

Standard Terms and Conditions of Virtual IT Technology Services Agreement

1. SERVICE

In this agreement "Service" means the IT service as defined in the Technology Services Agreement and attached Formal Proposal document where details of the service, response times and service levels are described in detail. Virtual IT Ltd ("Virtual") agrees to provide the Service to the Customer and the Customer agrees to use the Service on the terms set out in this agreement (the "Agreement"). Virtual will support and manage the Customer's IT infrastructure, including but not restricted to servers, PCs, operating systems, software, email services, virus checking and back up. A monitoring service and help desk are part of the package, together with access to high level central IT resource for advice on more strategic issues. In return the Customer will pay Virtual Monthly Charges for the Service

2. DURATION

2.1 The agreement commences on the first day that the Service is installed on the Customer's premises

2.2 Unless otherwise terminated in accordance with the Agreement, the duration will be for a fixed period of three years ('Period'), and will automatically renew at the end of each term for a further term of three years with the same terms and conditions unless either party gives the other written notice of termination at least 90 days prior to the end of the relevant term. renewable by mutual agreement of the Parties for further three year terms as outlined in clause 2.3

2.3 Three months prior to the termination of the Period, Virtual will offer the Customer a new three year by providing the Customer with a revised Formal Proposal document with revised charges to be mutually agreed at that time.

3. SERVICE LEVEL AGREEMENT AND BUY OUT GUARANTEE

3.1 Virtual will provide the Customer with a 99% Service Level Guarantee ("SLA") on the performance of the Service.

3.2 Where Virtual provides the Customer with products of third party suppliers, (including but not restricted to email and antivirus) the SLA will be the SLA of that third party supplier.

3.3 The SLA measures the aggregate usability of the Service on a Customer rather than a user level and is measured on the basis of a Calendar Quarter

3.4 In the event that Virtual breaches the SLA, a cash credit will be paid on the next month's bill on the basis of 2 times the cost of the service paid for during the period without service

3.5 In the event that Virtual breaches the SLA for 2 consecutive quarters, the Customer is entitled, within 15 days following the end of the second quarter, to give notice to terminate the contract at the end of the month subsequent to the end of the second quarter.

4. TERMINATION

4.1 Either party may terminate the Agreement at the end of the 12th month or at the end of the 24th month (as the case may be) by giving one month's written notice plus the payment of one month's extra rental. Notice must be received by Virtual prior to the end of the 11th month or the end of the 23rd month (as the case may be). In addition, the parties may agree in writing to terminate the Agreement at any time. In the event that the Customer terminates this agreement under this clause 4.1, they will have both the right and the obligation to purchase any server and firewall infrastructure installed on their premises by Virtual IT utilising the same formula relating to Leased Hardware and Software in clause 18.6.

4.2 The Customer may terminate the Agreement because Virtual is in breach of its Service Level Agreement as defined in clause 3.5 with no extra monthly payments.

4.3 Without prejudice to their rights under this Agreement Virtual and the Customer shall have the right to terminate this Agreement forthwith in the event that:

4.3.1 The other party is in default in its performance or observance of any of its obligations under the Agreements and in the case of a remediable breach, fails to remedy the breach within a reasonable time specified by the non-defaulting party in its written notice to do so.

4.3.2 an interim order is applied for or made or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the other party, or if a receiver or trustee in bankruptcy is appointed of the other party's estate or a voluntary arrangement is proposed or approved or an administration order is made, or a receiver or administrative receiver is appointed of any of the party's assets or undertaking or a winding-up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation) or if any circumstances arise which entitle the court or creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make up a winding-up order

4.4 Without prejudice to its other rights, Virtual shall have the right to terminate this agreement by notice in writing to the Customer fourteen days after suspension of the service per Clause 11 of this agreement, provided the suspension of the service was a consequence of any breach, fault or omission of the Customer and which has not subsequently been remedied

4.5 In the event of termination by Virtual under conditions 4.3 or 4.4, Virtual shall be entitled to recover from the Customer all costs, losses and expenses reasonably and necessarily incurred by Virtual, including but not limited to the cost of removing provision of the Service to the Customer's premises.

4.6 If the Customer ends this agreement before the Period is over for reasons not covered in this Clause 4, the Customer shall pay the full balance of the Monthly Charges for the Period and any outstanding Monthly Charges.

5. PAYMENT

5.1 The charges for the Service shall be as stated in this Agreement and varied from time to time by mutual consent between the Parties in the event of additional Service provided. The installation payment is payable with the signing of this Agreement. All prices are exclusive of VAT.

