**TERMS AND CONDITIONS FOR ELITE SUPPORT SERVICES**

These terms and conditions (the "Terms") govern the provision of elite support services from Adder to the Customer (collectively, the "parties" and each a "party").

**AGreed TERMS**

1. **INTERPRETATION**

   The following definitions and rules of interpretation apply in this Agreement.

1.1 **Definitions**

1.1.1 "Adder" means Adder Technology Ltd, a company incorporated and registered in England and Wales with company number 01823478 and whose registered office is at West Walk Building, 110 Regent Road, Leicester, LE1 7LT.

1.1.2 "Agreement" means the agreement between the parties for the provision of the Elite Service which shall include the Sales Order and these Terms.

1.1.3 "Applicable Laws" means all applicable laws, statutes and regulations from time to time in force.

1.1.4 "Business Day" means a working day for the country in which the Local Support Centre is based. Details of the Business Days for each Local Support Centre are displayed on [Adder’s website / the Sales Order].

1.1.5 "Business Hours" means 9.00 am to 5.30 pm (Local Support Centre time) on a Business Day.

1.1.6 "Covered Hardware" means the adder products which are denoted in the relevant Sales Order as being covered by 'Elite Services'.

1.1.7 "Customer" means the business, organisation, or person named in the Sales Order.

1.1.8 "Data Protection Law" means (i) the Data Protection Act 2018; and (ii) the EU General Data Protection Regulation (Regulation 2016/679) together with any transposing, implementing or supplemental legislation; and the terms ‘data subject’, ‘personal data’, ‘data controller’ and ‘data processor’ when used in this Agreement shall have the meanings given in the Data Protection Law.

1.1.9 "Elite Services" means the Advanced Replacement Service and 24/7 Technical Support Service as further detailed in clauses 3 and 4 respectively.

1.1.10 "Fees" means the fees to be paid by Customer to Adder for the provision of the Elite Services as set out in the Sales Order.

1.1.11 "Local Support Centre" means the local support centre identified in the Sales Order.

1.1.12 "Sales Order" means the sales order acknowledgement document issued by Adder under which Adder agrees to supply to the Customer the Elite Services and which reference these Terms.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3.1 A reference to a Customer shall include any Customer, corporation or other body corporate, wherever and however incorporated or established.

1.3.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include reference to the other genders.

1.3.3 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

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

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

A reference to writing or written includes fax and email.

Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

**Commencement and Duration**

Adder shall provide the Elite Services to the Customer beginning on the date set out in the relevant Sales Order (the "Commencement Date").

Subject to suspension or termination of the Elite Services in accordance with clauses 3.7 and 13 respectively, Adder shall continue to provide the Elite Services for a period of up to five (5) years following the Commencement Date (the "Support Term").

**Advanced Replacement Service**

In the event that the Customer encounters a problem with any of the Covered Hardware and wishes to receive a replacement, it must notify Adder in writing and provide: (i) an example of the problem; (ii) the context in which the problem was encountered; (iii) a description of the system configuration; and (iv) the steps necessary to generate or reproduce the problem (if applicable) (the "RMA Request").

Upon receipt of a valid RMA Request, Adder may as its sole discretion approve the request and send to the Customer:

- by email, a code which signifies the acceptance of the RMA Request (the "RMA Number"); and
- by post, a replacement product of substantially the same form and function as the Covered Hardware, in new or refurbished condition (the "Replacement Hardware").

Adder shall use commercially reasonable efforts to dispatch the Replacement Hardware to the Customer.
3.3.1 if it receives the RMA Request before 2.30 pm on a Business Day, that same day; or
3.3.2 if it receives the RMA request after 2.30 pm or on a day that is not a Business Day, the next Business Day.
3.4 Adder shall dispatch any Replacement Hardware to the Customer using a shipping service of its choice.
3.5 The Customer shall be liable for any additional fees which may be incurred in the delivery of the Replacement Hardware, including, but not limited to, any duties, customs, or tariffs.
3.6 Upon receiving the Replacement Hardware, the Customer shall return the Covered Hardware to Adder by post, and shall carefully package the hardware into the supplied box and clearly label the outside of the box with the RMA Number.
3.7 In the event that the Customer does not return the Covered Hardware to Adder within 30 days from receipt of the Replacement Hardware, Adder may invoice the Customer for the full cost of the Covered Hardware, by reference to its price list applicable from time to time (the "Penalty Fee"). Adder reserves the right to suspend the provision of the Elite Services until the Customer pays the Penalty Fee.

