

MODE1 TECHNOLOGY'S TERMS OF BUSINESS

“We are empowering more and more businesses across the UK to reach their full potential by providing managed IT solutions and support which are super-reliable, innovative and consistent.”

Your attention is drawn particularly to the provisions of condition N 4 which limits our liability to you

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A CONDITIONS WHICH APPLY TO ALL OUR SERVICES

A 1 DEFINITIONS AND INTERPRETATION

A 1.1 The following words have particular meanings in these Conditions:

Agreement: these Conditions the Order and any applicable Equipment Schedule.

Authorised User: means your employees etc. who are registered as an authorised contact on Mode1 Technology's systems.

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Charge: any reference to a Charge is to the relevant charge as set out in the Price Guide.

Claim: shall have the meaning given to it in condition N 4.1.

Computer: the laptop, desktop, workstation or terminal that you use.

Conditions: these terms and conditions as amended from time to time in accordance with condition N 10.

Data Protection Legislation: the UK Data Protection Legislation, the Privacy and Electronic Communicative (EC Directive) Regulations 2003, and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR, and any other directly applicable European Union regulation relating to privacy.

Defect: an issue which means the item is not in Good Working Order.

Equipment Schedule: the document headed "Equipment schedule" listing your equipment for which we will provide support and the location of that equipment as amended from time to time.

Event Beyond Our Control: shall have the meaning given in condition N 9.1.

Extended Business Hours: 8.00 am to 6.00 pm on a Business Day.

GDPR: General Data Protection Regulation ((EU) 2016/679).

Good Working Order: operates in accordance with the Supplier's guidance, documentation and warranty.

Goods: Hardware or Software supplied by us to you.

Hardware: any computers, servers and associated peripherals, parts and cables supplied by us to you under the Agreement.

Inappropriate Content: content which infringes any applicable laws regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) or which contains viruses (including trojan horses, worms, time bombs or any other harmful programs).

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world.

Normal Business Hours: 9.00 am to 5.30 pm on a Business Day.

Order: your order for the Goods or Services or both as set out in our quotation.

Price: has the meaning given to it in condition A 7.1.

Price Guide: our current list of charges for our services.

Services: the services to be provided by us under the Agreement.

Software: any computer program, code or software provided by us to you.

Supplier: the relevant supplier, manufacturer or developer.

Supported Equipment: the equipment specified in the Equipment Schedule, subject to condition B 3.2.

Third Party Licence: the terms upon which the relevant Software is licensed.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

We/us/our: Mode1 Technology a trading name of Prism Business Developments Limited incorporated and registered in England and Wales with company number 4141266 whose registered office is at The Technology Barn 20 John Bradshaw Court Alexandria Way Congleton Cheshire CW12 1LB.

You/your: the customer who placed the Order.

A 1.2 In these Conditions:

- (a) condition and section headings shall not affect the interpretation of these Conditions;
- (b) a **person** includes a natural person corporate or unincorporated body (whether or not having separate legal personality);
- (c) words in the singular shall include the plural and vice versa;
- (d) a reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment extension or re-enactment and includes any subordinate legislation for the time being in force made under it;
- (e) a reference to **writing** or **written** includes faxes and e-mail;
- (f) where the words **include(s)** **including** or **in particular** are used in these Conditions 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;
- (g) any obligation in these Conditions on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done;
- (h) all times stated are GMT;
- (i) a reference to **providing** or **allowing us** includes providing or allowing our employees contractors and agents;
- (j) for the avoidance of doubt the definitions and rules of interpretation in this condition apply to the other sections of these Conditions.

A 2 BASIS OF AGREEMENT

A 2.1 Your Order constitutes an offer by you to purchase the Goods or Services or both specified in the quotation from us in accordance with these Conditions. We shall provide the Goods and Services to you in accordance with these Conditions. Any further Orders placed by you will also be supplied subject to these Conditions.

A 2.2 The Order shall be deemed to be accepted by us on the earlier of:

- (a) us issuing written acceptance of the Order; or
- (b) any act by us consistent with fulfilling the Order,

at which point the Agreement shall come into existence.

A 2.3 These Conditions apply to the Agreement to the exclusion of any other terms that you seek to impose or incorporate, any inconsistent terms or conditions contained in or referred to in the Order or your confirmation of order or specification, or any terms or conditions implied by law, trade, custom, practice or course of dealing.

A 2.4 The Agreement and any documents referred to in it constitute the entire agreement between us and you. Please read these Conditions and check that the details in the Order are complete and accurate before you commit yourself to the Agreement. If you think there is a mistake or omission in these documents then please contact us immediately.

A 2.5 Sections A and N of these Conditions apply to all orders for Goods or Services or both. The following sections of these Conditions apply to specific services:

Service	Section
I.T. support	Section B
Hardware or software sales	Section C
Installation	Section D
Broadband	Section E
Telecommunications	Section F
Backup	Section G
Hosted Exchange	Section H
Encryption	Section I
Website hosting	Section J
Disaster recovery	Section K
Third-party software	Section L
Microsoft Azure	Section M

A 2.6 No addition to or variation of any term of the Agreement shall be binding on us unless it is in writing and signed by our authorised representative.

A 3 WHAT WE WILL DO

A 3.1 We shall use reasonable endeavours:

- to provide you with the Goods and Services which you have requested in accordance with the relevant sections of these Conditions in all material respects;
- to meet any performance dates or times but any such dates shall be estimates only and time for performance by us shall not be of the essence of the Agreement;
- to ensure that our personnel shall, whilst on site at your premises, comply with your reasonable health and safety and security policies provided that these policies have been brought to our attention in accordance with condition A 4.1(d). If as a result of observing those policies we are in breach of any of our obligations under the Agreement you agree not to hold us liable.

A 4 WHAT YOU MUST DO

A 4.1 You must:

- co-operate with us in all matters relating to the Services;
- provide in a timely manner such information and data as we may require and ensure that it is accurate in all material respects;
- provide for us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to your premises, office accommodation and other facilities as required by us;
- inform us of all health and safety and security policies at any of your premises;
- provide access to your Computer systems whether directly or remotely as we may require;
- provide facilities and supplies reasonably required by us such as power and internet access; and
- (in respect of all Hardware and Software provided to you) read and familiarise yourself with all documentation explaining the operation of such Hardware and Software issued by the relevant Supplier.

A 4.2 You acknowledge that you have appropriate knowledge of how the internet functions, the systems and products provided to you in connection with the Agreement and what types of use and content are and are not acceptable. You acknowledge that we have no obligation to:

- train you on your use of the Services;
- manipulate, validate or vet any material or data which you wish to or publish, transmit or store via any of our Services:
 - as to whether it is Inappropriate Content; or
 - for usability, legality, content or correctness; or
- explain to you what may constitute Inappropriate Content.

A 4.3 You must not (and must not allow anyone else to):

- sell, resell or exploit for any commercial purposes any portion of the Services, use of the Services or access to the Services; or
- publish, transmit or store any Inappropriate Content via any of our Services.

A 4.4 If we are prevented or delayed from carrying out our obligations under the Agreement by your act or failure to act we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.

A 5 TECHNICAL REQUIREMENTS

A 5.1 Your Computer(s) and modem(s) must:

- run either a Microsoft or Apple operating system;

- (b) have an internet connection; and
- (c) meet any other reasonable requirements of which we have notified you or may notify you.

A 5.2 All your equipment must be in good working order and suitable for the purposes for which it is used in relation to the Services and conform to all relevant United Kingdom standards or requirements.

A 5.3 **You must backup your data.** You acknowledge and agree that you are responsible for arranging to regularly backup your data and that as a consequence we will not be responsible for any loss of data. If you are unsure how to backup your data correctly please read our backup policy document, a copy of which is available on request. **This condition A 5.3 shall not apply during any period in which we are providing a DR Service to you.**

A 5.4 **You must ensure that you have access to the email account which you use to register for any of our Services.** If you forget your password for any Service an email will be sent to the email account you provided when you registered to enable you to reset your password (please note that this does not apply to encryption keys as they are irrecoverable). If you are also unable to access your email account you may not be able to access that Service at all and any data you had stored in it may be inaccessible. We will not be responsible for any loss you suffer as a consequence. Should you wish to change your email account for any Service you must notify us in writing in advance.

A 5.5 You must have up-to-date anti-virus software and carry out your own virus checks at least as frequently as your anti-virus software supplier recommends.

A 5.6 The technical processing and transmission of the Services may involve:

- (a) transmissions over various networks the security of which cannot be guaranteed; and
 - (b) changes to the transmissions to conform and adapt to technical requirements of connecting networks or devices,
- and you consent to that taking place. We may end your access to some or all of the Services if you withdraw your consent as set out in this condition A 5.6 at any time.

A 6 SECURITY

A 6.1 You must follow instructions which we reasonably consider are needed to protect you and us from unauthorised use of the Services.

A 6.2 You must choose at least one account administrator (**Primary Contact**) who is authorised by you to issue all necessary instructions relating to the Services. If you are an individual you can choose yourself to be the Primary Contact. The Primary Contact can permit Authorised Users to contact us. The Primary Contact is responsible for ensuring that the list of Authorised Users is kept up to date.

A 6.3 When we contact you or you contact us we will check that we are dealing with the Primary Contact or an Authorised User. For this reason when you contact us by telephone we will ask you a number of security questions to confirm that we are dealing with the Primary Contact or an Authorised User. If you contact us other than by telephone we will either:

- (a) telephone the Primary Contact or Authorised User and ask the security questions and confirm the instructions; or
- (b) email the Primary Contact or Authorised User and request confirmation of the instructions.

Provided we have checked we are dealing with the Primary Contact or an Authorised User you agree that we can assume that we are dealing with you.

A 6.4 You will receive a password and account designation for certain Services. You are responsible for maintaining the confidentiality of the password and account and are fully responsible for all activities that occur under your password or account.

A 6.5 We strongly recommend that you do not email us any confidential information or instructions and you should not respond to emails asking for your password and account designation details as we will not ask for these details by email. If you use email it is at your own risk.

A 6.6 We will notify you if we become expressly aware that your security has been breached.

A 7 CHARGES FOR OUR SERVICES

A 7.1 You must pay the charges set out in our Price Guide, as amended or updated from time to time, for the Goods or Services you receive (**Price**).

A 7.2 The Price will be calculated using the Price Guide, as amended or updated from time to time. We may change the Price Guide as set out in condition N 10. You can obtain a copy of the current Price Guide at any time by writing to us.

A 7.3 You must pay the Price to us in full and in cleared funds in advance. If the Price has not been paid in advance then the Price is payable in cleared funds immediately upon your receipt of our invoice (unless otherwise agreed with us in writing).

A 7.4 If you are liable to pay for any of our subscription Services (which have a price per month specified in the Price Guide) you must set up a direct debit so that payment is received by us on or before the appropriate date each month. We may suspend the relevant Service whilst a direct debit is not in place and we will not have any liability to you as a result of that suspension.

A 7.5 You can ask us to provide you with a copy of any paperwork which we have already provided to you but we may charge you as set out in the Price Guide for the additional administration caused by this request.

A 7.6 Without prejudice to any other right or remedy that we may have, if you fail to pay us on the due date for any Goods or Service we may charge interest on such outstanding sum from the due date for payment at the annual rate of 8% above the base rate from time to time of The Royal Bank of Scotland plc accruing on a daily basis and being compounded quarterly until payment is made whether before or after any judgment and you shall pay the interest immediately on demand and at our discretion we may:

- (a) suspend the Service and all other Services you receive until you have paid the amount due in full; or
- (b) end the Agreement in accordance with condition N 8.3(j) whether or not we have previously suspended under condition A 7.6(a).

A 7.7 If we reasonably incur third party costs such as tracing or debt collection agency costs as a result of your breach of this Agreement then you must reimburse to us on demand such third party costs incurred on an indemnity basis.

A 7.8 You must pay to us on demand and on an indemnity basis all such legal costs or expenses which we may reasonably incur from time to time in connection with:

- (a) enforcing the payment of any sum due to us under the Agreement; or
 - (b) successfully defending a claim brought by you relating to the Agreement.
- A 7.9 We may appropriate payments by you to such amounts as are due to us as we think fit notwithstanding any purported appropriation by you to the contrary and we may make such appropriation at any time.
- A 7.10 We reserve the right to apply an annual increase (Inflationary Increase) to the cost of any of our services, providing that this does not exceed the official rate of consumer price inflation (CPI) as defined by the Office for National Statistics (ONS).
- A 7.11 If we are notified by a vendor of a price increase (Vendor Increase) for a service that we subsequently resell to you we will pass this cost on to you in full, this may include (but is not limited to) the following:
- (a) changes to the basic pricing of Microsoft Office365 and Azure services
 - (b) changes to the basic pricing of mobile telecommunications services from Vodafone or O2.
- A 7.12 If we change our pricing due to a vendor increase or inflationary increase as described above, you remain subject to the minimum terms as set out in your agreement, and for the avoidance of doubt clause N10.2, (a) and (b) do not apply.
- A 8 CONTACTING EACH OTHER**
- A 8.1 We will contact you using the contact details you give us. You must ensure that the contact details we have for you are at all times current, accurate and complete and you must tell us if your name or contact details change. If you do not tell us we will go on using the details you last gave us and we will not be responsible if we fail to contact you or if we send confidential information to the wrong address using out of date details. We may charge you our reasonable costs of locating you (or trying to locate you) if your contact details are not up to date.
- A 8.2 We will communicate with you by e-mail. For contractual purposes you consent to receive communications from us electronically and you agree that all agreements notices disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. This condition does not affect your statutory rights.
- A 8.3 You agree that an e-mail shall be deemed received and properly served 24 (twenty four) hours after it is sent. In order to prove that you have received an email it will be sufficient for us to show that the e-mail was sent to your specified e-mail address.
- A 8.4 You must contact us using the following contact details:
Address: Mode1 Technology, The Technology Barn, 20 John Bradshaw Court, Alexandria Way, Congleton, Cheshire CW12 1LB
Telephone: 0345 64 66331
E-mail: hello@mode-1.com
- A 8.5 We may listen into or record any telephone calls with you to check we have carried out your instructions correctly and to help improve our service.

B MODE1 SUPPORT

B 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Location: the location of the Supported Equipment at your premises as specified in the Equipment Schedule.

Office Work: work carried out by us at our premises to provide Support to you other than Telephone Support.

Out of Hours Support: any Support provided outside Normal Business Hours.

Mode1 Support Matrix: our current matrix of support services document.

Site Visit: a visit to the Location for the purposes set out in condition B 5.1.

Support: making any adjustments to the Supported Equipment and replacing any parts or components of the Supported Equipment required to restore the Supported Equipment to Good Working Order. Support does not include installing new software or hardware.

Support Package: the support package as set out in the Order and the detail of which is set out in the Mode1 Technology Support Matrix.

Support Package Charge: the relevant charge as set out in the Price Guide.

Telephone Support: Support provided by our technical support staff discussing your issue with you over the telephone.

Telephone Support Charge: the relevant charge as set out in the Price Guide.

B 2 SUPPORT PACKAGES

B 2.1 The level of support and services you will receive in respect of your Support Package is set out in the Mode1 Technology Support Matrix.

B 2.2 In respect of each Support Package you must:

- (a) inform us of any changes in your equipment and ensure that your Equipment Schedule is up-to-date as we will provide Telephone Support and Site Visits only in respect of those items listed on your Equipment Schedule;
- (b) not allow any person other than us to maintain, alter, modify or adjust the Supported Equipment without our prior written approval;
- (c) provide us with any information that we request in providing the Telephone Support or Site Visit; and
- (d) pay the Support Package Charge.

- B 2.3 If you request Telephone Support or Office Work or a Site Visit which is not covered by your Support Package or in respect of any items not listed on your Equipment Schedule you must pay the relevant Charge as appropriate in advance of the Support that is not covered by your Support Package being provided.
- B 2.4 Out of Hours Support: if your Support Package does not include out-of-hours support we are still happy to provide you with Support outside Normal Business Hours (subject to the availability of our engineers) at an additional Charge. Out of Hours Support will be charged at the Out of Hours Support Rate as set out in our Price Guide.
- B 3 MODE1 ONE-OFF SUPPORT**
- B 3.1 If you have not ordered a Support Package then you can still access our essential Telephone Support. If you call for Telephone Support you must pay the Telephone Support Charge in advance of the Telephone Support being provided. If you subsequently request a Site Visit or Office Work then you must pay the appropriate Charge. Any Out of Hours Support will be charged at the Out of Hours Support Rate as set out in the Price Guide.
- B 3.2 If you request Support pursuant to condition B 3.1, for the purposes of conditions B 4 to B 7 **Supported Equipment** means the equipment in respect of which you have requested Support.
- B 4 TELEPHONE SUPPORT SERVICE**
- B 4.1 All requests for Telephone Support must be made to our Telephone Support centre by calling 0345 64 66331 or by email to: support@Mode1Technology.uk.com. During Normal Business Hours we will endeavour to return your call or email within 60 (sixty) minutes to discuss your issue. You must not call the engineers' mobile numbers as these calls will not be logged on our system.
- B 4.2 Our technical support staff will endeavour to provide you with Telephone Support by discussing any issues which you may have with your Supported Equipment. You must be within easy reach of the relevant Computer or Hardware during the telephone call so that you can carry out any steps recommended by our staff during the call. You must co-operate with our technical support staff during the call.
- B 4.3 If our staff can diagnose that there is a Defect with the Supported Equipment during the call our staff will attempt to guide you through the appropriate steps to put the Supported Equipment into Good Working Order.
- B 4.4 We will assume that a Defect has been successfully resolved if our engineer has recommended a specific action and after 3 working days you have not contacted us further regarding that Defect. However, you are still free to contact us regarding that Defect at any time.
- B 4.5 If our technical support staff decide that a specific Defect cannot be resolved over the phone they will recommend a Site Visit by one of our engineers or Office Work. You are not obliged to accept the recommendation of a Site Visit or Office Work. However, we will not deal with any further attempts to remedy the same Defect over the phone.
- B 5 SITE VISIT**
- B 5.1 On you agreeing to a Site Visit we shall use all reasonable endeavours to attend at the Location during Normal Business Hours and use all reasonable endeavours to put the Supported Equipment into Good Working Order whilst in attendance at the Location. Where this is not reasonably practicable or not reasonably practicable within Normal Business Hours we shall either arrange for a further visit to the Location within Normal Business Hours to complete the repair or remove the Supported Equipment or part of the Supported Equipment for repair off-site.
- B 5.2 Whilst we will reasonably endeavour to ensure that all Defects reported before 3.00 pm on a Business Day are rectified the following Business Day that may not always be possible. For example, information may be required from the vendor of your product or replacement hardware may be required. Insofar as it is within our control we will endeavour to rectify the Defect within a reasonable time.
- B 5.3 You must:
- (a) at all reasonable times allow full and free access to the Location and to the Supported Equipment and all components of the Supported Equipment to us and provide us with adequate and safe working space and any telecommunications facilities as are reasonably required to enable us to carry out the required Support while at the Location;
 - (b) provide us with any information that we request in providing the Support; and
 - (c) take any steps reasonably necessary to ensure the safety of our personnel when they are attending the Location.
- B 6 SPECIFIC DEFECTS**
- B 6.1 Broadband: Defects with your Broadband are excluded (unless we are your Broadband provider).
- B 6.2 Hardware supplied by us: please see condition N 1 below.
- B 6.3 Hardware from a third party Supplier:
- (a) if a Defect is caused by a defective piece of your Hardware which is still within its warranty period and you wish to claim under that piece of Hardware's warranty, if you request us to do so in writing and you provide us with a copy of the warranty, we will report the issue to the Supplier on your behalf. You may have to carry out fault testing with the Supplier directly;
 - (b) you will be responsible for the cost of any replacement Hardware required.
- B 6.4 Software:
- (a) we cannot install, reinstall or repair any Defects with Software which you are using in breach of someone else's Intellectual Property Rights;
 - (b) we may not be able to install or repair any Defects with Software if you have lost the user key password or other authentication required to reinstall the relevant Software;
 - (c) you will be responsible for the cost of any replacement Software required.
- B 7 OUR LIABILITY**
- B 7.1 It is your responsibility to make back ups of your data. You should make back ups at regular intervals. We will not be liable for any data loss howsoever caused.
- Support work warranty

