

# Standard Terms of Business

**IntraLAN Group Plc**

Version 4.21



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# INTRODUCTION

These are the standard **Terms of Business** on which **We** will provide products and / or services to **You**. They are to be read in conjunction with the **Services Handbook** and the **Order Form** specific to the products and / or services ordered. A completed **Order Form** signed by **You** incorporates these standard **Terms of Business** and the **Services Handbook**, and together they form a legally binding **Contract** between **You** and **Us**. These **Terms of Business** shall apply to ALL products and / or services provided by **Us**, whether ordered pursuant to an **Order Form** or not.

## 1 THIS DOCUMENT

- **We** provide a range of products and services. To reflect this, this document is split into Sections.
- The General Section (General Terms and Conditions) sets out the general terms and conditions that apply to ALL products and services provided by **Us**.
- ALL customers should read the General Section (General Terms and Conditions).
- Words and phrases used throughout these **Terms of Business** that are in bold have special meanings. Those meanings are set out in the General Section (General Terms and Conditions).
- Sections A to I contain specific terms and conditions relating to each of **Our** products and services. A Section may refer to the appropriate part of the **Services Handbook**, which contains further details of the services provided by **Us**.
- **YOU SHOULD READ ALL THE SECTIONS OF THESE TERMS OF BUSINESS AND ALL THE PARTS OF THE SERVICES HANDBOOK WHICH APPLY TO THE PRODUCTS AND SERVICES YOU ARE ORDERING FROM US.**
- The Sections in these **Terms of Business** are:

<b>Section</b>	<b>Service</b>	<b>Brief description</b>
<b>Section A</b>	NetCare	Provision of helpdesk support services for computer networks, including verbal and remote support, and ongoing server health-checks.
<b>Section B</b>	DSL	Provision of broadband Internet access services.
<b>Section C</b>	IT Professional Services	Provision of IT professional services, including, for example, field engineering, remote support, training, programming / software development, and consultancy.
<b>Section D</b>	Telephony System	Purchase and installation of new and upgraded telephony system.
<b>Section E</b>	Telephony System Maintenance and Support	Equipment and software maintenance of telephony systems, including helpdesk support.
<b>Section F</b>	Land Lines	Provision of land line (voice and data) for single point of billing and support.
<b>Section G</b>	ISP Services	Provision of Domain, web and server hosting.
<b>Section H</b>	Low Cost Routing (LCR) and Non Geographic Numbers (NGN)	Provision of reduced cost call rerouting and / or NGN services.
<b>Section I</b>	IT Hardware and Software Supply	Provision of third party IT hardware and / or software.
<b>Section J</b>	Business Continuum	Provision of managed IT server and data recovery services

## 2 HOW TO ORDER OUR PRODUCTS AND / OR SERVICES

- Submit a request to **Us** for products and / or services.
- **We** will consider **Your** request and may decide to undertake some scoping work. The scoping work enables **Us** to determine whether or not **We** are capable of providing the products and / or services that **You** have requested. If the scoping work reveals that **We** will need to make some changes, **We** will reflect those changes on the **Order Form**.
- If **We** choose to proceed with **Your** order, **We** will send **You** an **Order Form**. The **Order Form** will detail the products and / or services that **You** have requested.
- **You** should review the **Order Form** and make sure **You** are happy with the content. If **You** wish to make any changes, please let **Us** know and **We** will reissue an amended **Order Form** if appropriate.
- Once **You** are happy with the content, **You** should sign the **Order Form** (including any applicable direct debit or standing order forms) and return it to **Us** within 30 (thirty) days from the date of the **Order Form** (otherwise **We** may wish to reissue the **Order Form**, or confirm that it is still valid). When **We** receive the signed and completed **Order Form** (including the completed applicable direct debit or standing order forms) a legally binding **Contract** will come into existence between **You** and **Us**.

# GENERAL SECTION – GENERAL TERMS AND CONDITIONS

## 1 DEFINITIONS

In the **Contract**, the terms in bold have the following meanings:

- 1.1 “**Charges**” – the charges for the **Service, Equipment, Hardware, and Third Party Software**, as specified on the **Order Form** (excluding any installation charges);
- 1.2 “**Contract**” – a completed **Order Form** which when signed by both **You** and **Us** forms a legally binding contract incorporating these **Terms of Business** and the **Services Handbook**;
- 1.3 “**Equipment**” – the equipment (if any) specified on the **Order Form** and / or in the **Service Description**, that relates to the **Service**;
- 1.4 “**Hardware**” – the computer hardware (if any) specified on the **Order Form**;
- 1.5 “**Helpdesk Support**” – helpdesk support (if any), as further detailed in the **Service Description**;
- 1.6 “**Initial Contract Term**” – the initial contract term specified in the **Order Form**;
- 1.7 “**Installation Service**” – any preparatory work carried out by **Us** to enable **You** to receive services, including, for example, installation of any equipment (including the **Equipment**), migration work, configuration, any third party work;
- 1.8 “**Order Form**” – **Our** order form for products and / or services;
- 1.9 “**Service**” – the service, as specified on the **Order Form**, and further detailed in the **Service Description**;
- 1.10 “**Service Description**” – Clause 1 (Service Description) of the relevant Section of these **Terms of Business**, which, where applicable makes reference to, and incorporates, the relevant Part of the **Services Handbook**;
- 1.11 “**Services Handbook**” – **Our** services handbook containing further details of the services provided by **Us**, as amended by **Us** from time to time;
- 1.12 “**Third Party Software**” – the third party software (if any) specified on the **Order Form**;
- 1.13 “**Supported Software**” – the supported software detailed in the **Services Handbook**;
- 1.14 “**Terms of Business**” – these terms of business including all Sections, as amended by **Us** from time to time;
- 1.15 “**We**”, “**Our**”, or “**Us**” – IntraLAN Group (company reg. no. 03748995), incorporated in England with registered offices at Unit 12 Epsom Business Park, Kiln Lane, Epsom, Surrey, KT17 1JF;
- 1.16 “**Working Day**” – any day falling on or between Monday to Friday, but excluding all English public and bank holidays and excluding noon onwards on Christmas Eve;

1.17 “**You**” or “**Your**” – the customer purchasing **Our** products and / or services, whose details are specified on the **Order Form**;

1.18 “**Your Network**” – all the computer servers specified on the **Order Form** that together form **Your** server domain, including any personal computers and printers locally or remotely connected by a permanent VPN to that server domain; and

1.19 “**Your Telephone System**” – the telephone components specified on the **Order Form**.

