

IT Hardware Support Agreement

1. GENERAL

- 1.1 Excalibur IT's General Terms and Conditions of trading also apply to this agreement, a copy of which is available upon request.
- 1.2 Notwithstanding anything to the contrary in the Customer's standard conditions or elsewhere, this Agreement contains the terms upon which Excalibur IT will carry out Services and shall not be varied unless expressly agreed in writing, signed by a Director of Excalibur IT. No servant or agent of Excalibur IT is authorised to vary the conditions herein contained orally or to make representations or promises about the Services provided.
- 1.3 Each of the provisions of this Agreement is distinct and severable from the others and in the event that any one or more of the provisions contained in this Agreement shall for any reason be or become unenforceable, illegal or otherwise invalid in any respect (whether wholly or in part), such unenforceability, illegality or invalidity shall not affect any other provisions of this Agreement (or, as the case may be, the remaining parts of the relevant provisions) which shall continue in full force and effect and this Agreement shall then be construed as if such unenforceable, illegal or invalid provisions (or parts thereof) had never been contained herein. The parties shall thereupon use their respective reasonable endeavors to agree valid and enforceable terms to replace such unenforceable illegal or invalid provisions to meet so far as possible the original intention of the parties.
- 1.4 The Customer shall not assign or otherwise transfer any right or obligation under this agreement without the prior written consent of Excalibur IT.
- 1.5 Services prior to termination. Costs and commitments include but are not limited to: spare parts, loan equipment, services, insurances, storage etc.

2. TERMS OF PAYMENT

- 2.1 The Customer shall pay the Contract Charge within 30 days of the date of the invoice(s). Where any services additional to those set out in the Schedule are provided at the request of the Customer, the Customer shall also pay Excalibur IT within 30 days of the date of the invoice(s).
- 2.2 Any sum payable under this Agreement which is not paid within 7 days after the due date will (without prejudice to Excalibur IT's other rights and remedies) incur an interest charge on such sums on a day to day basis (as well as before any judgement) from the due date to the date of actual payment (both dates inclusive) at the rate as specified in the General Terms and Conditions of Trading. The Customer on demand shall pay such interest.
- 2.3 All invoices shall be deemed to be correct and approved by the customer unless either a manifest clerical error has been made or the Customer sends a notice making a bona fide complaint on any aspect of an invoice within 2 weeks of the invoice date specifying in what way the invoice is inconsistent with the provisions of this Agreement.
- 2.4 The Customer shall pay all accounts in full and not exercise any rights of set-off or counterclaim.
- 2.5 All charges are exclusive of Value Added Tax which will be payable by the Customer at the rate applicable from time to time.
- 2.6 Excalibur IT reserves the right to suspend performance of the Services where payment is not received in accordance with Clause 4.1 or any alternative terms of payment agreed in writing in advance.

3. CHANGES TO EQUIPMENT

- 3. From time to time, the Customer may request that certain items of Equipment be added to, or deleted from the Schedule. Excalibur IT agrees that it will consider any such reasonable requests in good faith, but Excalibur IT reserves the absolute right to refuse any such requests.
- 3.1 In the event that Excalibur IT agrees to add Equipment to the Schedule, in accordance with Clause 7.1, Excalibur IT reserves the right to charge for the addition at Excalibur IT's prevailing rates and in accordance with clause 5.2.
- 3.2 In the event that Excalibur IT agrees to deletions of Equipment from the Schedule, in accordance with Clause 7.1, it will be restricted to a maximum annual deletion value of 5% of the combined original charges at the commencement date or renewal date, whichever occurred latest, of services detailed either in the Schedule and will be subject to 90 days written notice of deletion. Requests for deletions which exceed 5% of the combined charges detailed in the Schedule can only be made at the next renewal date of the contract unless the equipment is replaced by additions to the same or similar value.

