

**Total Engine Support Limited Standard On-Wing Services Terms & Conditions – August 2016**

**A. DEFINITIONS:**

“**Agreement**” means the Terms & Conditions and any terms contained within a Purchase Order;

“**Business Day**” means a day (other than a Saturday, Sunday or holiday scheduled by law) on which banks are open for the transaction of business of the nature required by this Agreement in New York, USA or London, England;

“**Customer**” means the person, corporate or unincorporated body issuing the Purchase Order for the Services;

“**Maintenance Object**” means part or engine upon which TES shall carry out the Services;

“**OEM**” means original equipment manufacturer;

“**Party**” or “**Parties**” means TES and/or Customer, as the context may so require;

“**Parts**” means any parts, consumables, material or equipment provided by TES in connection with the Services;

“**Purchase Order**” means the purchase order provided by the Customer for the instruction of Services;

“**Services**” means the services to be provided by TES to Customer under a Purchase Order;

“**TES**” means Total Engine Support Limited;

“**Terms & Conditions**” means the terms and conditions contained within this document;

**B. INTERPRETATION:**

In this Agreement (except where the context otherwise requires):

(i) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns;

(ii) Words in the singular shall include the plural and vice versa and words importing any gender include every gender;

(iii) Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

(iv) Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

**1. DUTIES AND RESPONSIBILITIES**

1.1 TES shall perform the Services, as detailed in the Purchase Order by order of Customer, in such location provided for in the Purchase Order. Any communications on the subject matter of a Purchase Order shall be exclusively with Customer or its designated agent, unless otherwise agreed in writing between TES and Customer. Any Services to be provided outside the Purchase Order shall be agreed between the Parties in a supplement to the original Purchase Order.

1.2 In performing the Services, TES shall observe and act on instructions duly given by Customer, its designated agent or such third party as agreed between the Parties, which will, however, not release TES of its own responsibilities hereunder or under any Purchase Order. The Services to be performed by TES and the results thereof shall meet relevant technical, quality control and procedural requirements of OEM as applicable at the relevant time in the aerospace and aviation industry and relevant OEM manuals and procedures.

1.3 TES shall be responsible for complying with any applicable laws and regulations to it or its Services and for acquiring or maintaining during the performance of the Services any licenses, approvals, certificates or exemptions necessary therefore. Furthermore, unless otherwise stated in the Purchase Order TES shall be responsible for having available the correct hardware (e.g. tooling, testing equipment) and documentation required for the due performance of the Services.

1.4 Unless agreed between the Parties in writing, all preparation and restoration of the aircraft, engine and/or other equipment, namely: opening of access cowls and/or panels; removal/reinstallation (for access) of components, units or plugs and any resultant testing or maintenance; provision of access platforms; supply of power etc, is to be performed, supplied and certified (where applicable) by Customer or Customer's appointed maintenance provider.

1.5 Unless agreed between the Parties in writing all Services are to be performed inside a suitable hangar or maintenance facility and work will only be carried out in locations suitable for the performance of the Services. TES shall not put its personnel or equipment at risk by travel into difficult, dangerous or unstable locations. The work place shall be free of excess fluids and debris and suitably protected from the elements. TES shall withdraw from any unsuitable area and will not perform any Services until the area has either been prepared adequately or the task relocated to a suitable site.

1.6 Where appropriate, upon completion of Services TES will provide a release certificate authorised under the applicable regulatory authority agreed in Purchase Order which will detail the Services undertaken and the condition of the aircraft, engine, part or other equipment. Where authorised release certificates are required, TES will issue the applicable documentation as agreed in the Purchase Order.

1.7 Customer shall be responsible for the timely organisation of any required security passes or authorisations for TES personnel prior to the commencement of Services.

1.8 Customer shall provide TES with the information and or documentation (including current and approved maintenance manuals) required by TES in order to carry out the Services prior to the commencement. Such requirements shall be detailed in the Purchase Order and/or communicated to Customer by email prior to the commencement of Services.

1.9 All equipment which is subject to Services to be carried out at TES's facilities, shall be delivered by Customer DDP (Incoterms 2010) to TES's facilities. TES shall redeliver the Maintenance Object to Customer Ex Works (Incoterms 2010) at TES's facility upon completion of the Services.

**2. QUALITY**

2.1 TES maintains certification to both EASA and FAA Part 145 repair station approvals. In addition to this, TES is certified to AS 9100 and 9120 (including the requirements of AC 00-56). All Services are regularly audited by the respective regulatory bodies.

