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IT DISASTER RECOVERY S

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3. Activation and use of the Service
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- Standby Fees payable quarterly in
- Usage Fees payable monthly in ar
- Schedule 4 Requirements for th

**THIS AGREEMENT** is made and entered into on the <<insert day>> day of <<insert month>>, <<insert year>>

**BETWEEN:**

- (1) <<Name of Service Provider>> a company incorporated in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Service Provider")
- (2) <<Name of Client>> a company incorporated in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Client")

**WHEREAS**

The Service Provider has experience in providing commercial IT disaster recovery services to its clients and the Client wishes to use those services for its business operations.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

1.1 In this Agreement, unless otherwise requires, each of the following expressions has the following meaning:

**"Activation"** Service Provider's activation of the Client's Activation Notice stating that it wishes to use the Standby Facility for its business operations.

**"Activation Notice"** Activation Notice as defined in clause 3.1 and clause 3.2

**"Activation Response Time"** the [the] period of time from the time of the Client's Activation Notice to the time when the Standby Facility is available to Client

**"Additional Services"** any services (Additional Services) as Service Provider makes available to Client from time to time including, for example, data backup, disaster recovery, mobile disaster recovery, [workplace disaster recovery, enhanced support, hosting, network monitoring or remote access]

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**“Back Up Arrangements”**

Client’s arrangements to back up and keep current the data 6.6.2, including any Data Back Up Agreement Client outsources to a third party

**“Client Computer Systems”**

Client’s as defined in Schedule 2

**“Commencement Date”**

the date

**“Confidential Information”**

any information obtained by a party that is proprietary or confidential and (i) is clearly labelled as, or (ii) is otherwise, or (iii) from its nature and/or the circumstances it is reasonable to infer that it is, confidential that other party, but not including information which is publicly known other than through any advertising or obtaining party; b) was in the public domain before the disclosure; c) is lawfully disclosed to the obtaining party by a third party without restriction; d) is independently developed by the receiving party which independent development can be shown to have taken place; e) is required to be disclosed by law, by any court of law, jurisdiction or by any regulatory or administrative body

**“Customer”**

a third party as defined in the Standby Capability and the Standby Facility for purposes

**“Data Back Up Agreement”**

a separate agreement under which Service Provider is to provide data back up service

**“Data Protection Legislation”**

all applicable data protection and privacy including, but not limited to, the Data Protection Act 1998, the retained EU law version of the General Data Protection Regulation (EU) 2016/679), as it forms part of the law of Scotland, and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018); the Data Protection Regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended

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<b>“Disaster”</b>	an un...	stance (including but not limited to fire, power failure, server downtime [but other industrial action] resulting in on or loss of or loss of use of or Computer Systems causing a material business operations, where Client at result will continue for at least 24 hours
<b>“Fees”</b>	the St... as des	age Fees payable to Service Provider,
<b>“Force Majeure”</b>	an ev... control... action... other... teleco... God, ... dama... action... hardw... eartho	cause beyond a party’s reasonable ation, strike, lock-out or other industrial workforce of Service Provider or any utility service or transport or internet service provider failure, act of unrest, acts of terrorism, malicious law, rule, or regulation,, governmental breakdown of plant or machinery, power failure, fire, flood, storms, suppliers or sub-contractors
<b>“Multiple Activation”</b>	Activa... reques	ny Customer(s) resulting in competing y Facility and/or the Standby Capability
<b>“Priority Decisions”</b>	the pri... basis... Capab... a Mult	Provider on a "first come, first served" Provider provides use of the Standby Facility to the Client and Customers on
<b>“Service Period”</b>	the [te... use th... contin	ivation during which Client is eligible to and the Standby Facility for business
<b>“Services”</b>	the se	se 2
<b>“Standby Capability”</b>	the ec... the su	ources described in Schedule 2 used in
<b>“Standby Facility”</b>	the S... Stand	eferred to in Schedule 2 where the de available by the Service Provider
<b>“Testing”</b>	Client... testing... for rel	apability and the Standby Facility for to practise recovery for a Disaster, and

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**“Testing Days”**

[five] of the Standby Period of 12 months (beginning with the Commencement Date). When Testing is to occur, the first day for Testing shall be the first day after the Commencement Date on an agreed day.