4. CUSTOMER'S OBLIGATIONS

- 4. During the continuance of this Agreement the Customer shall:
 - 4.1 Ensure that proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment the cables and fittings associated therewith and the electricity supply thereto
 - 4.2 Not add to or make any modification to the Equipment without Excalibur IT's prior written consent provided, nevertheless if the Customer does make any such modification or addition which may affect the performance, compatibility or reliability of any Equipment the Customer will pay Excalibur IT such additional charges as are appropriate to remedy any defect in or caused by the modification or addition and to pay for a further charge in respect of such Additional Equipment or change in specification. Excalibur IT reserves the right to terminate this Agreement in relation to the item of Equipment concerned as a result of such addition, modification or adjustment, by giving 7 days' notice in writing to the Customer. For the avoidance of doubt, this clause is not intended to apply where the Customer wishes to remove an item of equipment from Schedule or to add a new item to that list, to which the provisions of Clause 7 shall apply.
 - 4.3 Keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer's operating instructions and specifications and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Equipment.
 - 4.4 Ensure that the external surfaces of the Equipment are kept clean, dry and in good condition and shall carry out any minor maintenance recommended by the manufacturer from time to time.
 - 4.5 Save as aforesaid, not attempt to adjust, repair or maintain the Equipment and shall not request, permit or authorise anyone other than Excalibur IT to carry out any adjustments, repairs or maintenance of the Equipment.
 - 4.6 Not cause the need for services as a result of making any movement of the Equipment or removing the Equipment from the Location.
 - 4.7 Not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied by or approved by the manufacturer.
 - 4.8 Provide Excalibur IT with full and safe access to the Equipment for the purposes of the Agreement.
 - 4.9 Provide adequate working space around the Equipment for the use of Excalibur IT's personnel and shall make available such reasonable facilities as may be requested from time to time by Excalibur IT for the storage and safekeeping of test equipment and spare parts.
 - 4.10 Ensure in the interests of health and safety that Excalibur IT's personnel while on the Customer's premises for the purposes of this Agreement are at all times accompanied by a member of the Customer's staff familiar with the Customer's premises and safety procedures.
 - 4.11 Provide such services as may reasonably be required for safety or other reasons by Excalibur IT engineers in pursuance of the maintenance of the Equipment.

- 4.12 Subject to Clause 14, make available to Excalibur IT such programs, operating manuals and information as may be necessary to enable Excalibur IT to perform its obligations hereunder and shall if requested by Excalibur IT provide staff familiar with the Customer's programs and operations, which shall co-operate fully with Excalibur IT's personnel in the diagnosis of any malfunction of the Equipment.
- 4.13 In the event that Excalibur IT is requested to supply any Maintenance Services in respect of any Additional Equipment, advise Excalibur IT forthwith of the date of the installation of such item of Additional Equipment at the Location subject to the provisions of Clause hereof.
- 4.14 Provide all facilities and services as are reasonably required by Excalibur IT to enable Excalibur IT to perform the Maintenance Service including without limitation telecommunication facilities at the Customer's expense.
- 4.15 Keep full security copies and/or back-up tapes of the Customer's programs, databases and computer records in accordance with best computing practice.
- 4.16 Use only such operating supplies of a type which is approved of by the manufacturer of the Equipment or Excalibur IT. Excalibur IT will not unreasonably withhold such approval.

5. EXCALIBUR IT WARRANTY

- 5.1 Excalibur IT warrants that the Services shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel in accordance with good industry practice.
- 5.2 Should the Customer become dissatisfied with the performance of any personnel assigned by Excalibur IT to perform the Services, the Customer shall notify Excalibur IT in writing with details of the unsatisfactory performance, and provided that Excalibur IT is satisfied that the Customer's dissatisfaction is reasonable, Excalibur IT at the Customer's request shall aim to replace that person as soon as reasonably practicable.

6. CUSTOMER'S WARRANTIES

- 6.1 The Customer hereby warrants to Excalibur IT that the Customer has not been induced to enter into this Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in this Agreement and the Customer hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind this Agreement. The Customer further warrants that if at the Commencement Date any Equipment is not in good repair and condition then the Customer will pay for such services as are required to put such of the Equipment into good repair and condition at the rates set out in Clause 5.3 hereof.
- 6.2 The Customer warrants and undertakes to the Company that it or the end user is the owner of the equipment (or where the equipment is leased or hire purchased, that the user has consented to this agreement) and that the Customer has full power and authority to enter into this agreement and that the End User permits and consents to the Company performing the Maintenance Services and any Additional Services.
- 6.3 The Customer undertakes to indemnify and hold harmless the Company against any loss or damage that the Company may suffer as a result of a breach by the Customer or End User of clause 11.2 or 9.
- 6.4 Save where Excalibur IT has been notified otherwise and has agreed in writing to accept the Equipment in other than full working order, the Customer warrants that the Equipment is in good working order and good mechanical and electrical condition at the date of commencement of the Initial Period.