## 2 GENERAL

2.1 **We** reserve the right to amend these **Terms of Business** and the **Services Handbook** at anytime. Such revised **Terms of Business** and the revised **Services Handbook** shall be binding on **You** in relation to all existing and future products and / or services, and shall come into effect when **You** agree a subsequent order with **Us**. Such revised **Terms of Business** and the revised **Services Handbook** shall be deemed to constitute a part of the **Contract** between **You** and **Us** in place of the previous **Terms of Business** and the previous **Services Handbook**.

## 3 INTERPRETATION

3.1 In the event of any conflict between the **Order Form** and these **Terms of Business** (and the **Services Handbook**), the **Order Form** shall prevail. In the event of any conflict between these **Terms of Business** and the **Services Handbook**, these **Terms of Business** shall prevail.

3.2 All references in a Section of these **Terms of Business** are to terms in that Section unless otherwise stated.

## 4 OUR OBLIGATIONS

4.1 **We** warrant that **We** will provide the **Service** to **You** by exercising the reasonable degree of skill and care of a competent information technology and telecommunications provider.

4.2 Notwithstanding any provisions set out in the **Contract**, **Our** obligation to provide any products and / or services to **You** (including the **Installation Service** and the **Service**) is limited to an obligation to use **Our** reasonable endeavours to do the same.

4.3 **We** shall use **Our** reasonable endeavours to meet any agreed dates, but time is not of the essence in respect of those dates.

4.4 Where the **Service** is not being charged on a fixed price basis, any estimate or indication by **Us** of the number of man days or hours required to complete a specific task shall be deemed to be an estimate only.

4.5 Unless otherwise specified on the **Order Form**, **We** shall be free to choose how the **Installation Service** and the **Service** is delivered.

## 5 YOUR OBLIGATIONS

### 5.1 You shall:

- 5.1.1 perform all **Your** obligations under the **Contract**;
- 5.1.2 use all reasonable endeavours to carry out **Our** reasonable instructions;
- 5.1.3 provide **Us** with, on an ongoing basis, all up-to-date information, cooperation, support, and access to enable **Us** to perform **Our** obligations under the **Contract**;
- 5.1.4 provide **Us** with all office, information technology, and telecommunications facilities (including full remote access), at **Your** cost, that **We** may require to enable **Us** to perform **Our** obligations under the **Contract**;
- 5.1.5 ensure that the users of the **Equipment** and / or the **Service** are suitably trained to do so;
- 5.1.6 provide a suitable operating environment for the **Equipment**, and only operate both the **Equipment** and other equipment that is used in conjunction with the **Service** in accordance with its manufacturer's operating instructions;
- 5.1.7 comply with all regulatory and legal requirements of competent regulatory bodies within the European Union with respect to use of the **Service**;
- 5.1.8 secure all necessary consents (required by relevant licences or leases) and provide electrical and connection points to enable **Us** to perform all services under the **Contract**; and
- 5.1.9 ensure **You** have cancelled any previous services that **We** are replacing and dealt with any early termination charges that may become due to any previous service provider(s).

### 5.2 You shall not:

- 5.2.1 except for the purposes of routine maintenance, add to, modify, or interfere with in any way, the **Equipment** and / or the **Service** (or permit any third party to do the same); and / or
  - 5.2.2 allow unauthorised users to use the **Service**, and shall take all reasonable security precautions to avoid such unauthorised access; and / or
  - 5.2.3 use the **Service** in any way that would constitute or contribute to the commission of a crime, tort, fraud, or other unlawful activity (including activities deemed unlawful under a complainant's legal jurisdiction).
- 5.3 **You** warrant that any material and / or communication received, transmitted, hosted, or otherwise processed using the **Service** is not (and will not be) menacing, of a junk mail or spam like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, or be otherwise actionable or in violation of any rules, regulations or laws to which the **Service** is subject, and does not (and will not) infringe the intellectual property rights of **Us** or any third party. **You** shall indemnify and keep **Us** fully indemnified against all costs, claims, demands, expenses and

liabilities arising out of or in connection with any breach or reasonably suspected breach of this Clause 5.3.

## 6 CHANGES

- 6.1 **You** shall not be permitted to make a change to this **Contract** unless such change is agreed by **Us** in writing.
- 6.2 Limited changes to the scope of the **Service** (including changes to **Your** sites and site locations where the **Service** is used) may be agreed by **You** and **Us** from time to time in accordance with the provisions of the **Services Handbook**.

## 7 CHARGES, INTEREST, AND DISCOUNTS

- 7.1 All **Charges** are payable in sterling, and are exclusive of Value Added Tax and any other sales tax, which shall be payable by **You** in the manner prescribed by law.
- 7.2 All **Charges** are exclusive of expenses which shall be payable by **You** in accordance with **Our** then current standard expenses policy (available at [www.intralan.co.uk](http://www.intralan.co.uk)).
- 7.3 **We** shall be entitled to raise an invoice for the **Charges** as and when they become payable. Full payment of a raised invoice shall fall due 30 (thirty) days after the date of that invoice, unless otherwise specified in the **Order Form** in which case full payment shall fall due on that date. **You** must check the invoice carefully on receipt. If **You** wish to raise any queries regarding the invoice, **You** must do so as soon as possible, and not later than 30 (thirty) days after the date of receipt (after which **You** are deemed to have accepted the invoice)
- 7.4 **You** shall pay all **Charges** without any deductions, withholdings, counterclaims, and set-offs.
- 7.5 **We** shall be entitled to revise any ongoing **Charges** with effect from the first day of a calendar month by giving **You** not less than 30 (thirty) days' written notice.
- 7.6 If any **Charges** are not paid in full by the due date then without prejudice to **Our** other rights and remedies **We** reserve the right to charge interest on the outstanding sum on a daily basis (before as well as after any judgment) until the date of payment at the rate prescribed from time to time under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.7 Where the **Charges** have been discounted (such discount being specified on the **Order Form**) based on any assumptions (e.g. **You** taking a 'bundle' of services and / or products from **Us** for period of time), such discount only remains valid for as long as those assumptions remain true and applicable. When any of those assumptions no longer remain true or are no longer applicable, **You** shall from then on pay the full **Charges** without the application of any discount.
- 7.8 Where the **Service Handbook** specifies that compensation is payable in a particular event, such compensation constitutes liquidated damages which both parties agree is a genuine pre-estimate of loss,

and therefore shall be **Your** sole and exclusive remedy for any claim arising out of such an event.

- 7.9 **You** may with **Our** prior consent arrange for a third party (for example, a leasing company) to discharge **Your** payment obligations under the **Contract**, in which case **We** may vary the date on which payment in respect of any **Equipment** falls due.