5.2 All sums due to Virtual under this Agreement shall be paid in full by the Customer without any set-off whatsoever.

5.3 The Customer shall be invoiced monthly by Virtual with charges paid monthly in advance

5.4 The Customer will make all payments under this agreement by direct debit

5.5 Virtual shall have the right to request payment on demand if the customer fails to make payment of any previous invoices within 15 days of the calendar month end.

5.6 Virtual reserves the right to charge interest on all outstanding amounts owed to Virtual and not paid in accordance with this Agreement. Until payment in full is received by Virtual interest shall be charged at a rate of 4% above Barclays Bank plc's base rate for the time being. Interest shall accrue notwithstanding termination of this Agreement for whatever reason. The Customer shall also pay all legal fees and other costs of collection of overdue amounts reasonably and necessarily incurred by Virtual, if any.

5.8 Virtual will increase the charge of the Titanium managed service by £1 per user per month on the first and second anniversary of the commencement of service of each term and on the renewal of each term.

6. EQUIPMENT AND SOFTWARE

6.1 Virtual may sell computer hardware ("Equipment") and / or software ("Software") to the Customer. Title of the Equipment and Software sold by Virtual is vested in the Customer and the Customer agrees that any repairs of such Equipment or Software shall be their own responsibility.

6.2 Virtual in certain circumstances may offer the Customer leasing facilities for the purchase of Equipment and Software. ("Leased Equipment" and "Leased Software"). The terms and conditions relating to such leasing can be found in the Appendix to these terms and conditions under clause 18.

6.3 The Customer agrees not to modify the operating system or applications running on the Equipment without Virtual's prior written consent

6.4 The Customer agrees not to add additional hardware to their Local Area Network without Virtual's prior written consent

7. ACCESS TO PREMISES AND WORKING HOURS

7.1 To enable Virtual to fulfil its obligations under this Agreement the Customer shall permit or procure permission for authorised representatives of Virtual to have access to the Customer's premises and shall provide Virtual with such reasonable assistance as Virtual shall request. Virtual will normally require access only during Customer's normal working hours but may, on reasonable notice, require access at other times in order to ensure provision of the Service.

7.2 At the Customer's request authorised representatives of Virtual may agree to work outside the Customer's normal working hours provided that the Customer reimburses Virtual its reasonable charges for so doing.

8. USE OF SERVICE

8.1 The Customer undertakes not to use the Service in contravention of any relevant regulations or licences or to transmit material which is of a defamatory, offensive, abusive, obscene or menacing character or in a manner which constitutes a violation or infringement of the rights of any other party.

8.2 The Customer shall indemnify Virtual against all liabilities, claims, damages, losses and expenses arising from or in any way connected with any such use as prescribed in Clause 8.1

9. PROVISION OF INFORMATION

The Customer undertakes promptly to provide Virtual free of charge with all information and co-operation that Virtual may reasonably require to enable it to proceed without interruption with the performance of its obligations under this Agreement.

10. LIABILITY

10.1 Nothing in this Agreement shall exclude or restrict Virtual's liability for death or personal injury resulting from the negligence of Virtual or its employees while acting in the course of their employment.

10.2 Subject to Condition 10.3 Virtual shall be liable for damage to the property of the Customer caused by any negligent act or omission of Virtual or its employees provided that such liability of Virtual in contract, tort or otherwise, including negligence, howsoever arising out of or in connection with the performance of Virtual's obligations under this Agreement shall be limited to £20,000 for any one incident or £50,000 for any series of incidents arising from a common cause in any twelve month period.

10.3 Virtual shall not be liable to the Customer in contract, tort or otherwise, including negligence, for any corruption or destruction of data, loss of revenue, business, goodwill, anticipated savings, profit or for any financial loss whatsoever or for any indirect or consequential loss howsoever arising

10.4 In the event that Virtual fails, for any reason, to provide the Service, Virtual shall not be liable to the Customer for any charges incurred by the Customer should the Customer divert its IT support to another supplier.