7. NON-SOLICITATION OF EXCALIBUR IT EMPLOYEES

- 7.1 The Customer shall not, and shall procure that any third party on whose premises the Services (or part of them) are to be performed or who will otherwise take the benefit of the Services (or part of them) will not, solicit or utilise either directly or indirectly the services of any employee of Excalibur IT who has been involved in the provision of the Services to the Customer for a period of 12 months following the end of any involvement by the individual concerned with any work for the Customer without the prior written consent of Excalibur IT.
- 7.2 if either:
- 7.2.1 the Customer employs or uses directly or indirectly the services of any employee of Excalibur IT in contravention of Clause 12.1; or
- 7.2.2 in circumstances where the Services, or part of them, are not to be performed at the Customer's premises, but at the premises of a third party, or the Services, or part of them, are otherwise performed for the benefit of a third party, and that third party employs or uses directly or indirectly the services of any employee of Excalibur IT who has been involved in the provision of the Services, at any time up to 12 months after the end of any involvement by that employee in the provision of the Services, without the prior written consent of Excalibur IT;
- 7.2.3 the Customer shall pay to Excalibur IT a sum equal to £60,000 or 100% of the Total Annual Employment Costs to Excalibur IT of the employee concerned, whichever the greater, such sum to be payable on the date when such employee is first employed or his services are first used by the Customer, or the third party, as the case may be, it being acknowledged that in view of recruitment difficulties and costs in the industry, this sum is a reasonable pre-estimate of the loss likely to be suffered by Excalibur IT

8. INTELLECTUAL PROPERTY

- 8.1 The Customer acknowledges that all copyright, design rights, patents and all data, reports, drawings, specifications, designs, plans, programs or other material produced or acquired and other intellectual property rights in or relating to any materials provided or made available by Excalibur IT in connection with any one of its Services, will remain the sole property of Excalibur IT or its licensors, suppliers or sub-contractors, and no copies may be made of such materials unless expressly agreed otherwise in advance and in writing by Excalibur IT.
- 8.2 The parties agree that all Intellectual Property Rights which existed prior to the date of this Agreement in relation to any items used in the performance of the Consulting Services shall remain the property of the existing owner of such Intellectual Property Rights.

9. CONFIDENTIALITY

- 9.1 Each of the parties undertakes to the other to 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 discussion leading up to the entering into or the performance of this Agreement save that which is:
- 9.1.1 already in its possession or which subsequently comes into its possession other than as a result of a breach of this clause; or
- 9.1.2 in the public domain other than as a result of a breach of this clause.
- 9.2 Each of the parties undertakes to the other to take all such steps as from time to time may be necessary to ensure compliance with the provisions of this clause by its employees, agents and sub-contractors. The foregoing obligations as to confidentiality shall survive any termination of this Agreement.

10. TERMINATION

- 10.1 Notwithstanding anything else contained herein, this Agreement may be terminated:
- 10.1.1 forthwith by notice in writing by either party if the other commits any material breach of any term of this Agreement and which in the case of a breach capable of being remedied shall not have been remedied within 30 days of a written request to remedy the same; or
- 10.1.2 forthwith by either party if the other shall become bankrupt, convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of a solvent amalgamation or reconstruction) or if anything analogous to any

- of the foregoing under the law of any jurisdiction occurs in relation to that other party.
- 10.2 Any termination of this Agreement for whatever 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 and liabilities of either party nor the coming into or 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.
- 10.3 In the event that the Customer terminates the Agreement without giving notice pursuant to Clause 3 hereof, the Customer will pay Excalibur IT a sum equal to the sum that would have become payable under the Agreement for the balance of the period of the Agreement had the Customer complied with that clause.
- 10.4 Upon completion by Excalibur IT of any Services or the termination of this Agreement, the Customer will promptly return to Excalibur IT all software, documentation and manuals used by Excalibur IT for performing the Services, or any other items belonging to Excalibur IT which the Customer has no contractual right to retain.
- 10.5 Excalibur IT may terminate the provision of Maintenance Services on any Equipment which in Excalibur IT's opinion but acting reasonably is obsolete or incapable of economical repair upon written 30 days' notice to the customer