- B 7.2 We warrant that the Support will be provided with reasonable care and skill.
- B 7.3 Solving one Defect with the Supported Equipment can highlight further underlying Defects (such as a faulty hard disk or operating system corruption). A pre-existing Defect may appear to be a Defect caused by our Support when this is not the case. Consequently if a possible Defect arises in your Supported Equipment after we have carried out any Support or you believe the Support has not been carried out in accordance with condition B 7.2:
- (a) you must contact us and inform us of the possible Defect as soon as reasonably possible following your discovery of it;
 - (b) you must give us a reasonable opportunity to inspect the relevant Supported Equipment; and
 - (c) you must not carry out any remedial work yourself except where instructed to do so by our staff during a call.
- B 7.4 Provided that:
- (a) you have complied with condition B 7.3; and
 - (b) we conclude that the Defect was directly caused by a breach by us of the warranty set out at condition B 7.2 above,
- then you will allow us to remedy the Defect which we will do free of charge.
- B 7.5 Except as provided in condition B 7.4 we shall have no liability to you in respect of any breach of the warranty set out at condition B 7.2 above.
- B 7.6 If you have not complied with condition B 7.3 then we will not be liable to you for any breach by us of the warranty set out at condition B 7.2 above.
- B 7.7 We reserve the right to charge you for any work which we have carried out to investigate or remedy the Defect in accordance with the Price Guide if:
- (a) the Defect has not been caused by our breach of the warranty set out at condition B 7.2 above; or
 - (b) you have not complied with condition B 7.3.
- Hardware and Software warranties
- B 7.8 All warranties applicable to any Hardware or Software supplied by us are set out in condition N 1.
- B 8 ENDING THIS SERVICE**
- B 8.1 Either we or you can end the Support Package you receive by giving the other at least 1 (one) month's written notice to expire on the day that the Support Package Charge is due and payable.
- B 8.2 We may at our option suspend provision of the whole or part of the Support Package or end the Support Package immediately without liability to you in the circumstances set out in condition N 8.3.

C HARDWARE AND SOFTWARE SALES

- C 1 BASIS OF SALE**
- C 1.1 Any quotation is valid for a period of 7 (seven) days only and we may withdraw it at any time by notice to you.
- C 1.2 Each Order or acceptance of a quotation for Goods by you shall be deemed to be an offer by you subject to these conditions. You shall ensure that the Order is complete and accurate.
- C 1.3 A binding contract shall not come into existence between us unless and until we issue a written Order acknowledgement to you or we deliver the Goods to you (whichever occurs earlier).
- C 1.4 We may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of condition A 7. Each instalment shall be a separate contract and no cancellation or termination by either of us of any one contract relating to an instalment shall entitle you to repudiate or cancel any other contract or instalment.
- C 1.5 No Order which has been acknowledged by us may be cancelled by you except with our written agreement and provided that you indemnify us in full against all losses (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of the cancellation.
- C 2 QUANTITY AND DESCRIPTION**
- C 2.1 The quantity and description of the Goods shall be as set out in the Order.
- C 2.2 All samples, drawings, descriptive matter, specifications and advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the contract.
- C 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation price list, acceptance of offer invoice, or other document or information issued by us shall be subject to correction without any liability on our part.
- C 2.4 We reserve the right (but do not assume the obligation) to make any changes in the specification of the Goods which are required to conform with any applicable legislation or which do not materially affect their quality or performance.
- C 3 PRICE**
- C 3.1 Notwithstanding condition A 7, all Prices shall be as stated in the Order and in default shall be the Price stated in our Price Guide. All Prices are exclusive of delivery, packaging, packing, shipping carriage insurance VAT and other charges and duties.

- C 3.2 The Price for the Goods is based on the rate prevailing at the date of the Order and we reserve the right to increase the Price to cover any unforeseeable increases due to market conditions (including without limitation increases in foreign exchange rates relating to the equipment or in labour materials, supply or transportation costs) which affect us at the date of delivery.
- C 3.3 We reserve the right by giving notice to you at any time before delivery to increase the price of such of the Goods which have not been delivered to reflect any increase in the cost to us which is due to:
- any factor beyond our control (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour materials or other costs of manufacture);
 - any change requested by you in delivery dates quantities or specifications for the Goods; or
 - any delay caused by your instructions or your failure to give us adequate information or instructions.
- C 4 **PAYMENT**
- C 4.1 Condition A 7 shall apply with regard to payment of the Price for the Goods.
- C 4.2 In addition to the rights set out in condition A 7.6 if you fail to make payment in full on the due date the whole of the balance of the Price of the Goods outstanding shall become immediately due and payable and without prejudice to any of our other rights or remedies we shall be entitled to:
- suspend any further deliveries of Goods to you (whether ordered under the same Order or not);
 - appropriate any payment made by you to such of the Goods (or the Goods supplied under any other contract between us) as we think fit (despite any purported appropriation by you);
 - suspend all further delivery, installation or warranty service until payment has been made in full;
 - make a storage charge for any undelivered Goods at our current rates from time to time;
 - stop any Goods in transit; and
 - a general lien on all Goods and property belonging to you exercisable in respect of all sums lawfully due from you to us. We shall be entitled on the expiry of 14 (fourteen) days' notice in writing to dispose of such Goods or property in such manner and at such price as we think fit and to apply the proceeds towards the amount outstanding to us.
- C 5 **DELIVERY OF EQUIPMENT AND ACCEPTANCE**
- C 5.1 We shall use our reasonable endeavours to deliver the Goods on the date or dates specified in our acknowledgement of your Order but any such date is approximate only. If no dates are so specified delivery shall be within a reasonable time of acceptance of the Order. Time is not of the essence as to the delivery of the Goods and we are not in any circumstances liable for any delay in delivery howsoever caused.
- C 5.2 The Goods may be delivered by us in advance of the specified delivery date.
- C 5.3 Delivery shall be made during Normal Business Hours on a Business Day. We may levy additional charges for any deliveries made outside such hours at your request.
- C 5.4 You shall be responsible (at your cost) for preparing the delivery location for the delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver the Goods. If we are prevented from carrying out delivery on the specified date because no such preparation has been carried out we may levy additional charges to recover our loss arising from this event.
- C 5.5 You must inspect the Goods on delivery. If you believe the Goods are defective or not in accordance with the Order and this was not apparent on the delivery inspection you must comply with condition N 1.6. We shall be responsible for any damage, shortage or loss in transit, provided that you notify us (or our carrier if applicable) within 3 days of delivery of the Goods and the Goods have been handled in accordance with the manufacturer's guidance, documentation and warranty.
- C 5.6 If you fail to notify us of a Defect in accordance with condition N 1.6 within 3 days of delivery you will be deemed to have lost the right to reject the Goods.
- C 5.7 Any remedy under condition C 5.5 shall be limited at our option to the replacement or repair of any Goods which are proven to our satisfaction to have been lost or damaged in transit.
- C 6 **OUR LIABILITY**
- All warranties applicable to the Hardware and Software are set out at condition N 1.
- C 7 **OTHER CONDITIONS**
- Other conditions in these Conditions apply to Software and Hardware sales. Your attention is drawn in particular to conditions N 1 N 2 and N 4.

D INSTALLATION

D 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Install: means set up of the relevant Hardware or Software so that it is in Good Working Order.

Installation Works: means those works carried out by us to Install the Hardware and Software specified in our acknowledgement of the Order or (if there is no acknowledgment of the Order) quotation.

D 2 BASIS OF INSTALLATION

D 2.1 We agree to:

- (a) deliver and Install the Hardware and Software at the premises specified in the Order;
- (b) integrate the Hardware and Software with your existing hardware and software only to the extent set out in the Order.

D 3 OUR LIABILITY

Installation work warranty

- D 3.1 We warrant that the Installation Works will be carried out with reasonable care and skill.
- D 3.2 If a possible Defect arises with the Installation Works after we have carried out any Install or you believe the Install has not been carried out in accordance with condition D 3.1:
 - (a) you must contact us and inform us of the possible Defect as soon as reasonably possible following your discovery of it;
 - (b) you must give us a reasonable opportunity to inspect the possible Defect; and
 - (c) you must not carry out any remedial work yourself except where instructed to do so by our staff during a call.
- D 3.3 Provided that:
 - (a) you have complied with condition D 3.2; and
 - (b) we conclude that the Defect was directly caused by a breach by us of the warranty set out at condition D 3.1 above, you will allow us to remedy the Defect which we will do free of charge.
- D 3.4 Except as provided in condition D 3.3 we shall have no liability to you in respect of any breach of the warranty set out at condition D 3.1 above.
- D 3.5 If you have not complied with condition D 3.3 we will not be liable to you for any breach by us of the warranty set out at condition D 3.1 above.
- D 3.6 We reserve the right to charge you for any work which we have carried out to investigate or remedy the Defect in accordance with the Price Guide if:
 - (a) the Defect has not been caused by our breach of the warranty set out at condition D 3.1 above; or
 - (b) you have not complied with condition B 7.3.

Hardware and software warranties

- D 3.7 All warranties applicable to the Hardware and Software are set out at condition N 1.
- D 3.8 Other conditions in these Conditions apply to Software and Hardware sales. Your attention is drawn in particular to conditions N 1, N 2 and N 4.

E MODE1 BROADBAND

E 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Broadband Charge: the relevant charge as set out in the Price Guide.

Broadband Service: high-speed network access to the internet.

Minimum Period: the period of either 12 months, 24 months or 36 months from the date the Broadband Service is activated, as specified in the Order.

E 2 INSTALLATION

- E 2.1 You will need to have a British Telecommunications plc (BT) compatible telephone line to enable you to receive your Broadband Service.
- E 2.2 We will begin the Broadband Service on the day we activate the service.
- E 2.3 If any equipment needs to be installed we will agree a date with you for delivery and installation of any equipment but all dates are estimates and we cannot guarantee we will meet them. If we need to change the installation date we will try to contact you a minimum of two Business Days before the scheduled date. If you need to change or cancel any appointment date you must tell us at least three Business Days prior to the scheduled appointment or we may levy a Broadband missed appointment charge against you as set out in the Price Guide.
- E 2.4 During installation a person authorised by you to make decisions regarding the location and installation of the equipment must be present.
- E 2.5 On the day of installation prior to visiting your premises the engineer will need to disconnect your phone line for a short period. If relevant you should make alternative arrangements to enable you to make calls to emergency services during this period. If you already have broadband this will also be taken out of service during the installation.
- E 2.6 As part of the installation, if reasonably practicable, our engineer will connect your Computers as set out on the Equipment Schedule to the Broadband Service. You will be responsible for reconnecting any other online equipment you may have such as additional computers or games consoles.

E 3 WHAT YOU MUST DO

You must pay the Broadband Charge in order to receive the Broadband Service. The Broadband Charge is payable monthly in advance.

E 4 ACCEPTABLE USE

- E 4.1 You agree that you will not use the Broadband Service in any way that we consider to:

- (a) be likely to be detrimental to the provision of the Broadband Service or which may adversely affect other customers' enjoyment of the Service;
- (b) publish, post, distribute or disseminate Inappropriate Content;
- (c) threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
- (d) engage in illegal or unlawful activities;
- (e) transmit spam or distribute viruses; or
- (f) otherwise deliberately abuse any part of the Broadband Service.

E 5 QUALITY OF SERVICE

- E 5.1 We aim to provide a continuous high-quality Service but we do not guarantee either the quality of the Service or that the Broadband Service will be available at all times. From time to time faults in the Service may occur. We will repair these faults as soon as we can. We may temporarily and immediately suspend provision of the whole or any part of the Broadband Service to enable us to carry out any repair maintenance or improvement or in the event of an emergency. We will restore provision of the Service as soon as reasonably practicable after any such temporary suspension.
- E 5.2 You acknowledge and accept that:
- (a) the quality of the Broadband Service is dependent on geographic, atmospheric or other conditions or circumstances beyond our control;
 - (b) we cannot provide the Broadband Service in all parts of the United Kingdom or in all other countries and we may be restricted to certain areas within those countries where service is available;
 - (c) the network provider may also take action to manage the network's performance during periods where there is a high demand.

E 6 FAIR USAGE

- E 6.1 The Broadband Service has no monthly usage allowance but is subject to a fair usage policy, imposed by the Supplier.
- E 6.2 If you don't use file sharing software or download large files from the internet it is unlikely you will ever be affected by the Supplier's fair usage policy. If you do then we ask that you do so considerately, for example by downloading outside the peak hours of 6.00 pm to 11.00 pm.
- E 6.3 If you only occasionally have very high usage we are unlikely to be concerned. If you regularly have very high usage we will contact you to discuss ways to reduce your usage.
- E 6.4 If your usage continues to be very high we will contact you again. Ultimately, if your usage remains very high we may have to end the Broadband Service and stop you using it. If we do so we will have no liability to you for the ending of the Broadband Service.

E 7 OUR RESPONSIBILITY TO YOU

- E 7.1 We aim to supply a continuous high quality Service. From time to time faults may occur. If this affects you we promise to put things right as soon as we are able unless a specific appointment date is agreed. We will treat a fault reported outside Normal Business Hours as if you reported the fault at 9.00 am on the next Business Day after the day you reported the fault to us.
- E 7.2 If we do not do so we will provide a daily credit for each whole or part day we are late in repairing the Service. The daily credit is equal to the daily charge of your rental for each day that applies. The daily charge is twelve times the Broadband Charge (including VAT) divided by 365. You will not be entitled to a credit if the fault relates to your phone line or is due to equipment you have bought from other suppliers.
- E 7.3 You will need to contact us to claim the credit. We will deduct the amount we owe you from your next bill unless you ask us to send you cash, in which case we will send it to you by bank transfer.
- E 7.4 Unless we are negligent our only responsibility in this regard is to pay you the rental credit as described in condition E 7.2 above.

E 8 OUR LIABILITY

- E 8.1 If you believe your Broadband may be slow you must first run 3 official BT speed tests (at <http://home.bt.com>) before we can log a slow speed fault.
- E 8.2 If you encounter a Defect with the Broadband Service:
- (a) you must contact us and inform us of the Defect as soon as reasonably possible following your discovery of the Defect;
 - (b) you must give us a reasonable opportunity to inspect the Defect; and
 - (c) you must not carry out any remedial work yourself except where instructed to do so by our staff during a call.
- E 8.3 Provided that you have complied with conditions E 8.1 and E 8.2 and if we conclude that the Broadband Service was defective we will remedy the Defect free of charge. Where we decide the Defect needs to be remedied by BT such remedial work will be carried out in accordance with BT's response times.
- E 8.4 If you have not complied with conditions E 8.1 and E 8.2 we will not be liable to you for the alleged Defect. In addition we reserve the right to charge you in accordance with the Price Guide for any work which we have carried out.
- E 8.5 If a router is required on loan you must sign a loan router disclaimer form and return it to us before a router can be sent out to you.
- E 8.6 If a BT engineer needs to attend site a BT engineer booking disclaimer form must be signed and returned to us before the appointment can be booked with BT.

E 9 ENDING THIS SERVICE

- E 9.1 Either we or you can end the Broadband Service by giving the other one month's written notice. You will have to pay an early disconnection fee in accordance with condition E 9.3 if your Broadband Service ends within the Minimum Period. Until this early disconnection fee is received by us you will continue to be liable for the ongoing Broadband Charge.
- E 9.2 We may at our option suspend provision of the whole or part of the Broadband Service or end the Broadband Service immediately without liability to you:

- (a) in the circumstances set out in condition N 8.3;
- (b) if the authority to operate as a public communications provider of any provider upon whom we rely for the provision of the Broadband Service is suspended for any reason; or
- (c) if you breach condition E 4.

E 9.3 Subject to condition N 10.2, if you end the Broadband Service during the Minimum Period or your right to use the Broadband Service ends within the Minimum Period you must immediately pay to us an early disconnection fee by way of compensation to us for ending the Broadband Service early. We sub-contract with internet service providers (ISPs) for the supply to you of the Broadband Service. The early disconnection fee will be equal to: (i) the charges you would have paid for the Broadband Service for the remainder of the Minimum Period together with (ii) any charges we incur from the ISP as a result of the early disconnection less (iii) any savings we receive from the ISP in respect of the Minimum Period as a result of the early disconnection.

F TELECOMMUNICATIONS

F 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Airtime: the wireless airtime and network capacity procured from the Network Operator.

Artificial Inflation of Traffic: a situation where the flow of Calls to any particular Revenue Share Service is as a result of any activity by or on behalf of the party operating that Revenue Share Service disproportionate to the flow of Calls which would be expected from good faith commercial practice and usage of the network.

Call: a signal, message or communication which can be silent, visual (including text) or spoken.

Charges: the sum resulting from applying the Prices and the Supplier's calculation methodology to the quantity of Services used, received or ordered by you.

CLI: the calling line identity.

Commencement Date: the date that the Telecommunications Services first become available to be used by you and billing for the Telecommunications Services commences, as recorded in our billing platform.

