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IT DISASTER RECOVERY SERV

AND SITE PROVISION BY SERVICE

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2. Services
3. Activation and use of the Service
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Schedules

- Schedule 1 Client Computer System
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- Schedule 3 Fees
- Standby Fees payable quarterly in
- Usage Fees payable monthly in ar
- Schedule 4 Requirements for th

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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 registered 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 registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> (“the Client”)

WHEREAS

The Service Provider has expertise 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 the context otherwise requires, each of the following expressions has the meaning set out below:

“**Activation**” means the activation of the Standby Capability for business continuity services as set out in clause 3.1 of Client’s Activation Notice stating the date of activation.

“**Activation Notice**” means the Activation Notice as defined under clauses 3.1 and 3.2.

“**Activation Response Time**” means the period of time after Activation in which Service Provider shall ensure that the Standby Capability is available to Client.

“**Additional Services**” means any services (other than the Services) as Service Provider may offer from time to time including, for example, backup, data recovery, [mobile disaster recovery] equipment-specific disaster recovery, support, hosting, ASP, continuous monitoring and testing or remote access testing.

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<<insert day>> day of <<insert month>>,<<insert year>>

<<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> (“the Service Provider”)

<<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> (“the Client”)

providing commercial IT disaster recovery services to its clients, and the Client wishes to use those services for its business operations.

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of Client’s Activation Notice stating the date of activation.

der clauses 3.1 and 3.2.

after Activation in which Service Provider shall ensure that the Standby Capability is available to Client.

the Services) as Service Provider may offer from time to time including, for example, backup, data recovery, [mobile disaster recovery] equipment-specific disaster recovery, support, hosting, ASP, continuous monitoring and testing or remote access testing.

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“Back Up Arrangements”

arrangements to back up and keep in clause 6.6.2, including any Data for any services Client outsources to

“Client Computer Systems”

described in Schedule 2

“Commencement Date”

the

“Confidential Information”

or obtained by a party that is of the other party and (i) is clearly or (ii) is otherwise clearly identified as, or (iii) from the circumstances of its disclosure it is reasonable to conclude that it is, confidential information of that party including information that: a) is or was obtained by the party other than through any act or omission of the party or obtaining party; b) was in the possession of the party before the disclosure; c) is received by the party from a third party by a third party on disclosure; d) is independently obtained by the party, which can be shown by written evidence; or is disclosed by law, by any court of law or by any regulatory or administrative body

“Customer”

use the Standby Capability for business

“Data Back Up Agreement”

writing under which Service Provider is providing data back up service

“Data Protection Legislation”

in force from time to time in the United Kingdom, the law relating to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law), the EU General Data Protection Regulation ((EU) 2016/679), the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended

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rist attack, power failure, server
strikes, lockout or other industrial
e or partial interruption or loss of or
bility to Client Computer Systems
rse effect on Client’s business
asonably considers that that result
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“Fees”

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e Usage Fees payable to Service

“Force Majeure”

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ause beyond a party’s reasonable
limitation, strike, lock-out or other
involving the workforce of Service
ty), failure of a utility service or
ations network, act of God, acts of
s of terrorism, malicious damage,
rule or regulation, governmental
t, breakdown of plant or machinery,
e, power failure, fire, flood, storms,
t of suppliers or sub-contractors

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“Multiple Activation”

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and any Customer(s) resulting in
of the Standby Capability

“Priority Decisions”

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Client and Customers on a Multiple

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“Service Period”

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“Services”

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“Standby Capability”

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“Standby Facility”

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“Testing”

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Capability for testing or use for a
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“Testing Days”

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ing period of 12 months (beginning
Date) when Testing is to occur, the
be within 30 days after the
n agreed date

[“Test Report”

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ny deficiencies or exposures and,
s recommendations for improved

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1.2 Unless the context

ference in this Agreement to:

1.2.1 “writing”, an
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on, includes any communication
nsmission or similar means.

1.2.2 a statute or
amended or

is to that statute or provision as
nt time.

1.2.3 “this Agree
amended or
schedule to

nt and each of the Schedules as
levant time, and a Schedule is a

1.2.4 a Clause or
Schedules) o

e of this Agreement (other than the
evant Schedule.

1.2.5 a "party" or

ties to this Agreement.

