

## Managed Hosting Terms and Conditions

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## 1. Parties

WANSTOR LIMITED, a company registered in England and Wales with registered number 04524830 and with its registered office at 124-126 Borough High Street, London SE1 1LB ("the Company")

## 2. Definitions

The Wanstor Managed Colocation Services is subject to the following additional terms and conditions:

"Hosting Services" means the provision for your use of the Hosted System described in a Service schedule or sales order.

"Personally Identifiable Information" or "PII" means a combination of any information that identifies an individual with that individual's sensitive and non-public financial, health or other data or attribute, such as a combination of the individual's name, address, or phone number with the individual's national insurance number or other government issued number, financial account number, date of birth, address, biometric data, mother's maiden name, or other "Personal Data" or "Special Categories of Data" as defined in the Directive 95/46/EC and the Data Protection Act 1998.

"Commencement Date" means the date on which the Company provide the access codes that enable you to send and receive information from your Hosted System, or the date on which the equipment which you host with us is installed.

### 3. Deployment

*Unless otherwise stated in the Hosting Services Agreement, the Company do not guarantee a deployment timeframe but will use reasonable endeavours to deploy the server(s) as described in your Services schedule or sales order promptly. The Company may agree to provide a guaranteed deployment timeframe for an additional fee. Where such Deployment Guarantee is agreed, the Company will deploy the Server(s) by the date stated in the Hosting Services Agreement, provided that you promptly provide all information that the Company reasonably request from you to complete deployment. Servers are deemed deployed as of the time that Wanstor generates an email message to you that includes the information needed to allow you to transfer information to and from the Server(s). Your sole and exclusive remedy for our failure to meet the Deployment Guarantee shall be a credit equal to the amount of the fee paid for the Deployment Guarantee service. You are not entitled to a credit if you request or cause the deployment delay. This Deployment Guarantee does not apply to any software, other managed services, or hardware devices other than the Server(s). If you request (orally or in writing) that the Company deploy your servers by a specific date or on an "expedited" basis for no additional fee, then the Deployment Guarantee shall not apply, and the Company commit only to using reasonable endeavours to deploy the Server(s) by the date requested.*

### 4. Encryption of Information

*The General Terms and Conditions require you to use reasonable security precautions in light of your use of the Services. For Hosting Services, this includes encrypting any PII transmitted to or from, or stored on, the servers or storage devices you use.*

### 5. Administration of Hosted and Collocated Systems

*Except as otherwise specifically agreed in writing, you are responsible for administering all aspects of your Hosted System, including application and virtualisation licensing, the operating system, any firewalls or load balancers, DNS, intrusion detection systems, backups, monitoring and customer-administered storage solutions. The Company will be available to assist you with certain Supplementary Services on an hourly fee basis at your request.*

### 6. Monitoring Services

i) *The Company shall remotely provide Simple Network Management Protocol (SNMP) monitoring services of the Network, as further set out in the service schedules. Where appropriate, other technologies such as SOAP and WMI may also be used. The Company shall provide the Monitoring Service continuously throughout the term of this Agreement. The notification of a monitoring alerts will be communicated via support ticket to the email addresses associated with the customer contacts that have access to that device in our portal, or to the company service desk. Wanstor is not responsible for notifying you by any*

*alternative method if the affected server is the server that you use to receive email notifications.*

- ii) The Monitoring Service includes the following:*
- iii) availability of Equipment and the Network;*
- iv) exception reporting for variation from normally accepted levels of usage;*
- v) trend reporting; and*
- vi) provision to the Customer of a web based 'dashboard' style application which shall be continuously updated in real time, whereby the Customer is provided access to details of the status of the information being monitored by the Company.*
- vii) If any faults or issues are detected pursuant to the Monitoring Service, the Company shall inform the Customer without delay and shall log such fault or issue with the Service desk, and thereafter shall respond and resolve all such faults or issues in accordance with the Service Levels.*
- viii) Each monitoring sensor required or requested will incur a £ 1.00 per sensor per month fee and a one off £ 10.00 set up fee.*

