

TERMS AND CONDITIONS OF MAINTENANCE AGREEMENT

1. General

- 1.1 This Maintenance Agreement provides a service program for the equipment specified under the equipment covered item of the Price Schedule of this Maintenance Agreement (the “Equipment” and the “Price Schedule” respectively) on the terms specified in this Maintenance Agreement. This Maintenance Agreement sets out the general terms and conditions under which Vertiv (Australia) Pty. Ltd. (the “Vertiv”) will provide and the party named in as the Client Name in the Price Schedule (the “Client”) will acquire the services set out in the Schedules (the “Maintenance Services”) and the parts required in connection with the Maintenance Services (“Parts”). For purposes of this Maintenance Agreement, an “Affiliate” means an entity controlled by, under common control with, or which controls Vertiv, where control is denoted by having fifty percent (50%) or more of the equity securities entitled to vote for the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority of the applicable entity). Vertiv is a direct or indirect subsidiary of Vertiv Co., and as such, any direct or indirect subsidiary of Vertiv Co. may also be deemed to be an “Affiliate” of Vertiv. For the avoidance of doubt, the parent entity(ies) of Vertiv Co. shall not be deemed to be an “Affiliate” of Vertiv.

2. Validity

- 2.1 Unless previously withdrawn, this offer is open for acceptance within thirty (30) days from the date of this Maintenance Agreement provided an unconditional authorisation from the Client for the performance of the Maintenance Services is received by Vertiv within such time period. If authorisation is not received by Vertiv within such thirty (30) day period, Vertiv shall have the right to change the price for the Maintenance Services. All prices are exclusive of taxes, which are to be borne by the Client. Unless otherwise specified by Vertiv, Parts will be furnished at Vertiv’s then prevailing prices.
- 2.2 Conditions or terms of contract submitted by the Client in or with a purchase order or request for quotation or other document or communication do not form part of any contract with Vertiv unless and to the extent agreed to by Vertiv in writing.
- 2.3 Vertiv reserves the right in its sole discretion to refuse any order.

3. Contract Period and Renewal

- 3.1 Unless otherwise specified, this Maintenance Agreement commences on the “Commencement Date” specified in the Price Schedule and will remain in force until the expiry of the “Agreement Term” specified in the Price Schedule of this Maintenance Agreement.
- 3.2 Upon expiry of the Agreement Term, this Maintenance Agreement will automatically renew for further periods of twelve (12) months (each a “Renewal Term”), unless either party provides sixty (60) days’ written notice that it does not intend to automatically renew. Either party may terminate this Agreement during a Renewal Term by providing the other with sixty (60) days’ written notice.

4. Termination

- 4.1 Without prejudice to any other rights Vertiv may have under this Maintenance Agreement or at law, Vertiv may immediately either:
- a) terminate this Maintenance Agreement with the Client; or
 - b) suspend its performance of the Maintenance Services in accordance with this Maintenance Agreement; by written notice to the Client, if the Client breaches any term of this Maintenance Agreement or any other agreement between Vertiv and Client, including, but not limited to, Client’s obligation to pay Vertiv for goods and/or services provided to the Client under this Maintenance Agreement or any other agreement between Vertiv and Client in accordance with the payment terms set out in this Maintenance Agreement or the other agreement.
- 4.2 Vertiv retains its right to claim compensation for early termination of this Maintenance Agreement, including loss of benefit damages in accordance with sub-clause 8.3(b)(i) below.

5. Service Level to be Provided

- 5.1 The service level to be provided to the Equipment is specified in the section entitled “Service Package” of Schedule 1 and is described in more detail in Schedule 2.
- 5.2 While Vertiv will use all reasonable commercial efforts to maintain the performance dates acknowledged or quoted by Vertiv, all performance dates are approximate and not guaranteed, and Vertiv will not be liable for any damage or loss caused by any delay.

