 days of the date they commenced providing the Services (or as otherwise agreed between the parties). The acceptance tests shall be started as soon as reasonably possible following the Services being provided. NVT will give the Customer at least 24 hours' notice of the start of the acceptance tests and the Customer is permitted to observe all or any part of the testing.

**6.3 Acceptance Remedies.** If any part of the Services fails the agreed acceptance tests, NVT shall remedy the defects or deficiencies and will repeat the relevant tests within a reasonable time.

## **7 THIRD PARTY CLAIMS**

7.1 **Indemnity.** If any claims or demands are brought against NVT or any NVT employee, officer, director or affiliate (each an “NVT Entity”) arising out of (i) the Customer’s breach or alleged breach of the AUP; or (ii) which allege: any damage or destruction to the Data Centre, the Network, NVT’s premises or equipment; or (iii) which allege any damage or destruction to any of NVT’s customer equipment or data; or (iv) which allege any personal injury to or property damage of any NVT Entity, and the claim, damage, destruction or injury is caused by the Customer or results from a breach of this Agreement or something that the Customer has negligently done or failed to do, the Customer must indemnify NVT and the NVT Entities against those claims or demands. This will not apply to the extent that the damage, destruction or injury is caused by the negligence or breach of this Agreement by NVT or any NVT Entity. The limit on liability set out in Clause 5.2 of the General Terms and Conditions shall not apply to this indemnity.

7.2 **Conditions of Indemnity.** For the indemnity set out in paragraph 7.1: (i), NVT will promptly notify the Customer in writing of the existence of any claim or demand covered by the indemnity; (ii) NVT will use reasonable endeavours to minimise any loss or damage which it may suffer; (iii) on request by NVT, the Customer will allow NVT to participate in or conduct all negotiations and proceedings in relation to the defence and settlement of the claim; and (iv) where NVT permits the Customer to conduct or defence of the claim, the Customer must obtain NVT’s prior written consent to the settlement of any claim (provided that NVT does not unreasonably refuse or delay giving its consent).

## 8 LIMITS OF LIABILITY

8.1 **Limit of exclusions.** Nothing in this Agreement excludes or limits NVT’s or the Customer’s liability where that liability arises out of the death or personal injury of any person caused by negligence or for any statement that is deemed to have been a fraudulent misrepresentation.

8.2 **Service credits.** Except where the Customer has an express right to terminate the Agreement as set out in the SLA, the service credit regime set out in the SLA will be the sole and exclusive remedy by which the Customer will be compensated for any failure (howsoever arising, whether in contract tort or otherwise) by NVT to meet the service levels set out in the SLA.

8.3 **The Customer’s obligations.** The Customer will take all reasonable measures to prevent and mitigate damages under this Agreement and will be solely responsible for the safe preservation and storage of all software and material delivered or created in relation to the Services. The Customer will also make backup copies of the Customer’s files at reasonable intervals, in order to allow lost or disrupted data to be recovered with reasonable efforts only.

8.4 **Liability to the Customer’s clients.** NVT will not under any circumstances be liable to the Customer under this Agreement for any claim by any of the Customer’s clients arising out of the Customer’s failure to provide any services which the Customer have agreed to provide to such client (whether such failure arises as a result of the Customer’s negligence, breach of this Agreement or otherwise).

8.5 **Exclusion of indirect losses.** Provided that Clause 5 of the foregoing General Terms and Conditions will always apply, NVT shall not in any circumstances whether in contract, delict (including for negligence or statutory duty) misrepresentation, (whether innocent or negligent), restitution or otherwise be liable for any:

8.5.1 loss of profits;

8.5.2 loss of anticipated savings;

8.5.3 pure economic loss;

8.5.4 loss of data;

8.5.5 loss of business opportunity and management time;

8.5.6 loss of goodwill

8.5.7 loss or damage that the Customer incur as a result of third party claims; or

8.5.8 indirect or consequential loss, costs, damages, charges or expenses, howsoever arising.

8.6 **Exclusion of implied warranties.** Subject to the warranties that NVT has given to the Customer, under this Agreement all warranties terms and conditions that would otherwise be implied by statute or at common law are excluded to the fullest extent permitted by law. Without prejudice to the foregoing, NVT does not warrant, guarantee or undertake that any Services will be uninterrupted, error-free or capable of withstanding all cyber-attacks or other unauthorised hacking or intrusions.

