



# Non-Disclosure & Services Master Supply Agreement - Direct Customers

# Non Disclosure

IT IS AGREED as follows:

**1.0** In order to enable both parties to evaluate the Opportunity, confidential information may be disclosed from one party to the other. Confidential Information shall include but not be limited to commercial, accounting, financial, technical, operational or other information, in whatever form (including information disclosed orally).

**2.0** Each party will keep in confidence any Confidential Information disclosed to it by the other party and will not disclose that Confidential Information to any person other than their employees (or employees of a company in the same group of companies) or professional advisers (including lawyers and brokers) who need to know the Confidential Information without the prior written consent of the other party.

**3.0** Confidential Information disclosed pursuant to this Agreement will be used solely for the purpose of enabling each Party to evaluate the Opportunity and not for any other purpose.

**4.0** The AGENT acknowledges that in order for it to evaluate THE SERVICE from Vitanium, commercially sensitive information regarding the product may be disclosed and The AGENT agrees that the confidential information disclosed by Vitanium will not be used by the recipient directly or indirectly to gain commercial advantage in relation to THE SERVICE.

**5.0** The AGENT agrees it will not for a period of 24 months from the date of this Agreement directly or indirectly solicit for employment any officer or senior employee or any member of the Disclosing Party.

**6.0** Confidential Information does not include:

**6.1** any information which has been published other than through a breach of this Agreement; or

**6.2** information lawfully in the possession of the recipient before its disclosure under this Agreement took

place; or

**6.3** information obtained from a third party who is free to disclose it; or

**6.4** information independently developed by a party; or

**6.5** information which a party is requested to disclose and, if it did not, could be required by law, stock exchange regulation or other regulatory body to disclose.

# Payment & Direct Debit Setup

## **IT IS AGREED as follows:**

**1.0** All payments owed by the AGENT are to be collected on behalf of THE SUPPLIER by Direct Debit. The AGENT agrees to complete the GoCardless (Vitanium's Direct Debit Partner) Direct Debit signup process by clicking on the active link provided below.

**NB.** Service configuration details cannot be issued until the Direct Debit signup process has been completed and approved

<https://dashboard.gocardless.com/api/paylinks/OG7FG8AEW4>

## **The Direct Debit Guarantee**

- This Guarantee is offered by all banks and building societies that accept instructions to pay Direct Debits
- If there are any changes to the amount, date or frequency of your Direct Debit GoCardless Ltd will notify you 3 working days in advance of your account being debited or as otherwise agreed. If you request GoCardless Ltd to collect a payment, confirmation of the amount and date will be given to you at the time of the request
- If an error is made in the payment of your Direct Debit, by GoCardless Ltd or your bank or building society, you are entitled to a full and immediate refund of the amount paid from your bank or building society
- If you receive a refund you are not entitled to, you must pay it back when GoCardless Ltd asks you to
- You can cancel a Direct Debit at any time by simply contacting your bank or building society.

Written confirmation may be required.

Please also notify us by emailing [accounts@vsl-net.com](mailto:accounts@vsl-net.com).

# Vitanium Services Master Supply Agreement

## Interpretations:

**“THE SUPPLIER”** – Vitanium a trading name of Vitanium Cloud Limited and the provider of THE SERVICE.

**“THE SUBSCRIBER”** – Any person, firm, company, organisation, individual, subscriber or agent with whom THE AGREEMENT is made or who downloads a trial from THE WEBSITE and subsequently receives or transmits DATA using THE SERVICE.

**“AGENT”** – Any third party who is either an official Authorised or Associate Channel Partner representing THE SUPPLIER in the sale of THE SERVICE to THE SUBSCRIBER.

**“THE AGREEMENT”** – Comprises of the SERVICE ORDER FORM, the SERVICES MASTER SUPPLY AGREEMENT TERMS AND CONDITIONS, the Vitanium RESELLER AGREEMENT, the SERVICE LEVEL AGREEMENT and THE PRICE LIST pertaining to THE SERVICE and all other documentation referred to in any of the items.

**“THE SERVICE”** – Service or services as detailed on the SERVICE ORDER FORM and covered by the terms of THE AGREEMENT, which may include: Hosted Microsoft Exchange, Hosted Email Filtering, Hosted Email Archive, Hosted Online Data Backup, Hosted Web Filtering, Connectivity Services and Co-location.

**“SERVICE ORDER FORM”** – The hard copy order form or electronic communication (email or online web form) which specifies THE SERVICE and forms part of THE AGREEMENT.

**“THE SOFTWARE”** – Any downloadable software made available by THE SUPPLIER to THE SUBSCRIBER or THE AGENT to facilitate the use of THE SERVICE.

**“SERVICE START DATE”** - The day that THE SERVICE configuration details are provided to THE CUSTOMER or THE AGENT.

**“INITIAL TERM”** – The contract length agreed and entered into by THE SUBSCRIBER.

**“ONGOING TERM”** – On service renewal the contract length agreed and entered into by THE SUBSCRIBER.

**“THE INFORMATION”** - Includes THE SERVICE activation / access username and password detail and installation, setup and configuration documentation.