11. **FORCE MAJEURE**

- 11.1 Neither party to this Agreement will be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to Force Majeure.
- 11.2 If a party's performance of its obligations under this Agreement is affected by Force Majeure:
- 11.2.1 it will use all reasonable endeavors to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, to mitigate its severity;
- 11.2.2 the date for performance of such obligation will be deemed suspended for a period equal to the delay caused by such event and a reasonable extension of time to recover where possible, from its severity;
- 11.2.3 the Customer will not be entitled to payment from Excalibur IT in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 11.3 If the Force Majeure in question continues for more than 30 days Excalibur IT may give written notice to the Customer to terminate this Agreement or part thereof. The notice to terminate will specify the termination date, which will not be less than 5 days from the date on which the notice is given, and once notice has been validly given, this Agreement or part thereof will terminate on that date.
- 11.4 If the Agreement or part thereof, is terminated in accordance with clause 16.3, then neither party will have liability to the other except rights and liabilities which accrued prior to such termination will continue to exist.

12. **NOTICES**

- 12.1 Any notice required or permitted to be given hereunder shall be in writing and shall be given by delivering the same by hand or by sending the same by prepaid first class post or courier service or facsimile to the registered office of the addressee or such other address or number as that party may have notified to the other pursuant to this Clause 17 (or if no such address has been notified, the last known relevant place of business of that party). Any notice given as aforesaid shall be deemed to have been given or received at the time of delivery or transmission (if delivered by hand or courier or given by facsimile) or 48 hours after posting (if sent by post). In proving service it shall be sufficient to prove that the letter was correctly addressed and was posted, or where it was delivered otherwise than by post that it was delivered to the correct address or where it was sent by facsimile that it was transmitted to the correct number.

13. **LAW AND JURISDICTION**

- 13.1 This Agreement shall be governed by and construed in accordance with English Law and subject to Clause 23, the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

14. **TITLE AND RISK**

- 14.1 Title to the goods shall not pass to the Purchaser until payment in full of the price (including any interest or other payment due under the contract).
- 14.2 The legal and beneficial ownership of the Goods included in the Support Services provision (but not, for the avoidance of doubt, the Services, Title to which shall remain with Excalibur IT) shall pass to the Customer at the time of payment in full of the price (including any interest or other payment due under the contract) for such Goods. Excalibur IT shall ensure that any licenses for any third-party software provided in the Goods provision and procured on behalf of the Customer under this agreement shall be licensed in favour of the Customer at the time of payment for such software
- 14.3 Risk of loss, theft or damage to the Goods provision shall pass to the Customer at the time of delivery:
- 14.3.1 Between delivery and payment for the Goods provision, the Customer shall maintain insurance indemnifying the Customer in respect of any loss or damage to the Goods provision by any risks commonly insured against for the full insurable value thereof, subject to such exclusions and conditions as insurers shall reasonably require and the Customer shall notify the insurers of the interest of Excalibur IT as unpaid seller and shall use all reasonable endeavors to procure that such interest is noted;
- 14.3.2 Where any Goods have been paid for by the Customer but is retained or located on Excalibur IT's premises, then Excalibur IT shall clearly mark such Goods as belonging to the Customer, and shall permit the Customer or its agents to enter into Excalibur IT's premises for the purposes of taking possession of such Goods.
- 14.4 Excalibur IT reserves the right to re-possess any goods in respect of which payment is overdue and thereafter to re-sell the same and for this purpose the Purchaser hereby grants an irrevocable right and license to Excalibur IT's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. The provisions of this sub-clause shall continue in force notwithstanding termination of the relevant contract howsoever caused.

15. **STATUTORY AND OTHER REGULATIONS**

- 15.1 If the cost to Excalibur IT of performing the Services shall be increased by reason of the making or amendment after the date of this Agreement of any law or of any order, regulation or by-law having the force of law that shall affect the performance of Excalibur IT's obligations under this Agreement, the amount of such increase shall be added to the Contract Charge 30 days after Excalibur IT gives the Customer notice in writing of such increase.

16. **HEADINGS**

- 16.1 The headings in these Conditions are for convenience only and shall not affect the construction or interpretation thereof.

17. **WAIVER**

- 17.1 The failure of either party to exercise any of its rights under this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

18. **DISPUTE RESOLUTION**

- 18.1 In the event of any dispute or difference arising between the parties in connection with this Agreement, either party may refer the matter for decision under the procedure as described below by giving written notice of the reference to the other party in which case the dispute shall be decided in the following manner.
- 18.2 An independent expert shall be appointed by agreement between the parties or in the absence of agreement by the President for the time being of the British Computer Society.