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1.3 In this Agreement:

1.3.1 The heading
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1.3.2 Words impa

include the plural and vice versa.

1.3.3 A reference

reference to the other genders.

1.3.4 A reference
unincorporat
personality).

a natural person, corporate or
or not having separate legal

1.3.5 A reference
employees a

ce Provider includes its respective

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2. Services

2.1 The Service Provid
conditions of this A
Standby Capability

encement Date, on the terms and
nable endeavours to maintain the
uring the Service Period:

2.1.1 the Standby
<<9.00am>>
holidays][24

ndby Facility [during the hours
business days excluding public
ays per week] if a Disaster occurs

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and following
make any co
free or that i

Service Provider does not represent or
tion shall be uninterrupted or error-

2.1.2 Testing;

2.1.3 technical as
necessary to

Service Provider decides is reasonably
testing or after Activation; and

2.1.4 at least on
reasonable p
Capability fo

standing period of 12 months, on
the Provider, access to the Standby
ng it.

2.2 This Agreement do
Client requests ar
reasonable endeav
standard terms and

any Additional Services but if the
the Service Provider shall use
tested services on its then current

3. Activation and use of the

3.1 If a Disaster occurs
Notice.

the Service Provider an Activation

3.2 The Activation Notic

requirements in Schedule 4.

3.3 Subject to clauses
within the Activatio
to the Client at the
Capability during th

Service Provider shall, following Activation and
the Standby Capability available
the Client may use the Standby
business continuity purposes.

3.4 The Service Provid
Customers stated i
Activation:

Customers] OR [up to the number of
accordingly in the event of Multiple

3.4.1 one or mor
Standby Ca

activated use of or be using the
vation by the Client;

3.4.2 the Service
Decisions;

in accordance with the Priority

3.4.3 the Service
provide any
that it comp
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resources a

liable to the Client for failure to
of the Standby Capability provided
it uses reasonable endeavours to
uity facilities, equipment and/or
and

3.4.4 the Client s
provide busi

Service Provider in its efforts to
to Customers.

3.5 The Client shall
practicable after ini
Client Computer S
operation a suitable

avours as soon as reasonably
Disaster either to restore use of the
the Disaster or to bring into

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3.6 The Client shall cease use of the Standby Capability within [three] hours of whichever of the following occurs: (a) the end of the Service Period, or (in accordance with clause 3.7) the end of the Client Computer Systems, or the bringing into use of the alternative facility. The Service Provider is hereby notified that it shall not use this subclause if the Client fails to do so.

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3.7 The Client may (as a condition of the Standby Capability) notify the Service Provider in writing that it wishes to use the Standby Capability after the Service Period. Whilst the Service Provider is available to provide use of or access to the Standby Capability after the Service Period, it shall use the Standby Capability for the Client's use (at the same rate which applied during the Service Period) until the Service Provider may end such use or access on at least [three] days' notice to the Client change the Standby Capability.

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3.8 The Service Provider shall provide the equipment and/or facilities for the Standby Capability on the Testing Days' notice to the Client change the Standby Capability.

4. Testing

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

4.2 The Client may use the Standby Capability for Testing on the Testing Days only by prior agreement with the Service Provider and in accordance with the Service Provider's policies for Testing from time to time.

4.3 The Client agrees and warrants that it shall be available to make Testing Days available

4.3.1 the Service Provider shall be available to provide for the [5] Testing Days to be chosen by the Client.

4.3.2 the Service Provider shall be available to provide for the [5] Testing Days to be chosen by the Client.

4.3.3 the Service Provider shall be available to provide for the [5] Testing Days to be chosen by the Client.

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

4.5 If the Client wishes to use the Standby Capability for Testing more than the [5] Testing Days or after the Service Period, the Client shall notify the Service Provider in writing as under clause 3.7 and the Client 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 the Standby Capability] The Client will not be entitled to refund of any charges paid or payable if cancellation occurs less than [14] days before the date of cancellation. The cancellation fee set out in Schedule 3 will be payable by the Client.

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4.7 [The Service Provider shall deliver to the Client a Test Report within 14 days of the completion of the recovery carried out on an occasion of Testing.]