4 24/7 TECHNICAL SUPPORT SERVICE
4.1 In the event that the Customer has a technical support query, it may contact Adder's customer support representatives by telephone:
4.1.1 during Business Hours, to the regional office number set out in the Sales Order; and
4.1.2 outside of Business Hours, to the 24/7 support number set out in the Sales Order.
4.2 The Customer shall provide the customer support representative with its agreement number, model number, serial number and a description of the technical issue when requested to do so (the "Support Request").
4.3 Adder shall use commercially reasonable efforts to arrange for a technical support engineer to call the Customer back within four (4) hours of receipt of the Support Request.
4.4 The Customer acknowledges that email support shall only be available during Business Hours.

5 TURNAROUND TIMES
5.1 Purchase of the Elite Services entitles the Customer to benefit from the turnaround times set out in clause 3.3 and 4.3 of these Terms ("Turnaround Times").
5.2 If Adder fails to meet the Turnaround Times, Customer shall be entitled to receive one month of Elite Services free of charge in respect of each such failure, such month to be added to the end of the Customer's Support Term. This clause 5.2 represents the Customer's exclusive remedy for any failure by Adder to meet the Turnaround Times.

6 WARRANTIES
6.1 Adder warrants to the Customer that:
6.1.1 the Elite Services shall be performed:
6.1.1.1 by an appropriate number of suitably qualified and experienced personnel;
6.1.1.2 using all reasonable skill and care; and
6.1.1.3 in accordance with all Applicable Laws;
6.1.2 all products supplied or used in the course of the provision of the Elite Services shall operate in accordance with their technical specifications; and it has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, these Terms. 
Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.

7 CUSTOMER OBLIGATIONS
7.1 For the duration of the Support Term, the Customer shall:
7.1.1 ensure that the Covered Equipment is installed and kept in suitable premises and under suitable conditions (as specified in the relevant operating manuals for such equipment), permit only trained and competent personnel to use it and follow any operating instructions as Adder may give from time to time;
7.1.2 notify Adder promptly if the Covered Equipment is discovered to be operating incorrectly; and
7.1.3 provide Adder with any information that is reasonably requested in the performance of the Services.

8 COVERAGE EXCLUSIONS
8.1 The Elite Services shall not be available in respect of any Covered Hardware which the customer has:
8.1.1 Damaged [other than fair wear or tear] (in any way including wilfully or negligently or as a result of abnormal storage or working conditions; altered, repaired or modified in any way (other than as expressly authorised by Adder); or operated other than in accordance with the relevant Covered Hardware's operating manual.
8.2 Covered Hardware does not include, cables or non-adder consumables used in conjunction with the product, beyond the standard 2-year period. Consumables include IEC, PSU's, SFP Modules, Mounting brackets and associated connectors.

9 CHARGES
9.1 The Fees shall be due and payable in full to Adder annually in advance, with the first payment to be made promptly following completion of the Sales Order (and, in any event, prior to the Commencement Date).
9.2 If the Customer fails to make any payment due to Adder under this agreement by the due date for payment, then, without limiting Adder's other remedies set out in these Terms, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
10 LIABILITY
10.1 Neither party excludes or limits liability to the other for:
10.1.1 fraud or fraudulent misrepresentation;
10.1.2 death or personal injury caused by negligence; or
10.1.3 any other liability that, by law, cannot be excluded or limited.
10.2 Subject always to clause 10.1, neither party shall be liable whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
10.2.1 any loss of profits; loss of business; loss of revenue; loss of contract; loss or depletion of goodwill and/or business opportunity; loss of anticipated earnings or savings or like loss; wasted management, operational or other time;
10.2.2 loss or corruption of data or information; or
10.2.3 any special, indirect or consequential loss, costs, damages, charges or expenses however arising arising under these Terms.
10.3 Subject always to clause 10.1, each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the total Fees paid or payable by the Customer to Adder during the 12-month period immediately preceding the date on which the cause of action first arose.

