

Master Services Agreement

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General Terms

1 Introduction to the documents that form the Contract

- 1.1 This document together with various attachments forms a Contract between you (the “Account Holder”) and Conosco Ltd (“Conosco”, “we”, “us”).
- 1.2 This Master Services Agreement (“MSA”) and its Schedules set out the overall agreement between you and us. The MSA covers the general terms of the agreement. Schedules A, B, etc cover specific terms relevant to particular Services we may provide to you.

2 Definitions

- 2.1 Account Manager: a member of our staff who is designated as your primary point of contact with us.
- 2.2 Business Customers: if you use the Equipment or Services other than as a Consumer Customer then you are a Business Customer and our relationship is a business one for legal purposes.
- 2.3 Backup Data: the data which we backup from your computer, including the operating system, application software, settings and data files.
- 2.4 Backup Software: a program that we install on your computer to backup your data to our Data Storage.
- 2.5 Computer: any personal or server computer which we are providing our Services to.
- 2.6 Consumer Customers: if you use the Equipment or Services for purposes outside of your trade, business or profession you are a Consumer Customer.
- 2.7 Data Storage: the space we provide at our data centres for storing backup copies of your data.
- 2.8 Data Transmission: the internet connectivity we provide between the Internet and our data centres for you to backup and restore your data. This does not include your connection to the Internet.
- 2.9 Equipment: any equipment that we supply or which is used by you in connection with a Service
- 2.10 Premises: your place of business or any other location where you require Managed Equipment to be installed or our representatives, agents, contractors or employees to attend in providing the Service.
- 2.11 Managed Equipment is any equipment, software or services that we have supplied or specified to you unless we notify you otherwise. Managed Equipment also includes any other equipment, software or services that we have not supplied but which we have agreed to support under a Managed Computing Service Plan.
- 2.12 Minimum Period: the minimum period for which a Service agreement will run, as set out in the Service Schedule.
- 2.13 Product: an item of software or hardware that we supply, license or sell to you.
- 2.14 Service: any service we provide to you in accordance with Schedule A, Schedule B, any Service Schedule annexed to this agreement, and any invoice for services.
- 2.15 Service Level, Service Level Agreement, “SLA”: a measurable standard of performance of our Services which we agree to work to. Service Levels are set out in the Service Schedules.
- 2.16 Service Schedule: a part of this agreement that sets out the details of a Service that we will provide to you.
- 2.17 Service Start Date: the date when a particular Service starts, set out in the Services Schedule.
- 2.18 Telephone Data Line: a telephone line over which we supply a DSL internet connection.

3 What we will do for you

- 3.1 We will provide you with the Services set out in this MSA and in the Service Schedules which refer to this MSA.
- 3.2 We will from time to time provide you with Consultancy Services as set out in Schedule C.
- 3.3 We will provide you with Third-Party Services as set out in Schedule D.
- 3.4 We will provide the Services with reasonable skill and care to normal professional standards.
- 3.5 We aim to make your computing experience as hassle-free as possible. You agree that computers, software and their associated products are often supplied in an imperfect state and that our role is to reduce the effects of such imperfections rather than to eliminate or correct them.

4 General conditions of supply of our Services

4.1 Administration

- 4.1.1 If our engineer is not able to access your premises at a time that we have arranged with you there may be an additional charge for each re-visit.
- 4.1.2 We will specify certain requirements for the installation of Equipment. If these requirements are not met, we may cancel your Service and charge you our costs. These costs will not exceed the installation fees you would have paid if the installation had been successful. Alternatively, at our discretion, we may complete the installation and charge you our normal consultancy fees for any unforeseen time and costs.
- You will provide an appropriate support surface for the Equipment which is within one metre of an electrical power socket and any necessary telephone or network sockets. You will ensure that this surface is clear of all objects before we visit the Premises.
 - You will obtain at your own expense all necessary consents and permissions for the installation of the Equipment at your premises. You will prepare the location for the Equipment in accordance with our instructions. It is your responsibility to restore the condition of your premises after installation.
 - You will provide, pay for and maintain the telephone lines required for any Internet Connection that we supply. You will not change the location, billing details or telephone numbers of such lines without our prior agreement.
 - You will provide at your expense sufficient electricity to power the Equipment.
 - You will ensure that the Equipment conforms to all relevant Health & Safety requirements.
- 4.1.3 You agree that we may act as your agent with the Equipment supplier for the purpose of resolving problems with the Equipment and if necessary requesting the supplier to repair it.
- 4.1.4 After any work that we do for you, we may request that you confirm to us in writing within 24 hours that the work has been completed and is to your satisfaction. If you do not confirm this, we may on our sole judgement declare that the work is complete and satisfactory.
- 4.2 You agree that our minimum cancellation terms for any Third-Party Service is one month and that in addition the following minimum terms apply:
- 4.2.1 Hosted Exchange and Blackberry services: a minimum term of one year.
- 4.2.2 Easynet internet services: a minimum term of one year with a cancellation period of 90 days.

5 Duration and Termination

- 5.1 This Contract will commence on the date of your signature of these terms or of despatch of our acceptance of your order, whichever is earlier, and shall continue in force until terminated by

either party in accordance with clause 5.2. It shall apply to all Services supplied by us from time to time in accordance with any Service Schedule.

5.2 How you can end a Service

- 5.2.1 You may cancel any Service at any time after the Minimum Period without penalty by giving us 30 days notice. If you cancel a Service within the Minimum Period specified for that Service then you will be liable for all the unpaid fees for the Minimum Period.
- 5.2.2 You may cancel any Service by giving us written notice within 14 days of our announcement of a price increase for that Service, where the increase causes a cumulative increase of more than 15% over the past 12 months. If you cancel for this reason, you will receive the Service for 60 days at your current pricing.
- 5.2.3 You may terminate this agreement immediately by giving written notice for any continuing material breach of this agreement by us and, if the breach is capable of remedy, we fail to remedy it within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- 5.2.4 You may cancel this contract without notice if we go into liquidation, suffer or make any winding up petition, make an arrangement with creditors, have an administrator or receiver appointed, or enter any form of insolvency proceedings other than for the purposes of amalgamation or reconstruction.
- 5.2.5 Subject to the above if you uninstall the Data Backup Software, you will lose access to all the Backup Data for the Service but we will not accept such uninstallation as notice to terminate the Service and we will continue to charge you for the Service where appropriate.

5.3 We may terminate the supply of any Service or of this Contract:

- 5.3.1 For any reason by giving you 30 days notice;
- 5.3.2 Forthwith, where a Service is provided using a facility provided to us by a third party and that facility for any reason becomes unavailable or available only on significantly changed terms, in which case we will use our best endeavours to find a replacement service;
- 5.3.3 Forthwith, without notice if you do not comply with your payment obligations under clause 6 or for any continuing material breach of this agreement by you and, if the breach is capable of remedy, you fail to remedy it within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 5.3.4 Forthwith, without notice if you become bankrupt, go into liquidation, suffer or make any winding up petition, make an arrangement with your creditors, have an administrator or receiver appointed, or enter any form of insolvency proceedings.