**[“Test Report”**

a document detailing the results of a rehearsal for recovery which identifies any gaps in the Standby Plan, exposures and, where appropriate, makes recommendations for an improved disaster recovery]

1.2 Unless the context otherwise requires, any reference in this Agreement to:

1.2.1 “writing”, and any communication, includes any communication in any form or by any means, whether in writing or otherwise, by any means, including electronic transmission or similar means.

1.2.2 a statute, regulation, or other legal instrument, means that statute or provision as amended or replaced from time to time, as in force at the relevant time.

1.2.3 “this Agreement” means this Agreement and each of the Schedules and any amendments thereto presented at the relevant time, and a reference to a Schedule means that Schedule.

1.2.4 a Clause means a Clause of this Agreement (other than the Schedules) and a reference to a Schedule means that Schedule.

1.2.5 a “party” means any of the parties to this Agreement.

1.3 In this Agreement:

1.3.1 The headings and titles are for reference only and have no effect upon the interpretation of the provisions of this Agreement.

1.3.2 Words importing the masculine gender include the plural and vice versa.

1.3.3 A reference to a gender includes a reference to the other genders.

1.3.4 A reference to a person (whether a natural person, corporate or unincorporated entity, or not having separate legal personality) includes that person’s successors.

1.3.5 A reference to the Service Provider includes its respective employees, agents, subcontractors and consultants.

**2. Services**

2.1 The Service Provider shall provide the Standby Capability from the Commencement Date, on the terms and conditions of this Agreement, and shall make reasonable endeavours to maintain the Standby Capability throughout the Standby Period:

2.1.1 the Standby Capability shall be provided from the Standby Facility [during the hours of <<9.00am>> to <<5.00pm>> on business days excluding public holidays][24 hours per week] if a Disaster occurs and following the Standby Plan. The Service Provider does not represent or warrant that the Standby Capability shall be uninterrupted or error-free or that it

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2.1.2 Testing;

2.1.3 technical assistance as may be necessary to

the Service Provider decides is reasonably necessary for testing or after Activation; and

2.1.4 at least one (1) Business Day, on a reasonable basis, the Standby Capability and

the Standby Capability for a period of 12 months, on a reasonable basis, the Service Provider, access to the Standby Capability for the purpose of inspecting them.

2.2 This Agreement does not constitute an offer of any Additional Services but if the Client requests any Additional Services, the Service Provider shall use its best efforts to provide such requested services on its then current standard terms and conditions.

any Additional Services but if the Client requests any Additional Services, the Service Provider shall use its best efforts to provide such requested services on its then current standard terms and conditions.

**3. Activation and use of the Standby Capability**

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3.1 If a Disaster occurs, the Client shall provide the Service Provider an Activation Notice.

the Service Provider an Activation Notice.

3.2 The Activation Notice shall comply with the requirements in Schedule 4.

requirements in Schedule 4.

3.3 Subject to clauses 3.4.1 through 3.4.4, the Service Provider shall, following Activation and during the Standby Period, provide the Standby Capability available to the Client at the time of Activation. The Client may use the Standby Capability during the Standby Period for business continuity purposes.

Subject to clauses 3.4.1 through 3.4.4, the Service Provider shall, following Activation and during the Standby Period, provide the Standby Capability available to the Client at the time of Activation. The Client may use the Standby Capability during the Standby Period for business continuity purposes.