**“FORCE MAJEURE”** – Such events as defined in clause 14 of THE AGREEMENT.

**“ACCEPTABLE USE POLICY”** – The rules concerning acceptable usage of THE SERVICE as detailed on THE WEBSITE and within THE AGREEMENT from time to time.

**“LIMITATION OF LIABILITY”** – As defined in clause 9 of THE AGREEMENT.

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**“SERVICE LEVEL AGREEMENT”** – The appropriate SERVICE LEVEL AGREEMENT will apply and are specific to each service provided by THE SUPPLIER. These may be changed from time to time and can be viewed on THE SUPPLIER website <http://www.vitanium.com>

**“THE PRICE LIST”** - Is any document, supplied by THE SUPPLIER or its representatives by post, fax, electronic email or via THE WEBSITE, that contains costs of use relevant to THE SERVICE. THE PRICE LIST can from time to time change but also contain specific terms of use relevant to THE SERVICE, therefore must be considered an integral part of THE AGREEMENT.

**“THE WEBSITE”** - THE SUPPLIER website <http://www.vitanium.com>

**“THE CHARGES”** - The fees paid to THE SUPPLIER by THE SUBSCRIBER or AGENT for THE SERVICE supplied by THE SUPPLIER.

**“LOCATIONS”** - UK Data Centre’s maintained by THE SUPPLIER.

**“DATA”** - Includes electronically transmitted files, folders, databases, emails and web content.

**“STORED DATA”** - Files, folders, databases and emails held by THE SUPPLIER on behalf of THE SUBSCRIBER within the LOCATIONS for the specific purposes of continuity, backup or archive.

**“THE EQUIPMENT”** - Is on-premise or hosted hardware owned, rented or leased by THE SUBSCRIBER or AGENT.

## 1. Services

**1.1** Subject to compliance by THE SUBSCRIBER or AGENT with their obligations under this agreement and acceptance of the appropriate SERVICE ORDER FORM, THE SUPPLIER shall provide THE SERVICE to THE SUBSCRIBER or AGENT during the term of THE AGREEMENT with reasonable skill, care and diligence, in accordance with best industry practice and in compliance with all applicable laws.

**1.2** THE SERVICE will only be provided to THE SUBSCRIBER or AGENT once the appropriate SERVICE ORDER FORM and a signed copy of the SERVICES MASTER SUPPLY AGREEMENT has been received by THE SUPPLIER. THE SUBSCRIBER or AGENT can provide this either via the THE SUPPLIER website or electronically in email or in hard copy by fax or post.

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**1.3** THE SUPPLIER reserves the right to vary THE SERVICE at any time provided such variation would make no material difference to the nature or extent of THE SERVICE provided or to the ability of THE SUBSCRIBER or AGENT to use THE SERVICE and that any changes are implemented at the expense of THE SUPPLIER unless otherwise agreed. However THE SUPPLIER will inform THE SUBSCRIBER or AGENT of such variations where THE SUPPLIER deems it necessary to do so and where it is reasonably practicable.

**1.4** If THE SERVICE is stated to be for unlimited usage, then it shall be subject to the FAIR USAGE POLICY of THE SUPPLIER published within THE AGREEMENT or on THE WEBSITE from time to time.

## 2. Term

**2.1** Unless otherwise agreed in writing by THE SUBSCRIBER or AGENT or THE SUPPLIER, THE AGREEMENT shall subsist for the INITIAL TERM. If THE SUBSCRIBER does not wish to renew THE AGREEMENT after the INITIAL TERM, THE SUBSCRIBER or AGENT must notify THE SUPPLIER in writing within the specific terms of THE SERVICE and before the date of expiry of THE AGREEMENT otherwise the agreement shall be deemed to be renewed for a subsequent ONGOING TERM which will be equivalent to the INITIAL TERM. In this instance THE AGREEMENT and all its terms will continue to subsist.

**INITIAL TERM 1 MONTH (Monthly) = ONGOING TERM 1 MONTH**

**INITIAL TERM 12 MONTHS (Annual) = ONGOING TERM 12 MONTHS**

**2.2** THE SUBSCRIBER or AGENT and THE SUPPLIER have additional rights to terminate THE SERVICE which are set out in clause 10. See clause 11 for how THE SUBSCRIBER or AGENT can pay to end THE SERVICE early.

## 3. THE SUPPLIER obligations

### THE SUPPLIER will:

**3.1** Subject to compliance by THE SUBSCRIBER or AGENT with their obligations under THE AGREEMENT and acceptance of the appropriate SERVICE ORDER FORM, provide THE SERVICE to THE SUBSCRIBER or AGENT during the term of THE AGREEMENT with reasonable skill, care and diligence, in accordance with best industry practice and in compliance with all applicable laws.

# Vitanium Services Master Supply Agreement

**3.2** provide THE INFORMATION required for THE SUBSCRIBER or AGENT to prepare its equipment and premises for any setup or installation work that THE SUPPLIER or its AGENT needs to carry out prior to or during the provision of THE SERVICE.

**3.3** will make reasonable endeavours to ensure THE SERVICE is available by any target date that has been formally agreed with THE SUBSCRIBER or AGENT. However, this date and any other dates and timescales in relation to THE SUPPLIERS obligations are estimates provided for planning purposes only.