10.5 The provisions of this Clause 10 shall continue to apply notwithstanding termination of this Agreement.

11. SUSPENSION OF SERVICE

11.1 Virtual may at its sole discretion elect to suspend forthwith the provision of the Service until further notice without liability to the Customer on notifying the Customer either orally (confirming the same in writing) or in writing in the event that:

11.1.1 the Customer is in breach of any term of this Agreement and in the case of remediable breach fails to remedy the breach within a reasonable time specified by Virtual in its written notice to do so;

11.1.2 the Customer prevents or delays prearranged maintenance from being carried out;

11.1.3 Virtual is obliged to comply with an order instruction or request of government, an emergency service organisation or other competent authority: or

11.1.4 the Customer is suspected, in Virtual's reasonable opinion of involvement with fraud or attempted fraud or acts which are of a defamatory, offensive, abusive, obscene or menacing character in connection with use of the Service.

11.2 Notwithstanding the right of suspension under this Condition 11 Virtual shall still have the right, under the terms herein to terminate this Agreement.

11.3 The Customer shall pay to Virtual all reasonable costs and expenses incurred by Virtual as a result of suspension of the Service which is a consequence of any breach, fault or omission of the Customer hereunder and any costs and expenses incurred in connection with reconnection of provision of the Service as may be applicable.

12. DATA PROTECTION

12.1 – Each party agrees that, in the performance of its respective obligations under this Contract:

12.1.1 – it shall comply, and procure that any employee, agent and/or sub-processors (as applicable) of it shall comply, with all applicable Data Protection Laws; and

12.1.2 – it shall not by any act or omission cause the other Party (or any other person) to be in breach of any requirements of the Data Protection Laws.

12.2 – The parties agree that the Customer is the Controller in respect of any personal data of the Customer that the Company processes in the course of providing the Services to the Customer (other than business contact data processed by the Company to allow it to manage the Customer's account).

12.3 – The Company agrees that where, in the course of providing the Services, it processes such personal data on behalf of the Customer it shall:

12.3.1 – only carry out processing of personal data in respect of which the Customer is the data controller on the Customer's instructions from time to time, such instructions at the date of the Contract being to process the personal data in order to provide the Services to the Customer in accordance with the Contract (however if any applicable law, order or regulation requires the Company to process personal data other than in accordance with the Customer's instructions the Company shall notify the Customer of any such requirement before processing such personal data, unless the applicable law, order or regulation prohibits such notification on important grounds of public interest);

12.3.2 – in respect of the processing of personal data, implement and maintain appropriate technical and organisational measures to protect personal data against unauthorised or unlawful processing and accidental destruction or loss, so as to protect applicable data subjects' rights in accordance with, and assist the Customer to comply with its obligations under, applicable Data Protection Laws;

12.3.3 – where personal data is lost, damaged, destroyed or subject to unauthorised access, immediately notify the Customer in writing and take all steps required by Data Protection Laws with respect to notification and remediation;

12.3.4 – ensure that person authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

12.3.5 – include in any contract with any subcontractors who shall process such personal data directly or indirectly on the Customer's behalf provisions which are at least equivalent to those in this clause 12.3, and the Customer hereby consents to the Contractor's use of such subcontractors in accordance with this clause 12.3;

12.3.6 – as soon as reasonably practicable refer to the Customer any requests, notices or other communication from data subjects, the Information Commissioner or any other law enforcement authority, for the Customer to resolve;

12.3.7 – make available to the Customer such information as is reasonably required to demonstrate the parties' compliance with their respective obligations under the Data Protection Laws and / or this clause 12.3, and allow for, permit and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose at the Customer's request from time to time.

12.4 – The Customer acknowledges and agrees that the Company may be required to transfer personal data which it processes on the Customer's behalf to countries outside the European Economic Area (which shall be deemed to include the United Kingdom regardless of any formal separation of the United Kingdom from the rest of the European Union) or to an International Organisation (as defined in the GDPR). Subject to the Company ensuring that any such transfer will be undertaken in accordance with the applicable Data Protection Laws, the Customer hereby consents to the Customer transferring such personal data outside the European Economic Area and/or to an International Organisation (as applicable).

12.5 – The Company shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Company's obligations under applicable Data Protection Laws. Such notice shall set out full details of the circumstances concerning such breach or potential breach.

12.6 – For the avoidance of doubt, nothing in this Contract relieves either Party of any responsibilities or liabilities under Data Protection Laws.

13. ASSIGNMENT

This Agreement may not be assigned in whole, or in part, by the Customer without the prior written consent of Virtual such consent not to be unreasonably withheld.

14. FORCE MAJEURE

Neither party shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control including but not limited to any act of God, inclement weather failure or shortage of power supplies, flood, drought, lightning, or fire, strike, lock-out trade dispute or labour disturbance, the act or omission of government, highway authorities, other telecommunications operators or administrators or other competent authorities, war, military operation, or riot, difficulty, delay or failure in manufacture production or supply by third parties of equipment.