Consumer Protection Lists: the lists that may from time to time be compiled and published by OFCOM of companies and individuals that have caused serious or repeated harm to consumers or of companies and individuals that are under assessment.

Device: a wireless device, or Equipment incorporating a SIM card.

Downtime: a period commencing when an incident which you have reported to us in writing has been verified by us as rendering any of the Telecommunications Services unusable by you and ending when we notify you that the incident has been cleared but in any event shall not include any period of scheduled maintenance that we notify to you in advance.

Minimum Period: the period of 36 months from the date the Telecommunications Services are activated if the Telecommunications Services purchased by you includes the Horizon Seat Rental service.

Mobile Extension: the service which uses certain wireless extension technology in conjunction with a private circuit or virtual private circuit and that enables certain Devices to operate as part of the Customer's wireless private or virtual private voice network.

National Plan: the national numbering scheme – telephone numbers administered by Ofcom.

Network Operator: the network operator who operates the wireless network or networks to which the SIM cards are connected.

Nuisance Call: an unwanted Call that:

- (a) causes annoyance, inconvenience or anxiety to the receiver of the Call;
- (b) is a hoax Call or is of an offensive, spiteful, abusive, indecent, defamatory, obscene or menacing nature;
- (c) causes the called person to experience silence when the Call is answered in circumstances where the called person has no means of establishing whether there is a person at the other end of the line; or
- (d) is not compliant with OFCOM's statement of policy on persistent misuse published in accordance with section 131 of the Communications Act 2003 as amended from time to time.

Number: means any telephone number provided by us to you under the Order.

Number Translation Services: means the 0808 0845 0870 0871 and other non-geographic services to be provided to you as described in the relevant Service Literature.

Prices: our applicable prices for the provision of the Telecommunications Services as amended from time to time as set out in the Price Guide.

Revenue Share Service: means a service (including but not limited to Number Translation Services and services related to 09 and 08 telephone numbers):

- (a) where a network operator pays to its customer operating such service an element of the conveyance charges which that network operator receives for Calls to such service; or
- (b) operated by a network operator and for which if operated by a customer of the network operator the network operator would pay to such customer an element of the conveyance charges which that network operator receives for Calls to such service.

Service Availability: the aggregate period when the Telecommunications Services are not in a period of Downtime expressed as a percentage of time during the Service Measurement Period. The following formula shall be used to calculate the service availability:

$$\text{Service Availability \%} = \frac{(H - D) \times 100}{H}$$

where: H is the number of hours in a complete calendar month; and

D is the number of complete hours during that calendar month when the Telecommunications Services are in a period of Downtime.

Service Measurement Period: a complete calendar month during the duration of this Agreement each calendar month consisting of the relevant number of 24 hour days (which in the case of a 30 day month shall consist of 720 hours).

Service Level: 95% (ninety five percent) Service Availability.

Service Literature: means the indicative service description and service literature published from time to time by the Supplier, a copy of which we will provide to you upon request.

SMS: the short message service, which enables text messages to be sent to, and received from Devices.

Spam: means an unsolicited marketing message not permitted under the terms of the Data Protection Legislation;

Supplier: the network provider who operates the telecommunications network through which the service is provided.

Telecommunications Charge: the relevant charge as set out in the Price Guide.

Telecommunications Services: a service which is offered by the Supplier to us and by us to you as shown in the Service Literature.

Telecommunications System: the electronic communications network and information technology system which the Supplier operates or provides so as to offer electronic communications services.

Wireless Services: the provision by the Network Operator to the Customer of Airtime, Equipment, GPRS bearer, Mobile Extension, mobile web, SMS, SMS land to mobile text messaging service and/or any other Wireless Services, which the Network Operator may from time to time provide.

F 2 TELECOMMUNICATIONS SERVICES

F 2.1 We will provide you with the Telecommunications Services as set out in your Order.

F 2.2 We shall be entitled to:

- (a) give you instructions (with which you must comply) which we or the Supplier believe to be necessary for health and safety reasons or for maintaining the quality of the Telecommunications Services;
- (b) where we are supplying Number Translation Services to you, transfer individual active numbers within ranges of numbers to third party providers on receipt of a valid request from you to do so, provided that such request is in accordance with OFCOM regulations or the regulations of any other relevant regulatory authority.

F 2.3 The parties to this agreement agree to promptly supply the other, upon request, with all information and assistance which may reasonably be required to enable the other or the Supplier to perform our respective obligations under the Order or under the agreement between us and the Supplier or which is necessary to satisfy a demand from a law enforcement agency to you us or the Supplier.

F 2.4 You must provide to us any information, access to premises for us and the Supplier and its subcontractors and any other co-operation required by us or the Supplier in connection with the provision of the Telecommunications Services.

F 2.5 Where the discharge of either our or the Supplier's obligations involves the processing of personal data you appoint us and the Supplier as your data processor to process the personal data on your behalf for the purposes of the Order. Where we or the Supplier carry out such processing we will do so in accordance with the provisions of the Data Protection Legislation.

F 3 USE OF THE SERVICES

F 3.1 You must use the Telecommunications Services in accordance with these Conditions and the Supplier's relevant Service Literature (as provided to you by us from time to time) and all other reasonable instructions as may be notified by us to you from time to time and in accordance with the relevant provisions of the Communications Act 2003.

F 3.2 You must:

- (a) comply with all processes, procedures and requirements set out in the relevant Service Literature;
- (b) ensure that all apparatus which is attached (directly or indirectly) to the Telecommunications System will conform to all applicable laws and to the relevant standard or approval for the time being designated under the Communications Act 2003 or the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 and any requirements or standards set out in the relevant Service Literature.

F 3.3 You must not use the Telecommunications Services:

- (a) in a way that does not comply with the terms of any legislation or any codes of practice, regulations or any licence or authorisation applicable to you, us or the Supplier (as appropriate) or that is in any way unlawful or fraudulent or that to your knowledge has any unlawful or fraudulent purpose or effect;
- (b) in connection with (without prejudice to the generality of condition F 3.3(a) above) the carrying out of fraud or a criminal offence against any public electronic communications operator;
- (c) in any way that constitutes Artificial Inflation of Traffic;
- (d) in a way that does not comply with any instructions given under condition F 2.2(a);
- (e) in a way that in our or the Supplier's reasonable opinion could materially affect the quality of any electronic communications service or other service provided by us or the Supplier or any third party;
- (f) to make Nuisance Calls or Spam;

- (g) to threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights (including but not limited to copyright rights of privacy and publicity) of others;
- (h) to obtain access through whatever means to notified restricted areas of the underlying network; or
- (i) to send and receive data in such a way or in such amount so as to adversely affect the network (or any part of it) which underpins any Telecommunications Services or to adversely affect other customers of ours or the Supplier or its suppliers.

- F 3.4 You shall use Numbers in accordance with the National Plan. We and the Supplier have the right to reallocate any Number allocated to you if that Number is not used for a period of 6 (six) consecutive weeks.
- F 3.5 In the event that you notify us in writing that a fraud or serious illegal misuse of the Telecommunications Services may have taken place or will take place we will suspend service to the Number concerned within 6 (six) hours during Normal Business Hours. You will remain responsible for any Charges or liabilities incurred by you until the Service is suspended.
- F 3.6 If we become aware of or we have reasonable suspicions that a fraud or serious illegal misuse may have taken place or will take place (other than by you notifying us in writing) we shall be entitled to take immediate steps to suspend service to the Number concerned. We shall not have any liability to you as a consequence of such suspension.
- F 3.7 You must comply with all applicable laws (including without limitation data protection laws and laws relating to the provision of voice-over IP services) and all codes of conduct decisions directions or recommendations issued by OFCOM and PhonepayPlus and any other competent regulatory body.
- F 3.8 You must not request a Number if at the date of the request you appear on any of the Consumer Protection Lists. You must notify us immediately if you are included on any of the Consumer Protection Lists. We reserve the right to terminate any Telecommunications Services with you and to withdraw the Numbers allocated to you should you appear on a Consumer Protection List. You agree to indemnify us in respect of all losses, damages, costs and expenses which we may incur as a consequence of you appearing on the Consumer Protection Lists.

F 4 CHARGES

- F 4.1 You must pay to us all Charges for the Telecommunications Services.
- F 4.2 Charges shall be calculated as follows:
- (a) the Charges for each Call will be calculated by multiplying the period of the Call rounded up to the nearest whole second by the relevant per minute rate and rounding the results up to 3 decimal places of a pound. Calls which extend over more than one time band will be charged at the rate appropriate to the time band in which the Call commenced;
 - (b) the time bands are (i) 8am to 6pm weekdays; (ii) midnight Friday to midnight Sunday; and (iii) all other times.
 - (c) payphone access levies will apply to all Calls from payphones at an additional cost in accordance with the Supplier's standard rates.
- F 4.3 We reserves the right to invoice you for excessive costs caused by (i) deliberate aggregation by you of Calls to a particular dialstring within a destination; (ii) you engaging in arbitrage; (iii) deliberate manipulation by you of call profiles; or (iv) other similar acts of a non-commercial nature.

F 5 SUSPENSION OF SERVICES

- F 5.1 In addition to the right to suspend set out in condition N 8.3 we may (without prejudice to our other rights) suspend the provision of the Telecommunications Services and the performance of its obligations under this Agreement in whole or in part with immediate effect and you will remain liable for all Charges accrued during such period of suspension if:
- (a) we or the Supplier are obliged to do so in order to comply with an order, instruction or request of government, an emergency services organisation, a court of law, tribunal or other competent administrative or regulatory body, including OFCOM and PhonepayPlus;
 - (b) we or the Supplier need to carry out work relating to the upgrading or maintenance of the Telecommunications System (provided that we have given you the maximum period of notice reasonably practicable in the circumstances);
 - (c) you do not pay any sum due and owing to us when due or within 3 Business Days of us notifying that payment is overdue;
 - (d) we have reason to believe the Telecommunications Services are being used in a manner which breaches or may breach the provisions of conditions F 3.1 or F 3.2 or F 3.3;
 - (e) you are in breach of any of the material terms of the Order; or
 - (f) for operational reasons or in case of emergency.
- F 5.2 If we exercise our right to suspend the Telecommunications Services or part thereof pursuant to this condition F 5 we shall, whenever reasonably practicable, give prior notice of such suspension and its expected duration and we will not be liable for any loss, damage or inconvenience suffered by you.
- F 5.3 Without prejudice to any of our other rights or remedies, we may on 24 (twenty-four) hours' notice delete or deactivate individual CLIs or connections to the Telecommunications System or both if you fail to pay all or any Charges or sums due and payable within the period provided for in these Conditions.
- F 5.4 In the event of suspension of the Telecommunications Services under the provisions of conditions F 5.1(c) to (e) or F 5.3 above all sums invoiced by us and not the subject of a bona fide dispute shall become immediately payable.

F 6 VARIATION TO THE TELECOMMUNICATIONS SERVICES

- F 6.1 In addition to condition N 10 we and the Supplier shall be entitled to:
- (a) make alterations to any Telecommunications Services (including without limitation conversions, shifts, reconfigurations and renumbers). Such alterations may result in disruption to the Telecommunications Services although we will use reasonable endeavours to minimise any disruption to you and where practicable we will endeavour to give you as much notice as possible;
 - (b) change the technical specification of the Telecommunications Services (provided that such changes do not materially affect the performance of the Telecommunications Services) where necessary for operational reasons, statutory or regulatory requirements;

- (c) change the conditions or service levels relating to the Telecommunications Services in order to reflect contractual changes imposed upon us by our Suppliers or any decision request by or change in the regulatory regime by the relevant regulatory authorities and (where reasonably practicable) we will give at least 25 (twenty-five) days' written notice to you before the change takes effect.

F 6.2 We shall on 1 (one) week's written notice to you be entitled to delete CLIs which have not used a Telecommunications Service in the previous 6 (six) months (except where the CLIs were provided under the Line Rental Service).

F 7 THE TELECOMMUNICATIONS SERVICES AVAILABILITY

F 7.1 We shall provide the Telecommunications Services to the standard to be reasonably expected from a competent provider of services in the nature of the Telecommunications Services. We shall use reasonable endeavours to procure that in relation to the provision of the Telecommunications Services the Service Availability for each Service Measurement Period shall be not less than the Service Level. If the Telecommunications Services experience any Downtime in excess of the Service Level then we will provide you with service credits as set out in condition F 12, which shall be our only liability to you in respect of such Downtime.

F 7.2 Due to the complex nature of the Telecommunications Services and public telecommunications networks generally we cannot warrant that the Telecommunications Services will be provided without interruption or error but we will use reasonable skill and care to ensure that the Telecommunications Services are properly managed.

F 7.3 We will use reasonable endeavours to correct faults in the Telecommunications Services which you report to us as soon as reasonably practicable. If you become aware of a fault with the Telecommunications Services you agree to report the fault to our technical helpdesk without delay. You must contact us rather than the Supplier.

F 7.4 You acknowledge that the Wireless Services shall be provided through the Network Operator therefore Prism has no liability whatsoever in relation to the same.

You acknowledge that the provision of Airtime is subject to the geographic extent of Airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference and/or the number of users trying to access the Wireless Services in any particular location that may from time to time adversely affect the provision of the Airtime in terms of line clarity and call interference.

F 8 FRAUD MANAGEMENT SYSTEM

F 8.1 Where stated in your Order, we will provide you with the fraud management system (FMS) feature. The FMS allows you to set an hourly and a daily limit on the value of Calls which can be made. Once the limit is reached, further outbound Calls (but not Calls already in progress) will be barred. The barring can take up to an hour to take effect after the limit has been breached. After a barring event the value of Calls made will be reset to zero for the purpose of the FMS limit.

F 8.2 We will waive charges for any Call:

- (a) started one hour after the configured limit has been breached and prior to the barring being removed; and
- (b) where the Call can be shown by you to be fraudulent.

F 8.3 We reserve the right to withhold crediting in instances of multiple fraud management barring events.

F 9 INDEMNITIES

F 9.1 You hereby agree to indemnify, defend and hold us harmless from and against any liabilities, actions, losses, damages, judgments, costs, claims or expenses incurred by us, or legal proceedings which are brought or threatened against us by a third party in the event of:

- (a) Telecommunications Services being or having been used in breach of condition F 3.3 except where such breach results from fraud on our part;
- (b) you breaching any of the provisions of the Agreement; or
- (c) any fraud or Artificial Inflation of Traffic by you, your employee or agent.

F 10 WARRANTIES

F 10.1 You warrant to us (such warranties being deemed to be repeated on each and every day during the term of the Agreement) that:

- (a) you have the unimpaired right and authority to enter into and perform the Agreement which shall constitute a binding obligation on you;
- (b) you will comply with your obligations under applicable Data Protection Legislation and will obtain and maintain all relevant registrations, notifications and consents including such registrations, notifications and consents as you should obtain and maintain to enable us and our Supplier and its suppliers and subcontractors to process the personal data for the purposes of the performance by us and our Supplier of our obligations under the Agreement;
- (c) all such licences, authorisations, approvals and consents as are necessary to enable you to legally receive the Telecommunications Services as envisaged by the Agreement have been obtained and will be maintained and kept up to date and that you have the unimpaired right to receive the Telecommunications Services.

F 11 ASSURANCE SERVICES

F 11.1 Our assurance service will replace your device should it become lost, stolen or faulty.

F 11.2 You must report to us the problem with your device within 24 hours of you becoming aware and provide us with all reasonable information to ascertain the cause of the fault or problem.

F 11.3 If we reasonably suspect that your device has been deliberately damaged, we reserve the right to refuse to supply a replacement.

F 11.4 If we agree to supply you with a replacement device, this may be a used or reconditioned device which will be in the same or better condition.

F 11.5 The maximum number of claims in any given 12 month period is 2.

F 11.6 An excess will apply to each replacement device supplied and is based on the value of the device and the number of replacements in any 12 month period as shown below

Value RRP inc VAT	1 st Device	2 nd Device	3 rd Device
£0-500	£50	£75	£100
£501 - £750	£75	£100	£125
£751 - 1000	£100	£150	£200
Above £1000	£150	£200	£250

F 12 SERVICE CREDITS

- F 12.1 Subject to paragraph F 12.2 below, if in relation to the provision of the Telecommunication Services to you the Service Availability for any Service Measurement Period is less than the Service Level then we shall pay you:
- a service credit of 2% (two percent) of the Price paid by you to us for the provision of the Telecommunications Services for the relevant Service Measurement Period; plus
 - a further service credit of 2% (two percent) of the Price paid by you to us for the provision of Telecommunications Services for the relevant Service Measurement Period for the second and each subsequent complete hour that the Telecommunications Services experience Downtime during that Service Measurement Period.
- F 12.2 You agree that your right to receive service credits pursuant to this condition F 12 with respect to any Service Measurement Period and in relation to the provision of the Telecommunications Services to you is subject to the following provisions:
- in the event that you contend that we are liable to pay service credits to you pursuant to this condition F 12 you shall within 5 (five) Business Days of the Downtime notify us in writing that you contend that a liability to pay service credits has arisen, the period of Downtime which you consider to have occurred and any other information reasonably requested by us to enable us to verify your contentions. We shall investigate whether such liability has arisen and the extent of such liability and if it is established that the liability has arisen pay the service credits due in accordance with condition F 12.2(b) below;
 - in the event that we are due to pay service credits to you pursuant to paragraph F 12.2(a) above the amount of such service credits shall be credited against the Price due to be paid by you to us for the Telecommunications Services on the next invoice issued by us or if no further invoice is to be raised paid to you by way of bank transfer;
 - our liability to pay service credits in respect of any Service Measurement Period shall not in any event exceed the Price paid by you to us for the provision of the Telecommunications Services for the relevant Service Measurement Period.

F 13 OUR LIABILITY

- F 13.1 We shall be liable for damage to your physical property caused by any negligent act or omission by us or our employees while acting in the course of their employment provided that our liability shall be limited to 20% of the Charges (exclusive of VAT) invoiced and collected by us from you in the 12 month period prior to the relevant incident or incidents (or in the period from the Commencement Date to the date of the relevant incident or incidents, if shorter than 12 months). You accept and agree that such limitation is reasonable.