- 18.3 The parties shall promptly furnish to such expert who will be required to keep such information confidential to the parties all information relating to the particular dispute reasonably requested by such expert to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to both parties and to allow performance hereunder to continue with minimum delay or additional cost. Information provided to the expert may be in the form of oral or written submissions but in either case the expert shall afford each party an opportunity equal to the other to put forward information and in any event when receiving oral information from or on behalf of a particular party shall afford the other an opportunity of being present at such a hearing.
- 18.4 The expert shall use all reasonable endeavors to render his decision within 30 days following his receipt of all information requested or if this is not possible so soon thereafter as may be reasonably practicable and the parties shall co-operate fully with the expert to achieve this objective.
- 18.5 The decision of the expert shall be final and binding on each of the parties but for the avoidance of doubt this procedure provides for a form of informal disputes resolution and is not a reference to arbitration under the Arbitration Acts 1950 to 1996 or any other statute.
- 18.6 The parties shall share equally the fees and expenses of the expert unless the expert directs that the party against whom the decision has been given should pay a greater proportion of such costs by reason of that party's unreasonable or vexatious behaviour concerning the matter the subject of the dispute.
- 18.7 Where the reference of a matter to the dispute resolution procedure has resulted in delay by either party in performance of its obligations hereunder the dates set out for performance shall be postponed by a period equivalent to the period of decision-making under the dispute resolution procedure.
- 18.8 The parties nevertheless agree that they will, so far as reasonably practicable, continue to perform their obligations under this Agreement whilst the dispute resolution procedure takes place and in particular Excalibur IT shall ensure that its personnel continue to carry out its obligations in so far as these do not relate to the matter in dispute.
19. **SEVERABILITY**
- 19.1 Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.
20. **ASSIGNMENT**
- 20.1 The Customer shall not assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of Excalibur IT.
21. **ENTIRE AGREEMENT**
- 21.1 This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.
- 21.2 The Customer acknowledges that in entering into this Agreement it has not relied on any representation, warranty, agreement or statement not set out in this Agreement and that (in the absence of fraud) it will not have any right or remedy arising out of any such representation, warranty, agreement or statement.
- 21.3 No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.
22. **INTERPRETATION**
- 22.1 In this Agreement:
- 22.1.1 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- 22.1.2 words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated; and (in each case) vice versa;
- 22.1.3 any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns.

SECTION 2 **SERVICES**

23. **HARDWARE MAINTENANCE**
- 23.1 Excalibur IT agrees to provide the Hardware Maintenance Service in respect of the Equipment on the terms set out herein.
- 23.2 Excalibur IT undertakes to respond to calls for the Hardware Maintenance Service by ordering a diagnosed part following a technical appraisal or providing an engineer on the Site within the Response Time (if any) specified in the Schedule provided that such calls are made to Excalibur IT at the response telephone number specified in the Schedule, or otherwise agreed between the parties.
- 23.3 Excalibur IT undertakes to handle calls for the Hardware Maintenance Service by providing appropriate maintenance in respect of the Equipment within the Fix Time (if any) specified in the Schedule, provided that such calls are made to Excalibur IT at the response telephone number specified in the Schedule, or otherwise agreed between the parties.
- 23.4 In addition to the Scheduled Maintenance Services, Excalibur IT shall provide during the continuance of this Agreement an emergency corrective maintenance service outside Maintenance hours as soon as practicable after the receipt of a request by the Customer therefore (such request to be made during Maintenance Hours) such emergency services shall be charged for at Excalibur IT's standard scale of charges for such service from time to time in force and shall be additional to the Maintenance Charge. Such charges shall run from the first arrival of Excalibur IT's service engineer at the Location to his final departure there from.
24. **SOFTWARE RESTORATION**
- 24.1 Should a hardware fix include the replacement of a hard disk drive in a Personal Computer, maintenance services will include the restoration of a Windows Operating System, using default settings. The onus is on the customer to make available the master disks or copies of, together with an appropriate licence key. The provision of such disks and keys must be made available during the visit which the hard disk drive was replaced. If Excalibur IT is requested to return to site to install software the call will be subjected to additional charges at Excalibur IT's prevailing rates.
- 24.2 Software restoration services other than those detailed in clause 29.1 will be specified in the Schedule.
- 24.3 Where Excalibur IT has agreed to provide software restoration following the provision of hardware maintenance, such services will be delivered outside of any contracted SLA time frame.
25. **PRE-CONTRACT INSPECTION (PCI)**
- 25.1 Excalibur IT reserves the right to perform a Pre-Contract Inspection (PCI) of Equipment and Additional Equipment prior to the provision of Maintenance Services. The inspection is to enable Excalibur IT to become familiar with the environment it is being used in, what purpose it is being used, how it is being used within the Customers infrastructure and to perform a health check if considered necessary.
- 25.2 Should during the PCI event European Electronic identify that the Equipment is not in good repair or condition clause 5.2 shall apply whether Additional Equipment or Equipment.
- NEXT BUSINESS DAY SERVICE**
- 25.3 Where Excalibur IT are contracted to a next business day response or fix within the agreed SLA, Excalibur IT must be in receipt of the request for