## 8 STAFF AND CONTRACTORS

- 8.1 **We** will ensure that **Our** staff employed in the provision of **Service** possess appropriate skills and experience. **We** reserve the right to replace any staff assigned to the provision of the **Service**.
- 8.2 Where any part of the **Service** is to be provided at **Your** premises, **You** shall ensure that **Our** staff and contractors have a safe place to work, and **You** shall notify **Us** of any health and safety rules which apply to **Your** premises. **We** will use **Our** reasonable endeavours to ensure that **Our** staff and contractors comply with such rules when working on **Your** premises.
- 8.3 **You** shall not, without **Our** prior written consent, initiate recruitment of any of **Our** field engineers during the life of, or for a period of 6 months from expiry or termination of, the **Service**. If **You** breach this Clause 8.3, **You** shall pay **Us** a sum equal to 6 months current gross salary of the field engineer in recognition of the value of that field engineer to **Us**. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by **Us** in these circumstances.

## 9 DATA PROTECTION AND CONFIDENTIALITY

- 9.1 Both parties shall comply with the Data Protection Act 1998, as amended.
- 9.2 Subject to Clause 9.3 below, neither party shall, without the authority of the other, disclose to any third party any confidential information concerning the software, licensees, business, accounts, finance, or contractual arrangements, or other dealings, transactions, affairs, or plans of the other which may come to that party's knowledge in the course of performing its duties under the **Contract**.
- 9.3 **You** agree that **We** may disclose any information **We** hold on **You** to any third party where necessary to provide, or enable the provision of, the **Service**, or to comply with any disclosure required by law, any court, or any regulatory authority.

## 10 SERVICE SUSPENSION

- 10.1 By giving reasonable notice to **You**, or if this is not practicable, such notice as is reasonably practicable in the circumstances, **We** may suspend the **Service** (or any part of the **Service**) and / or any other service (or services) that **We** are providing to **You**:
- 10.1.1 for operational reasons in accordance with the service levels as stated in the **Service Description**; or

10.1.2 if **We** are obliged to comply with the order, instruction, or request of a court, government, agency, emergency service organisation, or other competent administrative or regulatory authority, requiring suspension to the **Service**; or

10.1.3 if **Your** use of the **Service** may damage or disrupt the proper functioning of the infrastructure and / or equipment used to provide services to **Our** other customers; or

10.1.4 if **We** have reasonable grounds to believe that **You** are in breach of **Your** obligations (including **Your** obligation to pay **Charges**), and **You** either fail to remedy that breach or fail to demonstrate to **Our** reasonable satisfaction that no breach took place within five (5) **Working Days** of written notice of the suspected breach.

10.2 Suspension of the **Service** under Clauses 10.1.2 – 10.1.4 above shall be excluded from **Our** service level obligations under the **Contract**, and such suspension of the **Service** shall continue for as long as any of the circumstances in Clauses 10.1.2 – 10.1.4 above continue.

## 11 TERMINATION

- 11.1 **Our** provision of any services and / or products under the **Contract** is subject to **Us** undertaking scoping work. Where **We** determine pursuant to such scoping work that **We** cannot provide any service and / or product, **We** shall be entitled to immediately terminate the **Contract** and refund any payments made by **You** under that **Contract**.
- 11.2 **We** shall have the right, by giving written notice to **You**, to terminate the **Contract** immediately if **You**:
- 11.2.1 commit any material breach of **Your** obligations, and fail to remedy that breach within 28 (twenty-eight) days of written notice of that breach (the 28 (twenty-eight) day period only applies where a breach is capable of remedy; if it is incapable of remedy, the **Contract** may be terminated by written notice straight away); or
- 11.2.2 have a winding up petition presented, or enter into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency), or make an arrangement with **Your** creditors or petitions for an administration order, or have a receiver or manager appointed over any of **Your** assets, or generally become unable to pay **Your** debts within the meaning of section 123 of the Insolvency Act 1986.
- 11.3 On termination of the **Contract** any rights of either party which arose on or before termination shall be unaffected.

## 12 LIMITATION OF LIABILITY

- 12.1 **We** do not exclude or limit **Our** liability for:
- 12.1.1 death or personal injury caused by **Our** negligence; and / or

- 12.1.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979 (seller's implied undertaking as to title, etc.); and / or
- 12.1.3 breach of the obligations arising from section 2 of the Supply of Goods and Service Act 1982 (implied terms about title, etc. in certain contracts for the transfer of property in goods); and / or
- 12.1.4 fraudulent misrepresentation; and / or
- 12.1.5 breach of Clause 9 (Data Protection and Confidentiality).
- 12.2 **Our** liability for damage to **Your** tangible property caused by **Our** negligence shall not exceed £2,000,000 (two million pounds).
- 12.3 **We** shall not be liable to **You** for loss of profit, loss of revenue, loss of anticipated savings, loss of goodwill, and/or loss of data.
- 12.4 Except as expressly stated on the **Order Form**, all warranties, conditions, obligations, or implied terms which are implied into the **Contract** by statute, custom, or law are hereby excluded to the maximum extent permissible in law.

### 13 FORCE MAJEURE

- 13.1 **We** shall not be liable for any delay or failure in performing **Our** obligations under the **Contract** caused by any circumstances beyond **Our** reasonable control, including, without limitation:
  - 13.1.1 act of God, explosion, flood, tempest, fire, or accident;
  - 13.1.2 unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites;
  - 13.1.3 war or threat of war, sabotage, insurrection, civil disturbance, or requisition;
  - 13.1.4 acts, restrictions, regulations, byelaws, prohibitions, or measures of any kind on the part of any governmental agency or local authority;
  - 13.1.5 strikes, lock-outs, or other industrial actions or trade disputes;
  - 13.1.6 difficulties in obtaining materials, labour, fuel, parts, or machinery;
  - 13.1.7 power failure or breakdown in machinery; and
  - 13.1.8 failure or disruption of, or delay to, a service provided by **Our** subcontractor or service provider that adversely impacts on **Our** ability to comply with **Our** obligations.

### 14 SUBCONTRACTING AND ASSIGNMENTS

- 14.1 **We** may subcontract **Our** rights and obligations under the **Contract**.
- 14.2 **You** shall not assign or otherwise transfer the **Contract** or any of **Your** rights and obligations

under the **Contract** whether in whole or in part without **Our** prior written consent.