F 14 ENDING THIS SERVICE

- F 14.1 Either we or you can end the Telecommunications Services by giving the other one month's written notice. You will have to pay an early termination fee in accordance with condition F 14.5 if your Telecommunications Services end within the Minimum Period (if any). Until this early termination fee is received by us you will continue to be liable for the ongoing Telecommunications Charge.
- F 14.2 We are entitled to change the Telecommunications Services in accordance with condition N 10 (including during the Minimum Period) but if such change affects the nature, quality, scope of, or the charges for the Telecommunications Services you will be entitled to give us written notice to end the Telecommunications Services in accordance with condition N 10.2.
- F 14.3 We may at our option suspend provision of the whole or part of the Telecommunications Services or end the Telecommunications Services immediately without liability to you in the circumstances set out in condition N 8.3 (including during the Minimum Period).
- F 14.4 Upon the Telecommunications Services coming to an end (by whatever means) we shall have the right without the need to give you any notice to immediately stop your access to the Telecommunications Services without liability to you or anyone else for loss or damage.
- F 14.5 Subject to condition N 10.2, if you end the Telecommunications Service during the Minimum Period or your right to use the Telecommunications Service ends within the Minimum Period you must immediately pay to us an early termination fee by way of compensation to us for ending the Telecommunications Service early. We sub-contract with the Supplier for the supply to you of the Telecommunications Service. The early termination fee will be equal to: (i) the charges you would have paid for the Telecommunications Service for the remainder of the Minimum Period together with (ii) any charges we incur from the Supplier as a result of the early termination less (iii) any savings we receive from the Supplier in respect of the Minimum Period as a result of the early termination.

G MODE1 DATA BACKUP (ATTIX5/BACKUPPRO)

G 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Backup: the process of transferring data from your Computer to the Server for storage.

Backup Charge: the relevant charge as set out in the Price Guide.

Backup Service: the services offered by us for data storage in accordance with the terms of the Agreement.

Backup Software: the computer program supplied and licensed to you by us to enable your Data to be stored on the Server together with all of the contents of the files disk(s) CD-ROM(s) or other media relating to the Backup Software, including but not limited to (i) the Owner's or third party's computer information or software; (ii) related explanatory written materials or files; (iii) fonts; and (iv) upgrades, modified versions, updates, additions and copies of the Backup Software if any.

Data: any programs, files, data or other information copied or to be copied from your Computer to the Server for storage during a Backup.

Encryption Key: the special unique code which shall be known only to you which you will be given to allow you to access and retrieve your data.

Owner: the Supplier of the Backup Software.

Permitted Use: means to use the Backup Software to provide the Backup Service for one Computer or if different the number of Computers specified in the Order.

Server: the computer system used by us to provide the Backup Service and other ancillary functions.

G 2 BACKUP SERVICE

G 2.1 We will install the Backup Software onto your Computer(s) in accordance with the Order. You can then use the Backup Software to save copies of files chosen by you to the Server. You agree to pay the Backup Charge in advance in order to receive the Backup Service.

G 2.2 Prior to using the Backup Software you must read and familiarise yourself with all documentation explaining the operation of such Backup Software issued by the relevant Supplier.

G 2.3 The Backup Charge is based on a price per gigabyte of your Data stored. If the Order includes a price for a specified volume of Data (**Agreed Data Level**) and the volume of Data stored by us on your behalf exceeds the Agreed Data Level you must pay an additional fee in respect of each additional gigabyte of Data stored above the Agreed Data Level (**Flexible Data**) as set out in the Price Guide. The Backup Charge in respect of the Flexible Data will be levied on the first invoice raised following the additional fee being incurred. You authorise us to take payment of the Backup Charge in respect of the Flexible Data via the Direct Debit mandate. We do not limit the volume of Data that we can store on your behalf to the Agreed Data Level. It is your responsibility to monitor how much Data you are storing.

G 2.4 We have the right to delete your stored Data when your right to use the Backup Service ends. Please see condition G 8.3(b) below.

G 3 LICENCE

G 3.1 As between us and you, all Intellectual Property Rights and all other rights in the Backup Software shall be owned by us. All intellectual property in the Backup Software or any updates and supplements to it is used by us under license from the Owner. You may not use or access the Backup Software copy or modify it in any way without the express written permission of the Owner. We are authorised by the Owner to offer you a non-exclusive licence to such extent as is necessary to enable you to make use of the Backup Software for the Permitted Use on the terms of these Conditions.

G 3.2 You are permitted to:

- (a) use the Backup Software on only one Computer which is under your control or the number of Computers under your control specified in the Order;
- (b) make a backup copy of the Backup Software for individual backup purposes only in support of the Permitted Use. The copies must reproduce and include any copyright notice in the original Backup Software.

G 3.3 You are not permitted:

- (a) to use the Backup Software on any Computer or server or system which permits electronic access to it by more than one user (whether such access forms part of a LAN, WAN or otherwise);
- (b) to rent, lease, sub-licence, loan, copy (except as expressly provided in the Agreement), modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the Backup Software.
- (c) except as expressly provided in the Agreement, to use, reproduce or deal in the Backup Software in any way;
- (d) transfer the whole or any part of the Backup Software or the Agreement to any individual or entity whether on a permanent or temporary basis. If you transfer possession of the Backup Software (or a copy) to another person the licence granted by the Agreement is automatically terminated without prejudice to any other rights and remedies we or the Owner may have in respect of such unauthorised use;
- (e) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Backup Software;
- (f) modify the Backup Software in any manner or form or use modified versions of the Backup Software including for the purpose of obtaining unauthorised access to the Backup Service.

G 3.4 Any and all rights not expressly granted in accordance with these Conditions are hereby reserved on behalf of the Owner.

G 3.5 If the Backup Software is supplied to you on a trial basis, at the end of the evaluation period, which runs from the day that you Install the Backup Software, the Backup Software will cease to function and this licence will be suspended. In order to continue using the Backup Software you will need to purchase a subscription and register your backup account.

G 4 OWNERSHIP

The Owner shall at all times retain ownership of the Backup Software and any copies of it in whatever form.

G 5 ENCRYPTION KEY

G 5.1 **IMPORTANT NOTICE: YOU WILL HAVE THE SOLE RESPONSIBILITY FOR YOUR ENCRYPTION KEY WHICH WILL ALLOW YOU AND ONLY YOU ACCESS TO AND RETRIEVAL OF YOUR DATA STORED ON OUR SERVER. IN THE EVENT THAT YOU LOSE YOUR ENCRYPTION KEY NEITHER YOU NOR US WILL BE ABLE TO ACCESS YOUR DATA. YOU MUST ENSURE THAT YOU DO NOT LOSE YOUR ENCRYPTION KEY.**

- G 5.2 You are responsible for keeping your encryption key secure. You will be solely responsible and liable for any activity that occurs under your user name.
- G 6 **ACCEPTABLE USE**
- G 6.1 You may use the Backup Service only for lawful purposes. You may not use and shall take all reasonable steps to ensure that no other person uses the Backup Service:
- (a) in a way that does not comply with the terms of any laws applicable to you or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
 - (b) to store, send knowingly, receive, upload, download, use or re-use any Inappropriate Content.
- G 6.2 You hereby agree to fully and effectually indemnify us from and against any and all costs losses and damages (including our legal costs on an indemnity basis) incurred by or in respect of any breach by you of the terms of the Agreement including this condition G 6.
- G 7 **OUR LIABILITY**
- G 7.1 Condition N 1 applies to the Backup Software.
- G 7.2 We do not warrant that the Backup Software will meet your requirements or that the operation of the Backup Software will be uninterrupted or error-free or that Defects in the Backup Software will be corrected.
- G 7.3 You load and use the Backup Software at your own risk and you warrant to us that at no time will you use the Backup Software on a Computer on which there is a computer virus of any type regardless of whether the virus is capable of causing any damage.
- G 7.4 You must choose which files and programs you wish the Backup Software to backup and we will not be responsible in any way for the loss of Data caused by you selecting the wrong files to backup. If you wish us to advise on which files and programs you should backup then we will only provide such advice in writing. You agree that we will only be liable for such advice if it is provided to you by us in writing. Please see condition A 5.3.
- G 7.5 The entire risk arising out of use or performance of the Backup Software and any support services remains with you.
- G 7.6 We will not be liable in any way for any losses or damages arising out of your loss of the Encryption Key referred to in condition G 5 above.
- G 7.7 You warrant to us that at all appropriate or material times you will maintain and have maintained a registration under the Data Protection Legislation as the same may be varied and amended from time to time.
- G 8 **ENDING THIS SERVICE**
- G 8.1 Either we or you can end the Backup Service by giving the other one month's written notice.
- G 8.2 We may at our option suspend provision of the whole or part of the Backup Service or end the Backup Service immediately without liability to you in the circumstances set out in condition N 8.3.
- G 8.3 Upon your right to use the Backup Service coming to an end (by whatever means):
- (a) you agree to delete and destroy the Backup Software and any copies stored on any Computer under your control;
 - (b) we shall have the right without the need to give you any notice to delete your stored Data without liability to you or anyone else for loss or damage.

H HOSTED EXCHANGE

H 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Control Panel: the control panel interface which we make available to you from time to time to enable you to manage your account and otherwise configure certain aspects of your use of the Hosting Service.

Data: data program files or other information.

Downtime: a period commencing when an incident which you have reported to us in writing has been verified by the Owner as rendering the Hosting Service unusable by you and ending when we notify you that the incident has been cleared but in any event shall not include any period of scheduled maintenance that we notify you of in advance.

Hosted Exchange Mailbox Charge: the relevant charge for the Hosting Service as set out in the Price Guide.

Hosting Service: the hosted exchange service(s) ordered by you as specified in the Order.

Microsoft Licence: the Microsoft licence set out at Appendix 1.

Name: any names that we or the Owner may use in connection with the Hosting Service from time to time.

Owner: the Supplier of the Hosting Service.

Reseller Agreement: the agreement between us and the Owner under which we purchase the Hosting Services.

Server: the server or servers on which we provide the Hosting Service to you.

Service Availability: the aggregate period when the Hosting Service provided to you is not in a period of Downtime expressed as a percentage of time during the Service Measurement Period. The following formula shall be used to calculate the Service Availability:

$$\text{Service Availability \%} = \frac{(H - D) \times 100}{H}$$

where: H is the number of hours in a complete calendar month; and

D is the number of complete hours during that calendar month when the Hosting Service is in a period of Downtime.

Worked example: If the Hosting Service provided to you experiences 1.5 hours of Downtime in the Service Measurement Period of January in any year during this Agreement the Service Availability shall be deemed to be 99.86559% which is calculated as follows

$$\text{Service Availability \%} = \frac{(744 - 1) \times 100}{744}$$

Service Level: 99.8% Service Availability.

Service Measurement Period: a complete calendar month during the duration of this Agreement each calendar month consisting of the relevant number of 24 hour days (which in the case of a 30 day month shall consist of 720 hours).

Term: has the meaning given to it in condition H 2.1 below.

H 2 PROVISION OF THE HOSTING SERVICE

- H 2.1 Upon our acceptance of your Order for the Hosting Service, in accordance with condition A 2, the Hosting Service shall commence and thereafter shall continue until terminated in accordance with condition H 12 (**Term**). We agree to provide the Hosting Service in accordance with these Conditions. You agree to pay the Hosted Exchange Mailbox Charge in order to receive the Hosting Service.
- H 2.2 Subject to your compliance with these Conditions, we hereby grant to you a non-exclusive, non-transferable licence for the Term to use the Hosting Service on the terms set out in these Conditions.
- H 2.3 You must ensure that during the Term your Computer Hardware and internet connection meet and continue to meet the minimum specifications stated by the Owner as required in order to properly operate the Hosting Service.
- H 2.4 Prior to using the Hosting Service you must read and familiarise yourself with all documentation explaining the operation of the Hosting Service issued by the relevant Supplier.
- H 2.5 You must not sell, assign or transfer the Hosting Service.
- H 2.6 We are acting as a reseller of the Hosting Service and are not entitled to bind the Owner in any way. You acknowledge and accept that we are obliged to provide the Hosting Service as directed by the Owner.
- H 2.7 We may at our sole discretion refuse to supply the Hosting Service to you.
- H 2.8 Time for provision of the Hosting Service shall not be of the essence.
- H 2.9 We shall provide the Hosting Service to the standard reasonably expected from a competent provider of services in the nature of the Hosting Service. We shall use reasonable endeavours to procure that in relation to the provision of the Hosting Service the Service Availability for each Service Measurement Period during the Term shall be not less than the Service Level. If the Hosting Service experiences any Downtime in excess of the Service Level we will provide you with service credits as set out in condition H 10.
- H 2.10 Due to the complex nature of the Hosting Service and public telecommunications networks generally we cannot warrant that the Hosting Service will be provided without interruption or error but we will use reasonable skill and care to ensure that the Hosting Service is properly managed.
- H 2.11 We will use reasonable endeavours to correct faults in the Hosting Service which you report to us as soon as reasonably practicable. If you become aware of a fault in the Hosting Service you must report the fault to our technical helpdesk without delay. You must contact us rather than the Owner.
- H 2.12 We may temporarily and immediately suspend provision of the whole or any part of the Hosting Service to enable us to carry out any repair maintenance or improvement or in the event of an emergency. We will restore provision of the Hosting Service as soon as reasonably practicable after any such temporary suspension.
- H 2.13 You acknowledge that in order to make proper use of the Hosting Service you will require a working knowledge of the Internet the web and email communications functions. It is your responsibility to obtain and maintain appropriate telecommunications facilities to enable you to access the Hosting Service and to configure your systems correctly including but not limited to enabling files and emails to be received and transmitted correctly using the Hosting Service.
- H 2.14 We may vary the specification of the Hosting Service including any Hosting Service usage restrictions in accordance with condition N 10.

H 3 ACCEPTABLE USE DATA PROTECTION AND MICROSOFT LICENCE

- H 3.1 You undertake that you, your employees, agents and sub-contractors who access the Hosting Service will comply with the provisions of this condition H 3 and agree that you shall be liable for failure on the part of such employees, agents and sub-contractors to comply.
- H 3.2 You agree that you will use the Hosting Service within the limitations set out in this condition H 3.
- H 3.3 You acknowledge that services in the nature of the Hosting Service necessarily have finite storage, speed, resilience and operating capacity which must be shared and balanced between our clients and that the Charge has been calculated with reference to the capacity of the Hosting Service.
- H 3.4 You agree that it is reasonable for us to impose limitations on the manner in which you may use the Hosting Service and, if necessary, withdraw your authorisation to use the Hosting Service if we deem that it is reasonable to do so with regard to our other clients.
- H 3.5 You further acknowledge that if you exceed any Data limit without our prior written consent: (i) Data previously saved using the Hosting Service may not be stored or may be deleted; and (ii) some or all emails which are intended to be sent to or received by you may not reach their intended recipient; and (iii) stored emails may be deleted on a "first in first out basis". Once deleted neither we nor you will be able to retrieve Data stored pursuant to the Hosting Service.

- H 3.6 You acknowledge that the speed at which Data is transmitted to and from the Hosting Service is largely dependent on factors which are outside our control including but not limited to the capacity constraints of the public telecommunications network.
- H 3.7 Your use of the Hosting Service must be for lawful purposes and you shall comply with all legal requirements including but not limited to respecting third parties' copyright, trade marks and software licences and all application legislation and codes of practice throughout the world relating to the processing of personal information, including but not limited to the Data Protection Legislation. You further acknowledge that it is your responsibility to take appropriate legal advice in relation to all applicable laws.
- H 3.8 You may not copy, rent, lease, sublicense, display, reverse engineer, modify or alter any software owned or developed by us or the Owner.
- H 3.9 You agree that you will not use the Hosting Service in any way to:
- (a) publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
 - (b) threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
 - (c) engage in illegal or unlawful activities; or
 - (d) transmit spam or distribute viruses or otherwise deliberately abuse any part of the Hosting Service.
- H 3.10 We take the security of personal information very seriously. We will only use the personal information provided by you and relating to your employees, agents and sub-contractors in accordance with the Data Protection Legislation and any consents you grant to us from time to time. You acknowledge that we may use your information in order that we can provide an efficient service to you and to compile statistics which do not identify you.
- H 3.11 You consent to our using and disclosing your personal information for the following purposes:
- (a) providing or arranging for third parties to provide the Hosting Service which may involve disclosing your and your employees', agents' or sub-contractors' personal information to third parties; and
 - (b) as required or permitted by law from time to time.
- H 3.12 We may record any telephone calls you make to or receive from us and store the emails you send to or receive from us for the above purposes and in order to monitor service standards.
- H 3.13 We reserve the right (but shall not be obliged) to access the Data stored on the Server to monitor your compliance with this condition H 3 and to disclose any information, Data graphics, video sound files and other content sent by, provided by, accessed by or sent to you in order to comply with applicable laws and lawful requests to operate our business properly and to protect our clients as a whole, but at all times will ensure compliance with the Data Protection Legislation.
- H 3.14 We reserve the right to view Data held on the Server in the course of maintaining and developing the Hosting Service but at all times will ensure compliance with the Data Protection Legislation.
- H 3.15 We reserve the right in our sole discretion, but shall not be obliged, to remove any Data from the Server which we reasonably believe contravene this condition H 3. We will unless prohibited by law or any enforcement agency give you 72 (seventy two) hours' notice before removing such Data. We will fully co-operate with all applicable law enforcement authorities in investigating suspected lawbreakers and reserve the right to report to such authorities any activity of which we become aware where we reasonably suspect you have contravened the law.
- H 3.16 You agree at all times to comply with the terms of the Microsoft Licence attached as Appendix 1 to these Conditions. You shall further indemnify us in full and on demand for any losses we may suffer as a result of any breaches by you, your employees or agents of the Microsoft Licence.

H 4 PASSWORDS AND SECURITY

- H 4.1 We will provide you with usernames and passwords to access the Hosting Service and a control panel which enables you to configure certain aspects of the Hosting Service. You undertake to keep your usernames and passwords confidential and not to disclose them to any third party other than those of your employees, agents and subcontractors who you authorise to access the Hosting Service on your behalf. You agree to contact us immediately if you suspect that anyone else knows your usernames or passwords.
- H 4.2 We will use reasonable endeavours to keep information held on the Hosting Service secure.
- H 4.3 You undertake to only provide us with accurate information (including but not limited to information about you, your identity and contact details, your business and your anticipated usage of the Hosting Service) whether on the Control Panel or otherwise and to inform us immediately if that information becomes misleading or inaccurate.