3.4 The Service Provider shall provide the Standby Capability to the Client for up to [the number of Customers stated in Schedule 4] Customers during the Standby Period. In the event of Multiple Activation:

the number of Customers stated in Schedule 4] OR [up to the number of Customers stated in Schedule 4] Customers during the Standby Period. In the event of Multiple Activation:

3.4.1 one or more Customers shall be provided the Standby Capability for the activated use of or be using the Standby Capability during the Standby Period by the Client;

one or more Customers shall be provided the Standby Capability for the activated use of or be using the Standby Capability during the Standby Period by the Client;

3.4.2 the Service Provider shall provide the Standby Capability in accordance with the Priority Decisions;

the Service Provider shall provide the Standby Capability in accordance with the Priority Decisions;

3.4.3 the Service Provider shall not be liable to the Client for failure to provide any of the Standby Capability or for any of the Standby Capability or for any of the Standby Capability if the Service Provider complies with clause 3.4.2 and it is not reasonably practicable for the Service Provider to make alternative business continuity arrangements using alternative facilities, equipment or resources available (as applicable); and

the Service Provider shall not be liable to the Client for failure to provide any of the Standby Capability or for any of the Standby Capability or for any of the Standby Capability if the Service Provider complies with clause 3.4.2 and it is not reasonably practicable for the Service Provider to make alternative business continuity arrangements using alternative facilities, equipment or resources available (as applicable); and

3.4.4 the Client shall be responsible for providing the Standby Capability to its Customers. The Service Provider in its efforts to provide business continuity to its Customers.

the Client shall be responsible for providing the Standby Capability to its Customers. The Service Provider in its efforts to provide business continuity to its Customers.

3.5 The Client shall be responsible for providing the Standby Capability to its Customers as soon as reasonably practicable after initiation of the Standby Period. In the event of a Disaster, the Client shall endeavour to restore use of the Standby Capability either to restore use of the Standby Capability or to bring into operation a suitable alternative.

The Client shall be responsible for providing the Standby Capability to its Customers as soon as reasonably practicable after initiation of the Standby Period. In the event of a Disaster, the Client shall endeavour to restore use of the Standby Capability either to restore use of the Standby Capability or to bring into operation a suitable alternative.

3.6 The Client shall cease use of the Standby Capability and leave the Standby Capability at the Standby Facility within [three (3) Business Days] after the Standby Period, or (in the event of a Disaster) the restoration of the Client Computer Systems or (in the event of a Disaster) the restoration of a suitable alternative.

The Client shall cease use of the Standby Capability and leave the Standby Capability at the Standby Facility within [three (3) Business Days] after the Standby Period, or (in the event of a Disaster) the restoration of the Client Computer Systems or (in the event of a Disaster) the restoration of a suitable alternative.

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facility. The Service Provider shall be responsible for the cost of the Standby Facility if the Client fails to provide the Standby Facility.

is required to implement this subclause

3.7 The Client may (as an alternative to clause 3.6) notify the Service Provider in writing that it wishes to use the Standby Facility after the Service Period. The Service Provider shall provide use of or access to the Standby Facility after the end of the Service Period at the same rate which applies during the Service Period. The Service Provider may end the Standby Facility at any time.

(as an alternative to clause 3.6) notify the Service Provider in writing that it wishes to use the Standby Facility after the Service Period. The Service Provider does not undertake to provide use of or access to the Standby Facility after the end of the Service Period at the same rate which applies during the Service Period) but the Service Provider shall provide at least [three] hours' notice at any time.

3.8 The Service Provider shall be responsible for the cost of the Standby Facility if the Client fails to provide the Standby Facility. The Service Provider shall be responsible for the cost of the Standby Facility if the Client fails to provide the Standby Facility.

at least [three] hours' notice to the Client change the location of the Standby Facility and/or other resources comprising the Standby Facility.

**4. Testing**

4.1 The Client shall give the Service Provider (as far in advance as is practicable) of its requirements for Testing.

The Client shall give the Service Provider (as far in advance as is practicable) of its requirements for Testing.

4.2 The Client may use the Standby Facility for Testing on the Test Days and in accordance with the Service Provider's policies and procedures for Testing from time to time.

The Client may use the Standby Facility for Testing on the Test Days and in accordance with the Service Provider's policies and procedures for Testing from time to time.

4.3 The Client agrees and warrants that:

4.3.1 the Service Provider shall be able to make Testing Days available on dates the Client has agreed.

the Service Provider shall be able to make Testing Days available on dates the Client has agreed.

4.3.2 the Service Provider shall be able to provide for the [5] Testing Days to be carried out.

the Service Provider shall be able to provide for the [5] Testing Days to be carried out.