THE SUPPLIER will not be responsible for any failure to meet any such dates or timescales due to THE SUBSCRIBER or AGENT not meeting its obligations or because of any outside 3rd party influence or unforeseen circumstances beyond THE SUPPLIERS control.

**3.4** supply and support THE SERVICE within the terms of the relevant SERVICE LEVEL AGREEMENT.

**3.5** All the time THE AGREEMENT is in place THE SUPPLIER will not communicate or provide information and pricing direct to a customer of an AGENT unless otherwise agreed in advance between THE SUPPLIER and the AGENT.

**3.6** indemnify THE SUBSCRIBER against total loss of the STORED DATA, where THE SUPPLIER is proven negligent, notwithstanding acts of god or 3rd party influence outside of THE SUPPLIER control. In such cases where the total loss prevents THE SUBSCRIBER carrying out their daily business and THE SUPPLIER is directly negligent the total Liability of THE SUPPLIER arising out of a total loss of THE SUBSCRIBERS STORED DATA shall be limited to £1,000,000.00 in respect of each incident or series of connected incidents.

## **4. THE SUBSCRIBER or AGENT obligations**

**THE SUBSCRIBER or AGENT must:**

**4.1** use THE SERVICE in accordance with THE AGREEMENT the ACCEPTABLE USAGE POLICY and any reasonable instructions which THE SUPPLIER advises THE SUBSCRIBER or AGENT of from time to time.

**4.2** provide a signed SERVICE ORDER FORM relating to THE SERVICE either electronically by email or in hard copy either by fax or post. THE SUBSCRIBER or AGENT acknowledges that THE SUPPLIER will not be able to provide setup information which includes ENCRYPTION KEY OR PASSWORD details or commence any installation without a signed SERVICE ORDER FORM.

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**4.3** provide THE SUPPLIER with such information and access to equipment and premises (and those of any relevant third parties) as THE SUPPLIER requires to enable and maintain THE SERVICE provided to THE SUBSCRIBER or AGENT.

**4.4** in respect of THE SERVICE being installed, ensure that the relevant equipment and premises have been prepared as THE SUPPLIER reasonably requires and comply with any technical specifications agreed.

**4.5** effect and maintain throughout the provision of THE SERVICE insurance cover for the benefit of THE SUPPLIER against any and all foreseeable risks in providing THE SERVICE on such equipment or at such premises.

**4.6** inform THE SUPPLIER immediately if any contact details (including names, telephone numbers and physical addresses) change. THE SUBSCRIBER or AGENT also acknowledges that THE SUPPLIER may be unable to provide THE SERVICE if THE SUBSCRIBER or AGENT breaches this clause 4.7.

**4.7** must not (a) modify, redistribute, or copy THE SERVICE nor allow any third party to do so or (b) use or permit the use of THE SERVICE for the benefit of any third party, including on a “service bureau” basis (and in any such event THE SUBSCRIBER or AGENT must inform THE SUPPLIER immediately). Failure to do so will result in THE SUBSCRIBER or AGENT being in breach of THE AGREEMENT and THE SERVICE being subject to suspension until the breach is resolved or THE AGREEMENT terminated.

**4.8** must co-operate with any reasonable request from THE SUPPLIER for information regarding THE SUBSCRIBER or AGENT in relation to the use of THE SERVICE and supply such information to THE SUPPLIER without delay.

**4.9** acknowledges that the provision of THE SERVICE is dependent upon THE SUBSCRIBER or AGENT performing its obligations in accordance with the timescales agreed with THE SUPPLIER.

**4.10** If aware of any fault in THE SERVICE or has a question in relation to performance or operation of THE SERVICE then THE SUBSCRIBER or AGENT must immediately report this to THE SUPPLIER and provide sufficient information to enable THE SUPPLIER to investigate the problem.



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**4.11** shall ensure that each of its employees, agents or associates who use THE SERVICE understand and comply with the terms of THE AGREEMENT.

**4.12** have obtained all necessary permissions, consents permits and/or licences to enable THE SUPPLIER to enter onto and remain upon THE SUBSCRIBERS or AGENT equipment or premises for the purposes of installation and setup or removal and from time to time for the maintenance of THE SERVICE.

1. Such non-compliance may result in a delay to THE ACTIVATION DATE; and
2. THE SUPPLIER may not be able to provide THE SERVICE, for which THE SUPPLIER will have no Liability to THE SUBSCRIBER or AGENT.

**4.13** agree and accept that the initial setup of THE SERVICE will be performed by THE SUPPLIER free of charge. THE SUBSCRIBER or AGENT also agree that if THE SERVICE requires re-setup due to no fault of THE SUPPLIER, THE SUBSCRIBER or AGENT will pay reasonable costs for the re-setup of THE SERVICE.

**4.14** if THE SERVICE is cancelled by THE SUBSCRIBER or AGENT within 12 months of the initial setup on THE EQUIPMENT by THE SUPPLIER and THE SUPPLIER performed the setup free of charge, THE SUBSCRIBER or AGENT agree to pay THE SUPPLIER any setup costs detailed within THE PRICE LIST.

## **5. Acceptable use**

**5.1** Use of THE SERVICE consists of the right of THE SUBSCRIBER or AGENT to electronically transmit, receive, store and restore DATA and STORED DATA, using either a private data communications network, or the Internet to LOCATIONS provided and maintained by THE SUPPLIER.