5.3 Each party agrees to use reasonable endeavours to meet its responsibilities as set out in Schedule 2.

6. Scale of Charges

6.1 It is agreed that the Premium specified in the Price Schedule will be reviewed, and may be adjusted, annually.

6.2 Additional charges will be billed to the Client at Vertiv's then prevailing labour rates for any of the following or in any of the following circumstances:

- a) any Maintenance Services are required which are not specified in Vertiv's scope of work set out in Schedule 1, Vertiv's order acknowledgement, or other documents referenced therein;
- b) any Maintenance Services performed at times other than Vertiv's normal service hours;
- c) if timely and reasonable site and/or equipment access is not provided to Vertiv's service representative;
- d) if it is necessary, due to local circumstances, to use a subcontractor, Vertiv's personnel will provide supervision only and the cost of such contract labour will be charged to the Client;
- e) if Maintenance Services or repair are necessary to return the Equipment to proper operating condition as a result of (i) maintenance, repair or modification other than by Vertiv (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect (including, without limitation, failure to maintain facilities and the Equipment in a reasonable manner), (iii) failure to operate the Equipment in accordance with applicable specifications, and/or (iv) catastrophe, accident or other causes external to the Equipment; or
- f) if Vertiv's performance is made more burdensome or costly as a result of the Client's failure to comply with its obligations under this Maintenance Agreement.

7. Annual Increase in Premium

7.1 The "Premium" will increase annually on the anniversary date of the Maintenance Agreement in accordance with prevailing circumstances for labour, parts, CPI and exchange rates. It will be increased by an increment as determined by Vertiv (in its sole discretion), but in no case shall it exceed 5% per annum during the Agreement Term.

7.2 After the expiry of the Agreement Term, Vertiv is entitled to adjust the Premium annually, in any manner it reasonably sees fit, save that in the event the increase is to exceed 5% per annum, then it must be upon thirty (30) days' written notice. If the Client provides notice to terminate this Agreement during a Renewal Term in accordance with clause 3.2, and such notice is provided within thirty (30) days of receiving notice of a price increase that exceeds 5%, then to the extent it exceeds 5% per annum, it will be waived from the date of the increase until the date of termination.

8. Payment Terms and Default

8.1 Payment shall be net within thirty (30) days of invoice date, which invoice(s) will be issued in instalments as per the schedule (under the header "Term & Premium"). The first invoice will be issued within seven (7) days of commencement.

8.2 If the Client defaults on payment of any monies due and payable to Vertiv in accordance with this clause 8, the Client shall indemnify Vertiv for all costs and expenses incurred in recovering the monies due and payable, including but not limited to the fees of any mercantile agent or solicitor engaged by Vertiv in connection with the enforcement of this indemnity.

8.3 Without limiting any right or remedy to which Vertiv may be entitled, if the Client fails to make any payment of all or part of the monies due and payable to Vertiv when payment falls due:

- a) Vertiv may charge interest on the overdue amount at the rate of 5% per annum in excess of the then prevailing interest rate prescribed by either:
 - (i) the Citibank Ltd Indicator prime rate for overdrafts less than \$100,000.00, if the Site Details in the Price Schedule set out an address in Australia; or
 - (ii) the Bank of New Zealand Lending Rate for overdrafts less than \$100,000.00, if the Site Details in Schedule 1 set out an address in New Zealand,calculated from the date payment was due to Vertiv to the actual date of full and final payment. Any payment by the Client will be credited first against any interest so accrued. The balance of payment, if any, will be applied in reduction of the monies that are then due and payable to Vertiv by the Client; and
- b) Vertiv shall have the right either to terminate this Maintenance Agreement or to suspend further performance under this Maintenance Agreement and/or any or all other agreements with the Client, which other agreements the Client and Vertiv hereby amend accordingly. Client acknowledges that, without prejudice to any rights Vertiv may have at law, in the event of such:
 - i. termination, Vertiv is entitled to recover from the Client, as a genuine pre-estimate of its loss of benefit damages, the amount of 20% of the Premium for a single year Term or 30% for multi-year Terms, for the balance of the Agreement Term;
 - ii. suspension by Vertiv, Client is not relieved of its obligation to pay the Premium.

8.4 Vertiv may, in its absolute discretion, offer a credit facility to the Client, and alter or withdraw any such credit facility at any time by giving notice to the Client.