service by 16:00 during the contracted period of Maintenance Hours. Should the request for service be made after 16:00 during the period of Maintenance Hours the contracted response or fix will be the next business day plus one business day.

26. **LOAN EQUIPMENT**

- 26.1 Should the maintained Equipment include a fix element in the agreed SLA of that Equipment, Excalibur IT will, at the request of the customer, provide loan equipment subject to the following conditions:
- 26.1.1 If Excalibur IT are unable to repair the Equipment within the agreed SLA time frame of that Equipment;
- 26.1.2 The Customer accepts loan Equipment of an equal or better specification to that of the faulty Equipment;
- 26.1.3 Loan equipment is not guaranteed to be 'Like-for-Like', although this will be provided if currently available in Excalibur IT's loan stock and not already assigned to another customer;
- 26.1.4 If Excalibur IT provides an equal or better specification loan Equipment, Excalibur IT will provide consumables for the Customer to use in the loan Equipment for a minimum of five days.
- 26.1.5 Loan equipment is made available for collection from the Customer within ten days should the Customers Equipment be subject to clause 32.1.1 or 33, otherwise Excalibur IT reserve the right to charge the client a daily rental fee at its prevailing rates.
- 26.1.6 Where the loan Equipment is not 'Like-for-Like' it is the Customers responsibility to install drivers on networked Equipment to facilitate the use of the Equipment, the same is true when the Customers Equipment is returned to a working condition.
- 26.2 Excalibur IT will at its discretion decline the provision of loan Equipment, when it can be confirmed that a repair is possible, prior to, or within a short time period of the provision of the loan Equipment.

27. **CUSTOMER'S OBLIGATIONS**

The Customer shall:

- 27.1 Co-operate fully with Excalibur IT in the diagnosis of the reasons for any malfunction of the Equipment.
- 27.2 Before calling for Excalibur IT engineers to visit the Site, ensure and confirm that the following basic checks have been implemented:
- 27.2.1 Main power, external fuses and any external or internal sub-units not covered by this Agreement have been checked and restored.
- 27.2.2 Diagnostic self-check facilities (where appropriate) have been used in accordance with the instructions in the appropriate operating manual.
- 27.2.3 Any adjustments required as part of the relevant self-checks have been implemented wherever possible.
- 27.2.4 Follow the manufacturer's advice on operating the Equipment and on carrying out operator's routine maintenance.
- 27.3 Insofar as it is legally authorised to do so, provide Excalibur IT with full and free access at all reasonable times to:
- 27.3.1 all technical manuals and other documentation relating to the Equipment;
- 27.3.2 any diagnostic software which the Customer possesses in relation to the Equipment.
- 27.4 Transfer Customer and Loan Equipment to the ground floor should there be a requirement to remove it from site by Excalibur IT or one of its representatives.
- 27.5 Transfer Customer and Loan Equipment from the ground floor to the location it is to be used when delivered to site by Excalibur IT or one of its representatives enabling a Excalibur IT or one of its representatives to install it for use.

28. **NON-AVAILABILITY OF SPARES/TECHNICAL DATA**

- 28.1 If Excalibur IT is unable to perform the Hardware Maintenance Service due to the non-availability of parts and/or technical data relating to the Equipment or any item of the Equipment from the manufacturer, Excalibur IT shall have the right to terminate this Agreement in relation to such item or items of Equipment. Such termination shall be effected by notice in writing. Excalibur IT will use its reasonable endeavours to give at least 90 days' notice of any such termination. In the event that a shorter notice period is necessary, Excalibur IT will give as long a notice period as is reasonably practicable in the circumstances. In the event of any termination pursuant to this clause, Excalibur IT shall refund any part of the Hardware Maintenance Charge which has been paid in advance which relates to the period following termination and which is attributable to the relevant Equipment.