### 15 ENTIRE AGREEMENT

- 15.1 The **Contract** supersedes any prior contracts, arrangements and undertakings between the parties in relation to the subject matter of the **Contract** and constitutes the entire agreement between the parties relating to that subject matter.
- 15.2 **You** agree that **You** will have no remedy in respect of any untrue statement made to **You** upon which **You** relied in entering into the **Contract**, unless the statement was made fraudulently.

### 16 WAIVER, NOTICES, AND SEVERANCE

- 16.1 No delay, neglect, or forbearance by either party in enforcing its rights under the **Contract** shall be a waiver of or prejudice those rights.
- 16.2 All notices under the **Contract** shall be in writing and shall be sent to the address of the recipient specified on the **Order Form** or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally or by first-class post or by fax and shall be deemed to have been served if by hand when delivered, if by first class post 48 (forty-eight) hours after posting, and if by fax when confirmation of transmission is received.
- 16.3 If any part of the **Contract** is held unlawful or unenforceable that part shall be struck out and the remainder of the **Contract** shall remain in full effect.

### 17 DISPUTES

- 17.1 The parties shall attempt to resolve any dispute arising out of or relating to the **Contract** through negotiations between senior executives of the parties who have authority to settle the same.
- 17.2 If the matter is not resolved through negotiation, the parties will attempt to resolve the dispute in good faith through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Effective Dispute Resolution.
- 17.3 If the matter has not been resolved by an **ADR** procedure within 30 (thirty) days of the initiation of that procedure, or if either party will not participate in an **ADR** procedure, the dispute shall be decided by the English courts and the parties submit to its exclusive jurisdiction for that purpose.
- 17.4 The **Contract** shall be governed by the laws of England and Wales.

## **SECTION A: NETCARE**

### **1 SERVICE DESCRIPTION**

- 1.1 Provision of helpdesk support services for **Your Network**, including verbal and remote support, and ongoing server health-checks. Further detailed in Part A (NetCare) of the **Services Handbook**.

### **2 SERVICE DURATION**

- 2.1 **We** will provide the **Service** to **You**, from the start date specified on the **Order Form**, for the duration of the initial contract term specified on the **Order Form**. After the initial contract term specified on the **Order Form**, **We** will continue to provide the **Service** to **You** until either party terminates the **Service** by giving not less one calendar month's written notice to expire on the last day of a calendar month.

### **3 SERVICE LIMITATIONS AND EXCLUSIONS**

- 3.1 The **Service** is provided only for the **Supported Software** across **Your Network**.
- 3.2 The **Service** excludes support for faults that relate to any modification or unauthorised use of **Your Network** or the **Supported Software**.

### **4 CHARGES**

- 4.1 Unless otherwise agreed, **You** shall pay the **Charges** by standing order monthly in advance starting on the start date specified on the **Order Form**.

### **5 YOUR OBLIGATIONS**

- 5.1 **You** shall:
- 5.1.1 not let any one other than **Us** provide support for the **Supported Software** across **Your Network**;
- 5.1.2 keep full and up-to-date secure offsite backup copies of the data on **Your Network** in accordance with best industry practice; and
- 5.1.3 only permit the technical contacts specified on the **Order Form** to contact **Us** in relation to the **Service**, except in the case of emergencies where it is not reasonably practicable for such technical contacts to contact **Us**.
- 5.2 The technical contacts specified on the **Order Form** shall:
- 5.2.1 coordinate all support requests of **Your** employees, and be primarily responsible for communicating with **Us**; and

- 5.2.2 when contacting **Us**, have sufficient information to enable **Us** to appropriately deal with any support issues.

- 5.3 The network administrator specified on the **Order Form** shall carry out the responsibilities specified in the **Services Handbook** and / or as otherwise notified by **Us** to **You** from time to time.

- 5.4 **You** shall notify **Us** in writing if there is any change to the technical contacts and / or the network administrator specified on the **Order Form**. Such notice shall specify the full contact details of any new technical contacts and / or network administrator.

### **6 LIMITATION OF LIABILITY**

- 6.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 (twelve) months preceding the issue date on the applicable claim form; and (ii) £4,000 (four thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

## **SECTION B: DSL**

### **1 SERVICE DESCRIPTION**

- 1.1 Provision of broadband Internet access services. Further detailed in Part B (DSL) of the **Services Handbook**.

### **2 SERVICE DURATION**

- 2.1 **We** will provide the Installation Service to **You**.
- 2.2 **We** will provide the **Service** to **You**, from the activation date that **We** have notified to **You**, for duration of the initial contract term specified on the **Order Form**. After the initial contract term specified on the **Order Form**, **We** will continue to provide the **Service** to **You** until either party terminates the **Service** by giving not less than 90 (ninety) days' written notice to expire on the last day of a calendar month.
- 2.3 **We** will provide **Helpdesk Support** to **You** for the **Service** and the **Equipment** for the duration of the **Service**.
- 2.4 On termination of the **Service**, and within a reasonable time from **Your** request for such, **We** will provide the reasonable assistance to **You** that is necessary to enable the handover of the **Service** to a new provider.

### 3 EQUIPMENT

- 3.1 On delivery of the **Equipment** to the site specified on the **Order Form** full risk of damage to, or loss of, the **Equipment** shall pass to **You**.
- 3.2 On full payment of the installation charge specified on the **Order Form** title in the **Equipment** shall pass to **You**. If the installation charge specified on the **Order Form** is not paid in full then title in the **Equipment** shall not pass and, without prejudice to **Our** other rights and remedies, **We** reserve the right to recover or resell the **Equipment** and, for that purpose, **You** grant to **Us** a licence to enter upon the premises where the **Equipment** is stored. **You** undertake to keep the **Equipment** wholly identifiable and distinguishable from other goods until full payment of the installation charge specified on the **Order Form**.
- 3.3 Within 2 (two) **Working Days** from the delivery date **You** shall inspect the **Equipment**, including any accompanying documentation, and notify **Us** of any defects in delivery.
- 3.4 For a minimum period of 12 (twelve) months from delivery of the **Equipment**, and for the duration of the **Service** thereafter, **We** warrant that the **Equipment** shall operate in accordance with its manufacturer's documentation. In the event of **Equipment** failure within this period, **We** will replace the **Equipment** and reconfigure the replacement to the same or equivalent configuration as the original.