9. Goods and Services Tax (GST)

9.1 All amounts payable for supplies of goods or services under this Maintenance Agreement are exclusive of GST. If any amount payable under this Maintenance Agreement is the consideration for a Taxable Supply in respect of which the supplier is liable to pay GST, the amount payable will be increased by the amount of the GST payable in respect of the Taxable Supply, and the additional amount will be payable at the same time as the consideration is payable or if the recipient of the goods or services has not by then received a Tax Invoice in respect of the Taxable Supply, then within seven (7) days after receipt from the supplier of a valid Tax Invoice, the supplier must give the recipient a Tax Invoice in respect of each such Taxable Supply.

9.2 In this Maintenance Agreement, "Taxable Supply", "GST" and "Tax Invoice" have the same meanings as are ascribed to them in the Australian A New Tax System (Goods and Services Tax) Act 1999 if the "Site Details" in Schedule 1 set out an address for the Client in Australia, and if the "Site Details" in Schedule 1 set out an address for the Client in New Zealand, have the same meanings as are ascribed to them in the New Zealand Goods and Services Tax Act 1985.

10. Initial Inspection/ Risk Assessment

10.1 Without additional cost to the Client, Vertiv will inspect and report any malfunction of the Equipment, make recommendations for any rectification required and quote rectification costs within thirty (30) days of the "Commencement Date" specified in the Price Schedule. Any rectification of the Equipment is at the Client's cost and is not included in the Premium. If the rectification work is not completed for any reason, any work required to be undertaken by Vertiv because of the existence of any malfunctioning Equipment will be at the Client's cost and is not included in the Premium. At the time of the initial inspection a full site risk assessment will be carried out by Vertiv's fully trained engineers, as stipulated by the, Occupational Health and Safety legislation applicable in either:

- a) the state or territory of Australia in which the Client's site is located if the Site Details in Schedule 1 set out an address in Australia; or
- b) New Zealand if the Site Details in Schedule 1 set out an address in New Zealand.

The results of these findings will be communicated to the Client as recommendation for a safe working environment. A further risk assessment will be carried out at each service visit and recommendations will be made to the Client. Should any unsafe issues remain unresolved, the Client will be informed and no further work will take place.

11. Inspection

11.1 The Client shall have ten (10) days from the date of Vertiv's notice of completion of each portion of the Maintenance Services to inspect the Maintenance Services and any Parts supplied in connection with those Maintenance Services, and in the event of any non- conformity, the Client must give written notice to Vertiv within the said period stating why the Maintenance Services and/or Parts are not conforming. Failure by the Client to give such notice constitutes unqualified acceptance of the Maintenance Services and/or Parts.

12. Access to Site

12.1 The Client will provide all Vertiv's personnel providing any part of the Maintenance Services at the Client's place of business with access to the site and will make the Equipment available to such Vertiv's personnel.

12.2 Vertiv's staff will make every effort to arrange suitable times and dates for providing the Maintenance Services, in line with the scope of work in this Maintenance Agreement. Following three (3) unsuccessful attempts by Vertiv to gain access to the Client's site for the purposes of performing the scheduled Maintenance Services, Vertiv will be deemed to have discharged its obligations with respect to those scheduled Maintenance Services.

12.3 While Vertiv's personnel are present at the Client's place of business, the Client will provide them with a suitable and safe area in which to work and will further ensure that representatives of Vertiv will be provided with reasonable access to the Client's place of business and any area in which any of Vertiv's personnel are working, or are proposed to be working, in order to confirm that the conditions in those areas comply with the requirements of any Occupational Health and Safety legislation applicable in either:

- a) the state or territory of Australia in which the Client's site is located if the Site Details in Schedule 1 set out an address in Australia; or
- b) New Zealand if the Site Details in Schedule 1 set out an address in New Zealand.

12.4 In the event of special security clearance being required for any of Vertiv's personnel to visit the Client's site, Vertiv will be informed in adequate time to enable the relevant clearance to be obtained.