## **7. SLA's**

- i) Network. The Company guarantee that our data centre network will be available 100% of the time in a given month, excluding Maintenance. The data centre network means the portion of the network extending from, but not including, the outbound port on your cabinet switch to the outbound port on the border router and includes managed switches, routers, and wiring. The Company will credit your account 5% of the monthly fee for each thirty (30) minutes of network downtime, up to 100% of your monthly fee for the affected server(s).*
- ii) Infrastructure. The Company guarantee that data centre HVAC and power will be functioning 100% of the time in a given month, excluding Maintenance. Power includes UPSs, PDUs and cabling, but does not include the power supplies on your servers. Infrastructure downtime exists when a particular server is shut down due to power or heat problems. The Company will credit your account 5% of the monthly fee for each thirty (30) minutes of infrastructure downtime, up to 100% of your monthly fee for the affected server(s).*
- iii) Hardware. The Company guarantee the functioning of the following Wanstor-provided hardware:*
  - iv) switches, firewalls, load balancers and servers;*
  - v) direct attached storage devices;*
  - vi) network attached storage devices, and*
  - vii) storage area networks ("SAN"). Hardware repair or replacement will begin once the Company identify the cause of the problem. Hardware repair or replacement is guaranteed to be complete within one (1) hour of problem identification for switches, firewalls, load balancers, servers and direct attached storage devices and within five (5) hours of problem identification for network attached storage devices. For SAN hardware failures, the Company guarantee that the Company will have a technical specialist and necessary parts onsite to begin repairs within four (4) hours of problem identification The Company will*

*credit your account five per cent (5%) of the monthly fee per additional hour of downtime (after the initial one (1) hour or five (5) hours for repair or replacement, as applicable, or, for SAN, the additional hour of delay in beginning repairs), up to one hundred per cent (100%) of your monthly fee for the affected hardware. This guarantee excludes the time required to rebuild your system, such as the time required to configure a replacement device, rebuild a RAID array, reconfigure devices from their default settings, reload operating systems, reload and configure applications, and/or restore from backup (if necessary).*

*viii) Downtime Measurement. Downtime is measured from the time a trouble ticket is opened until network availability is restored, or the affected device is powered back on, as applicable.*

## **8. Service Credits.**

- i) Cumulative Credit Amount. Notwithstanding anything in this Agreement to the contrary, the maximum total credit for any calendar month for failure to meet Service Level Guarantees under this Agreement, including all guarantees, shall not exceed one hundred per cent (100%) of your monthly recurring fee for the affected Hosted System. Credits that would be available but for this limitation will not be carried forward to future months.*
- ii) Maintenance. You are not entitled to a credit for downtime or outages resulting from Maintenance. For the purposes of the Service Level Guarantee, Maintenance shall mean:*
  - iii) Wanstor maintenance windows - modifications or repairs to shared infrastructure, such as core routing or switching infrastructure that the Company provide notice of at least seventy two (72) hours in advance, that occurs during off peak hours in the time zone where the data centre is located;*
  - iv) Scheduled customer maintenance – maintenance of your configuration that you request and that the Company schedule with you in advance (either on a case by case basis, or based on standing instructions), such as hardware or software upgrades;*
  - v) Emergency maintenance – critical unforeseen maintenance needed for the security or performance of your configuration or Wanstor's network.*
- vi) Extraordinary Events. You are not entitled to a credit for downtime or outages resulting from denial of service attacks, virus attacks, hacking attempts, or any other circumstances that are not within our control.*
- vii) Your Breach of the Agreement. You are not entitled to a credit if you are in breach of the Agreement (including your payment obligations to us) at the time of the occurrence of the event giving rise to the credit until you have remedied the breach. You are not entitled to a credit if the event giving rise to the credit would not have occurred but for your breach of the Agreement or misuse or improper administration of your Hosted System*
- viii) Logical Access. Wanstor may need logical access to your Hosted System to meet certain Service Level Guarantees; no credit will be due if the credit would not have accrued but for your delay in providing, or refusal to provide, logical access to your Hosted System.*
- ix) Requests/Currency. You must request a credit in writing either via support ticket or by postal mail no later than fourteen (14) days following the occurrence of the event giving rise to the credit. The Company will contact you within thirty (30) days to approve or reject the claim*

*or to request more information. If the claim is approved, the credit will appear on your monthly invoice following approval. If you are paying for your Services in a currency other than pounds Sterling, then any credit that is expressed above as a fixed number of pounds Sterling will be converted to the currency in which you pay for your Services as of the date of the invoice on which the credit is applied.*