**3. TERMS OF PAYMENT**

3.1 All payments shall be made in full, in cleared funds, without any deduction, withholding or set off, by wire transfer to TES' nominated bank account, as detailed in the invoice, in United States Dollars (US\$) only. Time is of the essence in this regard.

3.2 All payments shall be made in accordance with the invoice provided to the Customer. In the event that Services run over a three (3) month period, TES reserves the right to invoice periodically on a monthly basis. If any payment under this Agreement would be due on a day which is not a Business Day, the Customer shall pay it on the preceding Business Day.

3.3 In the event the Customer does not make payments in accordance with this Agreement, TES shall be entitled to (i) suspend all Services until such time as all overdue payments are received and (ii) charge interest on the overdue sum from the due date for payment at the rate of four percent (4%) per annum above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand.

3.4 At the expiry or termination of this Agreement, Customer shall immediately pay to TES all of Customer's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, TES may submit an invoice, which shall be payable on and subject to the terms of this Clause 3.

3.5 Customer is not entitled to withhold, off-set or delay payment or invoices due or issued under this Agreement for any reason no matter how fundamental or unforeseen the event, including in connection with any alleged or actual defence, counter-claim or other rights against TES.

**4. TAX**

4.1 Customer shall bear all taxes, excises, duties including customs duties, stamp duties, fees, commissions and/or equivalent charges of any kind (“**Taxes**”) levied on the Maintenance Object and all payments due to TES hereunder by any competent Tax authority as a result of this Agreement, other than Taxes on income, gains or profits of TES.

4.2 All payments referred to in this Agreement are exclusive of any applicable value added tax chargeable under English law for the time being and any other similar sales, goods, services, purchase or turnover tax (“**VAT**”). The VAT treatment shall be determined pursuant to the VAT law of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. If VAT is properly chargeable, Customer shall pay to TES an additional amount equal to the VAT, upon receipt of a valid VAT invoice, provided Customer is not obliged to self-assess VAT under the reverse-charge rule.

4.3 All payments by Customer hereunder shall be made in full without any deduction or withholding whatsoever and free and clear of and without any deduction or withholding for or on account of any Taxes, except to the extent that any such deduction or withholding is required by law in effect at the time of payment. If Customer is so required, it must: (a) deduct the minimum amount as required by law; (b) pay the Tax to the relevant Tax authority according to the law and obtain a receipt where available from the relevant tax authority and forward such receipt to TES; and (c) increase the amount of the payment to be made to TES by such amount so as to leave TES, on an after tax basis, in neither a worse nor a better position than if no such deduction or withholding had been required.

**5. TRAVEL & LIVING**

5.1 If applicable, all travel and living costs in accordance with this Agreement will be charged to Customer at cost incurred in addition to the Service fees detailed and agreed within the Purchase Order.

For information:

- i. Flights of less than 4 hours duration shall be booked as economy fares
- ii. Flights of greater than 4 hours duration shall be booked as business class fares
- iii. Hotels shall be booked in the "middle range" e.g. Marriot Courtyard.
- iv. Expenses incurred such as travel, vehicle hire, fuel, food, parking, taxi, excess baggage (for tooling) plus ATA Carnet, visa's etc, shall be billed at cost incurred or at a per diem rate agreed in the Purchase Order.
- v. For vehicle travel where required, mileage will be charged at a rate of US\$.75 per mile.
- vi. For overseas car travel, mileage will be booked at a cost incurred.

*Note: Receipts will not be routinely provided.*

5.2 Postage & Freight Charges: Where TES is required to post/freight documents and parcels in support of the Services undertaken, charges for such postage/freight will be recharged to Customer at cost incurred.

5.3 Mobile Phone Charges: On an extraordinary basis, TES will recharge mobile phone costs incurred in support of the Services undertaken. The charges will only be invoiced to Customer where they are considered extensive and beyond normal expectations, and only following the agreement of Customer.