5.4 If we know or have any reason to believe that our storage of your Backup Data exposes us, our customers or any third party to any risk of legal action, particularly in relation to the matters set out in clause 7.1 we reserve the right to terminate your Services. Provided that we have suffered no loss as a result of storing your Backup Data we shall refund your charges on a pro-rata basis for any unused Services but otherwise shall have no further obligation to you.

5.5 What happens when a Service ends

- 5.5.1 When a Service ends you will cease to have access to the Backup Data for that Service. We will delete any such data from our Data Storage. We will make reasonable efforts to ensure you have time to move to another backup service.
- 5.5.2 You will immediately follow our instructions to destroy or return to us all Products licensed to you under this Contract.

6 Fees and changes to this contract

- 6.1 You will pay the fees set out in your Service Schedules monthly in advance by automatic credit card or direct debit payments on the day agreed on acceptance of these terms or as otherwise agreed with us. We will send our invoices to your email address unless otherwise agreed with us.

- 6.2 You shall make all payments due under the Service Schedules without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you.
- 6.3 You must notify us of any disputes in amounts owed within 7 days of receipt of an invoice. Failure to notify us within this time will be construed as a waiver of any of its rights to dispute the invoice.
- 6.4 You agree to the acceptance tests and procedure attached to any Service Schedule.
- 6.5 You acknowledge that our Services are provided using facilities provided to us by third parties. We reserve the right to increase our charges at any time subject to 14 days notice to you, whether to reflect increased costs to us from such third parties or otherwise.
- 6.6 If any sum due to us is not paid by the due date then we reserve the right, without prejudice to any other right or remedy it may have, to
- 6.6.1 charge interest on any unpaid monies due at the rate stipulated by The Late Payment of Commercial Debts (Interest) Act 1998 as amended from time to time from the date the payment became due until it is paid;
 - 6.6.2 and/or suspend the provision of the relevant Service on giving seven days' prior written notice to you.

7 Acceptance

- 7.1 Once the Managed Equipment and any Service or part of any Service referred to in the Acceptance Test Schedule has successfully passed the Acceptance Tests the Managed Equipment and such Service or part thereof shall be accepted by you and you shall sign the Acceptance Tests Schedule acknowledging acceptance of the Managed Equipment and such Service or part thereof.

8 Your Obligations to us (“Your Obligations”)

- 8.1 You agree not to use the Services in any way, or for any data, that: infringes on the intellectual property rights (including patents, copyrights, trademarks and servicemarks) of any third party; Violates any law or regulation; Is defamatory, libellous, unlawfully threatening or unlawfully harassing; Is obscene, pornographic or indecent; May damage the property, systems or data of others; Involves risks of death, personal injury, severe property damage or environmental damage; Involves life support systems, devices or applications; Breaches a contractual commitment between you and a third party.
- 8.2 Save to the extent permitted by law you will not try to decompile or reverse engineer the Products. You will not try to use our Services in any other way than how we have offered them to you. You will not attempt to connect to our servers except as provided in the Service.
- 8.3 In the event that any Equipment, Service or Product that we provide to you as part of our Services is subject to a third party licence we shall advise you of the terms of such licence and you hereby agree to abide by such terms. Except when specifically agreed, you agree that any licensed Products that we provide are part of the Services and you do not own them or have any property rights over them.
- 8.4 We aim to keep your data as private as possible. You acknowledge that in certain situations our staff may be in a position to see the contents of files on your computer. We will apply every safeguard to ensure that our staff do not violate the privacy of your data in any way.
- 8.5 You will ensure that all data is backed up on any Equipment that you ask us to perform work on.

9 Data Protection

- 9.1 We undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation insofar as the same relates to the provisions and obligations of this Agreement.
- 9.2 We undertake that we will comply with obligations equivalent to the obligations of a 'data controller' under the provisions of the seventh data protection principle as set out in the Data

Protection Act 1998, Schedule 1.

- 9.3 In addition, we:
- 9.3.1 warrant that we have appropriate technical and organisational measures in place against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by us and that we have taken reasonable steps to ensure the reliability of any of our staff who have access to personal data processed in connected with this agreement;
 - 9.3.2 undertake that we will act only on your instructions in relation to the processing of any personal data in connection with this agreement; and
 - 9.3.3 undertake to allow you access to any relevant premises on reasonable notice to inspect our procedures described above.
- 9.4 The obligations set out in this clause 8 shall remain in force notwithstanding termination of this Agreement.
- 9.5 You understand that you can use encryption and personal security programs to increase the security and privacy of your files. You agree that if any of your files are particularly private then you will use such precautions. You agree that if you are required under any professional or statutory regulations to keep your data confidential or secure then you will encrypt them so that our support staff cannot have access to them when working on your equipment. You understand that we are not authorised by any financial regulators such as the UK Financial Services Authority or the US Securities and Exchange Commission.
- 9.6 We gather and hold personal data about you, including your name, physical and email addresses, and telephone numbers; we do not hold your credit card information. Our Privacy Policy is available from our web site and states how we will use and protect your personal data. We are also registered under and comply with the UK Data Protection Act 1998.
- 9.7 All of our employees sign a Client Data Confidentiality Agreement, a copy of which is available on request.

10 Warranty

- 10.1 We warrant that all services supplied under this Agreement will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 10.2 You acknowledge that it is your responsibility to ensure that the facilities and functions described in the Schedules meet your requirements.
- 10.3 Where we sell Equipment to you we warrant that the Equipment will be free from material defects and be of satisfactory quality and that any software provided by the company will substantially meet the specifications set out in any accompanying documentation. Where possible we will transfer to you the benefit of any warranty or guarantee given to us.
- 10.4 Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, express or implied, statutory or otherwise is given or assumed by us, and all such warranties, conditions, undertakings and terms are hereby excluded to the fullest extent permitted by law.
- 10.5 If in any month we fail to deliver a Service in accordance with the Service Levels agreed for that Service, we will refund the fees for the month in which the failure took place by making a credit to your account. You must notify us within a month of any failure in the Service.
- 10.6 We shall have no liability to you for any loss of your original data due to any error or omission by you, or due to any event that takes place at your Premises, unless such event is caused by our negligence. You should where possible obtain your own insurance cover for any equipment or software that has not been supplied by us.
- 10.7 You acknowledge that software can never be guaranteed to be error free. We do not warrant that all errors can and will be corrected. We shall use our reasonable endeavours to correct errors in the Service or Managed Equipment.
- 10.8 You must promptly notify us of any non-conformance to the above warranties in order to benefit from the remedy stated above, and in any event within three months.