### 4 CHARGES

- 4.1 Within 5 (five) **Working Days** from the **Service** activation date specified on the **Order Form**, **You** shall:
- 4.1.1 pay the installation charge specified on the **Order Form**; and
- 4.1.2 pay the monthly **Charges** in advance pro rated for the period from the **Service** activation date to the day preceding the commencement of the **Charges** paid by standing order or direct debit in accordance with Clause 4.2 (below).
- 4.2 Starting from the last day of the calendar month to which the **Service** activation date relates, **You** shall pay all **Charges** by standing order or direct debit monthly in accordance with the **Services Handbook**.
- 4.3 **We** may at our discretion, pass on any additional charges levied by BT Openreach. These may include but are not limited to: late cancellation (but before the activation date), diagnostic charges, aborted visits etc.

### 5 YOUR OBLIGATIONS

- 5.1 Where **We** are not providing **You** with a related underlying voice telephone line, **You** are fully responsible for ensuring that **You** have full use of a suitable voice telephone line in order to be able to use, and for **Us** to provide, the **Installation Service** and the **Service**.

### 5.2 You shall:

- 5.2.1 secure all necessary consents (required by relevant licences or leases) and provide an electrical and connection point in order for **Us** to provide the **Installation Service** and the **Service**;
- 5.2.2 accept sole responsibility for the content of all material received, transmitted, hosted, or otherwise processed in using the **Service**; and
- 5.2.3 ensure that the users of the **Service** are suitably trained to use the **Service**.
- 5.3 **You** shall not use the **Service** to host a publicly accessible website (which for the avoidance of doubt does not include a privately available intranet).

### 6 LIMITATION OF LIABILITY

- 6.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 (twelve) months preceding the issue date on the applicable claim form; and (ii) £6,000 (six thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

## SECTION C: IT PROFESSIONAL SERVICES

### 1 SERVICE DESCRIPTION

- 1.1 Provision of IT professional services to **Our** NetCare customers, including, for example, field engineering, remote support, training, programming / software development, and consultancy. Professional services can be provided pursuant to an **Order Form**, or can be 'ad hoc' where they are not provided pursuant to an **Order Form**. Where professional services are 'ad hoc' they are provided on a time and materials basis. Further detailed in Part C (IT Professional Services) of the **Services Handbook**.

### 2 SERVICE

- 2.1 Where the **Service** is provided pursuant to an **Order Form**, **We** will provide the **Service** on a fixed price basis in accordance with that **Order Form**. For a period of 10 (ten) **Working Days** from completion of the **Service**, **We** will correct any material nonconformities of the **Service** with the originally agreed scope of work.
- 2.2 Where the **Service** is the provision of 'ad hoc' professional services, **We** will provide the **Service** on a time and materials basis and as agreed by **You** and **Us**. **You** shall accept the provision of such 'ad hoc' professional services by reviewing and signing **Our** 'job sheet' sheet.

- 2.3 Either party may terminate the **Service** in accordance with the **Services Handbook**.
- 2.4 Professional services provided by **Us** which address any issues which are out of scope of another **Service**, shall be provided by **Us** as chargeable professional services under this Section C.

### 3 CHARGES

- 3.1 Where the **Charges** are calculated on a time and materials basis, the time spent on providing the **Service** shall be determined by the time shown on the job sheet which shall be signed by **You** and returned to **Our** field engineer at the end of each day during which the **Service** is provided. The **Charges** shall be determined by multiplying the time shown on the job sheet by **Our** current standard hourly or daily rate (whichever is applicable).
- 3.2 **You** shall pay the **Charges** in accordance with this Clause 3, and the **Order Form** (if any).

### 4 YOUR OBLIGATIONS

- 4.1 Where software development forms part of the **Service**, if **We** request **You** to do so, **You** shall provide **Us** with a non-live version of the relevant computer system on which to provide the **Service**.
- 4.2 Where the **Service** is to be carried out on **Your** computer system, **You** are at all times responsible for keeping full and up-to-date secure offsite back-up copies of all data and software in accordance with best industry practice. **We** shall not be liable for any failure by **You** to abide by the terms of this Clause 4.2.

### 5 INTELLECTUAL PROPERTY RIGHTS

- 5.1 Where the **Service** involves the creation or development of any deliverable (e.g. software development, creation of user manuals):
- 5.1.1 all copyright and other intellectual property rights in those deliverables, will at all times, remain vested in **Us**; and
- 5.1.2 **We** grant to **You** a non-exclusive, non-transferable, irrevocable right to modify, adapt, use, and sublicense those deliverables for **Your** own internal business purposes.

### 6 LIMITATION OF LIABILITY

- 6.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 (twelve) months preceding the issue date on the applicable claim form; and (ii) £10,000 (ten thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

## SECTION D: TELEPHONY SYSTEM

### 1 SERVICE DESCRIPTION

Purchase and installation of new and upgraded telephony system. Further detailed in Part D (Telephony System) of the **Services Handbook**.

### 2 INSTALLATION SERVICE, EQUIPMENT, AND THIRD PARTY SOFTWARE.

- 2.1 **We** will provide the **Installation Service** to **You** in accordance with the **Services Handbook**.
- 2.2 For a further 10 (ten) **Working Days** from completion of the **Installation Service**, **We** will provide to **You** reasonable reconfiguration assistance.
- 2.3 On delivery of the **Equipment** and **Third Party Software** to the site specified on the **Order Form** full risk of damage to, or loss of, the **Equipment** and **Third Party Software** shall pass to **You**.
- 2.4 On full payment of the **Charges** title in the **Equipment** and the medium on which the **Third Party Software** is stored shall pass to **You**. If the **Charges** are not paid in full then title in **Equipment** and the medium on which the **Third Party Software** is stored shall not pass and, without prejudice to **Our** other rights and remedies, **We** reserve the right to recover or resell the **Equipment** and the medium on which the **Third Party Software** is stored and, for that purpose, **You** grant to **Us** a licence to enter upon the premises where the **Equipment** and the **Third Party Software** are stored. **You** undertake to keep the **Equipment** and the medium on which the **Third Party Software** is stored wholly identifiable and distinguishable from other goods until full payment of the **Charges**.
- 2.5 Within 2 (two) **Working Days** from the delivery date **You** shall inspect the **Equipment**, including any accompanying documentation, and notify **Us** of any defects in delivery.
- 2.6 For a period of 12 (twelve) months from delivery of the **Equipment**, **We** warrant that the **Equipment** shall operate in accordance with its manufacturer's documentation. In the event of **Equipment** failure within this period, **You** shall promptly notify **Us** whereupon **We** shall replace or repair the **Equipment** in accordance with the manufacturer's documentation within a reasonable period of time.