## **6. CONFIDENTIALITY**

6.1 TES and Customer warrant that the information contained in this Agreement, any ancillary /related documents, and all information which is secret or otherwise not publically available (in entirety or part) including financial, commercial, marketing or technical information, know-how, trade secret or business methods, personal data in all cases whether disclosed orally or in writing before or after the date of the Purchase Order, is confidential and shall be treated as confidential and not be disclosed to any third parties, be it that any data generated or produced by TES by order of Customer shall vest no restriction whatsoever in Customer unless specifically agreed otherwise by both parties prior to the acceptance of Customer's Purchase Order. Unless otherwise agreed, neither party shall disclose this Agreement or its terms, to any person, other than (a) to its board of directors, employees directly involved with the Agreement and Services, financiers, auditors, professional legal, tax and technical advisers (in which case the disclosing party shall cause each such person to abide by the terms of this Clause); or (b) in the case of TES to its associated companies, subcontractors, shareholders and financiers; or (c) to the extent necessary in the enforcement of a party's rights under this Agreement; or (d) to any parties permitted assigns; or (e) as may be required by any applicable laws or regulations or (f) to the extent already in the public domain at the date of disclosure otherwise than as a consequence of any unauthorised disclosure, act or omission by the disclosing party, its officers, employees or agents. This confidentiality Clause shall survive the expiration or termination of this Agreement for a period of one (1) year.

## **7. TES LIMITED LIABILITY**

7.1 Customer agrees to defend, indemnify and hold harmless TES and its successors and assigns, financiers, shareholders, subsidiaries, affiliates, partners, directors, officers, agents, contractors, subcontractors, personnel and employees in full and on demand from and against any and all liabilities, claims, damages, losses, Taxes, fees, fines, penalties, suits, demands, costs, expenses, proceedings and judgments (whether in contract, tort, negligence of any degree, strict liability, or otherwise), including all costs, expenses and reasonable attorneys' fees incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from TES and/or any third party (including, but not limited to, personal injury and/or death and property damage claims), arising out of or in any way connected with TES performance or non-performance of the Services and TES's obligations under this Agreement, delivery, possession, performance, refurbishment, storage, management, control, maintenance, condition, service, repair, overhaul, redelivery and Services to be performed under any Purchase Order to which this Agreement is subject, except where such loss or damage results solely from the gross negligence or willful misconduct of TES.

7.2 In no circumstances shall TES be liable in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Agreement or for any incidental, consequential, special, exemplary, and punitive damages, including but not limited to loss of profits, loss of revenue, loss of business or use, caused by or in any way related to the Services, breach of contract, any action in tort of any nature whatsoever.

7.3 In any event and notwithstanding anything contained in this Agreement, TES' liability in contract, tort (including negligence or breach of statutory duty) or otherwise, arising by reason of or in connection with this

Agreement (except for gross negligence or wilful misconduct or in relation to death or personal injury caused by the negligence of TES or its employees while acting in the course of their employment) shall be limited to the cost of the Services being provided by TES.

7.4 Each provision of this Clause is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said provisions is held inapplicable or unreasonable in any circumstances) and shall remain in force notwithstanding termination of this Agreement.

7.5 TES AND CUSTOMER EXPRESSLY AGREE THAT ALL PARTS DELIVERED PURSUANT TO THIS AGREEMENT OR ANY PURCHASE ORDER BY TES TO CUSTOMER IS DELIVERED AND SHALL BE SOLD, EXCHANGED AND/OR DELIVERED TO CUSTOMER "AS IS" AND "WITH ALL FAULTS,". TES MAKES NO WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO THE AIRWORTHINESS, VALUE, AGE, OPERATION, PERFORMANCE, FITNESS FOR USE OR PARTICULAR PURPOSE, MERCHANTABILITY OR CONDITION OF THE PARTS DELIVERED HEREUNDER.

7.6 FURTHER, CUSTOMER HEREBY WAIVES, RELEASES AND RENOUNCES ALL WARRANTIES, GUARANTEES, OBLIGATIONS, LIABILITIES, RIGHTS AND REMEDIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NON-COMFORMANCE OR DEFECT IN ANY PARTS DELIVERED BY TES HEREUNDER, INCLUDING BUT NOT LIMITED TO (A) ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR AGAINST INFRINGEMENT OR THE LIKE, (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING IN WHOLE OR IN PART FROM STRICT LIABILITY OR NEGLIGENCE, ACTUAL OR IMPLIED, (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY PARTS DELIVERED HEREUNDER, OR ANY OTHER PROPERTY, FOR LOSS OF USE, REVENUE OR PROFIT, AND (E) ANY LIABILITY OF TES TO ANY THIRD PARTY, OR FOR ANY DIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGE.