4.3.3 the Service Provider shall be able to change the date of any agreed Testing Day if the Client's customer has activated use of the Standby Capacity on that day.

the Service Provider shall be able to change the date of any agreed Testing Day if the Client's customer has activated use of the Standby Capacity on that day.

4.4 The Client is solely responsible for the data and storage media used during Testing.

The Client is solely responsible for the data and storage media used during Testing.

4.5 If the Client wishes to use the Standby Facility for Testing after the Service Period, the Client shall notify the Service Provider in writing as under clause 3.7 and the Service Provider shall apply to such request in the same way. The charges for Testing shall be at the Service Provider's then current standard rates for Testing.

If the Client wishes to use the Standby Facility for Testing after the Service Period, the Client shall notify the Service Provider in writing as under clause 3.7 and the Service Provider shall apply to such request in the same way. The charges for Testing shall be at the Service Provider's then current standard rates for Testing.

4.6 [If the Client cancels Testing, the Client shall not be entitled to refund of any charges paid or payable before the date booked for Testing. The Client shall be liable for any charges payable by the Client.]

[If the Client cancels Testing, the Client shall not be entitled to refund of any charges paid or payable before the date booked for Testing. The Client shall be liable for any charges payable by the Client.]

4.7 [The Service Provider shall deliver to the Client a Test Report within 14 days of the completion of Testing.]

[The Service Provider shall deliver to the Client a Test Report within 14 days of the completion of Testing.]

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**5. Service Provider's Obligations**

The Service Provider:

- 5.1 shall provide the Services with the skill and care;
- 5.2 shall use reasonable efforts to maintain the Standby Capability and to keep it in good order to be able properly to provide the Services;
- 5.3 may enter into any agreement for similar services;
- 5.4 may enter into any agreement with any [number of] Customers in relation to the Standby Facility [not exceeding the number stated in the Agreement];
- 5.5 may reject any of the Services via if Service Provider considers it unsuitable for use of the Services;
- 5.6 shall not be responsible for Client Computer Systems or any equipment, software, data (except under, and as provided by, any Disaster Recovery Plan), or storage media, used in or in connection with the operation of the Services or the Client's business;
- 5.7 shall, following Activation, in accordance with clause 2, provide the Client with reasonable access to the Standby Facility and make available the Standby Capability;
- 5.8 shall take all reasonable steps to ensure that the Standby Facility is secure, clean, tidy, and meets the environmental requirements needed for the use of the Standby Facility;
- 5.9 shall from time to time inspect the Standby Capability at the Standby Facility or elsewhere to identify changes that are not standard upgrades or material; [and]
- 5.10 shall not be responsible for the things for which the Client has sole responsibility under the Agreement;
- 5.11 [shall maintain for the Client's benefit] appropriate insurance policies to cover as far as is reasonable and available, its potential liabilities under this Agreement.

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**6. Client's Obligations**

- 6.1 In relation to this Agreement, the Client shall:
  - 6.1.1 provide the Services with the necessary information and assistance; and
  - 6.1.1.1 all necessary information and assistance; and
  - 6.1.1.2 all necessary information as may be required by the Service Provider.

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to enable the Service Provider to provide the Services;  
6.1.2 comply with all laws, regulations and regulations (in particular, but not limited to, data protection legislation) with respect to its activities; and

6.1.3 carry out its obligations in a timely and efficient manner. If the Client requires the assistance of the Service Provider, the Client shall provide any assistance agreed by the parties, and shall ensure the timing of its obligations as reasonably practicable.

6.2 While using or accessing the Standby Facility, the Client shall comply with all policies, procedures, arrangements and any instructions issued by the Service Provider relating to the Standby Facility (including but not limited to those relating to security).

6.3 The Client's personnel using the Standby Facility or doing anything in connection with the Standby Facility must be properly authorised, trained and qualified.

6.4 The Client shall provide the Service Provider with a representative authorised to act on its behalf in connection with the Standby Facility.