H 5 VIRUSES AND SPAM FILTERS

- H 5.1 We will endeavour to ensure that any materials which we send to you will be free from viruses and corrupt files but we cannot guarantee this. If we discover any Defect in any materials we have sent to you we will inform you as soon as reasonably practicable.
- H 5.2 Where the Hosting Service relates to an email service, virus scanning engines are used to filter emails received into the Hosting Service if we have agreed to provide such virus scanning service as part of the Hosting Service. In any event, we cannot guarantee that the Hosting Service and emails received will be free from viruses or other harmful content. We do not accept liability for any damage caused to your Computer, systems, network, business or reputation as a result of an undetected virus that passes through the Hosting Service.
- H 5.3 If we have agreed to provide a spam filtering service as part of the Hosting Service you acknowledge and agree that not all spam will be successfully identified and may pass to your Computer, systems or network. You acknowledge and agree that by attempting to identify spam, potential viruses and other harmful content the Hosting Service may identify and delete false positives whereby emails that you would have deemed to be legitimate may be deleted. You acknowledge and agree that we shall not be liable for any losses or damage caused to you or your business by the deletion of any emails.

H 6 ARCHIVING DATA STORAGE AND BACKUPS

- H 6.1 If the Hosting Service includes Data storage/archiving you acknowledge that such service is a service of last resort and that you will continue or implement separate backup procedures so that, in the event that our storage/archiving service fails, you will still be able to access all of your Data using your alternative backup procedures. You must ensure that you have external backup procedures in place.

- H 6.2 We cannot and will not be liable for any losses or damages suffered by you as a result of any failure by the Hosting Service in its storage of your Data.
- H 6.3 Deleted emails are not stored on the Server following deletion and will be irretrievable.
- H 7 INTELLECTUAL PROPERTY RIGHTS**
- H 7.1 We, the Owner and our technology and licensing partners own all Intellectual Property Rights in all aspects of the Hosting Service. You agree that you will not and procure that your employees, agents and subcontractors will not copy, redistribute, publish, modify or revise any part of the Hosting Service without our prior written consent. This provision shall survive termination.
- H 7.2 You shall have no rights in respect of the Name (including our goodwill associated with any trade marks and trade names) and you acknowledge and agree that you will not acquire any rights in respect thereof and that all such rights (and goodwill) are and will remain vested in us and our technology and licensing partners.
- H 7.3 You will at our expense take all such steps as we may reasonably require to assist us in maintaining the validity and enforceability of the Name and any Intellectual Property Rights in the Hosting Service during the Term.
- H 8 EMERGENCY CONTACTS**
- You undertake to provide us with details that we may request in respect of emergency contacts and procure that we will always be able to communicate with your emergency contacts within thirty minutes of attempting to do so.
- H 9 GENERAL**
- H 9.1 Except as set out in these Conditions the Hosting Service is personal to you and otherwise than as permitted under these Conditions you may not permit any third party other than your employees, agents and sub-contractors authorised by you to use the Hosting Service without our prior written consent.
- H 9.2 You will not allow any third party to use the Hosting Service or use the Hosting Service to provide services in the nature of the Hosting Service to third parties or assist any third party in its attempt to obtain access to the Hosting Service without our written consent.
- H 10 SERVICE CREDITS**
- H 10.1 Subject to paragraph H 10.2 below if in relation to the provision of the Hosting Service to you the Service Availability for any Service Measurement Period is less than the Service Level then we shall pay you:
- (a) a service credit of 2% (two percent) of the Price paid by you to us for the provision of the Hosting Service for the relevant Service Measurement Period; plus
 - (b) a further service credit of 2% (two percent) of the Price paid by you to us for the provision of the Hosting Service for the relevant Service Measurement Period for the second and each subsequent complete hour that the Hosting Service experiences Downtime during that Service Measurement Period.
- H 10.2 You agree that your right to receive service credits pursuant to this condition H 10 with respect to any Service Measurement Period and in relation to the provision of the Hosting Service to you is subject to the following provisions:
- (a) in the event that you contend that we are liable to pay service credits to you pursuant to this condition H 10 you shall within 5 (five) Business Days of the Downtime notify us in writing that you contend that a liability to pay service credits has arisen, the period of Downtime which you consider to have occurred and any other information reasonably requested by us to enable us to verify your contentions. We shall investigate whether such liability has arisen and the extent of such liability and, if the liability has arisen, pay the service credits due in accordance with condition H 10.2(b) below;
 - (b) in the event that we are due to pay service credits to you pursuant to paragraph H 10.2(a) above the amount of such service credits shall be credited against the Price due to be paid by you to us for any Hosting Services provided by us to you on the next invoice issued by us or if no further invoice is to be raised paid to you by BACS.
 - (c) our liability to pay service credits in respect of any Service Measurement Period shall not in any event exceed the Price paid by you to us for the provision of the Hosting Service for the relevant Service Measurement Period.
- H 11 OUR LIABILITY**
- H 11.1 You acknowledge that the value of Data stored using the Hosting Service and the amount of any direct indirect or consequential loss which you may suffer or incur as a result of any loss corruption or damage to such Data can only be known or ascertained by you and is disproportionate to the Price which is not related to the value of the information or Data contained in such emails.
- H 11.2 Notwithstanding anything else in these Conditions our liability in contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation) or otherwise arising out of or in connection with the provision of the Hosting Service shall unless the subject of condition N 4.8:
- (a) at all times not exceed a sum equal to 75% (seventy five percent) of the Hosted Exchange Mailbox Charge payable in respect of the Hosting Service in any annual period; and
 - (b) in any event not extend to loss or corruption of Data, indirect loss of profits, loss of revenue, business, goodwill, contracts, anticipated savings or for any type of special, indirect or consequential loss or damage whatsoever sustained by you or any other person even if we have been advised of the possibility of such loss.
- H 11.3 You acknowledge that we have no control over and exclude all liability for loss or damage to or caused by material stored on the Server.
- H 12 ENDING THIS SERVICE**
- H 12.1 Either we or you may end the Hosting Service on 60 days' prior written notice to expire at any time.
- H 12.2 The Hosted Exchange Mailbox Charge due up to the expiration of the Hosting Service will be due in full immediately upon the service of notice in accordance with condition H 12.1.
- H 12.3 We may at our option suspend provision of the whole or part of the Hosting Service or end the Hosting Service immediately without liability to you:

- (a) in the circumstances set out in condition N 8.3;
- (b) if you provide or if we discover that you have provided us with misleading or inaccurate information in breach of condition H 4.3;
- (c) if we are directed by any competent authority to cease the provision of the Hosting Service or any part of it;
- (d) in the event of an emergency and we are unable to contact any of your emergency contacts within thirty minutes of attempting to do so;
- (e) in the event of our Reseller Agreement ending for any reason;
- (f) in the event of the Hosting Service we receive from the Owner being suspended for any reason; or
- (g) in the event of the Microsoft Licence ending for any reason.

H 12.4 When the Hosting Service ends for any reason:

- (a) we will suspend your access to the Hosting Service and delete all Data stored on the Server. It is your responsibility to transfer Data stored on the Server prior to the date of termination and, when using email Hosting Services, to arrange for any incoming and outgoing emails received or sent after termination to be directed to an appropriate server. We shall not be liable for loss or damage suffered by you in connection with any failure by you to comply with this condition H 12.4(a).
- (b) you acknowledge that once deleted Data cannot be retrieved by you or us from the Server;
- (c) all rights and usage in respect of the Microsoft Licence shall cease immediately in the event of termination for any reason whatsoever. Any provision which expressly or by implication is intended to continue in full force and effect shall continue in full force and effect;
- (d) in the event that the Hosting Service is terminated for whatever reason we may at our discretion and subject to the Owner's agreement where necessary permit you access the Hosting Service for a period of 24 (twenty four) hours following termination solely for the purpose of transferring stored emails out of the Server. We may at our discretion and subject to the Owner's agreement where necessary offer to transfer such Data subject to us agreeing terms with you and you must pay any charges the Owner requests for doing so in advance.

I ENCRYPTION

I 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Data: data program files or other information.

Encryption Service Charge: the relevant charge for the encryption service as set out in the Price Guide.

Encryption Software: PGP Whole Disk Encryption or Symantec Endpoint Encryption provided by the Owner.

Owner: the Supplier of the Encryption Software.

Permitted Use: hard drive encryption.

I 2 THE ENCRYPTION SERVICE

- I 2.1 Where required we will install the Encryption Software on your Computer(s) as specified in your Order.
- I 2.2 You must pay the Encryption Service Charge in order to receive and continue to use the Encryption Software.
- I 2.3 Prior to using the Encryption Software you must read and familiarise yourself with all documentation explaining the operation of the Encryption Software issued by the relevant Supplier.

I 3 USE OF THE ENCRYPTION SOFTWARE

- I 3.1 We are acting as a reseller of the Encryption Software and are not entitled to bind the Owner in any way.
- I 3.2 As between us and you all Intellectual Property Rights and all other rights in the Encryption Software shall be owned by us. All Intellectual Property in the Encryption Software and any updates and supplements to it is used by us under license from the Owner. You may not use or access the Encryption Software copy or modify it in any way without the express written permission of the Owner. We are authorised by the Owner to offer you a non-exclusive licence to such extent as is necessary to enable you to make use of the Encryption Software for the Permitted Use on the terms of these Conditions.
- I 3.3 You may:
 - (a) use one copy of the Encryption Software on a single Computer. If a greater number of copies or number of Computers are specified within the Order you may use the Encryption Software in accordance with such specifications;
 - (b) make one copy of the Encryption Software for backup or archival purposes or copy the Encryption Software onto the hard disk of your Computer and retain the original for backup or archival purposes;
 - (c) use the Encryption Software on a network provided that you have a licensed copy of the Encryption Software for each Computer that can access the Encryption Software over that network; and
 - (d) use the Encryption Software in accordance with any additional permitted uses which may be set forth below.
- I 3.4 You may not nor may you permit any other person to:
 - (a) sublicense, rent, or lease any portion of the Encryption Software;
 - (b) other than to the extent and in the circumstances permitted by law, reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Encryption Software or create derivative works from the Encryption Software;
 - (c) use the Encryption Software as part of a facility management, timesharing service provider or service bureau arrangement; or

(d) use the Encryption Software in any manner that is not permitted pursuant to this Agreement.

I 3.5 Notwithstanding the generality of condition I 3.4 above any and all rights not expressly granted in accordance with the terms of these Conditions are hereby reserved to the Owner.

I 4 OWNERSHIP

The Owner shall at all times retain ownership of the Encryption Software and any copies of it in whatever form.

I 5 ENCRYPTION KEY

I 5.1 **IMPORTANT NOTICE: IF YOU LOSE YOUR PASSWORD OR THE ENCRYPTION KEY FOR YOUR ACCOUNT YOU WILL NOT BE ABLE TO ACCESS YOUR DATA.**

I 5.2 You are responsible for keeping your encryption key secure. You will be solely responsible and liable for any activity that occurs under your user name.

I 6 OUR LIABILITY

I 6.1 Condition N 1 applies to the Encryption Software.

I 6.2 The entire risk arising out of use or performance of the Encryption Software and any support services remains with you.

I 6.3 We will not be liable in any way for any loss or damages arising out of your loss of the encryption key referred to in condition I 5 above.

I 7 ENDING THIS SERVICE

I 7.1 Either we or you can end the Encryption Service by giving the other one month's written notice

I 7.2 We may at our option suspend provision of the whole or part of the Encryption Service or end the Encryption Service immediately without liability to you in the circumstances set out in condition N 8.3.

I 7.3 Upon your right to use the Encryption Service coming to an end (by whatever means):

- (a) you agree to delete and destroy the Encryption Software and any copies of it stored on any Computer under your control;
- (b) you must stop using the Encryption Software and consequently you will no longer be able to access any of your encrypted Data. We may be able to provide access to your Data at an additional charge;
- (c) we shall have the right without the need to give you any notice to delete any of your Data stored by us or our agents without liability to you or anyone else for loss or damage.

J WEBSITE HOSTING

J 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Go Live Date: has the meaning given to it in condition J 2.3.

Go Live Ready: has the meaning given to it in condition J 2.1.

Hosting Equipment: any hardware, Servers, cabling and other equipment used by us to provide the Website Hosting Service.

Materials: the content provided to us by you from time to time for incorporation in the Site.

Non-Host Defect: any failure of the Site to comply with the Site Specification which results from a Defect which is caused by your act or omission or by one of your employees, sub-contractors or agents for whom we have no responsibility.

Site: the website at the URL specified in the Order to be hosted by us pursuant to this Agreement.

Site Software : the software for the Site provided to you by us.

Site Specification: the specification for the Site as described in the Order.

Website Hosting Service: the hosting and related services to be provided pursuant to this Agreement as described in the Order.

J 2 WEBSITE HOSTING SERVICE

J 2.1 We will undertake the necessary works to ensure that the Site complies with the Site Specification. We will notify you when the Site in our opinion, save for Non-Host Defects, complies with the Site Specification (**Go Live Ready**). The Site will be deemed to be Go Live Ready notwithstanding any Non-Host Defects.

J 2.2 We shall provide assistance reasonably requested by you in remedying any Non-Host Defects by supplying additional services or products. If required you will pay us in full for all such additional services and products at our fees and prices current from time to time.

J 2.3 We will notify you once the Site is Go Live Ready and any Non-Host Defects have been remedied. You will approve the date on which the Site will be made accessible to the public (**Go Live Date**) as soon as reasonably practicable.

J 2.4 From the Go Live Date the amount of any Downtime will not exceed 5% (five percent) of the time in any year. For the purposes of this condition **Downtime** is any period commencing when an incident which you have reported to us in writing has been verified by us as rendering the Site unusable or inaccessible and ending when we notify you that the incident has been cleared, but in any event shall not include any period:

- (a) of scheduled maintenance; or
- (b) when the Site is unusable or inaccessible due to a Non-Host Defect.

J 3 WHAT YOU MUST DO

J 3.1 You are responsible for the accuracy and completeness of the Materials.

J 3.2 You must:

- (a) appoint a project manager who shall:
 - (i) provide professional and prompt liaison with us; and
 - (ii) have the necessary expertise and authority to commit you and take decisions on your behalf;
- (b) keep regular and full back ups of all material and data hosted by us on any web site or other system operated by us on your behalf on a daily basis (or more frequent basis if required by best computing practice). For the avoidance of doubt, we will not attempt to restore any of your lost material or Data except where such loss has occurred as a direct result of our error or a problem with the Hosting Equipment;
- (c) immediately notify us on becoming aware of any unauthorised use of or access to all or any of the Site or the Hosting Equipment;
- (d) remove or prevent access to any material hosted on any of the Hosting Equipment or the Site which causes or is likely to cause you to be in breach of this Agreement;
- (e) ensure that you have all necessary consents, permissions and licences to make use of the Hosting Service including registration and appropriate consents and approvals under the Data Protection Legislation;
- (f) ensure that the Materials and all material or data hosted by us on the Site or communicated by you through the Hosting Equipment:
 - (i) is checked for viruses and other harmful code and has appropriate security patches applied;
 - (ii) is not Inappropriate Content;
- (g) independently monitor your bandwidth in relation to the use of Hosting Service and report to us any use of bandwidth over and above any levels notified to you from time to time;
- (h) accept entire liability for all activities conducted and charges incurred under your passwords and user names whether authorised by you or not and you acknowledge that we shall not be liable for any loss of confidentiality or for any damages arising from any failure by you to comply with this condition;
- (i) procure all necessary rights from third parties (including intellectual property licences of computer software and website content including music) which are from time to time required in order for us to be able to provide the Hosting Service legally to you;
- (j) complete your own checks to ensure that any domain name or other relevant registration or renewal has been made successfully.

J 4 OUR LIABILITY

J 4.1 We shall perform the Hosting Service with reasonable care and skill.

J 4.2 We warrant that the Site will perform substantially in accordance with the Site Specification for a period of 90 days from the Go Live Ready date. If the Site does not so perform we shall, at no additional charge, carry out any work necessary in order to ensure that the Site substantially complies with the Site Specification.

J 4.3 The warranty set out in condition J 4.2 shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specification is caused by the Site Software or any Materials.

J 4.4 All warranties applicable to the Site Software are set out at condition N 1 below.

J 4.5 This condition sets out the full extent of our obligations and liabilities in respect of our supply of the Hosting Service. All conditions warranties or other terms concerning the Hosting Service which might otherwise be implied in this Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

J 5 INTELLECTUAL PROPERTY RIGHTS

J 5.1 You grant us a licence to such of your Intellectual Property Rights as are required to perform our obligations under the Hosting Service. The licence shall continue after the Hosting Service comes to an end for such period as we require to bring the Hosting Service to an end in the way which we decide is most economically efficient for us.

J 5.2 You shall indemnify us against all damages, losses and expenses arising as a result of any action or claim that the Materials and all material or Data hosted by us on the Site or communicated by you through the Hosting Equipment infringe any Intellectual Property Rights of a third party.

J 6 SITE CONTENT

J 6.1 You shall be responsible for the content of the Site. You must ensure that the Site does not contain any Inappropriate Content.

J 6.2 You acknowledge that we have no control over any content placed on the Site by visitors and we do not monitor the content of the Site. We reserve the right to remove content from the Site where we reasonably suspect such content is Inappropriate Content.

J 6.3 You agree that we will be entitled to include the statement "Powered by Mode1 Technology" on the home page of the Site in a form to be agreed between us.

J 7 ENDING THIS SERVICE

J 7.1 Either we or you can end the Website Hosting Service by giving the other one month's written notice.

J 7.2 We may at our option suspend provision of the whole or part of the Website Hosting or end the Website Hosting Service immediately without liability to you in the circumstances set out in condition N 8.3.

J 7.3 Upon your right to use the Website Hosting Service coming to an end (by whatever means):

- (a) you agree to delete and destroy the Site Software and any copies of it stored on any Computer under your control;

- (b) you must stop using the Website Hosting Software and consequently you will no longer be able to access any of this Service.
- (c) We shall have the right without the need to give you any notice to delete any of your Data or Materials stored by us or our agents without liability to you or anyone else for loss or damage.
- (d) Provided that:
 - (i) you notify us of your wish to do so within 7 (seven) days of your right to use the Website Hosting Service coming to an end; and
 - (ii) you pay to us in advance such sums as we estimate will cover our reasonable expenses of doing so,
 we will provide such assistance as is reasonably requested by you to transfer the hosting of the Site to you or another service provider subject to payment of our reasonable expenses.

K DISASTER RECOVERY

K 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Backup Image: point-in-time backup images of Your Server transferred to the DR Server for storage and possible later recovery.

Data: data program files or other information.

Disaster: an unplanned event or circumstance resulting in an interruption of or inaccessibility to all or part of Your Server justifying the use of the Recovery Facility.

Disaster Recovery Charge: the relevant charge as set out in the Price Guide.

DR Server: the computer system used by us to provide the DR Service and other ancillary functions.

DR Service: the services offered by us for disaster recovery in accordance with the terms of the Agreement.

