

MANAGED SERVICE SPECIAL CONDITIONS

v.1.8

1 Interpretation

Capitalised words used in these Special Conditions and not otherwise defined shall have the meaning given to them in the Standard Terms and Conditions.

2 Service Equipment

2.1 Egg shall, subject to the terms of the Agreement, grant You quiet possession of the Service Equipment and You shall pay the relevant Recurring Charges, in each case for the Service Term. The Service Equipment will remain Egg's property at all times. You agree to make Egg's ownership of the Service Equipment clear to all third parties at all times during the Service Term.

2.2 If, on any agreed date, You fail to:

- 2.2.1 take delivery of, or allow Egg to install, any Service Equipment; or
- 2.2.2 allow Egg to carry out work in relation to the supply of the Managed Service,

We may arrange storage for the Service Equipment at Your risk (meaning that Egg will not be liable for any loss or damage arising while the Service Equipment is in storage). You will have to pay the reasonable costs of such storage. We may also charge You a call-out fee and any reasonable costs arising as a result of Your failure.

2.3 Without prejudice to Egg's obligation to perform the Support Services, risk in the Service Equipment will pass to You, and You will be responsible for all loss of or damage to the Service Equipment, from when it has been delivered to the Site. You must insure the Service Equipment (in the joint name of You and Egg and, except in relation to third party claims, with Egg named as sole loss payee) against all risks of loss or damage for its full replacement value and third party liability for such amount as Egg may require from time to time or in the absence of any stipulation, for the amount which is prudent in all circumstances. You will provide a copy of such insurance along with evidence of payment of premiums on Egg's request. If You fail to do so, Egg may (but is under no obligation to do so) pay the relevant premium or effect the insurance required and You shall reimburse Egg on demand the cost of doing so. You are responsible for approaching Your insurance company for the Site(s) where

We will be installing the Equipment and providing the Services to ensure that this does not affect Your insurance policy.

2.4 We may alter or replace the Service Equipment from time to time as long as the altered or replacement Service Equipment does not have a significant negative effect on the Managed Service.

2.5 You are responsible for always making sure that the Service Equipment is kept safe and used properly at the Site in accordance with this paragraph 2. Unless the loss or damage results solely from Egg's negligence, actions or failings, We will not have any liability for loss of or damage to the Service Equipment (including lightning or electrical damage) and You must indemnify Egg for any such loss or damage. Things You must and must not do under this paragraph include, but are not limited to, the following.

2.5.1 You must not do the following:

- (a) Sell, let, transfer, dispose of, tamper with, remove or interfere with the Service Equipment, use it as security for borrowing, or do anything else which would affect Egg's rights over the Service Equipment.
- (b) Add to, alter or in any way interfere with the Service Equipment (provided that, if for any reason You have terminated Egg's provision of the Support Services, You may have someone repair, service or otherwise attend to the Service Equipment to the extent required to comply with Your obligations under paragraph 2.5.2(c) below).
- (c) Use the Service Equipment in breach of the terms of the Agreement or the terms of the Service Equipment's manufacturer's warranty.
- (d) Allow the Service Equipment to be repaired, serviced or otherwise attended to by any

person other than Egg's authorised representative (provided that, if for any reason You have terminated Egg's provision of the Support Services, You may have someone other than Egg's authorised representative repair, service or otherwise attend to the Service Equipment to the extent required to comply with Your obligations under paragraph 2.5.2(c) below).

- (e) Do anything which is likely to damage the Service Equipment or reduce its performance or operation.
- (f) Remove, tamper with, change or mask any words or labels on the Service Equipment or any part of it.

2.5.2 You must do the following.

- (a) Keep the Service Equipment at the Site and not move it at any time.
- (b) Protect, keep and use the Service Equipment:
 - (i) in line with any written instructions We may give You from time to time; or
 - (ii) if We do not give You such instructions, to the same standard as a reasonable owner of Service Equipment would keep it.
- (c) Without prejudice to Egg's obligation to perform the Support Services, You must ensure that the Service Equipment is kept at all times in good repair, condition and working order, properly serviced and maintained and shall keep records of the same;
- (d) In an emergency, take whatever steps as are reasonably necessary to

protect the Service Equipment, and notify Egg of the emergency as soon as possible.

- (e) Allow Egg (and any Funder to whom Egg has assigned its rights to the Service Equipment) and its nominees to inspect, test and maintain the Service Equipment at all reasonable times and after giving You reasonable notice.
- (f) Prevent any circumstance or thing which is likely to damage the Service Equipment or reduce its performance or operation.
- (g) Where required by Egg, obtain a waiver in a form approved by Egg from any landlord or mortgagee of, or other holder of security in respect of, the premises or land where the Service Equipment (or any item thereof) is from time to time or any holder of security from You acknowledging Egg's interest in the Service Equipment and agreeing to allow Egg and its nominees access to the Service Equipment for the purpose of inspection and to sever or remove the Service Equipment from the premises and not to repossess, seize or exercise any form of distress or execution (or in Scotland, any form of diligence) against the Service Equipment (whether or not any part of the Service Equipment shall be affixed to the premises or relevant land).