### 3 CHARGES

- 3.1 **You** shall pay to **Us**:
- 3.1.1 the deposit specified on the **Order Form** at least 5 (five) **Working Days** prior to **Us** delivering the **Equipment** and any **Third Party Software** to **You**; and

- 3.1.2 the installation charge specified on the **Order Form** within 2 (two) days of completion of the **Installation Service** unless otherwise stated in the **Services Handbook**

#### 4 YOUR OBLIGATIONS

- 4.1 Where **We** are not providing **You** with a related underlying voice telephone line(s), **You** are fully responsible for ensuring that **You** have full use of a suitable voice telephone line in order to be able to use, and for **Us** to provide, the **Installation Service**.
- 4.2 **You** shall:
- 4.2.1 where requested by **Us**, complete in accordance with **Our** instructions the "telephone programming sheet" prior to commencement of the **Installation Service**;
- 4.2.2 secure all necessary consents (required by relevant licences or leases) and provide an electrical and connection point to enable **Us** to provide the **Installation Service**, and
- 4.2.3 keep full and up-to-date secure back-up copies of the configuration of the **Equipment** and the **Third Party Software** in accordance with best industry practice and the telephone programming sheet.
- 4.3 **You** shall specify on the telephone programming sheet the telephone numbers (if any) that **You** require to be made non-accessible (number barring) on the **Service**.
- 4.4 **You** shall not materially reconfigure the **Equipment** and / or **Third Party Software**, or combine the **Equipment** and / or **Third Party Software** with any third party equipment or software, in each case without **Our** prior written consent.
- 4.5 **Your** right to use and deal with the software provided with the **Equipment** and the **Third Party Software** is governed by any licence terms applicable to that software. It is **Your** sole responsibility to agree to and enter in to any such licence with the owner of the intellectual property rights in that software. Nothing under the **Contract** shall be construed as having the effect of assigning, transferring, or dealing with any copyright, patent, or any other intellectual property rights in such software.

#### 5 LIMITATION OF LIABILITY

- 5.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 (twelve) months preceding the issue date on the applicable claim form; and (ii) £6,000 (six thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

## SECTION E: TELEPHONY SYSTEM MAINTENANCE & SUPPORT

#### 1 SERVICE DESCRIPTION

- 1.1 Equipment and software maintenance of telephony systems, including helpdesk support. Further detailed in Part E (Telephony System Maintenance and Support) of the **Services Handbook**.

#### 2 SERVICE DURATION

- 2.1 **We** will provide the **Service** to **You**, from the start date specified on the **Order Form**, for the initial contract term specified on the **Order Form**. After the initial contract term specified on the **Order Form**, **We** will continue to provide the **Service** until either party terminates the **Service** by giving not less than 90 (ninety) days' written notice to expire on the anniversary of the start date specified on the **Order Form**.

#### 3 SERVICE LIMITATIONS AND EXCLUSIONS

- 3.1 The **Service** is provided only for Your Telephone System.
- 3.2 The **Service** excludes support and maintenance in relation to system faults that result from any modification or unauthorised use of **Your Telephone System**.

#### 4 CHARGES

- 4.1 **You** shall pay the **Charges** annually in advance, the first annual payment falling due on the start date specified on the **Order Form**.
- 4.2 **We** may at any time after the initial contract term specified on the **Order Form** increase the **Charges** to reasonably reflect any addition of equipment and / or software to **Your Telephone System**.

#### 5 YOUR OBLIGATIONS

- 5.1 **You** shall:
- 5.1.1 specify the telephone numbers (if any) that **You** require to be made non-accessible using the **Service**. Where **You** require subsequent changes to these non-accessible telephone numbers, **You** shall request such changes in writing, following which **We** will respond to **Your** request stating whether **Your** request can be met, and if so, when;
- 5.1.2 keep full and up-to-date secure offsite back-up copies of all the software relating to **Your Telephone System** in accordance with best industry practice;
- 5.1.3 not let any party other than **Us** provide maintenance and support services on **Your Telephone System**;

- 5.1.4 only permit the technical contacts specified on the **Order Form** to contact **Us** in relation to the **Service**, except in the case of emergencies where it is not reasonably practicable for such technical contacts to contact **Us**.
- 5.2 In the event that **You** breach Clause 5.1.3, **Our** obligations to provide the service to **You** shall be suspended unless and until **We** provide **You** with a written notice that **We** will resume providing the service to **You** and such notice is to be provided in **Our** sole discretion.
- 5.3 The technical contacts specified on the **Order Form** shall:
  - 5.3.1 coordinate all maintenance and support requests of **Your** employees and be primarily responsible for communicating with **Us**; and
  - 5.3.2 when contacting **Us**, have sufficient information to enable **Us** to appropriately deal with any maintenance and support issues.
- 5.4 **You** shall notify **Us** in writing if there is any change to the technical contacts specified on the **Order Form**. Such notice shall specify the full contact details of any new technical contacts.

## 6 LIMITATION OF LIABILITY

- 6.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 (twelve) months preceding the issue date on the applicable claim form; and (ii) £5,000 (five thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

# SECTION F: LAND LINES

## 1 SERVICE DESCRIPTION

- 1.1 Provision of land line(s) for single point of billing and support. Further detailed in Part F (Land Lines) of the **Services Handbook**.

## 2 SERVICE DURATION

- 2.1 We will provide the **Installation Service** to **You**.
- 2.2 **Installation Service** timescales and the **Installation Service** charge (the "**Installation Charge**") are subject to **Our** (and / or **Our** subcontractor's) site survey and any further investigatory work. The **Installation Charge** specified on the **Order Form** is based on a standard installation. **We** will notify **You** where a non-standard installation is required, following which **You** shall elect to either cancel (in writing) the order for the **Service**, or proceed with the order for the **Service** on the basis of the revised **Installation Service** timescales and the revised **Installation Charge** to notified to **You**.

- 2.3 **We** will provide the **Service** to **You** from the **Service** activation date that **We** have notified to **You** for duration of the initial contract term specified on the **Order Form**. After the initial contract term specified on the **Order Form**, **We** will continue to provide the **Service** until either party terminates the **Service** by giving not less than 90 (ninety) days' written notice.
- 2.4 **We** may terminate the **Service** at any time during the initial contract term specified on the **Order Form**, by giving **You** not less than 1 (one) month's written notice.
- 2.5 **We** will provide **Helpdesk Support** to **You** for the **Service** for the duration of the **Service**.
- 2.6 On termination of the **Service**, **We** will provide all assistance to **You** that is necessary to enable the handover of the **Service** to a new provider.