DR Software: the computer program supplied and licensed to you by us to enable your Data to be stored on the Server together with all of the contents of the files, disk(s), CD-ROM(s) or other media relating to the DR Software including but not limited to: (i) the Owner's or third party's computer information or software; (ii) related explanatory written materials or files; (iii) fonts; and (iv) upgrades, modified versions, updates, additions and copies of the DR Software if any.

Minimum Period: the period of either 12 months, 24 months or 36 months from the date the DR Service is activated, as specified in the Order.

Owner: the Supplier of the DR Software.

Permitted Use: means use of the DR Software to provide the DR Service for one Computer or, if different, the number of Computers specified in the Order.

Preceding Year: the preceding 12 (twelve) months prior to the date of the Disaster Notice.

Recovery Facility: an alternative server running a copy of the last available working Backup Image of Your Server.

Testing: use by you of the Recovery Facility for testing purposes in accordance with condition K 3.

Testing Days: 4 (four) Business Days per year (the first such year commencing on the date of your Order) for your use of the Recovery Facility for Testing.

Your Server: your computer system as specified in your Order.

K 2 DISASTER RECOVERY SERVICE

K 2.1 Condition A 5.3 shall not apply during any period in which we are providing a DR Service to you.

K 2.2 Where required we will install the DR Software onto Your Server in accordance with your Order.

K 2.3 The DR Software will transfer Backup Images of Your Server to the DR Server at regular intervals as agreed between you and us in writing. The number of days that the DR Server will store Backup Images will be discussed between you and our engineer during the set-up process and this agreed timeframe will be configured within the DR Software management settings.

K 2.4 On being notified by you in writing that you wish to use the Recovery Facility because of a Disaster (**Disaster Notice**):

- (a) we will use reasonable commercial endeavours to make the Recovery Facility available to you within 30 (thirty) minutes (within Normal Business Hours);
- (b) without prejudice to condition K 2.4(a) if we do not make the Recovery Facility available to you within the period of 3 (three) hours (counting only Normal Business Hours) following receipt of the Disaster Notice you will be entitled to service credits as set out in condition K 9 below;
- (c) you will be able to use the Recovery Facility for the period (**DR Hosting Period**) starting on the date the Recovery Facility is made available to you and ending on the earlier of:
 - (i) the restoration of Your Server or the bringing into operation of a suitable alternative facility; or
 - (ii) 30 (thirty) Business Days from the date of the Disaster Notice;
- (d) you hereby irrevocably authorise us without liability or obligation to you and without prejudice to our other rights or remedies to bring your use of the Recovery Facility to an end and delete all of your Data from the Recovery Facility at the end of the DR Hosting Period without liability to you or anyone else for loss or damage if for whatever reason you have not done so by such time;

- (e) if you wish to use the Recovery Facility after the end of the DR Hosting Period you must notify us in writing as far in advance as practicable. We make no commitment that we shall grant use of or access to the Recovery Facility after the end of the DR Hosting Period for any reason but we shall use reasonable commercial endeavours to do so. You must pay us for any such extended use or access in accordance with the Price Guide. We shall be entitled to end any such extended use or access on not less than 24 (twenty four) hours' notice at any time.

K 2.5 You agree to pay the Disaster Recovery Charge in order to receive the DR Service.

K 2.6 Prior to using the DR Software you must read and familiarise yourself with all documentation explaining the operation of the DR Software issued by the relevant Supplier.

K 2.7 We have the right to delete your Data including Backup Images when your right to use the DR Service comes to an end. Please see condition K 11.4(b) below.

K 3 TESTING

K 3.1 You will with prior agreement with us and in accordance with our policies and procedures for Testing from time to time, be entitled to use the Recovery Facility for Testing during the Testing Days.

K 3.2 You acknowledge and agree that:

- (a) we might not be able to make available Testing Days on dates of your choice;
- (b) Testing Days may not be consecutive; and
- (c) we shall be entitled to change the date of previously agreed Testing Days at any time on giving reasonable notice to you.

K 3.3 You will be responsible for all Data and storage media used during Testing and we shall have no liability or responsibility for loss of or damage to any such Data or storage media or to any other equipment software services or other of your resources used during Testing.

K 4 OUR OBLIGATIONS

K 4.1 We undertake that the DR Service will be provided with all reasonable skill and care.

K 4.2 We undertake to take reasonable measures to maintain in Good Working Order all Computer Hardware and Software that we use in the supply of the Services but we do not represent or make any commitment that the operation of any such Hardware or Software shall be uninterrupted or error-free.

K 4.3 We will have no responsibility or legal liability whatsoever for any of the things in condition K 5 for which you have agreed that you alone have responsibility.

K 4.4 Other than as set out in this Agreement we will have no responsibility or liability for Your Server or any equipment, Software, Services, other resources, Data or storage media used by you.

K 4.5 We will provide you with reasonable access to the Recovery Facility in relation to Testing and following a Disaster Notice make available the Recovery Facility in accordance with condition K 2.4.

K 5 YOUR OBLIGATIONS

K 5.1 You must:

- (a) provide us with:
 - (i) all necessary co-operation; and
 - (ii) all necessary access to such information as may be required by us, to enable us to provide the DR Service;
- (b) comply with all applicable laws and regulations (in particular but without limitation the Data Protection Legislation) with respect to your activities under this agreement;
- (c) carry out all your responsibilities regarding the DR Service in a timely and efficient manner;
- (d) use and operate the DR Service and Recovery Facility:
 - (i) only for business continuity purposes and in a proper manner and in the ordinary course of your business; and
 - (ii) at all times in a proper professional and responsible manner and by properly trained and skilled personnel;
- (e) take good care of the Recovery Facility at all times whilst using it and at the end of use return it to us in the same condition it was in before your use of the Recovery Facility commenced. Without prejudice to any other of our rights or remedies, you will within 30 (thirty) days of the date of any invoice from us pay all sums due under such invoice in respect of restoration of the Recovery Facility to such condition.
- (f) comply with our guidelines policies and procedures relating to the use of the Recovery Facility;
- (g) ensure that all your relevant personnel and contractors comply with this condition K 5.1.

K 5.2 You alone are responsible in relation to your use of the Services for:

- (a) the adequacy, accuracy and security of all Data you supply, process, generate or use;
- (b) all software and other proprietary materials that do not form part of the Recovery Facility (including ensuring that they are appropriately licensed);
- (c) the supply, operation, control and support of all other resources not included within the DR Service;
- (d) risk of loss of or damage to any Data software or other resources (whether and howsoever in transit to or from or at the Recovery Facility);
- (e) all necessary security arrangements appropriate to your use of the DR Service including without limitation passwords, pass codes, audit controls, the creation of backup files and operating methods and procedures;
- (f) all results you obtain from the DR Service.

K 6 INTELLECTUAL PROPERTY

- K 6.1 You warrant that you are not aware of any reason why your use of the DR Software would constitute an infringement of any third party's intellectual property.
- K 6.2 You agree to indemnify us and keep us indemnified at all times against all or any costs, claims, damages or expenses incurred by us or for which we may become liable with respect to any intellectual property infringement claim or other claim by a third party relating to our use of your Data or the Backup Image for the purpose of providing the DR Service.

K 7 DISASTER RECOVERY SOFTWARE LICENCE

- K 7.1 As between us and you all Intellectual Property Rights and all other rights in the DR Software belong to us. All intellectual property in the DR Software and any updates and supplements to it is used by us under license from the Owner. You may not use or access the DR Software copy or modify it in any way without the express written permission of the Owner. We are authorised by the Owner to offer you a non-exclusive licence to such extent as is necessary to enable you to make use of the DR Software for the Permitted Use on the terms of these Conditions.
- K 7.2 You are permitted to:
- (a) use the DR Software in accordance with the Permitted Use;
 - (b) make a backup copy of the DR Software for individual backup purposes only in support of the Permitted Use. The copies must reproduce and include the copyright notice in the same form as the original.
- K 7.3 You are not permitted to:
- (a) use the DR Software on any Computer or server or system which permits electronic access to it by more than one user (whether such access forms part of a LAN, WAN or otherwise);
 - (b) rent, lease, sub-licence, loan, copy (except as expressly provided in the Agreement), modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the DR Software;
 - (c) except as expressly provided in the Agreement to use, reproduce or deal in the DR Software in any way;
 - (d) transfer the whole or any part of the DR Software to any individual or entity whether on a permanent or temporary basis. If you transfer possession of any copy of the DR Software to another person the licence granted by the Agreement is automatically terminated without prejudice to any other rights and remedies we or the Owner may have in respect of such unauthorised use;
 - (e) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sub-licence, grant a security interest in or otherwise transfer any right in the DR Software;
 - (f) modify the DR Software in any manner or form or to use modified versions of the DR Software including for the purpose of obtaining unauthorised access to the DR Service.

- K 7.4 Any and all rights not expressly granted in accordance with the terms of these Conditions are hereby reserved by the Owner.
- K 7.5 If the DR Software is supplied to you on a trial basis, at the end of the evaluation period, which runs from the day that you install the DR Software, the DR Software will cease to function and this licence will be revoked. If you require the use of the DR Service after the trial period you will need to purchase a subscription and register your account. Provided you tell us in plenty of time that you wish to continue with the DR Service there will be no disruption to your usage.

K 8 ACCEPTABLE USE

- K 8.1 You may use the DR Service only for lawful purposes. You may not use and shall take all reasonable steps to ensure that no other person uses the DR Service:
- (a) in a way that does not comply with the terms of any laws applicable to you or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
 - (b) to store send knowingly receive upload, download use or re-use any Inappropriate Content.
- K 8.2 You hereby agree to fully and effectively indemnify us from and against any and all costs, losses and damages (including our legal costs on an indemnity basis) incurred by us or in respect of any breach by you of the terms of the Agreement including this condition K 8.

K 9 SERVICE CREDITS

- K 9.1 Subject to paragraph K 9.2 below if following our receipt of any Disaster Notice the Recovery Facility is not available within 3 (three) hours from the time we receive the Disaster Notice (counting only hours during Normal Working Hours) then we will pay you a service credit of 2% (two percent) of the Price paid by you to us for the provision of the DR Service during the Preceding Year for each further complete hour during Normal Working Hours that the Recovery Facility is not available.
- K 9.2 You agree that your right to receive service credits pursuant to this condition K 9 in relation to the provision of the DR Service to you is subject to the following provisions:
- (a) in the event that you contend that we are liable to pay service credits to you pursuant to this condition K 9 you shall notify us in writing within 5 (five) Business Days that you contend that a liability to pay service credits has arisen;
 - (b) in the event that we are due to pay service credits to you pursuant to paragraph K 9.2(a) above the amount of such service credits shall be credited against the Price due to be paid by you to us for the DR Service on the next invoice issued by us or if no further invoice is to be raised paid to you by BACS;
 - (c) our liability to pay service credits shall not in any event exceed the Price paid by you to us for the provision of the DR Service for the Preceding Year.

K 10 OUR LIABILITY

- K 10.1 Condition N 1 applies to the DR Software.
- K 10.2 We do not warrant that the DR Software will meet your requirements or that the operation of the DR Software will be uninterrupted or error-free or that defects in the DR Software will be corrected.

- K 10.3 Except as expressly and specifically provided in this Agreement:
- (a) you assume sole responsibility for results obtained from your use of the DR Service and for conclusions drawn from such use; and
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are to the fullest extent permitted by applicable law excluded from this Agreement.
- K 10.4 You load and use the DR Software at your own risk and you warrant to us that at no time will you use the DR Software on a Computer on which there is a computer virus of any type regardless of whether the virus is capable of causing any damage.
- K 10.5 The entire risk arising out of use or performance of the DR Software and any support services remains with you.
- K 11 **ENDING THIS SERVICE**
- K 11.1 Either we or you can end the DR Service by giving the other one month's written notice. You will have to pay an early termination fee in accordance with condition K 11.5 if your DR Service ends within the Minimum Period. Until this early termination fee is received by us you will continue to be liable for the ongoing Disaster Recovery Charge.
- K 11.2 We can change the DR Service in accordance with condition N 10 (including during the Minimum Period) and if such change affects the nature, quality, scope of or the charges for the Services then you will be entitled to give us written notice to end the DR Service in accordance with condition N 10.2.
- K 11.3 We may at our option suspend provision of the whole or part of the DR Service or end the DR Service immediately without liability to you in the circumstances set out in condition N 8.3 (including during the Minimum Period).
- K 11.4 When your right to use the DR Service comes to an end (by whatever means):
- (a) you agree to delete and destroy the DR Software and any copies of it stored on any Computer under your control;
 - (b) we shall have the right without the need to give you any notice to delete your stored Data without liability to you or anyone else for loss or damage; and
 - (c) condition A 5.3 shall apply if you contract for any other Services.
- K 11.5 Subject to condition N 10.2, if you end the DR Service during the Minimum Period or your right to use the DR Service ends within the Minimum Period you must immediately pay to us an early termination fee by way of compensation to us for ending the DR Service early. We sub-contract with the Supplier for the supply to you of the DR Service. The early termination fee will be equal to: (i) the charges you would have paid for the DR Service for the remainder of the Minimum Period together with (ii) any charges we incur from the Supplier as a result of the early termination less (iii) any savings we receive from the Supplier in respect of the Minimum Period as a result of the early termination.

L THIRD-PARTY SOFTWARE AS A SERVICE

Covering: Firewall as a service, Mimecast, Mode1 Technology Cloud to Cloud Backup, ZeeDrive, Mode1 Technology Anti-Virus, Mode1 Technology Cryptoware and Ransomware Protection, Exclaimer Cloud Software, Virtual Desktop Infrastructure, Microsoft Office 365 products.

L 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Minimum Period: the period specified in condition L 2.1. Where no Minimum Period is specified there is no Minimum Period for that Software Service.

Owner: the Supplier of the Third-Party Software.

Permitted use: the use of the Third-Party Software in accordance with this Agreement and all documentation explaining the operation of the Third-Party Software issued by the relevant Supplier.

Software Service Charge: the relevant charge as set out in the Price Guide.

Software Service: the service provided to you by us as set out in condition L 3.1 below.

Third-Party Software: software specified in your Order.

Your System: the Supported Equipment unless otherwise specified in your Order.

L 2 WHERE THIS SECTION APPLIES

L 2.1 This section L applies to all Software supplied by us to you which does not fall within any other section of these Conditions, including:

- (a) Firewall as a service (12 month Minimum Period);
- (b) Mimecast (12 month Minimum Period);
- (c) Mode1 Technology Cloud to Cloud Backup;
- (d) ZeeDrive;
- (e) Mode1 Technology Anti-Virus;
- (f) Mode1 Technology Cryptoware and Ransomware Protection;
- (g) Exclaimer Cloud Software;
- (h) Virtual Desktop Infrastructure; and

- (i) Microsoft Office 365 products.

L 3 OUR OBLIGATIONS

L 3.1 We will:

- (a) in respect of the Third-Party Software specified in your Order either install it onto your Computer(s) or enable access to it from your Computer(s) as appropriate;
- (b) check that the Hardware specified to form part of Your System and the operating system are compatible with the Third-Party Software;
- (c) permit you to use the Third-Party Software during the term of the Software Service.

L 4 YOUR OBLIGATIONS

L 4.1 You must:

- (a) provide us with:
 - (i) all necessary co-operation; and
 - (ii) all necessary access to such information as may be required by us; to enable us to provide the Software Service;
- (b) comply with all applicable laws and regulations with respect to your use of the Third-Party Software;
- (c) carry out all your responsibilities regarding the Software Service in a timely and efficient manner;
- (d) use and operate the Third-Party Software:
 - (i) only in a proper manner and in the ordinary course of your business; and
 - (ii) at all times in a proper professional and responsible manner and by properly trained and skilled personnel.
- (e) comply with our guidelines, policies and procedures relating to the use of the Third-Party Software.
- (f) ensure that all your relevant employees and contractors comply with this condition L 4.1;
- (g) enter into any licence which the Owner usually requires users of the Third-Party Software to enter;
- (h) read the all documentation explaining the operation of the Third-Party Software issued by the relevant Supplier and ensure that it meets your requirements;
- (i) allow us on reasonable notice and at any time during Normal Business Hours to conduct an audit of the use by you of the Third-Party Software to ensure that you are complying with these Conditions;
- (j) comply with all applicable laws, rules, regulations, mandatory guidelines and codes which impose legal or regulatory requirements on a user of the Third-Party Software.

L 5 USE OF THE THIRD-PARTY SOFTWARE

L 5.1 If the Third-Party Software requires a connection to the internet you agree that we are not responsible for any connection issues.

L 5.2 The Third-Party Software may need to gather and share information with the Owner to which you agree.

L 6 SOFTWARE LICENCE

L 6.1 As between us and you all Intellectual Property Rights and all other rights in the Third-Party Software shall be owned by us. All intellectual property in the Third-Party Software and any updates and supplements to it is used by us under license from the Owner. You may not use or access the Third-Party Software copy or modify it in any way without the express written permission of the Owner. We are authorised by the Owner to offer you a non-exclusive licence to such extent as is necessary to enable you to make use of the Third-Party Software for the Permitted Use on the terms of these Conditions.

L 6.2 You are permitted to:

- (a) use the Third-Party Software on only one Computer which is under your control or the number of Computers under your control specified in the Order;
- (b) make a backup copy of the Third-Party Software for individual backup purposes only in support of the Permitted Use. The copies must reproduce and include the Owner's copyright notice.

L 6.3 You are not permitted (except with our prior express written approval) to:

- (a) use the Third-Party Software on any Computer or Server or system which permits electronic access to it by more than one user (whether such access forms part of a LAN, WAN or otherwise).
- (b) rent, lease, sub-licence, loan, copy (except as expressly provided in these Conditions), modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the Third-Party Software;
- (c) except as expressly provided in these Conditions, use, reproduce or deal in the Third-Party Software in any way.
- (d) transfer the whole or any part of the Third-Party Software to any individual or entity whether on a permanent or temporary basis. If you transfer possession of any copy of the Third-Party Software to another person your licence to use the Third-Party Software is automatically terminated without prejudice to any other rights and remedies we or the Owner may have in respect of such unauthorised use;
- (e) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sub-licence, grant a security interest in or otherwise transfer any right in the Third-Party Software;
- (f) try to defeat any mechanisms in the Third-Party Software designed to prevent users copying, modifying, creating a derivative work of, reverse engineering or reverse assembling the Third-Party Software;
- (g) delete or obscure any copyright or trademark notices appearing in the Third-Party Software;
- (h) modify the Third-Party Software in any manner or form or use modified versions of the Third-Party Software.