15. ENTIRE AGREEMENT

This Agreement, including the Formal Proposal and its appendices, together with, if appropriate, any further annexed and countersigned documents, represent the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings and representations, whether written or oral except for any fraudulent misrepresentations. This Agreement may only be modified if such modification is in writing and signed by Virtual and the Customer.

16. NOTICES

16.1 Any notice, invoice or other document which may be given by either party under this Agreement shall be deemed to have been given if left at or sent by post or facsimile transmission (confirming the same by post) to an address notified by the other party in writing as an address to which notices, invoices or other documents may be sent.

16.2 Virtual IT's address for service of any notice hereunder shall be such address as appears on the last invoice rendered to the Customer or such other address as may be prescribed by Virtual for that purpose.

17. GENERAL

17.1 Virtual may use sub-contractors to perform its obligations under the Contract.

17.2 If any provision of the Contract is held by a court or any governmental agency or authority to be invalid or unenforceable, the remainder of the Contract shall to the extent possible remain valid and enforceable.

17.3 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed a waiver of any such right nor operate so as to bar the exercise or enforcement thereof, or of any other right on any later occasion

17.4 The Contract shall be governed by English law and the Parties irrevocably agree to the exclusive jurisdiction of the English courts.

17.5 In the event that the Customer hires an employee of Virtual while they are working for Virtual or within 6 months of the cessation of their employment by Virtual, the Customer will pay to Virtual a sum equating to 3 times the monthly salary of that employee during their last month of employment at Virtual.

18. APPENDIX – LEASING TERMS AND CONDITIONS

18.1 Virtual in certain circumstances may offer the Customer leasing facilities for the purchase of Equipment and Software. ("Leased Equipment" and "Leased Software"). The Customer agrees to pay to Virtual monthly charges ("Lease Charges") for the lease of such Leased Equipment and Leased Software. The Customer further agrees that any repairs of such Leased Equipment or Leased Software not covered by warranty from the equipment or software manufacturer shall be their own responsibility.

18.2 Title of the Leased Equipment and Leased Software is vested in the Customer so long as payments are current. In the event that the Customer defaults on the Lease Charges, Virtual shall notify the Customer of such default and give the Customer 15 days to cure such default. In the event that the default is not cured, title to the Leased Equipment and Leased Software shall revert to Virtual. Where the title of the Leased Equipment and Leased Software has reverted to Virtual, the Customer agrees to Virtual's reasonable instructions as to its return or collection.

18.3 In the event of additional hardware or software that the Customer purchases during the term of this Agreement and requires lease facilities from Virtual ("Additional Leased Equipment" and "Additional Leased Software"), Virtual may agree to offer further leasing facilities to the Customer. In such event, Virtual and the Customer shall agree whether the Customer pays for the new Leased Equipment and / or Leased Software over the remaining term of this Agreement or over a period of thirty six months.

18.4 While title to the Leased Equipment is vested in the Customer so long as they are current with their payments, the Customer agrees not to sell or give it away or use it as security for any loan or allow it to be seized by anyone in satisfaction of a debt or allow anyone else to keep it until all payments due to Virtual under this Agreement have been discharged.

18.5 Virtual agrees in the event of malfunction of Equipment, Leased Equipment or Additional Leased Equipment and any computer hardware owned by the customer but not sold to them by Virtual, to provide "swap out" equipment as defined in the Formal Proposal to the customer while the faulty items are being repaired or replaced.

18.6 In the event that this Agreement is terminated for any reason, or reaches the end of its term, the Customer has both the right and the obligation to pay to Virtual the balance due ("Outstanding Lease Balance") on any Leased Equipment, Leased Software, Additional Leased Equipment and Additional Leased Software ("Total Leased Hardware and Software"). The Outstanding Lease Balance is calculated by taking the original purchase price of the Total Leased Hardware and Software notified to the Customer less the number of months the Total Leased Hardware and Software has been installed (with minimum of zero and maximum of thirty six) divided by thirty six months multiplied by the original purchase price.

18.7 The Customer agrees to ensure that all the Equipment, Leased Equipment and Additional Leased Equipment is comprehensively insured at all times, both when it is on the Customer's premises and when, in the case of laptop PCs, out of the Customer's premises. In the event that equipment is stolen and the insurance does not pay the replacement cost, it will be the Customer's responsibility to purchase replacement equipment