6.5 The Client shall:

6.5.1 access, use and operate the Standby Facility only for the purposes and in a proper manner and in the ordinary course of business;

6.5.2 use the Standby Facility in a proper, professional and responsible manner; and

6.5.3 at all times ensure that the Standby Facility and its contents are kept in good order and condition to them (save for any damage caused by the Service Provider) and, at the end of use, return the Standby Facility to the Service Provider in the condition they were before use, fair wear and tear excepted, failing which the Client shall be liable for the full cost of repair or replacement of the affected part/s of the Standby Facility.

6.6 The Client alone is responsible for its use of the Services for:

6.6.1 supplying accurate and reliable data compatible with and generally available to the Service Provider;

6.6.2 the adequacy, integrity and security of all storage media and data it backs up and/or uses;

6.6.3 the adequacy of its disaster recovery arrangements. It hereby confirms it will comply with all requirements and that any Data Backups are stored in accordance with the Standby Facility Agreement.

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6.6.4 all software (including Standby Capability materials that do not form part of the Standby Capability (including that they are appropriately licensed);

6.6.5 risk of loss of data, storage media, or other resources at the Standby Capability or in transit to or from the Standby Capability;

6.6.6 the supply, maintenance, and support of all other resources not included with the Standby Capability (but not limited to) ensuring that all Client Computer Systems are capable of running on the Standby Capability;

6.6.7 all security and control measures, and appropriate to its use of the Services including, but not limited to, user names, passwords, pass codes, audit logs, and other security controls, operating procedures; and

6.6.8 all results it generates.

6.7 The Client agrees that the Standby Capability is and will remain the exclusive property of the Service Provider. The Client will not have any right, title, or interest in it.

6.8 The Client agrees to indemnify the Service Provider for all data and storage media used during Testing. The Service Provider shall have no liability or responsibility for loss of such data or storage media, or to any other equipment or other resources of the Client used during Testing.

6.9 The Client warrants

6.9.1 any software used by the Client in connection with the Services: (a) is of the Client Computer Systems; (b) is being tested will be owned by or licensed to it and other Client Computer Systems; and (c) is available for use on or with the Standby Capability.

6.9.2 all personal information provided by the Client or made available to the Service Provider is properly in the possession of, and properly maintained by the Client.

**7. Charges and Payment**

7.1 The Client shall pay

7.1.1 the Standby Capability charges set out in Schedule 3 [quarterly][annually] which include all charges for, pursuant to the Standby Capability and Standby Capability Facility available for use on or with the Standby Capability (including Standby Capability Facility assistance, and the Testing Days (but not including Testing Days); and

7.1.2 the Usage Charges set out in Schedule 3 monthly in arrears (which include Usage Charges for use for Testing and on occurrence of a Disaster Recovery Test).

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materials that do not form part of the Standby Capability (including that they are appropriately licensed);

to, however caused, any such loss of data, storage media, or other resources at the Standby Capability or in transit to or from the Standby Capability;

support of all other resources not included with the Standby Capability (but not limited to) ensuring that all Client Computer Systems are capable of running on the Standby Capability;

and appropriate to its use of the Services including, but not limited to, user names, passwords, pass codes, audit logs, and other security controls, operating procedures; and

generates.

is and will remain the exclusive property of the Service Provider. The Client will not have any right, title, or interest in it.

for all data and storage media used during Testing. The Service Provider shall have no liability or responsibility for loss of such data or storage media, or to any other equipment or other resources of the Client used during Testing.

connection with the Services:

(a) is of the Client Computer Systems; (b) is being tested will be owned by or licensed to it and other Client Computer Systems; and (c) is available for use on or with the Standby Capability.

ed by the Client or made available to the Service Provider is properly in the possession of, and properly maintained by the Client.

vices set out in Schedule 3 which include all charges for, pursuant to the Standby Capability and Standby Capability Facility available for use on or with the Standby Capability (including Standby Capability Facility assistance, and the Testing Days (but not including Testing Days); and

set out in Schedule 3 monthly in arrears (which include Usage Charges for use for Testing and on occurrence of a Disaster Recovery Test).

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7.2 The Client shall re travel expenses inv by the Service Pro expenses [unless a

provider for all actual, reasonable limited to, hotel and meals incurred of the Services, but not any other ng].