11 CONFIDENTIALITY
11.1 The Customer undertakes that it shall not at any time during the Support Term, and for a period of three years after termination of the Elite Services, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Adder or of any member of the group of companies to which Adder belongs, except as permitted by clause 11.2.
11.2 The Customer may disclose Adder's confidential information:
11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Customer's rights or carrying out its obligations under or in connection with these Terms. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses Adder's confidential information comply with this clause 11; and
11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
11.3 The Customer shall not use Adder's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12 DATA PROTECTION
12.1 Both the Customer and Adder will comply with all applicable requirements of the Data Protection Law. This clause 12 is in addition to, and does not relieve, remove or replace, obligations imposed under the Data Protection Law.
12.2 The Customer warrants that:
12.2.1 it is entitled to transfer the relevant personal data to Adder so that Adder may lawfully use, process and transfer the personal data in accordance with the Agreement on the Customer's behalf; and
12.2.2 the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by Data Protection Law.
12.3 To the extent that Adder processes personal data under this Agreement, Adder shall:
12.3.1 process all personal data received in connection with the provision of the Elite Service (the "Data") for the purposes of providing the Elite Services in, and for the duration of, the Support Term (the "Purpose") and, if Adder is aware that the Customer's instructions infringe Data Protection Law, Adder shall notify the Customer immediately (unless prevented from doing so by Applicable Laws) and not carry out the relevant processing instructions;
12.3.2 not transfer the Data outside of the European Economic Area without first ensuring transfer is in compliance with Article 46 of the Data Protection Law;
12.3.3 provide reasonable assistance to the Customer (at the Customer's expense) to enable the Customer to: (i) complete any data protection impact assessments required by Data Protection Law; (ii) respond to: (a) any request from a Data Subject to exercise its rights under Data Protection Law; and (b) any other correspondence, enquiry or complaint received in connection with the processing of the Data;
12.3.4 if it becomes aware of a Personal Data Breach in relation to the Data, inform the Customer without undue delay and provide reasonable assistance to the Customer so that the Customer can fulfil any data breach reporting obligations it may have under Data Protection Law; and
12.3.5 subject to applicable law, upon termination or expiry of the Agreement, (at the Customer's election) destroy or return all Data in its possession or control, such requirement shall not apply to Data it has archived on back-up systems, which Adder shall isolate to the extent possible and protect from any further processing, except to the extent required by applicable law until deletion is possible.
12.4 The Customer consents to Adder engaging third party processors for the Purpose provided that Adder imposes data protection terms on any other Processor it appoints which comply with the Data Protection Law and Adder remains liable for any breach of this clause that is caused by its other processors.

13 TERMINATION
13.1 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party ("Defaulting Party") if:
13.1.1 the Defaulting Party commits a material breach of
any of term of this Agreement and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of the Defaulting Party being notified in writing to do so; or

13.1.2 the Defaulting Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

13.1.3 the Defaulting Party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

13.2 Adder may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment.

13.3 Without limiting its other rights or remedies, Adder may suspend the provision of the Elite Services if the Customer fails to pay any amount due under this Agreement on the due date for payment.

13.4 Either party may terminate this Agreement [at any time following the 2nd anniversary of the Commencement Date] upon giving [6 months’] notice in writing, such notice to expire on an anniversary of the Commencement Date.

13.5 On termination of the Agreement for any reason the Customer shall immediately pay to Adder all of Adder’s outstanding unpaid invoices and interest.

13.6 Termination in accordance with clauses 13.1 or 13.2 shall not give rise to any refund in respect of Fees paid.

13.7 Termination of the Agreement shall not affect any of the parties’ rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement that existed at or before the date of termination.

13.8 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

14 GENERAL TERMS

14.1 Force majeure: Adder shall not be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control.

14.2 Waiver: Failure to exercise, or any delay in exercising, any right or remedy provided under these Terms or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Terms or by law shall preclude or restrict the further exercise of that or any other right or remedy.

14.3 Variation: No variation of these Terms shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

14.4 Severance: If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion or a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.

14.5 Assignment and other dealings: Except as otherwise provided in these Terms, the Customer may not assign, sub-contract or deal in any way with, any of its rights or obligations under these Terms or any document referred to in it.

14.6 Notices: Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each Party required to receive the notice at its address as set out at the start of this Agreement or as otherwise specified by the relevant Party by notice in writing to each other Party.

14.7 Third party rights: These Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these terms.

14.8 Governing law and jurisdiction: These Terms and any dispute or claim arising out of or in connection with their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms or their subject matter or formation (including non-contractual disputes or claims).