## **9. Notices**

- i) *Any notice required to be given hereunder shall be in writing and signed by or on behalf of the Party giving it, and may be sent by hand, by first class pre-paid post or recorded delivery.
    - (a) *in the case of the Company:*
      - (i) *Wanstor Limited*
      - (ii) *(Marked for attention of: Managing Director)*
      - (iii) *124-126 Borough High Street,*
      - (iv) *London,*
      - (v) *SE1 1LB**
- ii) *Notices shall be deemed to have been received:*
- (i) *if delivered by hand, on the day of delivery;*
  - (ii) *if sent by first class pre-paid post or recorded delivery, two Working Days after posting, exclusive of the day of posting;*
- iii) *No notice given under this Agreement shall be validly served if sent by email or text messaging via mobile phone.*

## **10. Term and Termination**

- i) *This Agreement shall commence on the Commencement Date for an ("Initial term") of 12 months and, shall continue automatically thereafter for successive annual periods unless cancelled giving four months' notice prior to the expiry of the initial term.*
- ii) *This Agreement may be terminated by either Party:*
- iii) *With effect on the expiry of the Initial Term, upon giving at least 4 months' prior written notice to the other Party during the Initial Term; In the event of expiry after the initial term, termination will take place on the contract anniversary.*
- iv) *This Agreement may be terminated immediately by either Party on written notice to the other Party, if the other Party is in material breach of an obligation under this Agreement which breach is either not capable of remedy or which is capable of remedy but which has not been remedied by the other Party within 30 days after receipt of written notice to do so.*
- v) *This Agreement may be terminated immediately by either Party on written notice to the other Party:*
  - vi) *if the other Party is dissolved or struck off the register of companies maintained by the Companies Registration Office or a winding up order is made against the other Party or a meeting is convened, resolution passed or any step taken by the other Party with a view to*

- the winding-up of the other Party except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;*
- vii) if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the other Party;*
  - viii) if the other party enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other Party;*
  - ix) if notice of intention to appoint an administrator is given by any person (including the other Party's directors, the other Party or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the other Party into administration as defined by the Insolvency Act 1986; or*
  - x) if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above sub-clauses in relation to the other Party.*
  - xi) For the purposes of this clause, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).*

## **11. Consequences of Termination**

- i) Termination of this Agreement for any reason, shall be without prejudice to the accrued rights of the Parties on the date of such termination.*
- ii) Following the service of a notice of termination of this Agreement, the Company shall continue to be under an obligation to provide the Services to the required Service Levels and to ensure that there is no degradation in the standards of the Services until the date of such termination.*
- iii) Upon termination of this Agreement (howsoever arising) the Company shall, within 30 days of the date of such termination:*
- iv) return to the Customer all materials and data, including Customer Data, in its possession that has been provided to it by the Customer, or, if requested by the Customer, destroy the same and certify in writing to the Customer that they have been destroyed. The Company shall also cause any copies of such materials and data to be erased from its equipment and shall certify to the Customer that the same has been done; and*
- v) Return all other Confidential Information of the Customer, or, if requested by the Customer, destroy the same and certify in writing to the Customer that they have been destroyed.*
- vi) Where return and or deletion of data is requested, the Customer will bear all cost associated with preparation and transport.*
- vii) With effect from the date of termination of this Agreement, and for such period thereafter as the Customer may reasonably request, the Company shall provide all reasonable assistance and co-operation to the Customer and/or any Replacement Supplier in respect of the migration of the Services to the Customer or such Replacement Supplier, including:*
- viii) if specifically requested by the Customer, an exit management and data migration plan;*

- ix) *the novation of any transferable contracts or sub-licensing of other agreements as required by the Customer or the Replacement Supplier to facilitate the future provision of the Services; and*
- x) *the provision of historical and technical data and Service desk logs in respect of the Services.*
- xi) *The Company's standard rates will apply*

## **12. Termination for Convenience**

- i) *You may terminate this Agreement for convenience at any time on ninety (120) days advance written notice.*
- ii) *If after providing notice of termination you would like to request a postponement of your termination date, you must provide at least 30 days' written notice prior to your scheduled termination date. Any applicable early termination fee shall be adjusted accordingly.*
- iii) *Early termination fee*