11 Liability

- 11.1 We do not exclude our liability to you for direct damage to tangible property caused by the negligence of our employees in connection with the performance of their duties under this agreement or by defects in any Product supplied pursuant to this Agreement. Our total liability under this clause shall be limited to £2,500 for any one event or series of connected events.
- 11.2 Save in respect of claims for death or personal injury arising from our negligence, in no event will we be liable for any damages resulting from lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission by us, whether such damages were reasonably foreseeable or actually foreseen.
- 11.3 Except as provided above in the case of personal injury, death and damage to tangible property, our maximum liability to you under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the amount received by us from you in respect of the Service in the previous 12 months.
- 11.4 The parties hereby acknowledge and agree that the limitations contained in this clause 11 are reasonable in light of all the circumstances.
- 11.5 Your statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded to the fullest extent permitted by law. These limitations will apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

12 Retention of title

- 12.1 Ownership of Equipment you purchase from us (the Goods) shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of the Goods and all other sums which are or which become due to us from you on any account.
- 12.2 Until ownership of the Goods has passed to you, you must:
 - 12.2.1 hold the Goods on a fiduciary basis as our bailee;
 - 12.2.2 store the Goods (at no cost to us) separately from all your other goods or any third party in such a way that they remain readily identifiable as our property;
 - 12.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 12.2.4 maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you shall produce the policy of insurance to us; and
 - 12.2.5 hold the proceeds of the insurance referred to in clause 12.2.4 on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 12.3 Until ownership of the Goods has passed to you, your right to possession of the Goods shall terminate immediately if:
 - 12.3.1 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, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof, or a resolution is passed or a petition presented to any court for winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or
 - 12.3.2 you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or fail to observe/perform any of your obligations under this agreement or any other contract between us, or are unable to pay your debts

within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or

- 12.3.3 you encumber or in any way charge any of the Goods.
- 12.4 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.
- 12.5 You grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right to possession has terminated, to recover them.

13 Intellectual Property

- 13.1 Intellectual Property includes trade marks, service marks, domain names, logos and other branding elements ("Marks"); and patents, copyrights, inventions, know-how, processes and software; and all associated rights in these.
- 13.2 All Intellectual Property Rights in the Products, Services and their associated Marks remain the property of us or our suppliers, except where expressly stated.
- 13.3 Where we provide software to enable you to use the Services, we grant you a non-exclusive, non-transferable licence to use the software solely in connection with those Services.
- 13.4 You hereby agree that you will comply with any terms and conditions reasonably required by the owner of the copyright in any software to protect the owner's interest in that software.

14 Third Party Software

- 14.1 Altiris Licensed Software
 - 14.1.1 We use certain software licensed from Altiris, Inc. of Lindon, Utah, USA ("Altiris") in connection with our Services ("Altiris Licensed Software"). Such software and its use are subject to and governed by an Outsourcing Services Software License Agreement (including, without limitation, its limitation of liability provisions) between us and Altiris. To the extent that you use or have access to such software, you agree not to: (i) disassemble, de-compile, or otherwise reverse engineer the software, or (ii) create derivative works based on the software, or (iii) rent, lease, sublicense, distribute, disclose, translate, transfer, modify or reprogram the software, or (iv) timeshare the software, make the software available to others, or allow others to copy, access or use the software.
 - 14.1.2 You agree you will not export the Altiris Licensed Software to any country in contravention of any law or regulation of the United States or any of its agencies, including the Export Administration Act of 1979 and regulations relating to it. It is your responsibility to comply with all U.S. government requirements as they may be amended from time to time. At present such countries include Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.
- 14.2 You agree to be bound by the terms of the Microsoft software licence attached at Schedule C in respect of any hosted Microsoft Exchange or Sharepoint services we provide to you.
- 14.3 You agree to be bound by the Attix5 Software Licence attached at Schedule C in respect of any data back-up service we provide you which involves Attix5 software.

15 Miscellaneous

- 15.1 Where you are a Consumer Customer you acknowledge that our Data Backup service begins immediately upon your subscription to the Service and therefore once the Data Backup Service has begun the seven day 'cooling off period' provided for under the Consumer Protection (Distance Selling) Regulations 2000 will not apply to that Service. This shall not affect any other right to terminate the Service that you may have under this contract.
- 15.2 You may not transfer this Contract or any part of it to another party without our agreement in writing. We may transfer its rights or obligations to a company in the same group as us without

your consent.

- 15.3 This Contract binds you and each of your employees, agents and persons associated with you, including any of your associated companies and organisations that receive or use our Services or Products.
- 15.4 Either you or we can temporarily overlook a breach of a term of this contract and still have the right to enforce it at a later date.
- 15.5 It may happen that a part of this Contract is deemed to be invalid, unenforceable or illegal. In that case, we will modify that part to make it valid, enforceable and legal; we will make the modification in the way that best reflects the original intention of the part. The modified Contract will then become the agreement between us.
- 15.6 Notwithstanding that the whole or any part of any provision of this Contract may prove to be illegal or unenforceable the other provisions of this Contract and the remainder of the provision in question shall remain in full force and effect.
- 15.7 No term of this Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
- 15.8 Any notices and complaints under this contract must be in writing by email or paper to
 - 15.8.1 You at the email address or physical address held in our records for you
 - 15.8.2 Us at the email address or physical address specified under the "Legal" link on our website homepage.
- 15.9 This Contract will be construed in accordance with, and will be governed by, the law of England and Wales. Each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.
- 15.10 This agreement and any Service Schedules that refer to it are the entire agreement between you and us.

IN WITNESS whereof this Agreement was signed on behalf of the parties hereto the day and year first before written.

DATE

SIGNED by)
as director for and on behalf of)
Conosco)

SIGNED by)
as director for and on behalf of)
LIMITED)

Schedule A: Managed Computing

Summary of Managed Computing service plans			
● included in plan, ○ optional extra at consulting rates			
	Service plan		
	Absolute	Extensive	Responsive
Support			
Account Manager	●	●	●
Telephone, web & email access to helpdesk	●	●	●
Remote support service (up to 30 minutes per incident)	●	●	●
Unlimited remote and onsite support service	●	○	○
Monitoring & maintenance			
Backups	●	●	○
Internet connections	●	●	○
Network monitoring	●	●	○
Patch management	●	●	○
Additional services			
Scheduled site visits by engineer	●	○	○
PC replacement	●	○	○
Desktop or laptop reload	●	180	180
Server reload	●	○	○
Quarterly account management meetings	●	○	○
Annual budgeting	○	○	○
Networking equipment loan	●	25	25
Onsite response times			
2 hour response	● (High cases)	150	150
4 hour response	● (Med cases)	75	75
8 hour response	● (Low cases)	●	●
Hours of cover			
09:00-18:00 M-F excluding bank holidays	●	●	●
Evening & weekend support	○	○	○

16 Service Plans

- 16.1 Where we agree to cover your computers under one of our Managed Computing service plans, your fees for the service plan will cover the work that is included in that service plan. YOUR SERVICE PLAN MAY EXCLUDE SOME OF THE SERVICES DESCRIBED IN THIS SECTION. Your choice of Service Plan determines which of these Services are covered by your fees.
- 16.2 The fees for your Service Plan are calculated on the basis of the number and type of computers and other equipment that we are supporting. When you add or remove equipment we will adjust the fees accordingly. You are responsible for telling us that you have added or removed equipment. When you add computers to your network and we discover them then we will deem them to be covered and chargeable unless you notify us otherwise in advance.
- 16.3 Where a Service Plan has a restriction on the amount of time we will spend on each support Case, we will charge you at our applicable consultancy rates for remote work in excess of the time limit. The time limit applies to each Case logged in our support system. You agree that we

do not need your prior approval to do work in excess of the time limit.