5. Service Provider's Obligations

The Service Provider:

5.1 shall provide the Services with the skill and care;

5.2 shall use reasonable endeavours to maintain the Standby Capability and to keep it in good order so as 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 Capability exceeding the number stated in the Schedule];

5.5 may reject any of the Client's Computer Systems if Service Provider considers it unsuitable for use of the Standby Facility;

5.6 shall not be responsible for the loss of or damage to the Client's Computer Systems, the Client's Standby Facility, or any other equipment, services, other resources, data (except under, and in accordance with, a Back Up Agreement), or storage media, used in or for the Client's business or the Client Computer Systems or the Client's business;

5.7 shall, following Act of God, in accordance with clause 2, make available the Standby Capability;

5.8 shall from time to time, in accordance with clause 2, make available the Standby Capability to or of items comprised in the Standby Capability, and shall maintain detailed records of their serial numbers and maintenance details, and shall provide remedial maintenance services or are otherwise affected by such changes that are routine, arise through upgrades to equipment, software or services; and

5.9 shall not be responsible for the things for which the Client has sole responsibility under the Agreement;

5.10 [shall maintain for the Client, in accordance with clause 2, agreement appropriate insurance policies to cover as far as is reasonable and available, its potential liabilities under this Agreement]

6. Client's Obligations

6.1 In relation to this Agreement, the Client shall:

6.1.1 provide the

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 to enable the Service Provider to provide the Services;

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6.1.2 comply with all applicable laws, regulations and regulations (in particular, but not limited to, the Data Protection Legislation) with respect to its activities under the Agreement.

6.1.3 carry out all obligations set out in this Agreement in a timely and efficient manner. If the Client delays in giving assistance to the Service Provider, the Service Provider may adjust any timing of its obligations as a result.

6.2 While using or accessing the Standby Capability, the Client shall comply with the Service Provider's general terms and conditions, procedures, arrangements and any instructions issued by the Service Provider relating to the Standby Capability (including but not limited to security).

6.3 The Client's personnel shall be suitably qualified, authorised, trained and skilled to perform the Standby Capability or doing anything else pursuant to this Agreement. Only personnel specifically authorised, trained and skilled to do so.

6.4 The Client shall provide the Service Provider with a named representative authorised to act on its behalf in relation to the Standby Capability on Notice.

6.5 The Client shall:

6.5.1 use and operate the Standby Capability only for business continuity purposes and in the ordinary course of its business;

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

6.5.3 at all times take good care of the Standby Capability, ensure it is protected from damage caused to it (save any damage caused by the Service Provider), and, at the end of use, return it to the Service Provider in the condition it was before the Standby Capability was used, failing which the Client shall be liable for, as a minimum, the full cost of repair or full value of new replacement parts and part/s of the Standby Capability; and

6.5.4 ensure that the Standby Capability is secure, clean, tidy, and that it meets the requirements for use of the Standby Capability.

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

6.6.1 supplying all data compatible with and generally suitable for use of the Standby Capability;

6.6.2 the adequacy and security of all storage media and data it brings to the Standby Capability and/or uses;

6.6.3 the adequacy of its arrangements. It hereby confirms it will maintain all arrangements and that any Data Backups are up to date and in accordance with the Standby Capability Agreement.

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6.6.4 all software (including Standby Capabilities) licensed);

materials that do not form part of the Standby Capabilities, ensuring that they are appropriately licensed);

6.6.5 risk of loss of data, storage on the Standby Capabilities

to, however caused, any such loss of data, storage or other resources

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

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

6.6.7 all security and access controls, operations and appropriate to its use of the Standby Capabilities, including, but not limited to, passwords, pass codes, audit trails and procedures; and

and appropriate to its use of the Standby Capabilities, including, but not limited to, passwords, pass codes, audit trails and procedures; and

6.6.8 all results it produces.

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6.7 The Client agrees that the Standby Capabilities are the property of the Service Provider and the Client has no interest in it.

The Client is and will remain the exclusive owner of the Standby Capabilities and the Client will not have any right, title or interest in it.

6.8 The Client agrees it shall be responsible for all data and storage media used during Testing and 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.

responsible for all data and storage media used during Testing and 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 shall keep the Standby Facility comprehensively insured against all normal risks arising from its use.