## 3 LOANED EQUIPMENT

- 3.1 On delivery of any loaned equipment relating to the **Service** to the site specified on the **Order Form** full risk of damage to, or loss of, such equipment shall pass to **You**.
- 3.2 Title in any loaned equipment shall not at any time transfer to **You**. On termination of the **Service** (for any reason) **You** shall return the equipment to **Us** immediately, and **We** reserve the right to recover such equipment and, for that purpose, **You** grant to **Us** (and / or **Our** subcontractor) a licence to enter upon the premises where the equipment is stored. **You** undertake to keep the equipment wholly identifiable and distinguishable from other goods.

## 4 CHARGES

- 4.1 **You** shall pay the installation charge and ongoing **Charges** in accordance with the **Order Form** and the **Services Handbook**.
- 4.2 **We** may at our discretion, pass on any additional charges levied by BT Openreach. These may include but are not limited to: late cancellation (but before the activation date), diagnostic charges, aborted visits etc

## 5 YOUR OBLIGATIONS

- 5.1 **You** shall give **Us** and / or **Our** subcontractors access to **Your** site for the purposes of maintenance of the **Service**.

## 6 LIABILITY

- 6.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 (twelve) months preceding the issue date on the applicable claim form; and (ii) £5,000 (five thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

## **SECTION G: ISP SERVICES**

### **1 SERVICE DESCRIPTION**

- 1.1 Provision of new domain name registrations, domain name transfers, web and server hosting services within a full data-centre (located at Sovereign House, Canary Wharf). Further detailed in Part G (ISP Services) of the **Services Handbook**.

### **2 SERVICE DURATION**

- 2.1 We will provide the **Service** to **You**, from the **Service** activation date that **We** notify to **You**, for the initial contract term specified on the **Order Form**. After the initial contract term specified on the **Order Form**, **We** will continue to provide the **Service** until either party terminates the **Service** by giving not less than 90 (ninety) days' written notice to expire on the last day of a calendar month.
- 2.2 We will provide **Helpdesk Support** to **You** for the **Service** (except for the unmanaged server hosting options as specified in the **Services Handbook**) from the **Service** commencement date that **We** notify to **You** for the duration of the **Service**.
- 2.3 On termination of the **Service**, **We** will provide all reasonable assistance to **You** that is necessary to enable the handover of the **Service** in accordance with the **Services Handbook**.

### **3 CHARGES**

- 3.1 **You** shall pay the installation charge and ongoing **Charges** in accordance with the **Order Form** and the **Services Handbook**.

### **4 HOSTING**

- 4.1 Where hosting forms part of the **Service**, **You** grant to **Us** a licence for the duration of the **Service** to:
- 4.1.1. host the material to be hosted by **Us** pursuant to the provision of the **Service**; and
- 4.1.2. remove or amend any material contained in the hosted material that breaches the **Contract**.

### **5 YOUR OBLIGATIONS**

- 5.1 **You** shall keep full and up-to-date secure back-up copies of **Your** data which is received, transmitted, hosted, or otherwise processed by **Us** pursuant to the **Service**, in accordance with best industry practice.

### **6 LIMITATION OF LIABILITY**

- 6.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 (twelve) months preceding the issue date on the applicable claim form; and (ii) £5,000 (five thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

## **SECTION H: LOW COST ROUTING (LCR) AND NON GEOGRAPHIC NUMBERS (NGN)**

### **1 SERVICE DESCRIPTION**

- 1.1 Provision of LCR and / or NGN services. Further detailed in Part H (Low Cost Routing and NGN) of the **Services Handbook**.

### **2 SERVICE DURATION**

- 2.1 We will provide the Installation Service to **You**.
- 2.2 We will provide the **Service** to **You**, from the **Service** activation date that **We** have notified to **You**, for duration of the initial contract term specified on the **Order Form**. After the initial contract term specified on the **Order Form**, **We** will continue to provide the **Service** to **You** until either party terminates the **Service** by giving not less than 30 (thirty) days' written notice to expire on the last day of a calendar month.
- 2.3 We will provide **Helpdesk Support** to **You** for the **Service** for the duration of the **Service**.
- 2.4 On termination of the **Service**, **We** will provide all reasonable assistance to **You** that is necessary to enable the handover of the **Service** to a new provider (in relation to the NGN element of the Service, such assistance is subject to the appropriate inter-carrier porting agreements being in place) as specified in the **Services Handbook**.

### **3 CHARGES**

- 3.1 **You** shall pay the installation charge and ongoing **Charges** in accordance with the **Order Form** and the **Services Handbook**.
- 3.2 Where the **Service** also consists of NGN, if that NGN element of the **Service** generates a rebate that is to be paid to **You** (in accordance with the **Service Handbook**) **We** will pay such rebate in accordance with the **Service Handbook**.

## 4 YOUR OBLIGATIONS

- 4.1 Where **We** are not providing **You** with a related underlying voice telephone line, **You** are fully responsible for ensuring that **You** have full use of a suitable voice telephone line in order to be able to use, and for **Us** to provide, the **Service**.
- 4.2 **You** shall not use any other low cost routing service (including, for example, using bypass codes on the **Service**), for the duration of the **Service**.
- 4.3 The **Order Form** shall specify the telephone numbers (if any) that **You** require to be made non-accessible using the **Service**. Where **You** require subsequent changes to these non-accessible telephone numbers, **You** shall request such changes in writing, following which **We** will respond to **Your** request stating whether **Your** request can be met, and if so, when.
- 4.4 **You** shall be responsible for all usage costs (including any costs arising from unauthorised use of the **Service** by **You** or any third party) in relation to the **Service**.

## 5 LIMITATION OF LIABILITY

- 5.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 months preceding the issue date on the applicable claim form; and (ii) £4,000 (four thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

# SECTION I: IT HARDWARE AND SOFTWARE SUPPLY

## 1 SERVICE DESCRIPTION

- 1.1 Provision of third party IT hardware and / or software to **Our** NetCare customers. Further detailed in Part I (IT Hardware and Software Supply) of the **Services Handbook**.

## 2 HARDWARE AND SOFTWARE

- 2.1 **We** will deliver the **Hardware** and the **Third Party Software** to **You** on the delivery date notified to **You**, at the site as specified on the **Order Form**.
- 2.2 On delivery of the **Hardware** and **Third Party Software** to **You**, full risk of damage to, or loss of, the **Hardware** and **Third Party Software** shall pass to **You**.
- 2.3 On full payment of the **Charges** title in the **Hardware** and the medium on which the **Third Party Software** is stored shall pass to **You**. If the **Charges** are not paid in full then title in **Hardware** and the medium on which the **Third Party**

**Software** is stored shall not pass and, without prejudice to **Our** other rights and remedies, **We** reserve the right to recover or resell the **Hardware** and the medium on which the **Third Party Software** is stored and, for that purpose, **You** grant to **Us** a licence to enter upon the premises where the **Hardware** and the **Third Party Software** are stored. **You** undertake to keep the **Hardware** and the medium on which the **Third Party Software** is stored wholly identifiable and distinguishable from other goods until full payment of the **Charges**.