2.6 You must immediately tell Egg of any loss of or damage to the Service Equipment. We will not have any liability for loss or damage arising as a result of You not complying with paragraph 2.5.

2.7 Unless We agree otherwise with You in writing, there must be an adequate and secure electricity supply available at the Site, at the points and with the connections Egg specify, for installing, using and maintaining the Service Equipment. If You would need the Service Equipment and/or Services to continue

uninterrupted in a power failure, You must provide back-up power which meets the requirements of the relevant British standards. We will not be liable for faults arising in the Service Equipment or Services as a result of a power failure.

- 2.8 Where the Service Equipment is a generating asset, You will benefit from any feed in tariff that is paid in respect of surplus electricity that is exported to the grid.
- 2.9 If You terminate the Agreement following the expiry of the Initial Service Term (or any Further Fixed Term, if applicable) then upon written request from Egg You must allow Us and Our nominees reasonable access to the Site to decommission and remove the Service Equipment provided that any such removal will be at Egg's sole discretion.
- 2.10 Without prejudice to any other rights or remedies We have, if We terminate the Agreement prior to the expiry of the Initial Service Term (or any Further Fixed Term, if applicable), You must make the Service Equipment available for collection in a reasonable condition upon written request from Egg provided that any such collection will be at Egg's sole discretion. If We are required to undertake works to uninstall the Service Equipment, You will be charged for the decommissioning, removal and collection of the Service Equipment in accordance with Egg's then current rates and shall pay such amounts in accordance with clause **Error! Reference source not found.** of the Standard Terms and Conditions.
- 2.11 Egg shall not be liable for any damage caused by virtue of the deinstallation and/or removal of the Service Equipment and Egg shall not be required to make good any such damage or carry out any remedial works in respect thereof, save to the extent that such damage is caused by Egg's (or its sub-contractor's) negligence.
- 2.12 If You fail to make available the Service Equipment for collection for any reason, We shall be entitled to charge You for the replacement cost of such Service Equipment. If We hold any of Your money We may use that money towards the cost of replacing the Service Equipment.

3 Design and Installation

- 3.1 Clauses **Error! Reference source not found.** and **Error! Reference source not found.** of the Standard Terms and Conditions shall apply.

- 3.2 Installation Charges shall be invoiced in in accordance with clause **Error! Reference source not found.** of the Standard Terms and Conditions.

4 Acceptance

After installing the Service Equipment, We will carry out Acceptance Tests in accordance with clauses **Error! Reference source not found.** and **Error! Reference source not found.** of the Standard Terms and Conditions to make sure that the Service Equipment is ready for use at the Site. If the Service Equipment is not ready for use, We will carry out any necessary work and repeat the Acceptance Tests.

5 Hardware Management Services

- 5.1 Subject to paragraphs 5.2 and 5.3, You shall receive the benefit of the Business Plus Hardware Management Service Package in respect of all Service Equipment, save that in the context of the Manage Service:
- 5.1.1 notwithstanding anything else in the Agreement (including any other Special Conditions applicable thereto) any Service Credit to which you become entitled will be equivalent to the Support Services Charge element of the monthly Recurring Charge (where appropriate, calculated by dividing the annual Recurring Charge by 12) payable in respect of the affected Service Equipment; and
- 5.1.2 where Egg has failed to meet the On-Site Maintenance Service Level, for each further period of 5 Business Days that Egg fails to attend the Site, this shall be deemed a further breach of the Service Level Agreement for the purposes of paragraph (a) of the definition of Support Services (Termination) Default, provided however You shall not be entitled to receive any additional Service Credits in respect of such breaches.
- 5.2 Any repair effected by Egg following any damage to the Service Equipment arising as a result of Your failure to comply with paragraph 2.5 shall be charged for in addition to the Recurring Charge.
- 5.3 Any interference by You or anyone acting on Your behalf with the Service Equipment (unless agreed in writing with Egg) may invalidate any warranties and Service Level Agreements (if any) that Egg have provided as part of the

Agreement and could result in additional costs to remedy any unauthorised works.

6 Payment

Without prejudice to the generality of clause 13.1 of the Standard Terms and Conditions and subject to paragraph 8 below, there shall not be any rebate or deferral of any payment during any period in which the Service Equipment is not working, is not in Your possession, is unserviceable, unavailable for use or offline for any reason.

7 Termination

Clause 17.2 of the Standard Terms and Conditions shall not apply to the Agreement on and from the date You sign a Handover Report & Acceptance Certificate or the Service Equipment is otherwise deemed to have been installed successfully and be satisfactory to You in all respects pursuant to clause 6.9 of the Standard Terms and Conditions. On and from such date, paragraph 8.2 below shall apply to the Agreement in place of clause 17.2 and You shall not have any other rights of termination under the Agreement other than under clause 3.3 and clause 19.1 thereof. If any rights to terminate have arisen in favour of You under clause 17.2 of the Standard Terms and Conditions or otherwise (whether or not known to the You) and You subsequently sign a Handover Report & Acceptance Certificate or the Service Equipment is otherwise deemed to have been installed successfully and be satisfactory to You in all respects pursuant to clause 6.9 of the Standard Terms and Conditions, then You shall be deemed to have irrevocably waived all such rights.