8.7 **Data.** In the event that the Customer's data is corrupted or lost or sufficiently degraded as to be unusable due to a breach by NVT of its obligations under this Agreement after its receipt or creation by NVT or during any processing of the Customer's data in accordance with the Services, the Customer shall have the option, as the Customer's sole remedy, to require NVT, at NVT's own expense to restore or procure the restoration of the Customer's data to the last available back-up point.

8.8 **Cyber risk.** NVT will perform the Services as set out in this Agreement, including, without limitation, by implementing appropriate security measures and firewalls where the same are part of the Services. NVT has no knowledge of the data or types of data NVT hosts under this Agreement. It is the Customer's responsibility to ensure that the Services are appropriate for the type of data that NVT hosts under this Agreement. NVT will act on reasonable instructions from the Customer to tailor the Services to the Customer's business needs, but NVT does not provide any warranty regarding the adequacy of the Services and does not warrant that the Services, or their design, will protect the Customer's data from corruption, loss or degradation in all circumstances.

## 9 TERMINATION

9.1 **Terminating the Agreement on notice.** Either party can end the Agreement by giving notice in accordance with Clause 2.1 of the foregoing General Terms and Conditions. Alternatively, the Customer can end the Agreement on 90 days' written notice to NVT if the Customer does not agree to:

9.1.1. A proposed change by NVT to the AUP which the Customer can demonstrate materially and adversely will affect the Customer's business; or

9.1.2 An increase in the Charges intimated by NVT

On condition that the Customer must serve that notice in writing no later than 30 days after the amended AUP or increase in Charges is notified to the Customer. After expiry of that 30 day period, the change or increase that was notified to the Customer will be deemed to have been agreed and will take effect immediately.

9.2 **Terminating the Agreement following a breach.** Either party may end this Agreement with immediate effect on prior written notice to the other if the other materially breaches its obligations and (if such breach is capable of remedy) does not remedy that breach within 30 days after receipt of written notice from the other party to remedy such breach.

9.3 **NVT's specific rights to end the Agreement.** NVT may end this Agreement with immediate effect on written notice to the Customer where:

9.3.1 the Customer has breached the AUP; or

9.3.2 the Customer suspends, or threaten to suspend, payment of the Customer's debts, the Customer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Customer or if the Customer is unable to pay its debts as they fall due or if being a limited company, any resolution or petition to wind up the Customer (other than for the purpose of a bona fide amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or assets or if the Customer shall suffer any analogous proceeding under foreign law; or

9.3.3 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of the Customer's business.

9.4 **Continuing liability.** However this Agreement ends, each party will still be responsible for claims or liability (including payments due) relating to the time before the Agreement ended.

9.5 **The position after the Agreement ends.** When this Agreement expires or terminates:

9.5.1 NVT will immediately stop providing the Services; payments due or payable by the Customer under this Agreement will become due and payable immediately, including any unpaid Charges due for the remainder of the Initial Term or any Renewal Term (except where the Agreement has ended as a result of NVT's material breach);

9.5.2 within 30 days after this Agreement ends, each party will return all Confidential Information of the other in its possession at the time this Agreement ends and will not make or keep any copies of that Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

9.6 **Data Destruction.** NVT will process hard disk drives that are used in the provision of the service as follows:

9.6.1 at the end of this Agreement, any hard disk drive provided exclusively as part of the Services will be made available for collection and NVT will charge the Customer the cost of the hard disk drive. Alternatively, NVT will arrange for secure erasure and destruction of the hard disk at the Customer's expense;

9.6.2 in the case of a failure of a hard disk that is under the manufacturer's warranty, NVT will, by default, return the disk unaltered to the manufacturer for repair or replacement. Alternatively, if requested in writing by the Customer, NVT will arrange for the secure erasure and destruction of the hard disk and for the purchase of a replacement disk, all at the Customer's expense.

9.7 **Termination Assistance.** Where this Agreement is terminated for any reason, NVT's sole duty to provide termination assistance shall be to allow the Customer to access the Customer's data for the purposes of transferring this to the Customer or to a replacement service provider. NVT may at its discretion provide such other termination assistance as the parties shall agree in these circumstances, but shall not be obliged to do so.

9.8 **Termination of SLA.** On termination or expiry of this Agreement for any reason, any service levels set out in the SLA which apply to the Services, will no longer apply and will cease to have effect. Service levels will not apply to the provision of any termination assistance pursuant to paragraph 9.7 or any Services that continue for any reason after expiry or termination.

## 10 PROTECTION OF CONFIDENTIAL INFORMATION

10.1 **Information concerned.** Each party acknowledges that they will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, including the terms and conditions of this Agreement, proprietary software and customer information ("Confidential Information").