- 12.5 The Client shall immediately inform Vertiv, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the Client's site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Vertiv with any applicable material data safety sheets regarding the same. The Client will indemnify Vertiv against any and all losses, costs, damages, claims and expenses incurred by or made against Vertiv as a result of the Client's failure to so advise Vertiv.
- 12.6 Vertiv reserves the right in its sole discretion to cancel or terminate, without cost or penalty, its performance under this Maintenance Agreement or any other agreement for the provision of the Maintenance Services and/or Parts by Vertiv to the Client, or any order for Maintenance Services and/or Parts, immediately upon written notice to the Client following Vertiv's discovery of unsafe or hazardous substances or conditions on the site or any other premises at which it is required or requested to provide Maintenance Services or Parts, or any other circumstance affecting Vertiv's ability to perform the Maintenance Services.
- 12.7 The Client shall appoint a representative who is familiar with the site at which the Maintenance Services are to be performed and the nature of the Maintenance Services to be performed by Vertiv and who will be accessible at all times that Vertiv's personnel are at the site.
- 12.8 Vertiv shall not be liable for any expenses incurred by the Client in removing, replacing or refurbishing any of the Client's equipment or any part of the Client's building structure that restricts Vertiv's access.
- 12.9 The Client must ensure that its personnel cooperate with and provide all necessary assistance to Vertiv.

13. Limited Warranty

13.1 Subject to the limitations of clause 16, Vertiv warrants that:

- a) it will exercise due care and skill in the performance of the Maintenance Services and shall perform the Maintenance Services in accordance with relevant and generally accepted professional practices;
- b) all Maintenance Services performed shall be free from faulty workmanship for a period of ninety (90) days from completion of the Maintenance Services; and
- c) parts manufactured by Vertiv will be free from defects in material and workmanship and meet Vertiv's published specifications at the time of shipment under normal use and regular service and maintenance for a period of ninety (90) days from the date of completion of the Maintenance Services in connection with which the Parts are supplied by Vertiv, unless otherwise specified by Vertiv in writing. Parts purchased by Vertiv from a third party for resupply to the Client shall carry only the warranty extended by the original manufacturer.

14. Patents and Copyrights

Subject to clauses 16.7 and 16.8, Vertiv warrants that the Maintenance Services supplied and Parts sold, except Maintenance Services which are performed, and Parts which are made, specifically for the Client according to the Client's specifications, do not infringe any valid Australian patent or copyright in existence as of the date of supply or sale as the case may be. This warranty is conditional upon the Client promptly notifying Vertiv of any claim or suit involving the Client in which such infringement is alleged and cooperating fully with Vertiv and permitting Vertiv to control completely the defence, settlement or compromise of any such allegation of infringement. In the event (i) such Maintenance Services and/or Parts are held to infringe an Australian patent or copyright in such suit, and the use of such Maintenance Services and/or Parts are enjoined, or (ii) a compromise or settlement is made by Vertiv, Vertiv shall have the right, at its option and expense, to procure for the Client the right to continue using such Maintenance Services and/or Parts or modify same to become non-infringing. In the event of the foregoing, Vertiv may also, at its option, terminate this Maintenance Agreement and/or any other agreement as to future performance of the Maintenance Services and/or supply of such Parts, without liability.

15. Drawings

15.1 Vertiv's documentation, prints and drawings (including, the confidential information embodied in them and the underlying technology) furnished by Vertiv to the Client in connection with this Maintenance Agreement and/or any other agreement for the supply of the Maintenance Services ("Documents") are the property of Vertiv and Vertiv retains all rights, including, without limitation, exclusive rights of use, licensing and sale. Possession of such Documents does not convey to the Client any rights or licence, and the Client shall return such Documents and all copies (in whatever medium) of such Documents to Vertiv immediately upon request therefore.