- 16.4 All problems relating to a single underlying fault are a single Case.
- 16.5 'Remote' support refers to work that is done from our offices. 'Onsite' support refers to work done outside our premises.

17 Support Service

17.1 The Support Service includes

- 17.1.1 The Support Service is available only for items that we have agreed to support (the 'Managed Equipment').
- 17.1.2 We will keep the Managed Equipment working in the condition, and to the standard, that it was supplied by us ('Operational Order'). If a part of the Managed Equipment is not in Operational Order, we will restore it to Operational Order.
- 17.1.3 We will endeavour to solve faults remotely whenever possible. We will choose whether to use remote management tools or site visits. We will choose when to reinstall applications or the whole operating system. We may choose to defer minor problems that can't be solved remotely until our next scheduled site visit.
- 17.1.4 We provide first line support for any software we supply or specify. If we cannot resolve a problem we may choose at our discretion to reinstall the software. In extreme cases we will hand the problem over to the manufacturer.
- 17.1.5 We provide first line hardware support for the Managed Equipment. If we cannot resolve a problem we will hand it over to the supplier under any maintenance cover or warranty that you have. This may include replacement of hardware where it cannot be fixed.
- 17.1.6 We provide first line support for any third-party services that we resell to you provided that you are paying any Managed Computing fees for those services. If we cannot resolve a problem we may choose at our discretion to refer it to the supplier. The supplier's service level agreement will apply where it is less stringent than our own.
- 17.1.7 You must inform us of any faults as soon as they arise. If you delay informing us of obvious warning signs in the Managed Equipment then the fault may grow and cause additional damage. We reserve the right to charge our normal consultancy fees if such delays cause us additional work.
- 17.1.8 We will respond to faults according to any Service Level Agreement that exists between us. If there is no such agreement we will respond with our best efforts. The response time runs from when we receive your notice of a fault. We may prioritise faults and will endeavour to inform you of any such prioritisation.
- 17.1.9 If the fault is one that may be corrected through our web site help area we may refer you to the web site. You agree to perform any actions that we request of you to help correct the fault, such as restarting the computer and checking cables.
- 17.1.10 If we cover a computer that we have not supplied and agree that it does not need to be reloaded immediately with a clean operating system and applications, we may defer the cost of such a reload until such time as we deem it necessary. If you then decline to pay the reload fee we may immediately terminate the Service for that piece of equipment and we will have no obligation to do any further work on it.

17.2 Support case priorities

- 17.2.1 We will create a 'case' record in our fault management system for each fault that you report or we find. We will determine the priority of each case based on its severity, its urgency and the proportion of your users affected. We use the following guidelines when assessing a case:
- 17.2.2 High priority cases are those that significantly affect the work of an entire office.
- 17.2.3 Medium priority cases are those that significantly affect the work of one user.
- 17.2.4 Low priority cases are those for which there is a workaround.

- 17.2.5 Change requests are cases where there is no fault but a new setting or user needs to be created or new software installed.
- 17.3 Notifying us of a problem
 - 17.3.1 You can notify us of a question or problem by telephone, email or our web site. You must use one of the contact points specified by us for logging problems. If you use other contact points our response and fix times may be longer than expected.
 - 17.3.2 We will provide a single point of initial contact for all faults with the Managed Equipment and Services. This contact will be by web form or telephone. We cannot guarantee to meet our Service Levels until we have given you a reference number for the fault.
- 17.4 Hours of operation
 - 17.4.1 Our standard hours of operation are 0900 to 1800 UK local time, Monday to Friday excluding UK bank holidays. These are the hours during which we will respond to support problems and do remedial work. If you require us to do work outside our standard hours we may charge you additional fees.
 - 17.4.2 If we agree to offer the Service outside of our standard hours we will work on a best endeavours basis and we cannot guarantee any response or fix times, unless otherwise agreed.
 - 17.4.3 We may at our discretion offer to perform work outside our standard hours, in which case we may charge you additional fees. This includes performing remedial work on Managed Equipment that has failed during standard hours.
- 17.5 What the Service does not include
 - 17.5.1 We cannot correct any faults inherent in the Managed Equipment or enhance the original specification of it.
 - 17.5.2 The Service does not include installing or moving hardware, software or Services. Any additions are subject to our confirmation that the requested items are compatible with and appropriate for the Managed Equipment.
 - 17.5.3 The Service does not include setting up or configuring systems but we will perform a reasonable level of general server administrative tasks including adding new users, resetting passwords, and managing MS Exchange and its mailbox sizes.
 - 17.5.4 The Service does not include hardware warranties, repairs or replacements.
 - 17.5.5 The Service does not include information or support ('Tuition') about how to use third party programs, operating systems or pieces of hardware. The Service does not include responding to questions about how to do the following: achieve specific outputs or results; change the preferences, options, or customise a program; integrate the Managed Equipment or a program with another piece of software or hardware; perform tasks that aren't covered by the relevant user's manual or instructions.
 - 17.5.6 Any Tuition information we provide is on an 'as is' basis. If we provide you with links to or details of third party information or services we make no guarantees about the quality or suitability of these services.
 - 17.5.7 Unless specifically stated the Service does not include support for third party services such as Internet connections, email services and file storage services.
 - 17.5.8 The Service does not include the cost, supply or installation of consumables such as printer cartridges and paper, compact disks, DVDs, floppy disks, batteries and cables.
 - 17.5.9 The Service does not include the disposal of hardware or any other materials. You are responsible for the disposal of all hardware purchased by you.
 - 17.5.10 The Service does not include insurance of any form.
 - 17.5.11 Data and backups: the Service does not include data management such as cataloguing files, archiving files to permanent offline storage, splitting large files into smaller ones, managing versions of files, database administration, encryption and decryption of files, deleting old and temporary files, and searching for files. The Service does not include disaster recovery services except for providing online access to any Backup Data that is available through our Services.