L 6.4 Any and all rights not expressly granted in accordance with the terms of these Conditions are hereby reserved by the Owner.

- L 6.5 If the Third-Party Software is supplied to you on a trial basis, at the end of the evaluation period, which runs from the day that you install the Third-Party Software, the Third-Party Software will cease to function and this licence will be suspended. In order to continue using the Third-Party Software you will need to purchase a subscription and register your account.
- L 7 ACCEPTABLE USE**
- L 7.1 You may use the Third-Party Software only for lawful purposes. You may not use and shall take all reasonable steps to ensure that no other person uses the Third-Party Software:
- (a) in a way that does not comply with the terms of any laws applicable to you or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
 - (b) to store, send, knowingly receive, upload, download, use or re-use any Inappropriate Content.
- L 7.2 You hereby agree to fully and effectively indemnify us from and against any and all costs losses and damages (including our legal costs on an indemnity basis) incurred by or in respect of any breach by you of the terms of the Agreement including this condition L 7.
- L 8 EXPORT LAWS AND COMPLIANCE**
- L 8.1 You must not export the Third-Party Software in breach of any export laws statutes or regulations of any country which prohibits or restricts the use, export or transfer of the Third-Party Software.
- L 8.2 You hereby warrant that you are not:
- (a) located in any country that is subject to an embargo under United States export laws, statutes or regulations (including Cuba, Iran, North Korea, Sudan and Syria) or any other applicable laws (collectively **Embargoed Countries**);
 - (b) an instrumentality agent entity or individual of an Embargoed Country;
 - (c) an entity or individual on a US government prohibited party list including the List of Specially Designated Nationals & Blocked Persons and the Foreign Sanctions Evaders List, which are maintained by the Bureau of Industry and Security of the US Commerce Department.
- L 8.3 You hereby warrant that you will not use the Third-Party Software for the development, design, manufacture or production of missiles or nuclear chemical or biological weapons.
- L 9 OUR LIABILITY**
- Condition N 1 applies to the Third-Party Software.
- L 10 ENDING THIS SERVICE**
- L 10.1 Either we or you can end the Software Service by giving the other one month's written notice. You will have to pay an early termination fee in accordance with condition L 10.5 if your Software Service ends within the Minimum Period (if any). Until this early termination fee is received by us you will continue to be liable for the ongoing Software Service Charge.
- L 10.2 We may change the Software Service in accordance with condition N 10 (including during any Minimum Period) and if such change affects the nature, quality, scope of, or the charges for the Software Service you will be entitled to give us written notice to end the Software Service in accordance with condition N 10.2.
- L 10.3 We may at our option suspend provision of the whole or part of the Software Service or end the Software Service immediately without liability to you in the circumstances set out in condition N 8.3 (including during the Minimum Period).
- L 10.4 Upon the Software Service coming to an end (by whatever means):
- (a) you must stop using the Third-Party Software immediately;
 - (b) you must delete and destroy all copies of the Third-Party Software under your control and any copies stored on any Computer under your control;
 - (c) we shall have the right without the need to give you any notice to delete any Data stored by the Third-Party Software without liability to you or anyone else for loss or damage.
- L 10.5 Subject to condition N 10.2, if you end the Software Service during the Minimum Period or your right to use the Software Service ends within the Minimum Period you must immediately pay to us an early termination fee by way of compensation to us for ending the Software Service early. We sub-contract with the Supplier for the supply to you of the Software Service. The early termination fee will be equal to: (i) the charges you would have paid for the Software Service for the remainder of the Minimum Period together with (ii) any charges we incur from the Supplier as a result of the early termination less (iii) any savings we receive from the Supplier in respect of the Minimum Period as a result of the early termination.

M MICROSOFT AZURE

M 1 DEFINITIONS

In this section of these Conditions the following words have particular meanings:

Microsoft: Microsoft Corporation of One Microsoft Way, Redmond WA USA 98052 and its Group.

Microsoft Azure Service: us providing you with access to the Microsoft Azure cloud computing platform as set out in your Order.

Group: in relation to a company and each member of its group, any subsidiary or holding company from time to time of that company. Each company in a group is a member of the group. Holding company and subsidiary have the meanings given in section 1159 of the Companies Act 2006.

M 2 OUR OBLIGATIONS

We will:

- (a) enable access to Microsoft Azure from your Computer(s) as appropriate in accordance with your Order;
- (b) permit you to use Microsoft Azure during the term of the Microsoft Azure Service.

M 3 YOUR OBLIGATIONS

You must:

- (a) provide us with:
 - (i) all necessary co-operation; and
 - (ii) all necessary access to such information as may be required by us; to enable us to provide the Microsoft Azure Service;
- (b) comply with the Microsoft Online Services Terms available at <http://www.microsoftvolumelicensing.com/>;
- (c) enter into any licence which Microsoft requires users of Microsoft Azure to enter and comply with the terms of your Microsoft licence;
- (d) carry out all your responsibilities regarding the Microsoft Azure Service in a timely and efficient manner;
- (e) use and operate Microsoft Azure:
 - (i) only in a proper manner and in the ordinary course of your business; and
 - (ii) at all times in a proper professional and responsible manner and by properly trained and skilled personnel;
- (f) comply with our guidelines, policies and procedures relating to the use of Microsoft Azure;
- (g) ensure that all your relevant employees and contractors comply with this condition M;
- (h) read all documentation explaining the operation of Microsoft Azure issued by the relevant Supplier and ensure that it meets your requirements;
- (i) allow us on reasonable notice and at any time during Normal Business Hours to conduct an audit of the use by you of Microsoft Azure to ensure that you are complying with these Conditions;
- (j) comply with all applicable laws, rules, regulations, mandatory guidelines and codes which impose legal or regulatory requirements on a user of Microsoft Azure.

M 4 PRICE AND PAYMENT

- M 4.1 You agree to pay to us the amount of Microsoft's invoice without any deduction or set-off. Microsoft calculates the amount of an invoice based on your usage of the different services available under the Microsoft Azure brand. Microsoft's pricing information is available at <https://azure.microsoft.com/en-gb/pricing/>.
- M 4.2 If you have any query or dispute regarding your Microsoft invoice, you must still pay us in full without deduction or set-off pending the resolution of your query or dispute with Microsoft.

M 5 OUR LIABILITY

Condition N 1 applies to the Microsoft Azure Service.

M 6 ENDING THIS SERVICE

- M 6.1 Either we or you can end the Microsoft Azure Service by giving the other at least one month's written notice.
- M 6.2 We may change the Microsoft Azure Service in accordance with condition N 10 and if such change affects the nature, quality, scope of or the charges for the Microsoft Azure Service you will be able to give us written notice to end the Microsoft Azure Service in accordance with condition N 10.2.
- M 6.3 We may at our option suspend provision of the whole or part of the Microsoft Azure Service or end the Microsoft Azure Service immediately without liability to you in the circumstances set out in condition N 8.3.
- M 6.4 When the Microsoft Azure Service comes to an end (by whatever means):
- (a) you must stop using Microsoft Azure immediately (unless you obtain access through another provider); and
 - (b) we shall have the right without the need to give you any notice to delete any Data stored by Microsoft Azure without liability to you or anyone else for loss or damage.

N GENERAL CONDITIONS

N 1 SUPPLY OF HARDWARE AND SOFTWARE

- N 1.1 This condition applies to all Hardware and Software supplied by us to you.
- N 1.2 Your licence to use the Software is granted subject to the following conditions:
- (a) your licence to use the Software is non-exclusive and non-transferable.
 - (b) the Software is provided on the terms of the relevant Third Party Licence. Prior to using the Software you must accept the relevant Third Party Licence. If you do not accept the terms of the Third Party Licence you must not install the Software and you must return to us all storage media documentation and packaging. Once you have accepted it you must comply with the Third Party Licence;

- (c) as between us and you all Intellectual Property Rights and all other rights in the Software shall be owned by us;
 - (d) you shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement or which is required for normal operation of the Software), reproduce, translate, adapt, vary or modify the Software nor communicate it to any third party without our prior written consent;
 - (e) you shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software or on the medium on which it resides or any associated documentation;
 - (f) this licence shall be terminable by us immediately upon written notice to you if the continued use or possession of the Software by you infringes the Third Party Licence or the Supplier's or a third party's rights or we are compelled to do so by law or if you have failed to comply with any of these Conditions (including any condition regarding payment);
 - (g) on or before the expiry of this licence you must stop using and accessing the Software and destroy all copies of the Software and all of its component parts and return all associated documentation to us;
 - (h) you must not use the Software on a Computer on which there is a computer virus of any type regardless of whether the virus is capable of causing any damage;
 - (i) we are under no obligation to provide you with any updates or upgrades provided by the Supplier;
 - (j) you agree that we will not be liable for any non-conformance which is caused by use of the Software contrary to our or the Supplier's instructions (including those instructions contained within the documentation explaining the operation of the Software issued by the relevant Supplier) or for any modification or alteration of the Software by any party other than us or the Supplier;
 - (k) you warrant to us that at no time will you use the Software on a Computer on which there is a computer virus of any type regardless of whether the virus is capable of causing any damage;
 - (l) we are not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities including the internet and you acknowledge that the Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
 - (m) the licence granted to you by us does not prevent us from entering into similar licences with third parties or from independently developing using selling or licensing software documentation products or services which are similar to those provided under your licence;
 - (n) you alone are responsible in relation to your use of the Software for:
 - (i) the adequacy accuracy and security of all Data you supply process generate or use;
 - (ii) all software and other proprietary materials that do not form part of the Software (including ensuring that they are appropriately licensed);
 - (iii) the supply, operation, control and support of all other resources not included within the Software;
 - (iv) risk of loss of or damage to any Data software or other resources;
 - (v) all necessary security arrangements appropriate to your use of the Software including without limitation passwords, pass codes, audit controls, the creation of backup files and operating methods and procedures;
 - (vi) all results you obtain from the Software and all conclusions you draw from such results.
- N 1.3 Where there is a Third Party Licence in respect of any Software you understand and acknowledge that the Software is provided under the terms of the Third Party Licence and as such we have no responsibility or liability whether arising in contract, tort (including negligence) or otherwise howsoever arising from your use of the Software. You agree and acknowledge that your rights in respect of any problems or any breach of warranty in respect of the Software are against the Supplier pursuant to the Third Party Licence.
- N 1.4 We specifically exclude any implied or express representation or warranty that:
- (a) any Hardware or Software we supply will:
 - (i) operate in conjunction with any other hardware items or software products (other than those items which we confirm in writing are compatible);
 - (ii) meet your business requirements; or
 - (b) any Software we supply will:
 - (i) operate uninterrupted or error-free;
 - (ii) have any Defects in the Software corrected.
- N 1.5 In respect of all Hardware (and Software where condition N 1.3 does not apply) we shall provide to you upon request a copy of the warranties provided to us by the Supplier (**Warranties**) and shall use our reasonable endeavours to transfer to you the benefit of the Warranties:
- (a) where we are able to transfer the Warranties to you we shall have no further liability to you in respect of that Hardware or Software (other than as to title);
 - (b) where we are unable to transfer the Warranties to you we warrant to you on the same terms as the Warranties provided to us that our total liability in respect of any breach of such Warranties whether arising in contract, tort (including negligence) or otherwise howsoever arising shall be limited to the amount which we are able to recover from the relevant Supplier in respect of such breach and we shall have no other liability in respect of that Hardware or Software.
- You acknowledge that the limitation on our liability set out in this condition N 1.5 is reasonable.
- N 1.6 If a possible Defect arises in your Hardware or Software in breach of the warranty set out in conditions N 1.5(b):
- (a) You must:
 - (i) contact us and inform us of the possible Defect as soon as reasonably possible following your discovery of it;
 - (ii) give us a reasonable opportunity to inspect the relevant Hardware or Software;
 - (iii) not carry out any remedial work yourself except where instructed to do so by our staff during a call; and
 - (iv) not do anything which may void the Warranties.
 - (b) Provided that:

- (i) you have complied with condition N 1.6(a); and
- (ii) we conclude that the Defect was directly caused by a breach of the warranty set out at condition N 1.5(b) above, then you will allow us at our option to remedy the Defect which we will do free of charge or to pay you the amount we are able to recover from the relevant Supplier.

N 1.7 Except as provided in condition N 1.6(b) we shall have no liability to you in respect of any breach of the warranty set out at condition N 1.5(b) above.

N 1.8 If you have not complied with condition N 1.6(a) we will not be liable to you for any breach by us of the warranty set out at condition N 1.5(b) above. In addition we reserve the right to charge you for any work which we have carried out to investigate or remedy the Defect in accordance with the Price Guide.

N 2 RETENTION OF OWNERSHIP OF HARDWARE AND SOFTWARE

N 2.1 The Hardware will be your responsibility from the time of delivery.

N 2.2 Ownership of the Hardware will only pass to you when we receive payment in full of all sums due to us in respect of:

- (a) the Hardware; and
- (b) all other sums which are or which become due to us from you.

N 2.3 If any of the circumstances set out in conditions N 8.3(b) to N 8.3(d) or N 8.3(j) arise or if you encumber or in any way charge the Hardware (unless agreed by us in writing):

- (a) your right to possession of the Hardware before ownership has passed to you shall end immediately; and
- (b) your licence to use the Software shall end immediately.

N 2.4 You grant to us and our agents an irrevocable licence at any time to enter any premises:

- (a) where the Hardware is or may be stored in order to inspect the Hardware or to remove it;
- (b) where any Hardware is situated which may have or have had the Software installed upon it in order to inspect the Software or to confirm that the Software has been deleted from your Hardware,

and all costs incurred by us in repossessing the Hardware shall be borne by and recoverable from you.

N 2.5 On the Agreement ending for any reason our rights in this condition N 2 shall remain in effect.

N 3 CONFIDENTIALITY AND OUR PROPERTY

N 3.1 You will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us, our employees, agents, consultants or subcontractors and any other confidential information concerning our business, products or services which you may obtain.

N 3.2 You will disclose such information:

- (a) to your employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out your obligations under the Agreement; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

N 3.3 You will ensure that your employees, officers, representatives, advisers, agents or subcontractors to whom you disclose such information comply with this condition N 3.

N 3.4 You will not use any such information for any purpose other than to perform your obligations under the Agreement.

N 3.5 All materials, equipment and tools drawings, specifications and data supplied by us to you shall at all times be and remain our exclusive property but shall be held by you in safe custody at your own risk and supported and kept in good condition by you until returned to us and shall not be disposed of or used other than in accordance with the our written instructions or authorisation.

N 4 OUR LIABILITY

YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

N 4.1 **IMPORTANT NOTICE: THIS CONDITION N 4 SETS OUT THE CIRCUMSTANCES IN WHICH WE WILL BE LIABLE TO YOU AS A CONSEQUENCE OF ANY BREACH OF THE AGREEMENT, NEGLIGENCE, TORT OR OTHER ACT, DEFAULT, OMISSION OR STATEMENT OF US, OUR EMPLOYEES, AGENTS OR SUBCONTRACTORS AND IN RESPECT OF WHICH WE ARE HELD LIABLE TO YOU (Claim).**

N 4.2 You acknowledge that it is reasonable for us to limit our liability for any Claim under these Conditions as in the interests of keeping the Price at a reasonable level we cannot cover every risk normally associated with services in the nature of the Services given that software and hardware in general is not error free.

N 4.3 You acknowledge that:

- (a) it is your responsibility to ensure that the facilities and functions of the Services meet your requirements. We will not be liable for any failure of the Services to provide any facility or function not specified by us in writing;
- (b) email communication and software in general is not error free and you agree that the existence of such errors will not constitute a breach of these Conditions;
- (c) the Services may use technology that is not fault tolerant and the Services are not designed, manufactured or intended for use in environments or applications in which their failure could lead to death, personal injury or severe physical property or environmental damage;
- (d) unless we are providing a DR Service to you at the time, it is your responsibility to back up your data so that it can be recovered in the event of any Data loss. We shall not be liable in any way for any loss of Data;

- (e) it is your responsibility to ensure that your username and password for any Service is kept secure. We will not be liable in any way for any loss or damage arising out of your loss of or the misuse of your password;
 - (f) you must ensure that you have access to your email account which you use to register for any of our Services. Should you change your email account you agree to immediately update the email account used to contact you in respect of each Service. We will not be liable in any way for either: (i) any loss or damage arising out your inability to access your email account; or (ii) your failure to notify the provider of any Service of your change of email account.
- N 4.4 We warrant to you that the Services will be provided using reasonable care and skill. Except as set out in these Conditions all other warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Agreement.
- N 4.5 Subject to condition N 4.6 and condition N 4.8, in any Claim our total liability to you will be limited to **£500,000** (five hundred thousand pounds). If you believe that this limit may be too low for your business then you should arrange your own insurance cover. We may agree to accept a greater level of liability only if we expressly do so in writing and if such increased liability is covered by an additional insurance policy taken out by us at your expense.
- N 4.6 Subject to condition N 4.8 in respect of any Claim we will not be liable to you for losses that fall into the following categories:
- (a) loss of income or revenue; or
 - (b) loss of business; or
 - (c) loss of profits; or
 - (d) depletion of goodwill or similar losses; or
 - (e) loss of anticipated savings; or
 - (f) loss of contract; or
 - (g) loss of use; or
 - (h) loss or corruption of Data or information; or
 - (i) waste of management or office time; or
 - (j) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, even if we have been advised of the possibility of such losses.
- N 4.7 Condition N 4.6 will not prevent Claims for loss of or damage to your physical property that are foreseeable or any other Claims for direct loss that are not excluded by categories N 4.6(a) to N 4.6(j).
- N 4.8 Nothing in the Agreement excludes or limits our liability for:
- (a) death or personal injury caused by our negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any other matter for which it would be illegal for us to exclude or attempt to exclude our liability.
- N 4.9 In addition your attention is drawn to the following conditions:
- (a) condition B 7 (limitation regarding Mode1 Technology I.T. Support);
 - (b) condition C 6 (limitation regarding Hardware and Software sales);
 - (c) condition D 3 (limitation regarding installation work);
 - (d) condition E 8 (limitation regarding Mode1 Technology Broadband);
 - (e) condition F 13 (limitation regarding Telecommunications);
 - (f) condition G 7 (limitation regarding Mode1 Technology Backup);
 - (g) condition H 11 (limitation regarding Hosted Exchange);
 - (h) condition I 6 (limitation regarding Encryption);
 - (i) condition J 4 (limitation regarding Website Hosting);
 - (j) condition K 10 (limitation regarding Disaster Recovery);
 - (k) condition L 9 (limitation regarding Third-Party Software);
 - (l) condition M 5 (limitation regarding Microsoft Azure Service); and
 - (m) condition N 1 (limitation regarding Hardware and Software).
- N 4.10 If any exclusion or limitation of liability or any other provision contained in this condition N 4 or the conditions listed in condition N 4.9 or otherwise contained in these Conditions is held invalid under any applicable statute or rule of law it shall to that extent, be deemed omitted, but if we thereby become liable for any Defect, loss, damage or nuisance which would have otherwise been excluded such liability shall be subject to the other exclusions limitations or provisions set out in these Conditions.
- N 5 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006**
- N 5.1 You warrant and represent that you have undertaken reasonable enquiries with any current or former provider of the Services as to whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to the circumstances in which this Agreement is made or will be implemented.
- N 5.2 You warrant and represent that having carried out such enquiries there are no circumstances in which TUPE may apply to this Agreement or its implementation. If there are any such circumstances then you must inform us in writing prior to entering into this Agreement.