16. Exclusions and Limitations

- 16.1 The following are not the responsibility of Vertiv under this Maintenance Agreement although Vertiv may agree to attend to any of the following in which case Vertiv will charge, and the Client will pay, Vertiv's then prevailing hourly service rates for the performance of the work:
- a) damage to the Equipment due to misuse, neglect, wilful damage or operation of the Equipment other than as prescribed by the operation and maintenance manuals;
 - b) loss or damage to the Equipment caused by fire, lightning, water, frost, flooding, explosion, earthquake, aircraft or other devices or articles dropped from them, water damage from a sprinkler installation, or failure of room ventilation;
 - c) damage to the Equipment caused by the Client's failure to report a known fault or malfunction.
 - d) damage to the Equipment caused by unauthorised repairs or adjustments;
 - e) replacement of capital and major items of plant or equipment due to external effect, age related failure, obsolete equipment and/or obsolete spares;
 - f) failure of Equipment due to the fluctuation, interruption or failure of building services not listed under the "equipment covered" in the "Equipment Schedule" of this Maintenance Agreement, i.e. electrical supply (UPS excluded), water, refrigeration, chilled water or glycol systems, drains or forms of heating/cooling not covered in this Maintenance Agreement;
 - g) scaffolding, builders work or heavy lifting equipment;
 - h) the fitting of spare parts not supplied by or on behalf of Vertiv;
 - i) loss of use or consequential loss of any kind;
 - j) visits to the Client's site by Vertiv's personnel in circumstances where the Client has provided Vertiv with inadequate notice, made a false, unjustified or unauthorised request for service, provide inaccurate instructions, the Client's place of business was not accessible to Vertiv's personnel or the Equipment was not available for inspection, examination, surveillance, maintenance or repair by Vertiv's personnel, shall be charged at the appropriate rate; or
 - k) the replacement of batteries.
 - l) Supply or payment of temporary equipment (e.g. portable Air Conditioners or temporary UPS equipment) when any of the equipment covered is in-operable pending repair by Vertiv.
- 16.2 The warranties in clause 13 do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Vertiv's), unauthorised modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Vertiv. To the extent that the Client or its agents have supplied specifications, information, representation of operating conditions or other data to Vertiv that is used in (i) the selection of the Maintenance Services and/or Parts and/or (ii) the preparation of Vertiv's quotation and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by the Client, any warranties or other provisions contained herein that are affected by such conditions shall be null and void.
- 16.3 The Client assumes all other responsibility for any loss, damage or injury to persons or property arising out of, connected with or resulting from the use of the Maintenance Services or Parts, either alone or in combination with other parts.
- 16.4 Vertiv is under no obligation to remove or dispose of parts or equipment unless specifically agreed upon in Vertiv's scope of work. Parts and equipment removed by Vertiv at the request of the Client become the property of Vertiv upon removal.
- 16.5 Vertiv shall not be liable or responsible for any work performed by the Client.
- 16.6 All express or implied warranties, representations, statements, terms and conditions relating to the Maintenance Services or the Parts or this Maintenance Agreement, not contained in this Maintenance Agreement, are excluded to the extent permitted by law.
- a) If any condition or warranty is implied into this Maintenance Agreement by law and cannot be excluded, the liability of Vertiv for breach of the condition or warranty (including for any economic or consequential loss which the Client may sustain) is limited to one or more of the following at Vertiv's option:
 - in the case of Parts:
 - (i) replacement of the Parts or the supply of equivalent goods;
 - (ii) repair of the Parts;
 - (iii) payment for the cost of replacing the Parts or acquiring equivalent goods; or
 - (iv) payment of the cost of having the Parts repaired; and
 - b) in the case of the Maintenance Services:
 - (i) supplying the Maintenance Services again; or
 - (ii) payment of the cost of having the Maintenance Services supplied again.

16.7 The maximum aggregate liability of Vertiv under or in connection with this Maintenance Agreement, or its subject matter, whether in contract, tort (including without limitation negligence), equity, under statute or on any other basis is limited to an amount equal to the cost of the relevant Maintenance Services and/or Parts.

16.8 Notwithstanding any provision to the contrary, Vertiv is not liable for and no measure of damages will under any circumstances include any special, indirect, consequential, incidental or punitive losses or damages whether in contract, tort, equity, under statute or on any other basis, and whether or not such loss or damage was foreseeable. The term “consequential damages” in this Maintenance Agreement shall mean loss of revenue or profits, loss of production, loss of use, loss of opportunity, loss of contract, loss of data, or reputation or any other type of indirect, special, punitive, incidental or consequential loss or damage and all associated costs incurred, including without limitation, for capital, fuel and power, and loss or damage to property or equipment even if such loss, damage or cost arises naturally, according to the usual course of things, or each party has been advised of the possibility of such damage, loss or costs.

17. Prevention or Suspension of Work

If the Client prevents or suspends Vertiv’s performance, or manner of performance, of the Maintenance Services in any way, the Client will be responsible for reimbursing Vertiv for any work and/or expense which Vertiv or any of its employees have been required to expend, at Vertiv’s then prevailing hourly service rates.

18. Cancellation

The Client may not cancel this Maintenance Agreement within the Agreement Term for any reason other than Vertiv’s default. Client acknowledges that, in the event of Client’s cancellation without cause, Vertiv is entitled to claim loss of benefit damages in accordance with clause 8.3(b)(i).