- 17.5.12 Anti-virus and security: the Service does not include anti-virus software for the Equipment, anti-virus for any email services, network firewalls, surge protectors, and uninterrupted power supplies since the pricing of these cannot be fixed in advance. We require all these to be present and will supply such software as agreed between us for additional fees.
- 17.6 Viruses, hacking and other unauthorised use of the Managed Equipment
 - 17.6.1 If the Managed Equipment is affected by unauthorised usage or access we will restore it to working order subject to the following conditions: we reserve the right to charge consultancy fees where the fees for the Service do not reflect the amount of work involved; you accept that there may be some or total loss of your data.
 - 17.6.2 If you do not allow us to restore the Managed Equipment to our satisfaction we may terminate the Service immediately on it and require you to disconnect it from any networks.
- 17.7 General technical conditions
 - 17.7.1 You must give us Administrator-level access to all Equipment at all times and we may refuse to give you Administrator-level access to it. You will not change the Windows 'Computer name'. You will not remove or change the settings of any software that we use to manage the Managed Equipment.
 - 17.7.2 You must use anti-virus filtering on your operating system and inbound email, surge protectors on all Managed Equipment, and uninterrupted power supplies on all Managed Equipment servers. All these must be approved by us.
 - 17.7.3 If you store any data on the Managed Equipment then you must ensure that it is backed up to a physically separate location. You understand that in many situations we may need to erase all data on the Managed Equipment in order to fix faults and that computer data stored in only one location is susceptible to loss without warning.
 - 17.7.4 You must ensure that at all times your network allows us to remotely access the Managed Equipment. If you prevent us from gaining remote access to the Managed Equipment we may not be able to provide the Service.
 - 17.7.5 Your Managed Equipment must be connected to the Internet through a connection, including modem and firewall, that we have approved. When it is not connected, or the connection does not meet our technical requirements, we cannot guarantee to provide the Service to you. Our requirements include the Internet communications protocols and ports that are open to us; your connection speed; your firewalls and their configurations.
 - 17.7.6 Where Managed Equipment is connected to the Internet by a connection that we supply or manage, and the connection is not working, we may be unable to provide the full Service until the connection is working again.
 - 17.7.7 Software and hardware that we have not supplied are "Unsupported Items" unless we agree to support them. If you install Unsupported Items on the Managed Equipment, you do so at your own risk. We may remove or ask you to remove any Unsupported Item that in our sole opinion causes or may cause faults in the Managed Equipment or Services.
 - 17.7.8 Where Managed Equipment becomes unsupportable through age, wear and tear, or usage in excess of its specifications, or is out of warranty, we reserve the right to require you to upgrade the Managed Equipment. If you do not upgrade the Managed Equipment we may terminate the Service on it.
 - 17.7.9 We may at our discretion impose business-class requirements on Managed Equipment servers including: Trend and MessageLabs anti-virus services, a clean and air-conditioned physical environment, Diskkeeper or other defragmenter, limits on mailbox sizes, Raid 5 disk redundancy, Uninterruptible Power Supply and having your relevant Internet domains and Internet connection hosted by us.
- 17.8 General operational conditions
 - 17.8.1 We are not responsible for repairing or fixing hardware breakages. You should ensure that you are covered by manufacturers' warranties for all Managed Equipment. As a minimum we recommend "Next Business Day" maintenance contracts.

- 17.8.2 Where we have agreed to manage a warranty provided to you by a manufacturer, you must initiate any claims under the warranty through us. If you do not and you later ask us to act for you, we reserve the right to charge additional fees or refuse to take on the work.
- 17.8.3 Where we agree a time to visit your Premises or perform work for you, we will make best efforts to keep to that schedule. We do not make any guarantee, implicit or explicit, to keep to that schedule.
- 17.8.4 We can provide continuity of Service only whilst the Managed Equipment is connected in accordance with our Engineers' recommendations. If you wish to move the Managed Equipment to another Location, we recommend that you consult one of our engineers to ensure that the Managed Equipment is disconnected and reconnected in a manner that does not adversely affect the Service. If you move the Managed Equipment without consulting an engineer you do so at your own risk. If you are unsuccessful in reconnecting the Managed Equipment and require any of our engineers to visit your Premises, you will be charged for re-connection.
- 17.8.5 If you move a Broadband Internet connection to another Telephone Data Line, you must inform us before making any changes. You may have to pay charges for the original internet connection while it is subject to a minimum period of service. You may have to pay a set-up fee for the new Internet connection and an installation fee if any of our engineers need to visit you.
- 17.8.6 You agree to give us physical access to the Managed Equipment when we need it.
- 17.8.7 If the Equipment cannot be returned to normal working order by connecting from our Service Sites, we may hand the problem to the Equipment Supplier. If necessary, we or a component's manufacturer may swap a faulty component for a similar working component. We will make every effort to ensure that any such replacement component is as close in specification to the faulty one as possible.
- 17.8.8 We reserve the right to do urgent repair work that falls outside of the Service if we deem it necessary. We will endeavour to seek your approval of any additional charges in advance.
- 17.8.9 You are responsible for keeping records of all licences for your Equipment including software and services.
- 17.9 Self-help
 - 17.9.1 You agree that in the event of a fault you will check our web site help areas, if available, for the solution to the fault and perform any actions that our web site suggests to correct the fault, such as restarting the computer and checking cables, before contacting us.
 - 17.9.2 You understand that our charges are based on being able to support the Managed Equipment remotely and you agree that you will help us by performing any tasks that we may reasonably require, including restarting hardware, checking cables and performing diagnostic tests. If you are unable to help us and we have to visit your Premises to rectify a fault that we could have directed you to rectify, we reserve the right to charge our normal consultancy rates for the visit.
- 17.10 Termination
 - 17.10.1 We will provide Software Upgrades from time to time. If you do not accept a Software Upgrade, we may at our discretion give you 7 days notice and then terminate the Services to which the Upgrade relates.

18 Monitoring and Maintenance Service

- 18.1 We will monitor the Managed Equipment to give advance warning of and reduce the likelihood of any failure or breakdown in it. The monitoring tools cannot detect all impending faults and may not always prevent hardware failure.
- 18.2 If we see a fault and decide that it is significant we will raise a case in our system and fix it under the terms of your Support service. You agree that we will not notify you of all faults nor get your agreement before fixing them. We undertake to raise cases only for faults that do or could affect

the operational health of your systems and not for cosmetic issues.

- 18.3 We will keep Microsoft Windows, and certain other applications we select, up to date with software upgrades, fixes, service packs and patches ("Software Upgrades") as they are released by the manufacturer.
- 18.4 We will install Software Upgrades at our discretion. We may choose to not install them if they are faulty, do not provide significant improvements, or require additional payment. We may delay installing them until we have tested them to our satisfaction.
- 18.5 Where we provide you with anti-virus software as agreed between us we will keep the anti-virus software and services on the Managed Equipment up to date.

19 Additional Services

19.1 Account Management

- 19.1.1 As part of the Service we will provide you with a named Account Manager who will be your primary contact for all non-technical communications.
- 19.1.2 Account management: the Service does not include regular account management meetings, creating financial budgets and other management reports, or doing purchasing and licensing research.
- 19.1.3 We include a reasonable amount of advice and consultancy time in the Service commensurate with the size of your orders. If you require more work than we consider reasonable we will agree a charging basis with you in advance.

19.2 Scheduled site visits

- 19.2.1 We will send an Engineer to your sites on a regular scheduled basis. We will set the duration and frequency according to your needs.
- 19.2.2 During site visits we will as far as possible fix any accumulated minor problems.