7.3 All Fees and othe exclusive of Value invoice(s) at the ap

ferred to in this Agreement are be added to the Service Provider's

7.4 The Service Provid Standby Fees set o out in Schedule 3 m

nnually][quarterly] in advance for issue invoices for Usage Fees set ng.

7.5 Each invoice will b invoice date. If the days after the due of the Service Provi

the Client [30][10] days after the not received payment within [five] ce to any other rights or remedies

7.5.1 the Service of any of th and

or temporarily suspend provision oice(s) concerned remain unpaid;

7.5.2 the Client sl rate of [4]% time to time date until a after judgm overdue am

and on the overdue amount at the Name Of Bank]'s base rate from rue on a daily basis from the due erdue amount, whether before or ay the interest together with the

7.6 The Service Provid from any anniversary prior notice provided rate of charge is no Index for the twelve m

increase any charges with effect t Date on not less than 60 days' hat increase over the then current age increase of the Retail Prices niversary.

8. Data

**EITHER**

[Provision of the Services any personal data by the Client shall in relation to a data controller and data circumstances be a data responsible for ensuring t Data Protection Legislation

shall not include any processing of half of the Client. Accordingly the sed by the Client operate as both ce Provider shall not in those ccessor, and the Client shall be personal data complies with the

**OR**

[Except as follows, in relati use of the Services by the data on behalf of the Cl personal data processed

ervices by the Service Provider and der shall not process any personal e Client shall in relation to any as both data controller and data

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**12. Limitation of liability**

- 12.1 The Client accepts that the Service Provider does not take fully into account the limits of the Service Provider's liability (set out below) for the Standby Capability and the Services, the Client's use of them, and for anything else in connection with the Agreement.
- 12.2 Except as expressly stated to the contrary in this Agreement:
  - 12.2.1 the Client accepts full responsibility for use of the Services and for selecting the Standby Capability for their and the Standby Capability for their business needs; and
  - 12.2.2 the Service Provider does not provide any warranties or guarantees and makes no representation or warranty in relation to the Services, the Standby Facility, or the Standby Capability, and such warranties, guarantees, and any other terms whatsoever implied by the Agreement are hereby excluded from this Agreement to the extent permitted by applicable law.
- 12.3 Nothing in this Agreement includes the liability of the Service Provider for:
  - 12.3.1 death or personal injury caused by the Service Provider's negligence;
  - 12.3.2 direct damage caused either by any breach of this Agreement or by the Service Provider limited to £500,000 for any one event; or
  - 12.3.3 fraud or fraudulent misrepresentation.
- 12.4 Subject to clause 12.3, the Service Provider shall be liable for all liability, whether in contract, tort (including negligence or breach of statutory duty), or for any other reason, or otherwise, for:
  - 12.4.1.1 loss of data, information, or confidential information;
  - 12.4.1.2 any consequential loss, damage, cost or expense;
  - 12.4.2 any liability (excluding liability at clause 11.2) or tort (including negligence or innocent misrepresentation) in connection with this Agreement, the total amount paid by the Client in any one period up to the date the liability arose.
- 12.5 The limitations and exclusions in clauses 12.1 to 12.4 are cumulative.

**13. Period and Termination of**

13.1 This Agreement shall continue from that date either party gives a 12 month term or otherwise to the provisions of

13.2 Without affecting any Agreement or at law

13.2.1 the Service Provider shall effect by giving payment to

13.2.2 if the Service Provider change of Standby resources through the Standby Service Provider increase of after the date of Agreement with

13.2.3 either party giving written

13.2.3.1 continuing breach of any of its obligations (breach (remedy) within 30 days after written

13.2.3.2 has been able to period of [60] days been able to result of Force Majeure; or

13.2.3.3 is insolvent by its debts within the meaning of of the Insolvency Act 1986; or

13.2.3.4 is insolvent proceedings concerning its solvency, or admits an act of bankruptcy or is enters into liquidation, whether other than for the purposes of an auction, or makes an arrangement for an administration order or if administrative receiver or general officer part of its assets.