19. Indemnity

Subject to the limitations of liability set out in this Maintenance Agreement, Vertiv will indemnify the Client against all third party claims, liabilities, losses, damages, costs and expenses incurred or suffered in respect of any physical injury, death or damage to Client’s tangible property to the extent that such damage or injury is directly caused by the negligence of Vertiv, its employees, agents, representatives or Vertiv’s, reduced to the extent of Client, Client’s employees, agent, representatives or Vertiv’s or any other party’s negligence. The Client shall provide Vertiv reasonable notice regarding such claim and allow Vertiv the sole right to select and direct counsel and settle the claim.

20. Mediation

20.1 If any dispute arises in connection with this Maintenance Agreement, the parties will make every effort to resolve the dispute by mutual negotiation between senior managers of each party, nominated in writing by that party to the other, who is responsible for overseeing the dispute resolution process. In the event that the parties are unable to reach a resolution of the dispute by mutual negotiation of their representatives within thirty (30) days of the dispute arising or within such further period as agreed by the parties, the following provisions of this clause shall apply.

20.2 Either party may by notice in writing to the other party (the “Notice”) advise the other party that it seeks to have the dispute resolved by mediation.

20.3 Within thirty (30) days of the date of the Notice, the parties shall refer the matter to a mutually agreed mediator. In the event that agreement cannot be reached on an appropriate mediator, the dispute shall be referred to the Australian Commercial Disputes Centre (the “ACDC”).

20.4 The mediation shall be conducted in accordance with the ACDC Mediation guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved, the terms of which are deemed incorporated into this Maintenance Agreement.

20.5 Nothing contained in this clause will deny any party the right to seek injunctive relief from an appropriate court where failure to obtain such relief would cause irreparable damage to the party concerned. Furthermore, the dispute resolution procedures in this clause will not apply where a party is entitled under this Maintenance Agreement to immediately terminate this Maintenance Agreement.

20.6 The parties otherwise agree that they will not resort to court proceedings until they have first attempted to resolve the dispute by means of mutual negotiation and mediation.

21. Confidential Information

21.1 Each party (the “Receiving Party”) acknowledges that the other party (the “Disclosing Party”) has imparted, and may from time to time impart, its confidential information which remains the property of the Disclosing Party including, but not

limited to, information relating to Vertiv's marketing and conduct of the Maintenance Services and information designated by the Disclosing Party as confidential.

21.2 Each party agrees to use confidential information received by them as the Receiving Party solely for the purposes of fulfilling its obligations under this Maintenance Agreement and that it will not disclose, whether directly or indirectly, to any third party such information other than as required to fulfill its obligations under this Maintenance Agreement except:

- a) to those of the Receiving Party's employees, agents and representatives who need to know it for the limited purpose of enabling the Receiving Party to exercise its rights or perform its obligations under this Maintenance Agreement, and who undertake to keep it strictly secret and confidential; or
- b) with the Disclosing Party's prior written consent.

21.3 On expiration or earlier termination of this Maintenance Agreement each Receiving Party will immediately return to the Disclosing Party all copies of the Disclosing Party's confidential information.

21.4 The obligations of this clause 21 do not apply to information which:

- a) is disclosed to the Receiving Party by the Disclosing Party but which was and can be demonstrated to have been lawfully in the Receiving Party's possession, or known to the Receiving Party prior to its disclosure; or
- b) is in or comes into the public domain otherwise than through any act of the Receiving Party, or through any disclosure by any person acquiring the same from the Receiving Party; or
- c) is disclosed to the Receiving Party by a third party having no obligations of confidence to the Disclosing Party in respect thereof, and has not been disclosed to that third party in consequence of a breach of confidence.

21.5 Nothing in clauses 21.1 to 21.4 will prevent the disclosure by the Receiving Party of any of the Disclosing Party's confidential information which is required to be disclosed in order to comply with any applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body, provided that the Receiving Party:

- a) informs the Disclosing Party in writing, with as much advance notice as possible, of the proposed disclosure, giving full details of the circumstances of the proposed disclosure and of the relevant information to be disclosed;
- b) gives the Disclosing Party a reasonable opportunity to challenge the proposed disclosure in a court of law or other appropriate body;
- c) furnishes only that portion of the Disclosing Party's confidential information which is legally required to be disclosed; and
- d) uses its best endeavors to obtain reliable assurances that confidential treatment will be accorded to the confidential information to be disclosed.