The Client shall keep the Standby Facility comprehensively insured against all normal risks arising from its use.

6.10 The Client warrants that the Standby Facility is fit for use in connection with the Services:

connection with the Services:

6.10.1 any software used by the Client in connection with the Standby Capabilities

of the Client Computer Systems used in connection with the Standby Capabilities will be owned by or licensed to the Client and shall be available for use on or with the Standby Capabilities

6.10.2 all personal data held by it to the Standby Facility properly maintained

held by the Client or made available to the Standby Facility properly in the possession of, and controlled by the Client.

7. Charges and Payment

7.1 The Client shall pay the Standby Capabilities

the Standby Capabilities

7.1.1 the Standby Capabilities [quarterly] and the Standby Capabilities pursuant to the Standby Capabilities inspection, the Standby Capabilities Testing in accordance with the Standby Capabilities

Services set out in Schedule 3 which include all charges for, the Standby Capability available, and the Testing Days (but not any other days); and

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7.1.2 the Usage set out in Schedule 3 monthly in arrears(which use for Testing and on occurrence of a Disaster

7.2 The Client shall re provide for all actual, reasonable travel expenses inv limited to, hotel and meals incurred by the Service Pro the Services, but not any other expenses [unless a ng].

7.3 All Fees and othe referred to in this Agreement are exclusive of Value be added to the Service Provider's invoice(s) at the app

7.4 The Service Provid annually][quarterly] in advance for Fees set out in Sch oices for Fees set out in Schedule 3 monthly in arrears

7.5 Each invoice will b the Client [30][10] days after the invoice date. If the not received payment within [five] days after the due ce to any other rights or remedies of the Service Provi

7.5.1 the Service or temporarily suspend provision of any of th oice(s) concerned remain unpaid; and

7.5.2 the Client st and on the overdue amount at the rate of [4]% Name Of Bank]'s base rate from time to time true on a daily basis from the due date until a overdue amount, whether before or after judgm ay the interest together with the overdue am

7.6 The Service Provide increase any charges with effect from any anniversar t Date on not less than 60 days' prior notice provided that increase over the then current rate of charge is no age increase of the Retail Prices Index for the twelve n anniversary.

8. Data

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[Provision of the Services shall not include any processing of any personal data by the half of the Client. Accordingly the Client shall in relation to a sed by the Client operate as both data controller and data ce Provider shall not in those circumstances be a data processor, and the Client shall be responsible for ensuring t personal data complies with the Data Protection Legislatio

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[Except as follows, in relation to the use of the Services by the Client, the Client shall not process any personal data on behalf of the Client. The Client shall in relation to any personal data processed by the Client as both data controller and data processor, the Service Provider shall in relation to any circumstances be a data controller or data processor, and the Client shall be responsible for ensuring that its processing of the personal data complies with the Data Protection Legislation. However, where the Service Provider is to process personal data on the Client's behalf in the course of and as part of providing the Services, all such processing of personal data by the Service Provider shall be in accordance with the terms of the Data Processing Agreement entered into between the Service Provider and the Client [pursuant to this Agreement]

Services by the Service Provider and the Service Provider shall not process any personal data on behalf of the Client shall in relation to any personal data processed by the Client as both data controller and data processor, the Service Provider shall in relation to any circumstances be a data controller or data processor, and the Client shall be responsible for ensuring that its processing of the personal data complies with the Data Protection Legislation. However, where the Service Provider is to process personal data on the Client's behalf in the course of and as part of providing the Services, all such processing of personal data by the Service Provider shall be in accordance with the terms of the Data Processing Agreement entered into between the Service Provider and the Client

9. Proprietary Rights

The Client acknowledges that it owns all intellectual property rights in and to its Standby Capability. Except as expressly stated herein, this Agreement shall not grant to the Client any rights to, or in, patents, trademarks, trade names, trade marks (whether registered or unregistered), or other intellectual property rights in respect of the Standby Capability, the Services, or the Client's Confidential Information.

Service Provider and/or its licensors own all intellectual property rights in and to its Standby Capability. Except as expressly stated herein, this Agreement shall not grant to the Client any rights to, or in, patents, trademarks, trade names, trade marks (whether registered or unregistered), or other intellectual property rights in respect of the Standby Capability, the Services, or the Client's Confidential Information.