13.3 On any termination the Client shall return to the Service Provider, and, unless the parties have provided otherwise, the Service Provider may, without notice to the Client, delete the Client's data, storage media, possession without thereby incurring any liability for doing

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the Commencement Date, and shall continue for 12 months and thereafter unless and until either party gives notice expiring either at the end of the 12 month term, subject to the provisions of

shall be available to either party under this Agreement and shall not be a liability of either party:

13.2.1 the Service Provider shall terminate this Agreement with immediate effect if the Client fails by the due date for payment to

13.2.2 if the Service Provider change of Standby resources through the Standby Service Provider increase of after the date of Agreement with the Client pursuant to clause 3.8 of a change of Standby Capability equipment or resources that adversely affect the Client's use of the Standby resources for continuity purposes, or if the Client pursuant to clause 7.6 of any Agreement may, at any time within 30 days after the date of the Client's notice, elect to terminate this

13.2.3 either party giving written notice of termination of this Agreement with immediate effect by either party if the other party:

13.2.3.1 continuing breach of any of its obligations (breach (remedy) within 30 days after written

13.2.3.2 has been able to period of [60] days been able to result of Force Majeure; or

13.2.3.3 is insolvent by its debts within the meaning of of the Insolvency Act 1986; or

13.2.3.4 is insolvent proceedings concerning its solvency, or admits an act of bankruptcy or is enters into liquidation, whether other than for the purposes of an auction, or makes an arrangement for an administration order or if administrative receiver or general officer part of its assets.

13.3 On any termination the Client shall return to the Service Provider, and, unless the parties have provided otherwise, the Service Provider may, without notice to the Client, delete the Client's data, storage media, possession without thereby incurring

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**14. Waiver and Rights and Remedies**

No failure or delay by a party in exercising its rights or its waiver of any such rights or remedies shall be deemed to be a waiver of any other rights or remedies.

...all prejudice or restrict its rights. No contractual terms will be deemed to

**15. Force Majeure**

Subject to Clause 13.2.3, the parties shall be excused for any failure or delay in performing their obligations under this Agreement and where Force Majeure applies, the parties shall be entitled to a reasonable extension of time for performance.

...able for any failure or delay in delay results from Force Majeure, ...y shall be entitled to a reasonable

**16. Severance**

In the event that one or more provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, such provision(s) shall be deemed severed from the Agreement. The remainder of this Agreement shall be valid and enforceable.

...of this Agreement is found to be at / those provision(s) shall be deemed severed from the Agreement. The remainder of this

**17. Assignment**

This Agreement is personal to the parties and cannot be assigned, mortgaged, charged (otherwise than by way of its rights hereunder), or otherwise delegated or assigned hereunder without the written consent of the other party, such consent not to be unreasonably withheld.

...her party may assign, mortgage, licence or otherwise delegate any of its obligations to any other party, such consent not to be

**18. Third Party Rights**

No part of this Agreement shall create or confer any rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.]

...rights on any third parties and (b) the Contracts (Rights of Third Parties) Act 1999 shall not apply to this

**19. No Partnership or Agency**

Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency, or other relationship between the parties other than the contractual relationship created by this Agreement.

...deemed to constitute a partnership, joint venture, agency, or other relationship between the parties other than the contractual relationship created by this Agreement.

**20. Notices**

20.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, an authorised officer of the party giving the notice.

...writing and be deemed duly given if signed by, or on behalf of, an authorised officer of the party giving the

20.2 Notices shall be deemed to have been given:

...given:

20.1.1 when delivered to the recipient by hand, by a courier or other messenger (including registered mail) during business hours of the recipient; or

...ier or other messenger (including registered mail) during business hours of the recipient; or

20.1.2 when sent, by electronic mail or e-mail and a successful transmission is generated; or

...ile or e-mail and a successful transmission is generated; or

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20.1.3 on the fifth ordinary mail

g mailing, if mailed by national

In each case notice address, or facsimil

to the most recent address, e-mail other party.