22. Excuse of Performance

22.1 Vertiv shall not be liable for delays in performance or for non-performance due to acts of God, war, epidemic, fire, flood, weather, sabotage, strikes or labour disputes, civil disturbances or riots, governmental requests, restrictions, allocations, laws, regulations, orders or actions, unavailability of or delays in transportation, default of suppliers, acts or omissions of the Client, including, without limitation, acts or omissions in breach of its obligations under clause 12, or unforeseen circumstances or any events or causes beyond Vertiv's reasonable control. Performance of the Maintenance Services and deliveries of Parts may be suspended for an appropriate period of time or cancelled by Vertiv upon notice to the Client in the event of any of the foregoing, but the balance of this Maintenance Agreement shall otherwise remain unaffected as a result of the foregoing.

22.2 If Vertiv determines that its ability to supply the total demand for the Maintenance Services or Parts or to obtain material used directly or indirectly in the manufacture of the Parts is hindered, limited or made impracticable due to causes set forth in clause 22.1, Vertiv may delay performance of the Maintenance Services or allocate its available supply of the Parts among its purchasers on such basis as Vertiv determines to be equitable without liability for any failure of performance which may result there from.

22.3 Vertiv reserves the right to withdraw the personnel assigned to on-site services that are described in the scope of this Maintenance Agreement, if such person is in a potentially hazardous situation for any of the following: natural disasters, public safety situations such as fighting organized crime, guerrillas, etc., client or work disruptions such as strikes and occupations, and any other force majeure that could endanger the health or safety of Vertiv's personnel.

23. Occupational Health and Safety

23.1 The Maintenance Services shall be carried out by Vertiv, its employees, agents, representatives and Vertiv's with full and proper regard to reasonable standards of safety and in compliance with any Occupational Health and Safety legislation and other statutory obligations which apply either:

- a) in the state or territory of Australia in which the Client's site is located if the Site Details in Schedule 1 set out an address in Australia; or
- b) in New Zealand if the Site Details in Schedule 1 set out an address in New Zealand.

23.2 The Maintenance Services will also be performed within the terms of Vertiv's Occupational Health and Safety Guidelines which are available upon request.

23.3 Vertiv's obligations to provide the Maintenance Services under this Maintenance Agreement are conditional and contingent upon the existence of a safe environment in which to perform the Maintenance Services.

24. Assignment

21.1 Vertiv may at any time in its sole and absolute discretion and without Client's prior consent: (i) assign, to any third party for any purposes, its rights over any monies due or to become due to it from the Client under or in connection with this Maintenance Agreement; and to create any security interest over its rights to any monies due or to become due to it from Client under or in connection with this Maintenance Agreement.

21.2 Except as provided in the foregoing, this Maintenance Agreement may not be assigned or otherwise transferred, nor may any right or obligation hereunder be assigned or transferred, by either party without the express written consent of the other party, which shall not be unreasonably withheld; provided, however, that either party may, without such consent, assign the Maintenance Agreement and its rights and obligations hereunder to its Affiliate or to a purchaser of all or substantially all of the assets of such party.

25. Refusal to Repair

25.1 Vertiv will not be obliged to repair or service the Equipment or any part of the Equipment if:

- a) Vertiv considers it unsafe for its employees, agents, representatives or Vertiv's to do, or to attempt to do, so;
- b) the Equipment or any part of the Equipment is obsolete; or
- c) the working conditions to which the Vertiv's employees, agents, representatives or Vertiv would be subject would contravene the provisions of any legislation applicable to Vertiv or the Client.

25.2 Vertiv will notify the Client of Vertiv's reasons for refusing to repair the Equipment or any part of the Equipment.

25.3 Vertiv will use all reasonable endeavors to advise the Client when the Client should refurbish, modify, or renew all or any part of the Equipment.

26. Additional Unforeseen Charges

If new legislation comes into force during the period of validity of this Maintenance Agreement that results in extra expenditure of time or money on the part of Vertiv in relation to its performance of the Maintenance Services, then the Client will reimburse Vertiv for the additional expense incurred.