29. **PARTS AND STORAGE**

- 29.1 Excalibur IT will at its option repair or replace (on an exchange basis) any parts of the Equipment which become unserviceable in normal use. Replacement parts shall become part of the Equipment and those parts which have been replaced shall become the property of Excalibur IT. Should the Customer, for security reasons, wish to retain such replaced parts, Excalibur IT shall charge the Customer a reasonable fee, therefore.
- 29.2 Certain items of equipment, as indicated in the Schedule, may be designated by Excalibur IT as "Non-Site Repairable". Where repairs are necessary to such Equipment, such items will be removed from the Site, repaired and returned at the earliest opportunity. If the Customer wishes an immediate replacement to take place, the appropriate spares must be purchased and held by the Customer for use by Excalibur IT. Excalibur IT engineers shall have full and free access to all such spares held by the Customer. These shall be adequately protected and stored in a location notified to Excalibur IT close to the Equipment.
- 29.3 Excalibur IT may at its own risk, subject to the Customer's agreement which shall not be unreasonably withheld, elect to store on the Customer's premises such equipment and/or parts as are reasonably necessary to provide the Hardware Maintenance Service.

30. **RECONDITIONING**

- 30.1 If Excalibur IT reasonably considers that an item of Equipment requires reconditioning then Excalibur IT may submit an estimate of the cost of reconditioning to the Customer. The cost of reconditioning will be in addition to the Hardware Maintenance Charge. If the Customer does not accept the cost estimate then Excalibur IT shall be entitled to vary this Agreement forthwith to delete all reference to the item of Equipment requiring reconditioning. In such an event Excalibur IT will refund any part of the Hardware Maintenance Charge which has been paid in advance and which is attributable to the relevant Equipment for the period following its deletion.
- 30.2 At the option of Excalibur IT provision of the Services for Equipment described in the Schedule under the term "Laser Printers", will be subject to reconditioning at the Customer's expense if the manufacturer's engine life cycle for the specific printer reaches the level expected by the manufacturer or the laser printers duty cycle reaches that specified by the manufacturer requiring a service and replacement maintenance kit. Where the manufacturer does not specify either an engine life cycle or printer duty cycle Excalibur IT reserve the right to recondition the printer at copy count multiples of 75,000 copies from the date of installation, if in the opinion of Excalibur IT it is deemed necessary

31. **EXCLUSIONS**

- 31.1 The Hardware Maintenance Service does not include maintenance of the Equipment necessitated by other than fair wear and tear and in particular does not include (unless separately listed in the Schedule):
- 31.1.1 Repair or damage caused by accident, misuse, neglect, movement of or interference with the Equipment, software errors in operating systems or application software; or by failure to maintain a suitable environment and electrical supply including (but not limited to) failure of electrical power, poor air conditioning or humidity control, static electricity, or by any cause other than the normal usage of the Equipment;
- 31.1.2 repair or damage caused by faulty manufacture of or modification of the Equipment, before the date of this Agreement, or by any person other than an authorised representative of Excalibur IT attempting to maintain the Equipment;
- 31.1.3 maintenance of accessories, attachments, options, equipment or any other items not included in the Equipment specified in the Schedule;
- 31.1.4 upgrades of physical firmware and memory modules i.e. non-flashable memory;