**5.2** THE SUPPLIER reserves the right to cease THE SERVICE if the terms of THE AGREEMENT or the ACCEPTABLE USE POLICY are infringed by THE SUBSCRIBER or AGENT.

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**5.3** THE SUBSCRIBER or AGENT shall not use THE SERVICE for storage, possession or transmission of:

- a. Stolen materials.
- b. Information or materials that may infringe the intellectual property rights or other right of third parties, including trademark, copyright or right of publicity or privacy.
- c. Violates any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing, unfair competition, anti-discrimination or false advertising), is defamatory, trade libellous, unlawfully threatening, or unlawfully harassing.
- d. Obscene, pornographic or indecent content or materials.
- e. Any virus or other programming routine intended to damage any form of information technology.
- f. unsolicited bulk Email (UBE), junk mail, or unsolicited commercial email (UCE), in large quantities to an indiscriminate set of recipients.
- g. Material that is provided in breach of any prior contractual commitment to any third party.

**5.4** THE SUBSCRIBER or AGENT agrees to indemnify THE SUPPLIER against liability for use of THE SERVICE where liability is a direct result of illegal use, abuse, misuse or negligent use by THE SUBSCRIBER or AGENT.

**5.5** THE SUPPLIER reserves the right to cease THE SERVICE provided if THE SUBSCRIBER or AGENT abuses THE SERVICE beyond reasonable use. Abuse of THE SERVICE will be deemed to be excessive indiscriminate transmissions of DATA, which exceed reasonable use of THE SUPPLIER facilities and bandwidth or behavior or pursuant to clause 5.3. THE SUPPLIER or its AGENT will contact THE SUBSCRIBER or AGENT in such an event prior to suspending THE SERVICE provided.

## **6. THE CHARGES and Payment**

**6.1** THE SUBSCRIBER or AGENT shall pay THE CHARGES of THE SUPPLIER as set out in the SERVICE ORDER FORM and THE SUPPLIER invoice. THE SUBSCRIBER or AGENT must pay THE CHARGES on time and to terms as this is an integral part of THE SERVICE and THE AGREEMENT.

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**6.2** THE SUBSCRIBER or AGENT must pay all THE CHARGES by such method specified and to the payment terms agreed. This may include payment by BACS, cheque, direct debit, credit or debit card to such account as specified on THE SUPPLIER invoice. Where a direct debit agreement is entered into, or any credit or debit card has been provided, THE SUPPLIER will collect payment of THE CHARGES from THE SUBSCRIBER or AGENT account on or around but not before the DUE DATE shown on THE SUPPLIER invoice.

**6.3** THE SUPPLIER may change THE CHARGES at any time on giving not less than 30 days' notice to THE SUBSCRIBER or AGENT to pass on increases in charges, made by its suppliers, agents and sub-contractors.

**6.4** THE SUPPLIER may set off amounts and/or credits to which THE SUBSCRIBER or AGENT may otherwise be entitled against any and all monies which THE SUBSCRIBER or AGENT owes to THE SUPPLIER.

**6.5** THE CHARGES are stated exclusive of value added tax ("VAT") and other taxes applicable to THE SERVICE. THE SUBSCRIBER or AGENT must pay VAT and other applicable taxes at the applicable rate(s), which are included in the invoices of THE SUPPLIER.

**6.6** THE SUPPLIER shall issue invoices for THE SERVICE in accordance with the billing dates specified in THE SUPPLIER invoice. THE SUBSCRIBER or AGENT shall pay all THE CHARGES shown on any given invoice on the DUE DATE shown without any set-off or withholding.

**6.7** Where THE CHARGES are not paid by THE SUBSCRIBER or AGENT in accordance with this clause 6 THE SUPPLIER may require THE SUBSCRIBER or AGENT to pay all sums due under the SERVICE ORDER FORM immediately, and may charge:

(a) Interest (both before and after any judgment) on all amounts overdue from THE SUBSCRIBER or AGENT at a rate of 5 percent over the Bank of England base rate from time to time, such interest to accrue on a daily basis from the due date of payment until receipt by THE SUPPLIER of the overdue amount (including any accrued interest and compensation); and

(b) Compensation arising out of late payment pursuant to section 5A of The Late Payment of Commercial Debts Regulations 2002.

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## 7. Interruption and Suspension of Services

**7.1** THE SUPPLIER may suspend THE SERVICE in full or any part of THE SERVICE if:

- (a) THE SUBSCRIBER or AGENT fail, or THE SUPPLIER acting reasonably, believe THE SUBSCRIBER or AGENT will or are likely to fail to meet any of the obligations under the SERVICE ORDER FORM or THE AGREEMENT or THE SUPPLIER acting reasonably, believe the conduct of THE SUBSCRIBER or AGENT is prejudicial to interests of THE SUPPLIER;
- (b) it needs to in order to comply with THE SERVICE, instruction or request of a competent governmental or regulatory authority or the emergency services;
- (c) it is entitled to terminate THE SERVICE;
- (d) THE SUBSCRIBER or AGENT rejects any change made pursuant to clause 1;
- (e) THE SUBSCRIBER or AGENT fails to promptly comply with any request made by THE SUPPLIER under clause 4.