10. Confidentiality

Each party may receive or have access to Confidential Information from the other party under this Agreement. Each party shall hold the other's Confidential Information in confidence and shall not disclose the other's Confidential Information to any third party, or use the other's Confidential Information for any purpose other than the performance of its obligations under this Agreement, or divulge the other's Confidential Information to any third party, or use the other's Confidential Information for any purpose other than the performance of its obligations under this Agreement, or disclose the other's Confidential Information to any third party, or use the other's Confidential Information for any purpose other than the performance of its obligations under this Agreement, or divulge the other's Confidential Information to any third party, or use the other's Confidential Information for any purpose other than the performance of its obligations under this Agreement.

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11. Indemnity

11.1 The Client shall defend, hold harmless and indemnify the Service Provider against claims, actions, damages, expenses and costs (including without limitation reasonable attorneys' fees) arising out of or in connection with the Client's use of the Services, and, without limitation, breach of any warranty made by the Client in this Agreement.

The Client shall defend, hold harmless and indemnify the Service Provider against claims, actions, damages, expenses and costs (including without limitation reasonable attorneys' fees) arising out of or in connection with the Client's use of the Services, and, without limitation, breach of any warranty made by the Client in this Agreement.

11.2 The Service Provider shall defend, hold harmless and indemnify the Client against any claims by third parties arising out of or in connection with the provision of the Services to the Client, provided that the Service Provider shall have no liability to indemnify the Client if the alleged infringement or other claim is either modification by anyone other than the Service Provider or to the extent that the claim is formed by software contrary to any instructions given by the Service Provider.

The Service Provider shall defend, hold harmless and indemnify the Client against any claims by third parties arising out of or in connection with the provision of the Services to the Client, provided that the Service Provider shall have no liability to indemnify the Client if the alleged infringement or other claim is either modification by anyone other than the Service Provider or to the extent that the claim is formed by software contrary to any instructions given by the Service Provider.

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 or its use of them, and for anything else in connection with the Services.

12.2 Except as expressly provided otherwise, the Service Provider's liability is limited to:

12.2.1 the Client's liability for use of the Services and for selecting the Standby Capability for them and the Standby Capability to meet its business requirements;

12.2.2 the Service Provider's liabilities or guarantees and makes no representation or warranty in connection with the Services or the Standby Capability, and all such warranties, representations, and all conditions and any other terms, conditions, exclusions, or limitations by statute or otherwise, are hereby excluded from the Agreement to the fullest 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 or loss of data caused either by any breach of this Agreement or the Standby Capability, or the Service Provider limited to £500,000 for all such events; or

12.3.3 fraud or fraudulent misrepresentation.

12.4 Subject to clause 11.111.211.2, the Service Provider shall exclude and

12.4.1 the Service Provider shall exclude and disclaim all liability, whether in contract, tort (including breach of statutory duty), or for negligent or otherwise, for the Services or the Standby Capability, or otherwise, for the Client's or the Client's employees' or

12.4.1.1 loss of anticipated savings, loss or corruption of data, whether it is direct, special, or indirect consequential or other loss, damage, or

12.4.1.2 a direct or consequential loss, damage, or expense.

12.4.2 any liability of the Client or any third party for breach of this Agreement (excluding liability at clause 11.111.211.2 or tort (including breach of statutory duty), or for negligent or otherwise in connection with this Agreement), or aggregate to the total amount paid by the Client to the Service Provider in the 12 month period up to the date of the Client's breach of this Agreement, or the liability of the Client or any third party for the Services or the Standby Capability, or otherwise, for the Client's or the Client's employees' or

12.5 The limitations and exclusions in clause 12 are cumulative.

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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 in

13.2 Without affecting any Agreement or at law

13.2.1 the Service Provider effect by giving payment to

13.2.2 if the Service Provider change of materially a Capability for notifies the charges, then the Service Provider immediate effect

13.2.3 either party giving written

13.2.3.1 continuing breach of any of its obligation and fails to remedy the breach (remedy) within 30 days after written notice

13.2.3.2 has performed a period of [60] days been able to

13.2.3.3 is going to settle its debts within the meaning of section 72 of the Insolvency Act 1986; or

13.2.3.4 is insolvent or admits an act of bankruptcy or is entering into liquidation, whether or not for the purposes of an administration order or if a receiver or general officer is appointed of its assets.