- 31.1.5 electrical work external to the Equipment, making modifications or specification changes to the Equipment, reconditioning, refurbishing, painting or refinishing the Equipment or adding or removing accessories, attachments or other devices;
- 31.1.6 provision and replacement of supplies or accessories or items defined by either Excalibur IT or the manufacturer of the Equipment as consumables or limited lifecycle components, including (but not limited to): media, toner cartridges, ribbons, developer units, maintenance kits, fuser units, feed and transfer rollers/belts, print heads, hammer modules/springs, shuttle assemblies, bulbs or lamps;
- 31.1.7 normal Operator Functions as recommended by the manufacturer and/or Excalibur IT including (but not limited) performing cleaning cycles, replacing cartridge ribbons, toner cartridges and ink cartridges or any other task detailed in the user guide/manual provided by the manufacturer of the equipment;
- 31.1.8 any use with the Equipment of consumable supplies or accessories which are not of the type recommended by the manufacturer of the Equipment or Excalibur IT;
- 31.1.9 the maintenance or replacement of cathode ray tubes in monitors and terminals except where a defect has arisen as a result of an electrical fault;
- 31.1.10 maintenance necessitated as a result of fire, flood, storm, earthquake, and willful interference by third parties, accidental damage, contamination and other similar causes;
- 31.1.11 maintenance of laser printers or laser drums beyond their expected working life;
- 31.1.12 replacement of laptop screens and batteries, including CMOS & Re-Chargeable;
- 31.1.13 replacement of print heads, print bands, ribbon shields/masks or wheels, hinges, cabling and cables, screen filters, mice mats, holsters and monitor arms;
- 31.1.14 any item classified as Beyond Economic Repair;
- 31.1.15 any item with a limited life cycle
- 31.1.16 any requirement to carry out an annual or other test on the Equipment to satisfy statutory regulations or any repair necessitated as a result of a failure to satisfy such test, or;
- 31.1.17 obligation to carry out additional or unnecessary work as a result of incorrect or inadequate information provided by the customer.
- 31.2 Software restoration from backups tapes/disks, original vendor supplied master disks or copies of, following replacement of a storage media including (but not limited to) personal computers and file servers, other than that detailed in clause 29.
- 31.3 Provision of loan equipment where the maintained Equipment does not include a fix element in the agreed SLA of that Equipment.
- 31.4 At the Customer's request, Excalibur IT may, in its sole discretion, agree to perform any of the services

32. **BEYOND ECONOMIC REPAIR**

- 32.1 Excalibur IT reserve the right to classify the Equipment Beyond Economic Repair if:
 - 32.1.1 any one incident where the cost of repair (including parts and labour) to facilitate the required repair exceeds 60% of the current market value of the faulty equipment at the time of the incident, this incident will be deemed as 'Beyond Economic Repair', and as such the supplier will not be required to facilitate a repair to the equipment.
 - 32.1.2 Parts required for the repair will not be available within 28 working days from commencement of repair
- 32.2 Equipment deemed Beyond Economical Repair will not be subject to SLA penalties that Excalibur IT commits to.
- 32.3 Excalibur IT will notify the customer of any Equipment judged to be Beyond Economical Repair, and Excalibur IT will offer the customer an alternative replacement, subject to the customer agreeing the replacement charges.

33. **REPLACEMENT**

- 33.1 Excalibur IT reserves the right to replace, by providing on loan or permanently the whole of or any part or parts of any equipment which may be found to be faulty, worn out or in need of investigation by parts or Equipment of similar or better specification.
- 33.2 Excalibur IT reserves the right to send to customer replacement items such as keyboards, mice and monitors (classified as less than or equal to 17") for installation by the Customer.
- 33.3 The customer will retain any part or parts of the Equipment, which has been replaced by a loan, until such time as Excalibur IT replaces the Customer's original equipment. This clause is subject to the Customers Equipment not being classified as Beyond Economic Repair as set out in clause 32.1.1. If the equipment is subject to clause 32.1.1, Excalibur IT will at its discretion allow the Customer to continue using the loan for a period of up to seven business days without charge, thereafter the Customer will subject to a daily hire charge. However, Excalibur IT reserves the right to withdraw this loan at any time during the seven-day period.
- 33.4 All defective parts or Equipment permanently removed by Excalibur IT will become the property of Excalibur IT and replacement (other than any Equipment on loan or rental) will become the property of the Customer.
- 33.5 The provisions of this Agreement shall apply to all replacements and renewals of any part or parts of the Equipment made by Excalibur IT during the continuance of this Agreement.

34. **ORDER OF PRECEDENCE**

- 34.1 For the avoidance of doubt if there is any conflict between the terms of this agreement, and Excalibur IT's General Terms and Conditions of Trading, which is available on request, then the terms of this agreement shall prevail.

35. **GENERAL DATA PROTECTION REGULATION**

- 35.1 Protecting your personal information is incredibly important to Excalibur. Our privacy policy which sets out how we do this is available here: <https://www.excaliburcomms.co.uk/gdpr-policy/>. This policy explains the information that we hold, how we use it, and how long we keep it for.