8 Support Service Default: Service Credits and Support Services Termination

8.1 Service Credits

Clause 9.5 of the Standard Terms and Conditions shall not apply to the Agreement. This paragraph 8.1 shall apply to the Agreement in place of clause 9.5. Egg will provide monthly reporting regarding its performance against the relevant Service Level Agreement which will include a calculation of any Service Credits to which You are entitled. To claim any Service Credits to which you are entitled You must submit a written request to support@egg.com referring to the relevant report and requesting that the Service Credits be applied to your next Recurring Charge. Following receipt of Your request Egg will apply the Service Credits to the next Recurring

Charge up to a maximum amount equal to the Support Services Charge element of the Recurring Charge. Any residual Service Credits shall be applied to the next Recurring Charge(s) on the same basis until all accrued Service Credits are exhausted. Where no further Recurring Charges are scheduled to be paid under the Agreement and there are still Service Credits which have not been applied, the Service Provider shall pay to You in a lump sum an amount equal to the Service Credits which have accrued but have not been applied on the last day of the Service Term.

8.2 Support Services Termination

If a Support Services (Termination) Default occurs, then You shall be entitled to terminate (and cease paying for) Egg's provision of the Support Services ("**Support Services Termination**") upon service of written notice and procure that a different person provides such Support Services; any such termination shall not, for the avoidance of doubt, cause the Service Equipment Supply to terminate, and nor shall it entitle You to withhold payment of, nor require any rebate of, any Service Equipment Supply Charge, which must continue be paid in accordance with clause 13.1 of the Agreement and paragraph 6 above. In the event of a Support Services Termination:

8.2.1 Egg shall co-operate with You and the replacement provider and provide all such information and assistance as You and they reasonably require to facilitate the transfer of the provision of the Support Services to the replacement provider;

8.2.2 Egg shall, to the extent permitted, assign the benefit of all manufacturer's warranties in respect of the Service Equipment to You or a replacement provider nominated by You; and

8.2.3 You shall be entitled to retain all copies of the Materials and software to the extent, and for such time as is, reasonably required for the operation and maintenance of the Service Equipment and the provision of the Support Services by an alternative provider, provided that Egg shall not be obliged to incur any cost in order to facilitate such retention.

8.3 Sole remedies

You agree that this paragraph 8 sets out Your sole rights and remedies in respect of: (a) any failure by Egg to perform the Support Services in accordance with the terms of the Agreement; and (b) any Support Services (Termination) Default. For the avoidance of doubt, You will not be entitled to treat any failure by Egg to perform the Support Services in accordance with the terms of the Agreement, a Support Services (Termination) Default or a Support Service Termination as a repudiation of the Agreement or to terminate or void the Agreement if any of the foregoing occurs.

9 Breach of Egg's Additional Obligations

9.1 Where Egg is in breach of any of Egg's Additional Obligations (each such breach being a "**Relevant Breach**"), You shall be entitled to take direct, personal action against Egg in respect of such Relevant Breach but You shall not be entitled to: (a) withhold payment of, nor require any rebate of, any Service Equipment Supply Charge, which must continue to be paid in accordance with clause 13.1 of the Agreement and paragraph 6 above irrespective of the occurrence of the Relevant Breach or any other matter, including the award of damages in connection therewith or the non-payment of those damages; (b) terminate the Service Equipment Supply Services under the Agreement; or (c) treat any Relevant Breach as a repudiation of the Agreement or to terminate or void the Agreement as result of the occurrence of a Relevant Breach. To the extent that any limitation on liability in clause 15 of the Standard Terms and Conditions would render this paragraph unenforceable in accordance with its terms, clause 15 shall be deemed to be amended to the minimum extent to ensure that this paragraph is and remains enforceable and achieves as close to the same intended outcome as is possible.

9.2 You are aware that all or some of Our rights under the Agreement may be vested in a third party Funder to enable that Funder to provide financing in connection with the Agreement. Any Funder is entirely separate from Egg and its sole role will be to provide the relevant financing to Egg. You therefore acknowledge and agree that, without prejudice to the provisions of paragraph 8, such Funder is relying on the provisions of paragraphs 8 and 9.1 and to the extent that any claim arises in Your favour under the Agreement, You shall only be able to make such claim against Egg and You shall not, for the avoidance of doubt,

raise any such claim or any defence relating thereto against the Funder.

10 Funder Warranty

You represent and warrant to the Funder on the date of the Agreement and again on the date you sign a Handover Report & Acceptance Certificate or the Service Equipment is otherwise deemed to have been installed successfully and be satisfactory to You in all respects pursuant to clause 6.9 of the Standard Terms and Conditions that You have reviewed the manufacturer warranties that apply to the Service Equipment and they are satisfactory to You in all respects.

11 Know your customer

You shall, when requested by Egg, provide any information which Egg requires from time to time to comply with its obligations under the prevailing anti-money laundering, anti-bribery or anti-corruption laws or regulations from time to time (or any of Egg's internal policies in place from time to time in connection with any of the same).