**7.2** Where practical, THE SUPPLIER will give THE SUBSCRIBER or AGENT notice of its intention to suspend THE SERVICE under clause 7. and, in relation to suspension for the reasons stated in clauses 7. will restore THE SERVICE once THE SUBSCRIBER or AGENT have rectified any failure or to THE SUPPLIER reasonable satisfaction, demonstrated that THE SUBSCRIBER or AGENT will not and are not likely to fail to meet the obligations of THE SUBSCRIBER or AGENT under the terms of THE AGREEMENT. THE SUPPLIER reserves the right to make a charge for the re-instatement of any service that has been suspended due to the actions of THE SUBSCRIBER or AGENT.

**7.3** If THE SUPPLIER suspends THE SERVICE it will still be able to terminate THE AGREEMENT in accordance with its terms.

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## 8. Limited Warranty

**8.1** Warranties. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICE, THE SUPPLIER EQUIPMENT, OR LICENCED SOFTWARE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SUPPLIER DOES NOT WARRANT THAT THE SERVICE, EQUIPMENT, OR LICENCED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF RESTRICTIONS, LATENCY OR DELAY, OR THAT THE SERVICE, EQUIPMENT, OR LICENCED SOFTWARE WILL MEET THE SUBSCRIBER OR AGENT REQUIREMENTS, OR THAT THE SERVICE, EQUIPMENT, OR LICENCED SOFTWARE WILL PREVENT UNAUTHORISED ACCESS BY THIRD PARTIES. THE SERVICE IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS, SUBJECT TO ANY APPLICABLE SERVICE LEVEL AGREEMENT.

**8.2** THE SUPPLIER warrants that THE SERVICE will not be substantially different from THE SERVICE described in the SERVICE ORDER FORM.

**8.3** THE SUBSCRIBER or AGENT is responsible for assessing their commercial needs, how THE SERVICE relates to THE SUBSCRIBER or AGENT and how THE SUBSCRIBER or AGENT should use THE SERVICE. THE SUBSCRIBER or AGENT warrants that they are familiar with the services provided by THE SUPPLIER and that they understand the implications when completing the SERVICE ORDER FORM. THE SUPPLIER does not warrant the value of THE SERVICE to THE SUBSCRIBER or AGENT.

**8.4** THE SUBSCRIBER or AGENT is solely responsible for the use of any information or other materials obtained through THE SERVICE. THE SUPPLIER specifically excludes any responsibility for the accuracy or quality of any information obtained through THE SERVICE, or that any other material obtained through THE SERVICE may be used in any way by THE SUBSCRIBER or AGENT without infringing the rights of any third parties. THE SUBSCRIBER or AGENT further acknowledges that these matters are outside the control of THE SUPPLIER.

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## 9. Limitation of Liability

**9.1** Without prejudice to the express warranties contained in THE AGREEMENT and to the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law into THE AGREEMENT or relating to THE SERVICE are hereby excluded.

**9.2** THE SUBSCRIBER or AGENT agrees that the allocation of risk contained in this clause 9 is reflected in THE CHARGE and is reasonable and that THE SUBSCRIBER or AGENT is in a better position than THE SUPPLIER to foresee and evaluate any potential damages or loss which THE SUBSCRIBER or AGENT may suffer in connection with THE SERVICE and that THE SUPPLIER cannot adequately insure potential liability incurred by THE SUBSCRIBER or AGENT.

**9.3** THE SUPPLIER DOES not limit or exclude its liability for death or personal injury arising as a result of its negligence, for fraud and for any other liability which cannot be excluded or limited by law. This clause shall apply notwithstanding any conflicting provisions in THE AGREEMENT or SERVICE ORDER FORM.

**9.4** Except for liability which falls under clause 9.3, the total aggregate Liability of THE SUPPLIER in respect of THE SERVICE shall not exceed the total amounts payable by THE SUBSCRIBER or AGENT for THE SERVICE under the INTITAL or ONGOING TERM.

**9.5** THE SUPPLIER total Liability arising out of or in connection with clause 9.4 shall be limited to £1,000,000.00 in respect of each incident or series of connected incidents.

**9.6** THE SUPPLIER will not be responsible and shall have no Liability for:

(a) loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (in each case whether direct or indirect);

(b) loss of use of any THE SUBSCRIBER or AGENT computers or equipment (in each case whether direct or indirect);

(c) wasted management or staff time (in each case whether direct or indirect);

(d) any punitive, special, indirect or consequential loss or damage (even if foreseeable at the SERVICE START DATE even if THE SUPPLIER were told about the possibility of such loss or damage); and/or

(e) the acts or omissions of any other party, including other providers of telecommunications, computers or other equipment or services including internet services.

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**(f)** any failure to perform or for delay in performing any obligation under the SERVICE ORDER FORM (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of THE AGREEMENT by THE SUBSCRIBER or AGENT or any voluntary act or omission of THE SUBSCRIBER or AGENT.

**(g)** changes in any of THE SUPPLIER facilities, operations, procedures or THE SERVICE which render obsolete or necessitate modification or alteration to any of THE SUBSCRIBER or AGENT Equipment, software and communication lines, including any public lines required by THE SUBSCRIBER or AGENT to properly access THE SERVICE.