**21. Dispute Resolution (Arbitration)**

21.1 The parties shall at the Agreement through their appointed representatives who have the authority to

dispute arising out of or relating to this Agreement through their appointed representatives who

21.2 If negotiations under this clause fail, the parties will attempt to resolve the dispute in good faith using an Alternative Dispute Resolution (“ADR”) procedure.

that resolve the matter within 21 days of receipt of a written notice. If the parties will attempt to resolve the dispute in good faith using an Alternative Dispute Resolution (“ADR”) procedure.

21.3 If the ADR procedure does not resolve the matter within 28 days of the date either party provides notice to participate in the ADR procedure, the matter may be referred to arbitration by either party.

21.2 does not resolve the matter within 28 days of the date either party provides notice to participate in the ADR procedure, or if either party will not participate in the ADR procedure, the matter may be referred to arbitration by either party.

21.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Rules for Arbitration of the International Chamber of Commerce. If the parties are unable to agree on the Rules for Arbitration, either party may, upon the request of the President or Deputy President of the International Chamber of Commerce Arbitrators for the time being, apply to the President or Deputy President for a decision on rules that shall apply.

Clause 21.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and the Rules for Arbitration of the International Chamber of Commerce. In the event that the parties are unable to agree on the Rules for Arbitration, either party may, upon the request of the President or Deputy President of the International Chamber of Commerce Arbitrators for the time being of the Chartered Institute of Arbitrators, apply to the President or Deputy President for a decision on rules that shall apply.

21.5 Nothing in this Clause shall prevent either party or its affiliates from applying to a court for an injunction or other relief.

Neither party or its affiliates from applying to a court for an injunction or other relief.

21.6 The parties hereby agree that the award and outcome of the final method of dispute resolution under this Clause shall [not] be final and binding on both parties.

and outcome of the final method of dispute resolution under this Clause shall [not] be final and binding on both parties.

**22. Entire Agreement**

22.1 This Agreement constitutes the entire agreement and understanding between the parties, and shall not be modified except by an instrument in writing signed by the authorised representatives of the parties.

This Agreement constitutes the entire agreement and understanding between the parties, and shall not be modified except by an instrument in writing signed by the authorised representatives of the parties.

22.2 Each party acknowledges that, in entering into this Agreement, it does not rely on any representation, statement, or other provision (made innocently or negligently) except as expressly stated in this Agreement except if made or given fraudulently.

Each party acknowledges that, in entering into this Agreement, it does not rely on any representation, statement, or other provision (made innocently or negligently) except as expressly stated in this Agreement except if made or given fraudulently.

22.3 Except as expressly provided under this Agreement, the rights and remedies provided under this Agreement shall be in addition to, and not exclusive of, any rights or remedies provided by law.

Except as expressly provided under this Agreement, the rights and remedies provided under this Agreement shall be in addition to, and not exclusive of, any rights or remedies provided by law.

**23. Governing Law and Jurisdiction**

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- 23.1 This Agreement (including all matters and obligations arising therefrom or associated with it) shall be governed by, and construed in accordance with, the law of England and Wales.
- 23.2 Subject to the provisions of this Agreement (including all matters and obligations arising therefrom or associated with it) any dispute, controversy, proceeding or claim between the parties relating to this Agreement (including all matters and obligations arising therefrom or associated with it) shall be referred to and determined by arbitration within the jurisdiction of the courts of England and Wales.

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**Schedule 1**

Client Computer Systems

<< insert details >>

**Schedule 2**

Service Provider's Standby Facility

<< insert details >>

Standby Capability

<< insert details >>

[As per clause 3.4, state maximum number of simultaneous activations for Provider's other Customers]

**Schedule 3**

Fees

[Standby Fees payable [quarterly] << >> ]

Usage Fees payable monthly in arrears per [hour][day][week] £<< >>]

[Cancellation Fee (payable pursuant to clause 3.4) << >> ]

**Schedule 4**

The Activation Notice shall be: in true, complete and accurate in all material respects, signed by a representative of the Client, sent to the following e-mail address of the Provider in accordance with the Provider's Activation procedures from time to time.

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[ATTACH FORM OF NOTICE]

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF  
SERVICE PROVIDER]

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF C

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