13.3 On any termination of this Agreement the Client shall cease to use and shall return to the Service Provider, and, unless otherwise agreed in writing, the Service Provider may, without notice to the Client, delete the Client's data, storage media,

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

shall be available to either party under this Agreement and shall not be the liabilities of either party:

the Service Provider shall terminate this Agreement with immediate effect if the Client fails by the due date for payment to the Service Provider to pay the amount due under this Agreement ; or

the Client pursuant to clause 3.8 of a change of equipment or resources that would materially affect the Client's use of the Standby Service for the purposes, or if the Service Provider notifies the Client pursuant to clause 7.6 of any increase of any charges, then the Client shall terminate this Agreement with immediate effect if the Client fails to do so within 30 days after the date of notification;

either party shall terminate this Agreement with immediate effect by giving written notice to the other party if the other party:

continuing breach of any of its obligations under this Agreement and fails to remedy the breach (remedy) within 30 days after written notice;

has performed a period of [60] days been able to perform its obligations as a result of Force Majeure; or

is going to settle its debts within the meaning of section 72 of the Insolvency Act 1986; or

is insolvent or admits an act of bankruptcy or is entering into liquidation, whether or not for the purposes of an administration order or if a receiver or general officer is appointed of its assets.

Client shall cease to use and shall return to the Service Provider, and, unless otherwise agreed in writing, the Service Provider may, without notice to the Client, delete the Client's data, storage media,

software, equipment
any liability for doing

session without thereby incurring

14. Waiver and Rights and Remedies

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

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

15. Force Majeure

Subject to Clause 13.2.3, a party shall not be liable for any failure or delay in
performing their obligations under this Agreement where Force Majeure
occurs and where Force Majeure shall entitle a party to a reasonable
extension of time for performance.

liable 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
reement. The remainder of this

17. Assignment

This Agreement is personal to the parties and shall not be assigned, mortgaged,
charge (otherwise than by way of security) or otherwise delegated to any
of its rights hereunder, or its obligations 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
se delegate any of its obligations
er 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
) 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,
p between the parties other than
n 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
sed officer of the party giving the

20.2 Notices shall be deemed to have been given to a party at its last known address
as set out in this Agreement.

given:

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20.2.1 when delivered by a registered messenger or other messenger (including registered messenger) outside normal business hours of the recipient; or

20.2.2 when sent, by registered mail, by e-mail and a successful transmission is generated; or

20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail.

In each case notice shall be given to the most recent address, e-mail address, or facsimile address of the other party.

21. Dispute Resolution (Arbitration)

21.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through their appointed representatives who have the authority to bind them.

21.2 If negotiations under paragraph 21.1 do not resolve the matter within 21 days of receipt of a written notice of dispute, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.

21.3 If the ADR procedure does not resolve the matter within 28 days of the date either party participates 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 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 arbitrator, either party may, upon the request of the President or Deputy President of the Chartered Institute of Arbitrators for the time being, request 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.

21.6 The parties hereby acknowledge that the award and outcome of the final method of dispute resolution used shall [not] be final and binding on both parties.

22. Entire Agreement

22.1 This Agreement constitutes the entire agreement between the parties, and shall supersede all other agreements between them with respect to its subject matter. It shall not be modified except by an instrument in writing signed by both 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 set out in this Agreement except if made or given fraudulently or in breach of fiduciary duty.

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.

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registered messenger or other messenger (including registered messenger) outside normal business hours of the recipient; or

by registered mail, by e-mail and a successful transmission is generated; or

on the fifth business day following mailing, if mailed by national ordinary mail.

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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 set out in this Agreement except if made or given fraudulently or in breach of fiduciary duty.

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.

23. Governing Law and Jurisdiction

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 resolution), 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 within the jurisdiction of the courts of England and Wales.

Schedule 1

Client Computer Systems

<<insert details>>

Schedule 2

[Client's Standby Facility

<<insert details>>

Standby Capability

<<insert details>>

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

Schedule 3

Fees

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

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

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

Schedule 4

The Activation Notice shall be: in writing, true, complete and accurate in all material respects, signed by a duly authorized 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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