19.3 PC replacement

- 19.3.1 This Service does not include the supply of any hardware, software or other licences, nor the cost of disposal of old equipment.
- 19.3.2 We will install and configure a new desktop or laptop PC to replace one that has been, but will no longer be, covered under a Support Service, provided that we have agreed a replacement is necessary.
- 19.3.3 We will move your data from the 'My Documents' folder of the old computer to the same location on the new computer.
- 19.3.4 We will install a reasonable number of applications on the new computer provided you give us a list of the applications beforehand and any installation disks and licences that are needed. If you have installed any programs yourself, or changed the preferences or settings on any programs, you may have to reinstall or reconfigure them again yourself.

19.4 PC reload

- 19.4.1 We will re-install the operating system on a desktop or laptop PC when we decide that it is the most efficient way to solve a fault on the PC.
- 19.4.2 We will move your data from the 'My Documents' folder of the old installation to the same location on the new installation.
- 19.4.3 We will install a reasonable number of applications on the new installation provided you give us a list of the applications beforehand and any installation disks and licences that are needed. If you have installed any programs yourself, or changed the preferences or settings on any programs, you may have to reinstall or reconfigure them again yourself.
- 19.4.4 We may decide to perform this work on our premises in which case we may charge transport fees.

19.5 Server reload

- 19.5.1 We will re-install the operating system on a server when we decide that it is the most

efficient way to solve a fault on the server. This service does not apply to servers that we did not originally set up.

- 19.5.2 We will move the data on the server to the new installation and re-install the applications on it.
- 19.5.3 We may decide to perform this work on our premises in which case we may charge transport fees.

Schedule B: Consultancy Services

20 Consultancy work

- 20.1 When we do work that is not covered by a fixed-price Managed Computing service plan, we will work on a consultancy basis. We will charge you for costs and time spent on consultancy work according to our prevailing standard rates.
- 20.2 Consultancy services will be provided with our prior consent and at mutually agreeable dates and times.
- 20.3 We do not make any commitment as to our availability for Consultancy work.
- 20.4 You agree that you are responsible for ensuring your data is backed up. We are not responsible or liable for the loss of any data or the loss of working time due to consultancy work that we perform.

21 Project work

- 21.1 A Project is pre-planned consultancy work done to a specification and timetable ("Project Plan"). Work that is not included in the Project Plan is not included in any budget for the Project.

22 Change requests

- 22.1 A Change Request is a request to make changes to a Project Plan. A Change Request must be approved by us and may include changes to the timetable, specifications and budget of the Project.
- 22.2 If you want to alter a Project you must submit a Change Request in writing to your Account Manager, ahead of the work that you want to change. We may refuse to change the Project Plan, in which case we will offer you the option of terminating the Project.
- 22.3 We may make a Change Request when circumstances outside our control mean that a Project Plan is no longer achievable. In this situation we will offer you the choice of accepting the Change Request or terminating the Project.

23 Suspension of work

- 23.1 If you suspend a Project for more than one month we may deem you to have terminated the Project.

24 Terminating a Project

- 24.1 If you terminate a Project then we will charge you for all work done and all costs incurred on the Project. If we have agreed a fixed cost for the Project then we may charge you for hours worked at our standard consultancy rates.

Schedule C: Third-Party Services

25 General

- 25.1 For goods and services that we resell, unless otherwise specified:
 - 25.1.1 We will charge you for support at our consultancy rates.
 - 25.1.2 We will provide support within our standard business hours.
 - 25.1.3 We do not provide any service level guarantees.

26 Anti-virus

- 26.1 We cannot guarantee that any anti-virus software supplied by us will keep the Equipment or your data free from computer viruses, worms, trojans, hacking or any other unauthorised access.

27 Data Backup Services

- 27.1 Where we provide a service to back up your data the following terms will apply.
 - 27.1.1 We will provide you with the backup application. You are responsible for telling us in writing which data are to be backed up and for notifying us in writing of any changes to this.
 - 27.1.2 If you uninstall the backup application, you will lose access to all the Backup Data for the Service after the time that the Service Schedule shows for keeping deleted data.
 - 27.1.3 This service does not constitute a 'Disaster Recovery' service. We will restore data by downloading it from the backup servers. If for speed or other reasons you ask for your data to be restored by a physical transfer of disks we may charge additional fees.
 - 27.1.4 You must ensure the following conditions are met for the Data Backup Service to work. If you do not, we will not be able to backup or restore your data and we will not be responsible for any loss of data that results.
 - 27.1.5 Your Computer must be connected to a power source, turned on and not in a standby or sleep mode.
 - 27.1.6 Your Computer must be connected to the Internet. The speed and type of connection may affect which services we can provide and how long they take to perform. You must ensure that your Internet connection and firewall allow the backup traffic.
 - 27.1.7 You must not remove access permissions for the Backup Software from the data to be backed up. You must not change the settings on the Backup Software.
 - 27.1.8 You acknowledge that if you use backup services from Mozy.com then Microsoft Exchange backups may not be fully reliable.
- 27.2 We do not do the following:
 - 27.2.1 Keep files that you have deleted from your Computer and old versions of files that you have overwritten on your Computer beyond the time limits set out in the Service Schedules. The Service is a backup of the current files on your Equipment and not a long-term archive.
 - 27.2.2 Choose which files on your Computer to exclude or include in backups, nor which files or folders to restore.
 - 27.2.3 Do data management: cataloguing files, archiving files to permanent offline storage, splitting large files into smaller ones, managing versions of files, database administration, encryption and decryption of files, deleting old and temporary files, and searching for files.
 - 27.2.4 Repair corrupted files. We do not recover data from disks that are corrupt or have physically malfunctioned.

27.3 Charges for data storage

27.3.1 We will charge you for the amount of Data Storage that you use for your Backup Data.

27.3.2 We will increase the Data Storage as necessary to keep your data backed up. You agree that, if you increase the amount of Backup Data, we will increase your backup charges accordingly.

27.3.3 If you want to reduce your Data Storage, you must notify us by telephone or email. Any reductions in charges will take effect from the date of the next bill; if the next bill is dated less than ten working days after your notification, the reductions may not take effect until the following bill.

27.3.4 The Service does not include any consultancy or other work, by us or any third-party, in relation to your backups. In particular, the Service does not include work to restore your data or rebuild your computers.

Schedule D: Third-Party Licences

28 Attix5 Software Licence

28.1 This schedule concerns your use of Attix5 software ("Licensed Programs") and associated media, printed materials and "online" or electronic documentation ("Licensed Program Materials"). We do not own the Licensed Programs or the Licensed Program Materials and the use thereof is subject to your agreement with us, and to your understanding of, compliance with and consent to the following terms and conditions.

28.2 Licence

28.2.1 We hereby grant to You a non-exclusive, non-transferable licence without the right to sub-licence to use the Licensed Programs and Licensed Program Materials for the purposes of the Data Backup Service more particularly described in Schedule A in connection with your own data for Your own internal business purposes only ("the Licence").

28.3 INTELLECTUAL PROPERTY RIGHTS

28.3.1 All copyright and other intellectual property rights vested in and to the Licensed Programs and Licensed Program Materials furnished by Us to You pursuant to and in terms of this Schedule, shall be and remain the sole property of Us, and/or Our supplier and You shall only be entitled to utilise same for the purposes set out in this Schedule.