**(h)** any costs which THE SUBSCRIBER or AGENT incur prior to the SERVICE ACTIVATION DATE for THE SERVICE in anticipation of THE SERVICE being provided (including in relation to the production of marketing materials, business cards and changes made to any website);

**(i)** any loss suffered by any third party or any liability to any third party.

**(j)** loss of THE SERVICE ENCRYPTION KEY or PASSWORD details by THE SUBSCRIBER or AGENT.

**9.7** For these purposes, "loss" includes a partial loss or reduction in value as well as a complete or total loss.

**9.8** Save as expressly set out in THE AGREEMENT, to the fullest extent permitted by applicable law, THE SERVICE is provided to THE SUBSCRIBER or AGENT without any express, implied, or statutory representation, warranty or condition of any kind including but not limited to any warranty or condition of quality or fitness for a particular purpose, that THE SERVICE will meet THE SUBSCRIBER or AGENT requirements, that THE SERVICE will work in combination with other software or hardware, that THE SERVICE will be uninterrupted or error free, that errors in THE SERVICE will be corrected, that THE SUPPLIER will identify or filter out all known spam, viruses or other programming routines that might cause THE SUBSCRIBER or AGENT damage, unless otherwise detailed in specific SERVICE LEVEL AGREEMENT that THE SERVICE does not breach third party Intellectual Property Rights, or that THE SUBSCRIBER or AGENT will have quiet enjoyment of THE SERVICE.

**9.10** If a number of events give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under one SERVICE ORDER FORM.

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## 10 Termination of THE AGREEMENT

**10.1** THE SUPPLIER may terminate THE AGREEMENT with immediate effect by notice in writing if:

- (a)** THE SUBSCRIBER or AGENT fails to pay any sums due to THE SUPPLIER whether pursuant to clause 6 or within 7 days of receiving a written overdue payment request from THE SUPPLIER.
- (b)** THE SUBSCRIBER or AGENT fails to comply with the ACCEPTABLE USE POLICY of THE SUPPLIER;
- (c)** THE SUBSCRIBER or AGENT fails to comply with a Software Licence for software that is provided to them by THE SUPPLIER and/or the Licensors of THE SUPPLIER.
- (d)** THE SUBSCRIBER or AGENT commit a serious breach of THE AGREEMENT and (where capable of correction) THE SUBSCRIBER or AGENT do not correct this breach within 10 days of receiving a notice from THE SUPPLIER specifying the breach;
- (e)** THE SUBSCRIBER or AGENT commit persistent breaches of THE AGREEMENT whether corrected or not.
- (f)** any of the circumstances set out in clause 4. occur;
- (g)** THE SUBSCRIBER or AGENT ceases trading;
- (h)** THE SUBSCRIBER or AGENT suffer an Insolvency Event
- (i)** THE SUBSCRIBER or AGENT fail to promptly comply with any request made by THE SUPPLIER under clause 5.
- (j)** if any of the authorisations of THE SUPPLIER, licences or other permissions are revoked, withdrawn or not renewed for whatever reason.



# Vitanium Services Master Supply Agreement

## 11. What happens on Termination

**11.1** If THE SUPPLIER terminates THE AGREEMENT at any time to a breach of THE AGREEMENT or if THE SUBSCRIBER or AGENT terminates THE AGREEMENT during an ONGOING PERIOD or THE SUBSCRIBER or AGENT terminate THE AGREEMENT without giving THE SUPPLIER the correct notice required, THE SUBSCRIBER or AGENT must pay to THE SUPPLIER within 7 days of the date of such termination:

- (a) all of THE CHARGES unpaid due at the date of termination; and
- (b) an amount equal to THE CHARGE remaining for THE SERVICE that THE SUBSCRIBER or AGENT would have incurred up to the end of the INITIAL TERM or the ONGOING TERM (as applicable) had the termination not taken place;

**11.2** Upon termination of THE AGREEMENT THE SUBSCRIBER or AGENT must stop using THE SERVICE and THE SUBSCRIBER or AGENT must return; THE SUPPLIER equipment to THE SUPPLIER and within 21 days of termination return or destroy any Confidential Information and Software which THE SUBSCRIBER or AGENT has in their possession. If THE SUPPLIER asks THE SUBSCRIBER or AGENT to, one of your authorised officers must certify to THE SUPPLIER that such return and/or destruction has taken place.

**11.3** In the event of THE SUPPLIER Equipment not being returned in what THE SUPPLIER considers to be satisfactory condition and good working order, THE SUPPLIER may charge THE SUBSCRIBER or AGENT with the cost of repairing or replacing THE SUPPLIER Equipment. THE SUPPLIER and/or the owner or third-party provider of THE SUPPLIER Equipment will be entitled to enter THE SUBSCRIBER or AGENT premises to remove THE SUPPLIER Equipment and THE SUPPLIER shall have no Liability to THE SUBSCRIBER or AGENT in relation to such removal unless THE SUPPLIER is negligent.

**11.4** Following termination of THE AGREEMENT, THE SUPPLIER reserves the right to charge if THE SUBSCRIBER or AGENT requests any data stored at the LOCATIONS to be returned to THE SUBSCRIBER or AGENT, THE SUPPLIER will make a charge for such a request.