10.2 **Maintaining secrecy.** Each party agrees that except as expressly permitted under this Agreement, they will not use in any way, for their own account or the account of any third party, nor disclose to any third party, except as required by law or as reasonably necessary to that party's professional advisors (or in NVT's case, to members of NVT's group of companies), any of the other party's Confidential Information and that each party will take reasonable precautions to protect the confidentiality of that information.

10.3 **Exceptions.** Information will not be deemed Confidential Information if that information (i) was already known or becomes known to the receiving party from a source other than the disclosing party; (ii) becomes publicly known or becomes no longer secret or confidential, except through a breach of this Agreement by the receiving party; (iii) is independently developed by the receiving party; or (iv) is required to be released by law or regulation, provided that the receiving party promptly informs the disclosing party in writing of the impending release, and the releasing party co-operates fully with the disclosing party to minimise the extent of the release.

## 11 PROTECTION OF PERSONAL DATA

11.1 In this paragraph 11, the terms "personal data", "data", "data subject", "data controller", "sensitive personal data", "data processor" and "processing" have the meanings that they have in the DPA Regulations.

11.2 Each party will, in the performance of their obligations under this Agreement, comply with the DPA Regulations applicable to them.

11.3 In addition, if NVT receives from the Customer or processes any personal data on the Customer's behalf, NVT will, acting as data processor:

11.3.1 only process that personal data in accordance with this Agreement and the Customer's instructions;

11.3.2 not transfer any of the personal data outside the European Economic Area unless directed to do so by the Customer in writing; and

11.3.3 implement appropriate technical and organisational measures against unauthorised or unlawful processing of that personal data as if NVT was the data controller and permit the Customer to audit those measures on reasonable prior notice.

11.4 **US clients.** The Customer acknowledges and agrees that if the Customer is a business located in the United States it is the Customer's responsibility to ensure compliance with the DPA Regulations (or equivalent) in relation to transfers of the Customer's personal data from NVT to the Customer.

11.5 **PCI DSS Requirements.** In accordance with best practice as described in the Payment Card Industry Data Security Standard (PCI DSS) scheme to safeguard sensitive credit and/or debit card data:

11.5.1 should the Customer use the Services to store, process or transmit credit or debit card information the Customer will comply with the PCI DSS requirements; and

11.5.2 the Customer will take all necessary steps to ensure they are properly advised by the Customer's card acquirer or a PCI DSS Qualified Security Assessor (QSA) with regards to their obligations and

appropriateness of the Services.

11.6 **Business Continuity.** NVT warrants that it has and undertakes that it will maintain in force a business continuity plan to standards consistent with ISO/IEC 9001:2000 and ISO27001:2005. While NVT takes all steps provided in this Agreement to protect the Customer's data, this does not constitute an absolute guarantee that a third party will not try to access, interrupt, delete or compromise Customer's data. The Customer is therefore responsible for determining the ultimate safety and integrity of its data.

## 12 GENERAL PROVISIONS

12.1 **Unenforceable Provisions.** If any part of this Agreement is found by a court or other competent authority to be illegal or unenforceable then the rest of this Agreement will remain valid.

12.2 **Circumstances outside either party's control.** Except for the obligation to pay money, neither party will be liable for any failure or delay in meeting their respective obligations under this Agreement, or for credits due under the SLA, due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, terrorist activity, sabotage, labour shortage or dispute, governmental act or failure of the Internet, provided that whichever party is affected: (a) gives the other prompt notice of the situation; and (b) uses reasonable commercial efforts to correct promptly the failure or delay in performance.

12.3 **Property rights.** This Agreement is a services agreement and is not intended to and does not grant a lease or license over any real or personal property. In particular, the Customer acknowledges and agrees that the Customer has not been granted any real property interest the Data Centre or in NVT's other premises (including the location where the Services are provided), and the Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, or regulations.

12.4 **Status of the parties.** NVT and the Customer are independent contractors and this Agreement does not create any partnership, joint venture or agency or employee relationship. Neither of us has authority to enter into any contract on behalf of the other.

## 13 DISPUTE RESOLUTION

13.1 Any dispute between the parties in relation to this Managed Service Agreement that is not resolved will be escalated to a director of NVT and the Customer to discuss the problem and negotiate in good faith to resolve the dispute. The specific format for such discussions and negotiations will be left to the discretion of the two directors. No further proceedings for the resolution of any dispute may be commenced until the earlier of:

13.1.1 the date on which the two directors conclude in good faith that a resolution to the dispute through continued negotiations is not likely; or

13.1.2 thirty days from the date the dispute was escalated to the directors.