28.4 INTELLECTUAL PROPERTY RIGHT INFRINGEMENT

28.4.1 If a claim, demand or action for infringement or alleged infringement of the intellectual property rights of a third party is made, or if a final injunction is obtained against Your right to continue using the Licensed Programs or, if in Our opinion the Licensed Programs are likely to become the subject of a such claim, We shall have the option to:

- modify any or all of the Licensed Programs or Licensed Program Materials so as to avoid the infringement or the alleged infringement; or
- take such other action as We deem reasonable to avoid or settle such claim, demand or action.
- If We determine that neither of these alternatives is reasonably available, We shall have the option to terminate the Licence.

28.4.2 Notwithstanding the foregoing, We shall have no liability under this clause 28.4 if the alleged infringement arises from:

- use of the Licensed Programs in combination with other equipment or software not provided by Us;
- any modification to the Licensed Programs made by You without Our prior written consent;
- Your failure to install Fixes (as defined in clause 28.6.1) or Updates (i.e. any new version of the Licensed Programs which adds functionality and other improvements and which is designated by a progression of the release number (either right or left of the decimal point) following the version initially licensed) within 60 days after You received such Fix or Update from Us;
- use of the Licensed Programs other than in the manner specified in the Licensed Program Materials; or
- claims made alleging that the Licensed Program's practicing of any protocol not created in whole or in part by Us or Our supplier infringes any third party's patent rights,
- if in the case of any claim described in clauses 28.4.2 above, such action would have been avoided but for such modification, use or combination. For the purposes of this Schedule, a "protocol" is a formal set of conventions governing the format and control of interaction among communicating functional units that is widely used

within an industry and may or may not be adopted by a standards body. Examples of protocols are Secure Sockets Layer (SSL) and Transport Layer Security (TLS).

- 28.4.3 You shall, at Your own expense, indemnify, defend and hold Us and Our directors, officers, employees and agents harmless from and against all claims, actions, judgments, awards, expenses (including reasonable attorneys' fees) and awarded damages assessed against Us or agreed to be paid by You in settlement from any infringement claim arising from any of the events described in clauses 28.4.1 above, so long as We give You (a) prompt notice in writing of such action, (b) the right to control and direct the investigation, preparation, defence and settlement of the action; and (c) reasonable assistance and information.
- 28.4.4 Notwithstanding anything to the contrary in this Schedule, the foregoing states each party's entire liability and exclusive remedy for proprietary rights infringement.

28.5 LICENSE RESTRICTIONS

- 28.5.1 You shall not, for the duration of this Licence granted in this Schedule, nor at any time after its termination for any reason whatsoever, itself or through any third party, and whether directly or indirectly:-
- copy, reproduce, translate, adapt, vary, modify, encumber or in any other way deal with the Licensed Programs or any portion thereof other than so far is necessary for the purposes of the Licence;
 - de-compile, disassemble or reverse engineer the Licensed Programs or any portion thereof, except to the extent permitted by applicable law (notwithstanding any contractual prohibition);
 - use the Licensed Programs except under the terms and conditions contained in this Schedule; and
 - remove any proprietary notices or labels or Trade Marks on the Licensed Programs or the Licensed Program Materials.
- 28.5.2 In addition, unless otherwise indicated, nothing in this Schedule grants You any right to the source code of the Licensed Programs.
- 28.5.3 Attix5 is the authorised licensor of the Trade Marks and the Trade Marks are used with the permission of and under licence from Attix5 and/or the proprietor of the Trade Marks. Nothing in this Schedule grants You any rights to use the Trade Marks and you undertake not to take any action which may or does prejudice the ownership of Attix5 and/or the proprietor or any of Attix5's and/or the proprietor's right and/or title to any goodwill vested in the Trade Marks, or which does or may affect the validity of the registration (if any) of the Trade Marks. "Trade Marks" means the trade marks (whether registered or not), designs, marks, brand names, signs, emblems, logos and/or devices used by Attix5 in connection with the Licensed Programs or Licensed Program Materials from time to time.

28.6 LIMITATION OF LIABILITY

- 28.6.1 Should You discover any virus, fault or defect in and/or failure of the Licensed Programs You shall notify Us in writing of such fault or defect and furnish Us with details of the cause of that breach and We shall –
- at Our own cost and expense forthwith, at Our option, remedy the cause of the breach in question as soon as is reasonably possible by (i) replacing the Licensed Programs; (ii) correcting the cause of the breach; (iii) provide a work around or Licensed Programs patch (referred to as "Fixes"); or
 - in the event that We are unable to remedy the cause of the breach in question, We shall be entitled to terminate the Licence and refund to You all amounts paid by You in respect of the Licensed Programs in question, subject to return by You to Us of that Licensed Programs.
 - All Fixes provided by Us shall constitute Licensed Programs as defined, and shall be governed by the terms hereof.
- 28.6.2 You acknowledge and agree that Your sole remedy in respect of any virus, fault or

defect in and/or failure of the Licensed Programs shall be as set out in clause 28.6, and You shall have no further claims of any nature whatsoever against Us arising out of or pursuant to any virus, fault or defect in and/or failure of the Licensed Programs.

28.6.3 We make no warranties or representations of whatsoever nature, and specifically disclaim all such warranties, (whether express or implied by law) in respect of the Trade Marks, Licensed Programs and Licensed Program Materials, including without limitation, the warranties of merchantability and fitness for a particular purpose, and the Licensed Programs and Licensed Program Materials are provided by Us on an "as is" basis. You are responsible for deciding whether or not the Licensed Programs are suitable for Your purposes and We will not be responsible for this. Also, it is not a term of this Schedule that use of the Licensed Programs will be uninterrupted or error-free.

28.6.4 We shall not be liable to You, and/or any third party whomsoever, and You hereby indemnify and hold Us harmless against any loss (including but not limited to any loss of profits, loss of use, business interruption and loss of data), liability, damage (whether direct or indirect, or consequential) or expense of whatsoever nature and howsoever arising which may be suffered by You and/or any third party whomsoever, which is caused by, results from or is attributable to—

- the performance (or failure to perform, as the case may be) by You of Your obligations in terms of this Schedule; or
- the use, operation, functioning and interoperability of the Licensed Programs with any hardware or software not provided by Us.

28.6.5 Notwithstanding anything to the contrary contained in this Schedule, but subject to clause 5.6, We shall not, in any circumstances whatsoever, be liable to You, or any third party whomsoever, (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) and You hereby indemnify and hold Us harmless for any indirect, contingent, consequential, punitive and/or exemplary damages, expense or losses (including but not limited to loss of revenue, loss of business, loss of profit or loss of data), suffered or incurred by You, and/or any third party, whomsoever and howsoever arising in connection with the Licensed Products.

28.6.6 Our liability for:

- death or personal injury caused by its negligence or the negligence of its employees or agents; or
- breach of any condition as to title or quiet enjoyment implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or
- for fraudulent misrepresentation,

28.6.7 is not excluded or limited by this Schedule D, even if any other term of this Schedule D would otherwise suggest that this might be the case.