The conditions are as follows:

- (a) THE SUBSCRIBER or AGENT notifies THE SUPPLIER in writing that it would wish THE SUPPLIER to do so, at least 14 days in advance of notice to terminate actually being given;

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(b) THE SUBSCRIBER or AGENT pays THE SUPPLIER, in advance of THE SUPPLIER providing such data to THE SUBSCRIBER or AGENT THE CHARGE for doing so together with all monies due under clause 15.1.

**11.4** The terms of THE AGREEMENT, will continue to be in force even if THE SERVICE has terminated.

## **12. Copyright, Trade Marks & Ownership Intellectual Property**

**12.1** THE SOFTWARE and DOCUMENTATION required for the use of THE SERVICE are covered by THE SUPPLIER or its/their licensors copyright. THE SUBSCRIBER or AGENT may not copy THE SOFTWARE or DOCUMENTATION except as part of using / loading THE SERVICE onto a computer owned or used by THE SUBSCRIBER or AGENT licenced with the express intention of using THE SERVICE according to the terms of THE AGREEMENT. Redistribution of THE SOFTWARE or DOCUMENTATION owned by THE SUPPLIER or its/their licensors unless explicitly granted by THE SUPPLIER is strictly prohibited and will be deemed in direct violation of THE AGREEMENT.

**12.2** Neither THE SUBSCRIBER or AGENT or THE SUPPLIER shall use the other party's proprietary marks in any manner that disparages the other party or its products or services, or portrays the other party or its products or services in a false, competitively adverse or poor light. Each party will comply with the other party's requests as to the use of the other party's proprietary marks and will avoid any action that diminishes the value of such marks. Either party's unauthorised use of the other's proprietary marks is strictly prohibited.

**12.3** This Section does not grant expressly or implicitly, any right or licence to use the Intellectual Property of THE SUPPLIER.

**12.4** Neither THE SUBSCRIBER or AGENT or THE SUPPLIER grants any licence to the other except as specifically set forth in this Section. Except as is expressly set forth under this Section all parties expressly reserve all of their right, title and interest in their respective Intellectual Property Rights.

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**12.5** THE SUPPLIER and/or its licensors retain all right, title and interest in and to THE SOFTWARE and DOCUMENTATION and any copies at all times, regardless of form or media in or on, by which the original or other copies are kept. THE SOFTWARE is not a sale of the original or any subsequent copy. THE SUBSCRIBER owns only the medium on which THE SOFTWARE is recorded or loaded.

## **13. Software provided to THE SUBSCRIBER or AGENT**

**13.1** Any software that is provided to THE SUBSCRIBER or AGENT by THE SUPPLIER or its and/or our Licensors software in connection with THE SERVICE is provided subject to such licensing conditions and restrictions as are set out in THE AGREEMENT, or may be specified by the Software manufacturer, supplier or licensor as appropriate (details of which where applicable will be made available on request). THE SUBSCRIBER or AGENT must ensure that they comply with any applicable standard specifications and minimum system requirements (if any) in force from time to time.

**13.2** Even if there is a provision to the contrary elsewhere, THE SUBSCRIBER or AGENT agree that any Software Licence may be terminated by THE SUPPLIER in accordance with its terms.

**13.3** THE SUBSCRIBER or AGENT acknowledges that any Software and all related documents are in each case licenced to them subject to applicable laws regarding the export of software programs and related documentation, including without limitation, those of the United States of America, the United Kingdom and the European Union. THE SUBSCRIBER or AGENT agrees to comply with all such applicable laws.

**13.4** THE SUBSCRIBER or AGENT will not use the software to engage in the manufacture, use, distribution or transfer of counterfeit, pirated or illegal software. In the event that you become aware that any of your employees or agents have used the Services for any such activities (whether in the course of their duties or otherwise), you will inform us immediately to the extent that you may do so in accordance with applicable law.

**13.5** THE SUBSCRIBER or AGENT must:

- (a) use the Software only for the purpose of THE SERVICE and for their own benefit;
- (b) at all times take reasonable precautions to protect any apparatus, equipment and/or hardware on which Software is loaded from unauthorised use;

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**(c)** not copy, alter, modify, adapt, translate, create derivative works of, distribute, rent, lease, sublicense assign, transmit, sell all or part of the Software or do so in respect of any media on which the Software is loaded, or any related documents nor allow any third party to do so;

**(d)** save as expressly permitted by applicable law, not do or try to do anything which would result in THE SUBSCRIBER or AGENT understanding, at a technical level, how the Software works. This restriction prevents you from doing anything which may constitute decompiling, disassembling or reverse engineering. It also means THE SUBSCRIBER or AGENT cannot do anything which would result in THE SUBSCRIBER or AGENT obtaining the source code for the Software, or the algorithms or ideas in, or structure or organisation of, the Software;

**(e)** not, and must not try to, avoid, defeat, bypass, remove or deactivate any security measures included in the Software, including those that restrict its functions;

**(f)** not use THE SERVICE or Software in hazardous environments requiring fail-safe performance in which failure could lead to death, personal injury or severe physical, property or environmental damage;

**(g)** not create any security interest over or in connection with Software;

**(h)** not separate the components of the Software by installing them on different servers, or by upgrading or downloading them at different times (unless with prior agreement from THE SUPPLIER; or

**(i)** not remove, alter, cover or obscure any trademarks, trade names, service marks, logos or brands, copyright notices, patent numbers or any other statements or symbols of ownership from the Software, any media supplied to THE SUBSCRIBER or AGENT on which any Software is loaded, any related documents (including permitted copies of the same) or from the packaging in which they are supplied (if any).