- 2.4 **We** reserve the right prior to delivery of the **Hardware** to substitute an alternative item of hardware for any hardware specified on the **Order Form**, provided that such substitution will not materially affect the performance of such hardware and will not result in any increase in the **Charges**.
- 2.5 On **Our** request, **You** shall return to **Us** all packing materials used for delivering the **Hardware** and the **Third Party Software** to **You** in good condition and at **Your** expense as soon as reasonably possible after delivery. **We** reserve the right to charge for any such packing materials not so returned.

## 3 CHARGES

- 3.1 Within 2 (two) **Working Days** of delivery of the **Hardware** and / or **Third Party Software** the **Charges** shall be paid by **You** in full by cheque or electronic transfer funds unless otherwise stated in the **Services Handbook**.

## 4 LIMITATIONS AND EXCLUSIONS

- 4.1 **Your** right to use and deal with the **Third Party Software** is governed by any licence terms applicable to the **Third Party Software**. It is **Your** sole responsibility to agree to and enter in to any such licence with the owner of the intellectual property rights in the **Third Party Software**.
- 4.2 Nothing under the **Contract** shall be construed as having the effect of assigning, transferring, or dealing with any copyright, patent, or any other intellectual property rights in the **Third Party Software**.

## 5 WARRANTIES

- 5.1 Within 2 (two) **Working Days** from the delivery date **You** shall inspect the **Hardware** and any medium on which the **Third Party Software** is stored, including any accompanying documentation, and notify **Us** of any defects in delivery.
- 5.2 If **You** accept delivery of the **Hardware** and **Third Party Software**, and do not notify **Us** of any defects under Clause 5.1 above, **You** shall not be entitled to reject the **Hardware** and **Third Party Software**.
- 5.3 Except as provided under Clause 5.2 above, the **Hardware** and **Third Party Software** is sold on an 'as is' basis, and **You** assume the entire risk as to the related functionality, performance, and quality.

- 5.4 Unless the **Order Form** specifies a longer period, for a period of 12 (twelve) months from delivery of the **Hardware**, **We** warrant that the **Hardware** shall operate in accordance with its manufacturer's documentation. In the event of **Hardware** failure within this period, **You** shall promptly notify **Us** whereupon **We** shall replace or repair the **Hardware** in accordance with the manufacturer's documentation within a reasonable period of time.

## 6 LIMITATION OF LIABILITY

- 6.1 Subject to the General Section, **Our** liability to **You** under or in relation to any **Hardware** and / or **Third Party Software** shall not exceed the greater of: (i) 100% of the charges paid by **You** (including any charges payable but not yet paid) for that **Hardware** and / or **Third Party Software**; and (ii) £3,000 (three thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.

# SECTION J: BUSINESS CONTINUUM

## 1 SERVICE DESCRIPTION

- 1.1 Provision of managed IT server and data recovery services. Further detailed in Part J (Business Continuum) of the **Services Handbook**.

## 2 SERVICES

- 2.1 **We** will provide the **Installation Service** to **You** in accordance with the **Order Form** and the **Services Handbook**. The **Installation Service** charge is specified on the **Order Form** (the "Installation Charge").
- 2.2 Following completion of the **Installation Service**, **We** will provide the **Service** to **You** from the **Service** activation date (the "Start Date" as defined in the **Services Handbook**) for the duration of the **Initial Contract Term**. After the **Initial Contract Term**, **We** will continue to provide the **Service** until either party terminates the **Service** by giving not less than 30 (thirty) days' written notice to expire on the anniversary of the Start Date.
- 2.3 **We** will provide **Helpdesk Support** to **You** for the **Service** for the duration of the **Service**.
- 2.4 The **Installation Service**, the **Service**, and **Helpdesk Support** will only be provided for the computer server(s) specified on the **Order Form**.

## 3 LOANED EQUIPMENT

- 3.1 **We** will loan **Equipment** to **You** (called the Local Data manager – LDM) as part of the **Installation**

**Service** and the **Service** (the "Loaned Equipment"). Title in the **Loaned Equipment** shall not at any time transfer to **You**. On termination of the **Service** (for any reason) **You** shall return the **Loaned Equipment** to **Us** immediately, and **We** reserve the right to recover such equipment and, for that purpose, **You** grant to **Us** (and / or **Our** subcontractor) a licence to enter upon the premises where the equipment is stored. **You** undertake to keep the equipment wholly identifiable and distinguishable from other goods.

- 3.2 **You** shall not interfere and / or tamper with the **Loaned Equipment**.

## 4 CHARGES

- 4.1 **You** shall pay the **Installation Service** and ongoing **Charges** in accordance with the **Order Form** and the **Services Handbook**.

## 5 YOUR OBLIGATIONS

- 5.1 **You** shall:

5.1.1 comply with all **Your** obligations detailed in the **Services Handbook**;

5.1.2 only permit the technical contact specified on the **Order Form** to contact **Us** in relation to the **Service** and **Helpdesk Support**, except in the case of emergencies where it is not reasonably practicable for such technical contacts to contact **Us**.

5.2 **You** shall give **Us** reasonable prior notification of any material changes to **Your Network**, examples of which include (without limitation): addition or removal of hardware or software on the servers specified on the **Order Form**, and any movement of data greater than 2 (two) gigabyte in any 1 (one) **Working Day** so that **We** can make arrangements to accommodate such changes or where such changes are too adverse to be able to continue the provision of the **Service**, **We** reserve the right to terminate the **Contract** immediately whereupon **We** will refund all prorated **Charges** until the end of that month.

5.3 **You** shall give **Us** access to **Your** site(s) and the **Loaned Equipment** for the purposes of providing the **Installation Service** and the **Service**.

## 6 LIABILITY

- 6.1 Subject to the General Section, **Our** liability to **You** under or in relation to the **Contract** shall not exceed the greater of: (i) 150% of the charges paid by **You** (including any charges payable but not yet paid) under the **Contract** in the 12 (twelve) months preceding the issue date on the applicable claim form; and (ii) £15,000 (fifteen thousand pounds), regardless of whether such liability arises from a breach of contract, tort, or breach of statutory duty.