7.7 The indemnities provided under this Clause 7 shall survive the expiration or termination of this Agreement.

## **8. WARRANTY**

8.1 TES provides no warranty in relation to the Services and does not warrant the quality or fitness of Parts furnished to Customer by TES, its contractors, officers, employees or agents. Customer waives any and all warranties express or implied, including warranties of merchantability and fitness for a particular purpose.

8.2 With regard to Parts supplied by TES having a warranty from the manufacturer thereof, TES agrees to assign to Customer any warranties on any Parts or Services that it is able.

## **9. RISK OF LOSS / INSURANCE**

9.1 Risk of loss or damage to Customers or any third party owned aircraft, engine, parts or equipment shall remain with Customer at all times throughout the duration of the provision of Services.

9.2 Customer shall maintain, or shall procure that there is maintained, the following insurances for the duration of the Services (or in the case of 9.2.2 for a period of 2 years after completion of the Services):-

9.2.1 All risks insurance in respect of the aircraft, engine, parts or other equipment upon which the Services are being performed in an amount no less than the current market value or such aircraft, engine, parts or other equipment;

9.2.2 Comprehensive general aviation liability (including products, operations and hangarkeepers) insurance in respect of the aircraft, engine, parts or equipment upon which the Services are being performed, for a combined single limit of US\$500,000,000 for any one occurrence and in the aggregate for products and if higher, as is customarily maintained by Customer, with TES and any subcontractor named as additional insured. Such insurance shall provide that the insurers will hold harmless and waive any rights of recourse against the additional assureds or to be subrogated to any rights of the Lessor or the Lessee

9.2.3 Employers liability insurance / workers compensation insurance in an amount customarily held by business similar to that of the Customers for no less than the level prescribed by law.

## **10. GOVERNING LAW AND JURISDICTION**

10.1 This Agreement and any non-contractual obligations arising out of or connected with it shall be governed and construed in accordance with English law and shall be deemed to have been made in England.

10.2 Customer agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Agreement.

10.3 Each of the parties, irrevocably and unconditionally: (a) agrees not to claim any immunity from proceedings brought against it in relation to this Agreement and to ensure that no such claim is made on its behalf; (b) consents generally to the giving of any relief or the issue of any process in

connection with those proceedings; and (c) waives all rights of immunity in respect of it or its assets.

**11. FORCE MAJEURE**

11.1 TES shall not be liable for nor deemed to be in default on account of any delay or for the consequences of any delay in performing of any of its obligations under this Agreement or any order by Customer if such delay is due to any cause whatsoever beyond its reasonable control (a **Force Majeure Event**).

11.2 For the purposes of this Agreement, a Force Majeure Event shall include but not be limited to, acts of God or the public enemy; civil war; insurrection or riots; fires; floods; explosions; earthquakes; labour disputes, work stoppages, restrictions or strikes; compliance with government legislation, acts, orders or regulations; inability or failure of suppliers to deliver (to the extent caused by reasons similar as those mentioned in this provision); or for any other cause to the extent that it is beyond TES' reasonable commercial efforts to control. Any period of delay which is deemed by TES to be reasonable shall lengthen TES's due date for completion of the Services by an equal period of time.

**12. NOTICES:** All notices and other communications required or permitted under this Agreement shall be in; (a) writing (sent by any generally available commercial delivery carrier providing tracking service, by first class mail, return receipt requested, postage prepaid, to the applicable address set out below, or to any other address for notices that either party may provide to the other, all properly delivered notices shall be effective upon delivery or, if delivery is refused, upon the date that delivery is refused) or, (b) email to the applicable address set out below (and shall be considered delivered upon the senders receipt of a "delivery receipt") and sent:

12.1 To TES at:

FAO: Legal Department  
TES Aviation Group  
Aviation House, Brocastle Avenue  
Waterton Industrial Estate, Bridgend  
CF31 3XR, Wales, UK  
[TESNotices@tesaviation.com](mailto:TESNotices@tesaviation.com)

12.2 To Customer at the address Customer provided in the Purchase Order.

12.3 Each notice, request, demand or other communication made or delivered by one party to another pursuant to this Agreement shall be in the English language or, if not in English, will be accompanied by an English translation. If there is any inconsistency between the English version and any version in any other language, the English version will prevail.

**13. SUB-CONTRACTING:** TES may retain a third party sub-contractor or supplier in the performance of its obligations hereunder or transfer or assign any of its obligations to any such third parties. TES shall under all circumstances remain responsible and liable towards Customer for the due performance of its obligations.