N 6 WARRANTY AND INDEMNITY

- N 6.1 You warrant and represent that your and your employees', agents' and sub-contractors' use of the Services will be for lawful purposes and within the scope of these Conditions.
- N 6.2 You warrant and represent that your and your employees', agents' and sub-contractors' use of the Services will not violate any applicable law regulation or treaty and that such use will not infringe the Intellectual Property Rights of any person.
- N 6.3 You will indemnify and hold us harmless against and will pay to us on demand all Claims, liabilities, losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere), damages, costs and expenses incurred or suffered by us (including but not limited to Claims in respect of defamation breach of copyright or other Intellectual Property Right infringement) arising out of or in connection with:
- (a) any Claim or demand including for reasonable legal charges made to us by any third party due to or arising out of anything you submit, store, post to or transmit through the Services, your use of the Services or your connection to the Services; or
 - (b) any breach of conditions N 5.1, N 5.2, N 6.1 or N 6.2; or
 - (c) any breach, failure to perform or delay in the performance of any of your obligations under these Conditions; or
 - (d) any fraud or negligence by you, your employees, agents or subcontractors.

N 7 DATA PROTECTION

- N 7.1 For the purposes of this condition the following words have particular meanings:

Applicable Laws: (for so long as and to the extent that they apply in the UK) the laws of the European Union, the laws of any member state of the European Union and Domestic UK law.

Data: such data relating to your customers or clients appointed representatives and employees as you pass to us to provide services you require us to perform from time to time.

Data Controller, Data Processor and Data Subject: shall have the meanings specified in the Data Protection Legislation.

Domestic UK Law: UK Data Protection Legislation and any other law that applies in the UK.

Personal Data and Processing: shall have the meanings specified in the Data Protection Legislation.

- N 7.2 Both you and we agree to comply with all applicable requirements of the Data Protection Legislation. This condition N 7 is in addition to and does not relieve, remove or replace, our or your obligations under the Data Protection Legislation.
- N 7.3 Both you and we acknowledge that for the purposes of the Data Protection Legislation you are the Data Controller and we are the Data Processor. Mode1 Technology's Data Processing Policy at Appendix 2 sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of Personal Data and categories of Data Subject.
- N 7.4 Without prejudice to the generality of condition N 7.2, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this Agreement.
- N 7.5 Without prejudice to the generality of condition N 7.2, we will, in relation to any Personal Data processed in connection with the performance by us of our obligations under this Agreement:
- (a) process that Personal Data only on your written instructions unless we are required by Applicable Laws to otherwise process that Personal Data. Where we are relying on the Applicable Laws as the basis for processing Personal Data, we will promptly notify you before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
 - (b) ensure that we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted);
 - (c) ensure that all employees who have access to or process Personal Data are obliged to keep the Personal Data confidential;
 - (d) not transfer any Personal Data outside of the European Economic Area unless your prior written consent has been obtained and the following conditions are fulfilled:
 - (i) you or we have provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) we comply with reasonable instructions notified to us in writing in advance by you with respect to the processing of the Personal Data;
 - (e) assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify you without undue delay on becoming aware of a Personal Data breach;
 - (g) at your written direction and cost, delete or return Personal Data and copies thereof to you on termination of the Agreement unless required by Data Protection Legislation to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate our compliance with this condition N 7 and allow for audits by you pursuant to condition N 7.8.

- N 7.6 You consent to us appointing third-party processors of Personal Data under this Agreement where necessary to enable us to provide the Services to you. The details of such third-party processors from time-to-time are available upon request. We confirm that we have entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this condition N 7. We remain fully liable to you should the third-party processor fail to fulfil its obligations under the Data Protection Legislation.
- N 7.7 Notwithstanding condition N 10, we may, at any time, on not less than 30 (thirty) days' notice, revise this condition N 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- N 7.8 We will allow you or your designated auditor to undertake an audit to confirm that we are complying with our obligations under this Agreement in relation to the use of the Data on condition that you:
- (a) give us at least 10 (ten) Business Days' notice of any such audit and conduct such audit during Normal Working Hours;
 - (b) observe our security and confidentiality procedures in relation to the protection of confidential information concerning any clients or customers;
 - (c) comply with our reasonable regulations governing security and health and safety;
 - (d) take all reasonable steps to minimise disruption to our business during such audit;
 - (e) where you are part of a group (whether, without limitation, a group of companies, franchise, partnership, agent or buying group) and we also provide services to other members of that group we may request that the audit is carried out by an agent on behalf of all members of that group; and
 - (f) pay our reasonable costs of cooperating with such audit.

N 8 ENDING THE AGREEMENT

- N 8.1 The Agreement will continue until you or we cancel or end it.
- N 8.2 The Agreement will continue until you or we end all the Services you receive. Each of the Services you receive must be ended in accordance with these Conditions.
- N 8.3 We may at our option suspend provision of the whole or part of one or more of the Services or end the Service immediately without liability to you:
- (a) by giving you 30 (thirty) days' notice in writing;
 - (b) if you commit any breach of any of these Conditions (or in the case of any breach capable of remedy you do not remedy such breach within 72 (seventy two) hours of a request to do so);
 - (c) (if you are a company) if you convene any meeting of creditors or pass a resolution for winding up or suffer a petition for winding up or have an administrative receiver or receiver appointed over the whole or part of your assets or suffer the appointment of an administrator or go into liquidation or in our reasonable opinion are unlikely to be able to pay your debts as they fall due;
 - (d) (if you are an individual) if you have a bankruptcy order made against you or make an arrangement or composition with your creditors or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
 - (e) in any circumstances where we are entitled to suspend or end the relevant Service noted anywhere in these Conditions;
 - (f) if in our reasonable opinion it is necessary to do so for security, technical or operational reasons;
 - (g) if it becomes contrary to any law statute regulation or decision of any governmental or regulatory body for us to provide the relevant Service;
 - (h) if any third party supplier upon whom we rely to provide the Service changes the terms on which it provides such supply or ceases its provision of such supply;
 - (i) in the event of any actual or suspected security breach; or
 - (j) on giving notice to you if you fail to pay any amount due under the Agreement on the due date for payment.
- N 8.4 When the Agreement ends for any reason:
- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and in respect of any Services supplied but for which no invoice has been submitted we may submit an invoice which shall be payable immediately on receipt;
 - (b) you shall immediately return to us all Hardware in respect of which ownership has not passed to you;
 - (c) in respect of any Software for which you have not paid in full or which was provided as part of a Service your licence to use the Software shall end and you must immediately comply with condition N 1.2(g);
 - (d) it will not affect any legal rights or obligations which may already have arisen;
 - (e) if not already ended all of the Services you receive will end;
 - (f) if you are using any Services, applications or features which are free of charge these will end on the day the Agreement ends; and
 - (g) conditions which are intended to have effect after the end of the Agreement shall continue in full force and effect including the following conditions: condition A 1; condition A 7; condition A 8; conditions N 1 to N 7; and conditions N 11 to N 18.

N 9 EVENTS BEYOND OUR CONTROL

- N 9.1 We will not be responsible for any delay or failure to comply with our obligations under the Agreement if the delay or failure arises from any cause which is beyond our reasonable control (**Event Beyond Our Control**)
- N 9.2 An Event Beyond Our Control is any act, event, non-occurrence, omission or accident beyond our reasonable control including, but not limited to, the following: strikes, lock-outs or other industrial action, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, impossibility of the use of railways, shipping, aircraft, motor, transport or other means of public or private transport, impossibility of the use of public or private telecommunications networks, pandemic, interruption or failure of utility service including to electric power, gas, or water, lack of materials, or malicious or negligent damage or other act (other than, in each case, by the party seeking to rely on it as an Event Beyond Our Control or by a member of the same group as such party).

- N 9.3 Our obligations under these Conditions are suspended for the period that the Event Beyond Our Control continues and we will have an extension of time to perform these obligations for the duration of that period subject to N 9.4 below. We will take reasonable steps to bring the Event Beyond Our Control to a close or to find a solution by which our obligations under these Conditions can be performed despite the Event Beyond Our Control.
- N 9.4 If an Event Beyond Our Control continues for more than 90 (ninety) days after its commencement either party may terminate the Service(s) affected on notice in writing to the other party.
- N 10 VARIATION**
- N 10.1 Except as set out in this condition and subject to condition N 7.7, no variation of the Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of both us and you.
- N 10.2 We review our Services and the way in which we charge for them from time to time. We will be entitled to make any changes to these Conditions and the charges payable for any reason (including changes in technology, changes in payment methods and changes in market conditions) provided that before we do so we give you written notice of any changes at least 30 days in advance. We reserve the right to increase the cost of our services in certain circumstances and these are detailed in clause A7.10, A7.11 and A7.12. Excluding changes made in line with clauses A7.10, A7.11 and A7.12, if you do not agree to the change:
- (a) if the change affects all the Services you receive you can give us written notice to end the Agreement without penalty at any time prior to the change;
 - (b) if the change only affects one or more but not all of the Services you receive you can give us written notice to end those Services affected by the change without penalty. All other Services remain as contracted. Continuing Services can only be terminated in accordance with these Conditions.
- N 10.3 We may from time to time and without notice change the Services in order to comply with any applicable safety or statutory requirements provided that such changes do not affect the nature, quality, scope of or the Charges for the Services.
- N 10.4 We may use messages on or with any receipts or other documents we may send you to tell you about changes to the Agreement.
- N 11 NOT ENFORCING THE AGREEMENT**
- We may not always strictly enforce our rights under the Agreement. For example, we may allow you more time to pay what you owe. If we do this it will be a temporary measure and we may enforce our rights strictly again in the future.
- N 12 SEVERANCE**
- If any of these Conditions is deemed invalid, void or for any reason unenforceable that condition will be deemed severable and will not affect the validity and enforceability of any remaining condition.
- N 13 ENTIRE AGREEMENT**
- N 13.1 You agree that the Agreement supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between us and you whether written or oral relating to the subject matter of the Agreement.
- N 13.2 You acknowledge that in entering into the Agreement and the documents referred to in it you do not rely on and shall have no remedies in respect of any representation, misrepresentation or warranty (whether made innocently or negligently) that is not set out in the Agreement or those documents. You agree that our only liability in respect of those representations and warranties that are set out in the Agreement or those documents (whether made innocently or negligently) shall be for breach of contract.
- N 13.3 Nothing in this condition shall limit or exclude any liability for fraud.
- N 14 TRANSFER OF RIGHTS AND OBLIGATIONS**
- N 14.1 You may not transfer any obligations or rights, benefits or interests under the Agreement unless we say you can in writing.
- N 14.2 We may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of our rights or obligations under the Agreement.
- N 15 NO PARTNERSHIP OR AGENCY**
- N 15.1 Nothing in the Agreement is intended to or shall operate to create a partnership between us and you or to authorise either party to act as agent for the other and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty the assumption of any obligation or liability and the exercise of any right or power).
- N 15.2 This Agreement will not prevent us from entering into any similar agreements with anyone else.
- N 16 OUR EMPLOYEES**
- N 16.1 You shall not without our prior written consent at any time from the date of the Agreement to the expiry of 12 (twelve) months after the end of the Agreement solicit or entice away from us or employ or attempt to employ any person who is or has been engaged as an employee, consultant or subcontractor of us in the provision of the Services.
- N 16.2 Any consent given by us in accordance with condition N 16.1 shall be subject to you paying to us a sum equal to 25% (twenty percent) of the then current annual remuneration of our employee, consultant or subcontractor or if higher 25% (twenty percent) of the annual remuneration to be paid by you to that employee, consultant or subcontractor.
- N 17 RIGHTS OF THIRD PARTIES**
- A person who is not a party to the Agreement shall have no rights under or in connection with it.

N 18 GOVERNING LAW AND JURISDICTION

- N 18.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or Claims) shall be governed by and construed in accordance with the law of England and Wales.
- N 18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

APPENDIX 1 - MICROSOFT LICENCE

This licence governs the use of Microsoft software which may include associated media printed materials and “online” or electronic documentation (individually and collectively “**Products**”) provided by Giacom World Networks Limited (hereinafter referred to as “**Customer**”). Customer does not own the Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Products is subject to the terms of your agreement with Customer and to your understanding of compliance with and consent to the following terms and conditions which Customer does not have authority to vary alter or amend.

1. DEFINITIONS

Client Software: means software that allows a Device to access or utilise the services or functionality provided by the Server Software.

Device: means each of a computer workstation terminal handheld PC pager telephone personal digital assistant “smart phone” server or other electronic device.

Server Software: means software that provides services or functionality on a computer acting as a server.

Software Documentation: means any end user document included with the server software.

Redistribution Software: means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

2. OWNERSHIP OF PRODUCTS

The Products are licensed to Customer from an affiliate of the Microsoft Corporation (collectively “Microsoft”). All title and intellectual property rights in and to the Products (and the constituent elements thereof including but not limited to any images photographs animations video audio music text and “applets” incorporated into the Products) are owned by Microsoft or its suppliers. The Products are protected by copyright laws and international copyright treaties as well as other intellectual property laws and treaties. Your possession access or use of the Products does not transfer any ownership of the Products or any intellectual property rights to you.

3. USE OF CLIENT SOFTWARE

You may use the Client Software installed on your Devices by Customer only in accordance with the instructions and only in connection with the services provided to you by Customer. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

4. USE OF REDISTRIBUTION SOFTWARE

In connection with the services provided to you by Customer you may have access to certain “sample” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). **YOU MAY NOT USE MODIFY COPY AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO CUSTOMER WHICH TERMS MUST BE PROVIDED TO YOU BY CUSTOMER.** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms as provided to you by Customer.

5. COPIES

You may not make any copies of the Products; provided however that you may (a) make one copy of Client Software on your Device as expressly authorized by Customer; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Customer upon notice from Customer or upon transfer of your Device to another person or entity whichever occurs first. You may not copy any printed materials accompanying the Products.

6. LIMITATIONS ON REVERSE ENGINEERING DECOMPILE AND DISASSEMBLY

You may not reverse engineer decompile or disassemble the Products except and only to the extent that applicable law notwithstanding this limitation expressly permits such activity.

7. NO RENTAL

You may not rent lease lend pledge or directly or indirectly transfer or distribute the Products to any third party and may not permit any third party to have access to and/or use the functionality of the Products except for the sole purpose of accessing the functionality of the Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Customer.

8. TERMINATION

Without prejudice to any other rights Customer may terminate your rights to use the Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Customer or Customer’s agreement with Microsoft under which the Products are licensed you must stop using and/or accessing the Products and destroy all copies of the Products and all of their component parts.

9. NO WARRANTIES

NO WARRANTIES LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES LIABILITY FOR DAMAGES AND REMEDIES IF ANY ARE PROVIDED SOLELY BY CUSTOMER AND NOT BY MICROSOFT ITS AFFILIATES OR SUBSIDIARIES.

10. PRODUCT SUPPORT

Any support for the Products is provided to you by Customer and is not provided by Microsoft its affiliates or subsidiaries.

11. NOT FAULT TOLERANT

THE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED MANUFACTURED OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCTS COULD LEAD TO DEATH PERSONAL INJURY OR SEVERE PHYSICAL PROPERTY OR ENVIRONMENTAL DAMAGE.

12. EXPORT RESTRICTIONS

The Products are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations the International Traffic in Arms Regulations as well as end-user end-use and destination restrictions issued by U.S. and other governments. For additional information see <http://www.microsoft.com/exporting/>.

13. LIABILITY FOR BREACH

In addition to any liability you may have to Customer you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

APPENDIX 2 – MODE1 TECHNOLOGY'S DATA PROCESSING POLICY

This appendix sets out the scope, nature and purpose of processing by Mode1 Technology, the duration of the processing and the types of Personal Data and categories of Data Subject.

1. DURATION OF THE PROCESSING

You acknowledge and agree that for the term of the Agreement we may process Personal Data provided to us by you.

2. THE SCOPE, NATURE AND PURPOSE OF PROCESSING BY MODE1 TECHNOLOGY

You acknowledge and agree that we may process Personal Data provided to us by you where reasonably necessary for the purpose of us providing the Services to you.

3. CATEGORIES OF PERSONAL DATA

You may upload Personal Data in the course of using the Services, the nature and extent of which is controlled by you. Without prejudice to the foregoing, from our experience it is likely that you may upload Personal Data in the following categories: name, address, telephone number, date of birth, email address, and other data collected that could identify a natural person.

4. CATEGORIES OF DATA SUBJECT

You may upload Personal Data in the course of using the Services, the nature and extent of which is controlled by you. Without prejudice to the foregoing, from our experience it is likely that you may upload Personal Data relating to the following Data Subjects: your prospects, customers, vendors and employees (where the foregoing are natural persons).

APPENDIX 3 – MODE1'S PRICE GUIDE / RATE CARD

Where appropriate, Mode1 will charge the following rates for its services:

Technical Consultant	Rate
Half day	£395 + VAT
Full Day	£795 + VAT
Additional hours	£105 + VAT
Half day (SATURDAY)	£592.50 + VAT
Full Day (SATURDAY)	£1192.50 + VAT
Additional hours (SATURDAY)	£157.50 + VAT
Half Day (SUNDAY)	£790 + VAT
Full Day (SUNDAY)	£1590 + VAT
Additional hours (SUNDAY)	£210 + VAT
Initial remote period	£100 + VAT
Further remote hours	£66.50 + VAT
Half day remote	£299.50 + VAT
Full Day remote	£499 + VAT
Senior Technical Consultant	

Full Day	£900 + VAT
Half Day	£450 + VAT
Full Day (SATURDAY)	£1350 + VAT
Half Day (SATURDAY)	£675 + VAT
Full Day (SUNDAY)	£1800 + VAT
Half Day (SUNDAY)	£900 +VAT