28.6.8 Without derogating from the provisions of clauses 28.6.1 to 28.6.5, Our maximum total liability for any loss, liability, damage or expense for which We may in any event be liable to You arising out of or pursuant to or in terms of this Schedule D (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be as set out in clause 11 of the MSA.

28.6.9 Subject to clauses 28.6.6.1 and 28.6.6.3 no action, whether in contract or tort, including negligence, arising out of or in connection with the Licence, may be brought by either party more than two years after the cause of action has accrued.

28.7 INDEMNITY

28.7.1 Unless expressly stated, You do not indemnify Us in respect of any loss or damage suffered by Us under or in connection with the Licence and We shall be under a duty to mitigate all such loss or damage.

28.7.2 You hereby indemnify and hold Us harmless against all and any claims which may be made or action brought against Us by any person in respect of any matter for which Our liability is excluded in terms of clauses 28.6.4.

28.7.3 You indemnify and holds Us harmless against all costs, expenses, damages, loss or

liability of whatsoever nature (whether direct, indirect or consequential) which may be suffered or incurred by Us and/or any third party whomsoever, as a result of or which may be attributable to the performance by Us of Our obligations and/or the exercise by Us of Our rights in terms of this Schedule.

28.8 BREACH

28.8.1 Should either Party ("Defaulting Party")–

- breach any material provision of this Schedule (irrespective of the materiality of such breach or provision) and fail to remedy such breach within seven Business Days after receiving written notice requiring such remedy from the other Party;
- being a company, become controlled by a person or entity which did not have such control as at the commencement date of the Agreement;
- have any distress or execution levied on any of its property or assets, make or offer to make any arrangement or composition with creditors, have any resolution or petition passed or presented against it to wind up its business (other than for the purpose of amalgamation or reconstruction), have a receiver or administrative receiver appointed (or a petition presented for the appointment of an administrator) in relation to its undertaking, property;
- being a company, be deemed to be unable to pay its debts;
- compromise or attempt to compromise with, or defer or attempt to defer payment of debts owing by it to, its creditors generally; or
- alienate or encumber the whole or a major portion of its assets,

28.8.2 then the other Party shall be entitled, without prejudice to its other rights in law including the right to claim damages, to terminate the Licence granted under this Schedule on 10 days' notice given to the Defaulting Party.

28.8.3 For the purposes of this clause 28.8, a company shall be deemed to be controlled by any person or entity which directly or indirectly and whether in law or effect–

- beneficially owns the majority in number of the shares in that company's issued share capital;
- has the right or obligation to direct the manner in which the majority of the votes attaching to any class of shares in the issued share capital of that company are exercised at meetings of shareholders of that company; or
- has the right or obligation to appoint or remove directors holding a majority of the voting rights at meetings of that company's board.

28.9 EFFECTS OF TERMINATION

28.9.1 On termination of the Licence for any reason whatsoever –

28.9.2 You will cease using the Licensed Programs and Licensed Program Materials; and

28.9.3 You shall forthwith on request by and at the election of Us, either destroy or return all Licensed Programs, Licensed Program Materials, promotional and marketing materials, books, records, notes, memoranda, drawings, designs, manuals, documents and other information (irrespective of the medium upon which same is stored) which relate in any way to the Licensed Programs and/or bear or record the Trade Marks, in Your possession and/or under Your control, to Us and shall furnish Us with a certificate signed by a duly authorised officer confirming such return or destruction as the case may be.

29 Microsoft Licence Terms

TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document concerns your use of Microsoft software, which includes computer software provided to you by us as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually and collectively "SOFTWARE PRODUCTS"). We do not own the SOFTWARE PRODUCTS and the use thereof is subject to

certain rights and limitations of which we need to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with us, and to your understanding of, compliance with and consent to the following terms and conditions, which we do have authority to vary, alter or amend.

29.1 Definitions.

“Client Software” means software that allows a Device to access or utilize 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,” or other electronic device.

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

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

29.2 Ownership of Software products.

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29.3 Use of CLIENT SOFTWARE.

You may use the Client Software installed on your Devices by us only in accordance with the instructions, and only in connection with the services, provided to you by us.

29.4 USE OF REDISTRIBUTION SOFTWARE.

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29.6 Limitations on Reverse Engineering, Decompilation and Disassembly.

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

29.7 No Rental.

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.

29.8 Termination.

Without prejudice to any other rights, we may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.

29.9 No Warranties, LIABILITIES OR REMEDIES BY MICROSOFT.

Any warranties, liability for damages and remedies, if any, are provided solely by us and not by microsoft or its affiliates or subsidiaries.

29.10 PRODUCT SUPPORT.

Any product support for the SOFTWARE PRODUCTS is provided to you by us and is not provided by Microsoft or its affiliates or subsidiaries.

29.11 NOT FAULT TOLERANT.

the software products may contain technology that is not fault tolerant and is not designed, manufactured, or intended for use in environments or applications in which the failure of the software products could lead to death, personal injury, or severe physical, property or environmental damage.

29.12 EXPORT RESTRICTIONS.

The SOFTWARE PRODUCTS are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the SOFTWARE PRODUCTS, including the U.S. Export Administration 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/>

29.13 LIABILITY FOR BREACH.

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

Schedule E: SLA

30 The following Service Level Agreement applies to the Support Service.

30.1 We will create a 'case' record in our fault management system for each fault you report or we find. We will determine the priority of each case based on its severity, its urgency and the proportion of your users affected. We use the following guidelines when assessing a case:

30.1.1 *High priority* cases significantly affect the work of an entire office.

30.1.2 *Medium priority* cases significantly affect the work of one user.

30.1.3 *Low priority* cases have a workaround.

30.1.4 *Scheduled* cases are due by a specific date.

30.1.5 *Change requests* are for something new that needs to be set up or configured, rather than something that needs to be restored to a previous working state.

30.2 We aim to respond to and fix cases within these times:

Case priority	Response time	Fix time
High	30 mins	9 hours
Medium	30 mins	18 hours
Low	30 mins	27 hours
Scheduled	30 mins	Due date
Change request	30 mins	18 hours

30.2.1 The Response time is the time between when the case is logged in our systems and when we start working on it. The Fix time is the time between when the case is logged in our systems and when we finish working on it.

30.2.2 Time when we are waiting for your input to a case is not counted. Time between a case being closed and re-opened is not counted.

30.2.3 We aim to meet the target response and fix times in 90% of cases, measured at quarterly intervals through the year. You agree that it is not possible to meet these targets in 100% of cases due to peaks in workloads and the fact that some issues cannot be solved in a short period of time.

30.3 If our SLA performance falls below the target levels we will credit your account as follows:

Performance	Discount
<85%	2.5%
<70%	5%
<50%	10%

30.3.1 The performance is the average of the Response and Fix results.

30.3.2 The discount will be applied to future Managed Computing fees and calculated on the Managed Computing fees for the period of the measurement.