**13.6** If THE SUBSCRIBER or AGENT contravenes, or THE SUPPLIER suspects that THE SUBSCRIBER or AGENT may have contravened any of clauses 6.1 to 6.5 (inclusive), THE SUBSCRIBER or AGENT agrees that THE SUPPLIER may inform each relevant Licensor to such effect and co-operate with them in full in investigating such activities.

# Vitanium Services Master Supply Agreement

## 14. FORCE MAJEURE

**14.1** Neither THE SUBSCRIBER or AGENT or THE SUPPLIER shall be liable for any breach of THE AGREEMENT due to any cause beyond its reasonable control (save obligation in respect of the payment of monies) including but not limited to Acts of God, inclement weather, flood, lightening or fire, industrial action, act or omission of government, or other competent authority, riot, war or act or omission of any other party for whom that party is not responsible (“an event of FORCE MAJEURE”)

## 15. Confidentiality and access to data

**15.1** No bailment or equivalent obligation is generated between THE SUBSCRIBER and THE SUPPLIER with respect to THE SUBSCRIBERS stored DATA. THE SUBSCRIBER or AGENT and not THE SUPPLIER is solely responsible for maintaining confidentiality of THE SUBSCRIBERS encryption keys and passwords. All encryption keys and passwords shall only be known to THE SUBSCRIBER and will not be stored or known by THE SUPPLIER. THE SUBSCRIBER has the sole responsibility of making sure their encryption keys and passwords are kept in a safe and secure place. THE SUPPLIER shall not be liable for any damages, including damages for THE SUBSCRIBER not being able to use THE SERVICE due to the compromise or loss of THE SUBSCRIBERS usernames, encryption keys or passwords.

**15.2** THE SUPPLIER shall have no obligation to monitor postings, content or transmissions made in connection with THE SERVICE unless otherwise agreed with THE SUBSCRIBER or AGENT and such monitoring forms part of THE SERVICE. THE SUPPLIER shall not without the prior approval of THE SUBSCRIBER or AGENT monitor or grant access to any postings, content, or transmissions unless required by law, valid subpoena, or other required legal compliance. THE SUPPLIER may use and disclose such monitoring and postings as required.

**15.3** THE SUBSCRIBER agrees to indemnify THE SUPPLIER against any liability due to the confidential information of THE SUBSCRIBER or AGENT being disclosed to third parties, through a direct result of the encryption keys or passwords of THE SUBSCRIBER or AGENT being compromised or lost.

**15.4** THE SUPPLIER shall not be responsible, what so ever, for the use of THE SERVICE accessed through the encryption keys or passwords of THE SUBSCRIBER or AGENT. THE SUPPLIER shall neither be obligated to THE SUBSCRIBER or AGENT for monitoring, overseeing or supervising content or information processed, stored on, or restored from THE SERVICE.

# Vitanium Services Master Supply Agreement

**15.5** Any party who enters into THE AGREEMENT may disclose information which would otherwise be confidential if and to the extent that:

- (a) The disclosure is required by law or applicable regulatory requirements;
- (b) The information has come into the public domain through no default of any party;
- (c) These restrictions shall continue to apply after termination of THE AGREEMENT

## **Clause 16 - Specific obligations of the AGENT**

**16.1** The AGENT agrees to provide all first line support for THE SERVICE to THE SUBSCRIBER introduced to THE SUPPLIER. If the AGENT requires THE SUPPLIER to perform first line support on their behalf, the AGENT agrees to pay reasonable costs incurred by THE SUPPLIER in performing the obligations of the AGENT.

**16.2** If the AGENT requires THE SUPPLIER to access THE EQUIPMENT, the AGENT agrees to pay reasonable costs and expenses incurred in investigating and rectifying the reported fault if THE SUPPLIER concludes, acting reasonably that there has not been a failure by THE SERVICE, THE SUPPLIER or their third-party provider.

**16.3** The AGENT agrees that it is their responsibility to seek out and advise THE SUPPLIER, by way of an invoice, of any commissions owed to the AGENT by THE SUPPLIER.

**16.3** The AGENT agrees that from the date they are no longer the billing point for THE SUBSCRIBER they will not be entitled to any further or ongoing commissions from THE SUPPLIER.

## **Clause 17 - General**

**17.1** Failure or delay by THE SUPPLIER in enforcing any term of THE AGREEMENT shall not be construed as a waiver of any of its rights under it.

**17.2** The illegality, invalidity or unenforceability of any part of THE AGREEMENT will not affect the legality, validity or enforceability of the remainder.

**17.2** THE AGREEMENT shall be construed in all aspects as an English contract and in conformity with the English Law.

# Contact us:

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Vitanium Systems Limited is an ISO9001 accredited company registered in England and Wales.

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831 8525 27