**14. INDEPENDENT CONTRACTOR:** This Agreement is not to be construed as a joint venture, incorporation or business association. Each Party shall remain an independent Party and does not have the right to act in the name or on behalf of the other Party.

**15. ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the Customer and TES and supersedes any and all other agreements whether oral or in writing prior to the date hereof with respect to the subject matter hereof. No amendments or modification of this agreement will be valid or binding unless in a written instrument signed by both TES and Customer. This Agreement cannot be amended or altered by electronic mail. Execution of the Purchase Order in one or more counterparts, each of which shall be considered an original but all of which together constitute one and the same instrument. The parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in this Agreement. All warranties, conditions, terms and representations not set out in this Agreement whether implied by state or otherwise are excluded to the extent permitted by law.

**16. NO WAIVER:** All rights and remedies of either party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgent, forbearance or extension of time granted by that Party to the other nor by any failure of, or delay in ascertaining or exercising any such right or remedies. Any waiver of any breach of this Agreement shall be in writing. The waiver by either party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any provision.

**17. PARTIAL INVALIDITY:** If any provision of this Agreement or any individual Purchase Order becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**18. FURTHER ASSURANCES:** Each Party agrees from time to time to do and

perform such other and further acts and execute and deliver any and all such other and further instruments as may be required by law or reasonably requested by any other party to establish, maintain and protect the respective rights and remedies of the parties and to carry out the intent and purpose this Agreement.

**19. ASSIGNMENT:** Subject to Clause 13 (Sub-contracting), neither Party shall be entitled to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, provided that TES shall be entitled to assign the benefit of this Agreement to its financiers.

**20. NO EXCLUSIVITY:** This Agreement is not intended to be exclusive. TES is free to perform similar services for entities other than Customer, Customer may also use other providers for similar services.

**21. THIRD PARTIES:** A party who is not a party to the Agreement has no right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Agreement.

**22. COSTS:** Each Party shall pay its own costs relating to the negotiation, preparation, execution and performance of this Agreement and any ancillary documentation.

**23. TERM:** This Agreement shall remain valid from the date of the Purchase Order and shall terminate upon completion of (i) the Services being provided hereunder and (ii) all Customer obligations being satisfied, except where expressly stated otherwise in this Agreement.

**24. INTENDED USE OF SERVICES:** Customer shall not use or sell, transfer, export, or re-export or participate in any export transaction of the services provided in accordance with the Agreement directly, or indirectly, in a manner that breaches any US or EU imposed trade restrictions and sanctions, including those imposed by or against Customer or the ultimate end user/beneficiary of the services, or Customer's owner or ultimate or end user/beneficiary of the services owners state of incorporation.

**25. REPRESENTATIONS AND WARRANTIES:**

25.1 Each Party represents and warrants to the others that: (a) it is a company duly incorporated and validly existing and in good standing under the laws of its jurisdiction of incorporation and has the corporate power to own its assets and carry on its business as it is being conducted; (b) it has the corporate power to enter into and perform, and has taken all necessary corporate action to authorise the entry into, performance and delivery of, this Agreement; (c) this Agreement has been duly authorised, executed and delivered by it and constitutes legal, valid and binding obligations of it, enforceable in accordance with their respective terms, except insofar as enforceability may be limited by (i) applicable bankruptcy and similar laws affecting creditors' rights generally or (ii) general principles of equity; (d) the choice of English law as the governing law of this Agreement, and any judgment obtained, will be recognised and enforced in its jurisdiction or county of incorporation ; (e) the entry into and performance by it of and the transactions contemplated by, this Agreement do not and will not: (i) conflict with any laws binding on it; (ii) conflict with the constitutional documents of it; or (iii) conflict with or result in default under any document which is binding upon it or any of its assets; (f) all authorisations, consents, registrations and notifications required in connection with the entry into, performance, validity and enforceability of, this Agreement and the transactions contemplated by, this Agreement, have been obtained or effected (as appropriate) and are (or will on their being obtained or effected be) in full force and effect; and (g) no litigation, arbitration or administrative proceedings are pending or threatened against it which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

25.2 The representations set out in this Clause 24 are made by each Party on the date of this Agreement.

**26. PART SALES:** Any sales of Parts from TES to Customer as a result, or during the course of the Services provided under this Agreement, shall be governed by Clauses 7.5, 7.6 and 8 of these Terms & Conditions and TES part sales terms and conditions, which are available upon request.