27. Changes

27.1 If the Client requests changes or additions to the Maintenance Services, and such changes or additions are accepted by Vertiv, Vertiv may revise the price and performance dates.

27.2 Vertiv may change designs and/or specifications for the Parts without prior notice to the Client, except with respect to Parts being made-to-order for the Client. Vertiv shall have no obligation to install or make such changes in any Parts manufactured prior to the date of such change.

28. Nuclear/Medical

MAINTENANCE SERVICES AND PARTS SOLD HEREUNDER ARE NOT INTENDED FOR USE, AND SHALL NOT BE USED, IN CONNECTION WITH ANY NUCLEAR, MEDICALLY INVASIVE, LIFE-SUPPORT OR RELATED APPLICATIONS. The Client accepts the Maintenance Services and Parts with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users of the Maintenance Services and/or Parts and to defend, indemnify and hold harmless Vertiv from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that Vertiv's liability is based on negligence or strict liability.

29. Client's Compliance with Laws

The Client at all times shall comply with all applicable federal, state and local laws and regulations applicable to the Maintenance Services and/or Parts, including import and export control laws, regulations, orders and requirements of

the United States, the European Union and of any applicable state, foreign and local governmental body in connection with the acquisition and use of the Maintenance Services and/or the purchase, receipt, use, transfer and/or disposal of the Parts. Client agrees furthermore that it shall not engage in any activity that would expose Vertiv any of its affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Client agrees to comply with all appropriate legal, ethical and compliance requirements.

30. Export/Import

The Client agrees that all applicable import and export control laws, regulations, orders and requirements, including, without limitation, those of the United States and the jurisdictions in which Vertiv and the Client are established or from which Maintenance Services and/or Parts may be supplied, will apply to their receipt and use. In no event shall the Client use, transfer, release, import or export Parts in violation of such applicable laws, regulations, orders or requirements.

31. Non-solicitation

The Client shall not solicit, directly or indirectly, or employ any employee of Vertiv during the period any Maintenance Services are being provided to the Client and for a period of one (1) year after the last provision of the Maintenance Services.

32. Consumer Contract

In the event that this Maintenance Agreement is deemed a "Consumer Contract" for the purpose of the Australian Consumer Law, the following provisions shall apply notwithstanding any other provisions to the contrary: Vertiv's Services and/or Parts come with guarantees that cannot be excluded under the Australian Consumer Law. Client is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Client is also entitled to have the Services and/or Parts repaired or replaced if the Services and/or Parts fail to be of acceptable quality and the failure does not amount to a major failure.

33. General Provisions

- 33.1 This Maintenance Agreement and any quotation or order acknowledgement or confirmation from Vertiv regarding the Maintenance Services and/or Parts, and any documents incorporated by specific reference therein, constitute the complete and exclusive statement of the terms of the agreement between Vertiv and the Client about the supply of the Maintenance Services and sale of Parts by the Vertiv to the Client.
- 33.2 This Maintenance Agreement supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of this Maintenance Agreement.
- 33.3 No change, modification, rescission, discharge, abandonment or waiver of this Maintenance Agreement shall be binding upon Vertiv unless made in writing and signed on its behalf by a duly authorized representative of Vertiv. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement this Maintenance Agreement or any other agreement for the provision of Maintenance Services or Parts by Vertiv to the Client shall be binding unless hereafter made in writing and signed by the party to be bound.
- 33.4 Vertiv may subcontract the Maintenance Services to others.
- 33.5 Failure of either party to insist upon the strict performance of any provisions of this Maintenance Agreement or any other agreement for the provision of the Maintenance Services and/or Parts by Vertiv to the Client, or to exercise any right or remedy, shall not be deemed a waiver of any right or remedy with respect to any existing or subsequent breach or default, and the election by either party of any particular right or remedy shall not be deemed to exclude any other.
- 33.6 All typographical or clerical errors made by Vertiv in any quotation, acknowledgement or publication are subject to correction.
- 33.7 Any provision of this Maintenance Agreement or of any agreement for the provision of Maintenance Services and/or Parts by Vertiv to the Client which is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of this Maintenance Agreement or of such agreement.
- 33.8 This document is governed by the law in force in New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.