*If you terminate this Agreement for convenience or the Company terminate this Agreement for your breach, in addition to other amounts you may owe, you must pay an early termination fee equal to the total monthly recurring fees for the remaining portion of the then-current term. You will not be charged an early termination fee under this Section in the event you terminate this Agreement as part of an agreement to establish a replacement for the Hosted System in a different Wanstor service segment, if the overall fees for the replacement system are equal to those for the Hosted System.*

## **13. Charges**

- i) *Your first invoice will include:*
- ii) *a Setup Fee (if applicable);*
- iii) *a One Time Fee (if applicable);*
- iv) *a monthly recurring fee; and*
- v) *a Pre Pay Service(s) fee (if applicable).*
- vi) *The monthly recurring fee shall be prorated from the Service Commencement Date to the last day of the calendar month (subject to any free time as agreed between you and Wanstor). The Company may require you to make a payment ahead of the Service Commencement Date (an "Upfront Payment"). The Company will offset such Upfront Payment against the initial invoice(s) that the Company raise against your account. Following Service Commencement Date, the monthly recurring fee shall be billed in advance at the beginning of each calendar month. "Utility Fee", which refers to those fees that apply to Services priced on usage, such as Virtual Machines, email and apps, bandwidth charges and overages, shall be billed monthly in arrears. If the Company agree to you prepaying for the whole or any part of the term, such prepay amount is exclusive of all Utility Fees. The term Utility Fees may be used interchangeably with the term "Non-Recurring Fees".*
- vii) *Fees are due within 30 days of invoice date.*
- viii) *If any amount is overdue by more than thirty (30) days, Wanstor may:*



- (a) charge interest on overdue amounts at the statutory rates;
  - (b) suspend all Services, and services provided pursuant to any unrelated agreement, if you do not pay the overdue amount within four (4) Business Days of our written notice to your billing contact. You agree that if your Services are reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee.
- ix) In the event Wanstor brings a legal action to collect due to late payment of valid invoices, you must also pay costs of collection, including reasonable legal fees, expenses and court costs.
- x) If your payment is returned for insufficient funds, the Company may charge you an administration fee up to the maximum amount permitted by law.
- xi) All payments will be made in the currency in the Services Description at the exchange rate at the date of the invoice.
- xii) Invoices that are not disputed within one (1) year of invoice date are conclusively deemed accurate
- xiii) Increase in Consumer Price Index. If during the initial term or any renewal term there is an increase in the Consumer Price Index as published by the National Office for Statistics over the Consumer Price Index reported for the month in which you signed your Agreement, the Company may increase your fees by the same percentage as the increase in the Consumer Price Index; provided that the Company may not increase your fees under this subsection more often than once per twelve (12) months, and the Company must give you at least thirty (30) days advance written notice of the increase. (Example: if the Consumer Price Index for the month in which you sign the Agreement is 186, and then increases in a subsequent month during the term of the Agreement to 195, the Company may increase your fees by up to 4.8%).
- xiv) Increase after expiry of Term. If following the expiration of the initial term or any renewal term you do not sign a renewal of your Agreement, but continue to use your Services on a rolling three (3) month basis as described in Section 7 (Term) above, then the Company may increase your fees at any time by any amount, in our sole discretion, on ninety (90) days advance written notice.

## 14. IP Addresses

Upon termination of the Agreement you must promptly release any Internet protocol numbers, addresses or address blocks assigned to you in connection with the service (but not any URL or top level domain or domain name) and you agree that the Company may take steps to change or remove any such IP addresses.

## 15. Hosting Service

- i) The Agreement governs the provision of hosted server services, including, Managed, Windows and Linux Server products, (the "Services") to the Customer and certain administration and servicing thereof. The Services comprise making available for use by the Customer a dedicated Windows or Linux server with appropriate administration rights, for the exclusive use of the Customer. If the subject matter of the agreement is a virtual server,

- the Customer receives server hardware not solely designated to them. The server functions granted to the Customer are made available based on software operation.*
- ii) The Company provides the use of a virtual Server to the Customer, for the exclusive use of the Customer, excepting maintenance of the virtual Server hardware, at the price agreed upon before the initiation of service, for the term as defined.*
  - iii) The Company aims to deliver the highest possible levels of up-time, and agree that the Hardware on which The Customer's Virtual machine is based, and service critical infrastructure, including Power and Network Connectivity will be available for 100% of the time (excluding scheduled maintenance, advance notice of which will be given wherever possible).*
  - iv) In the event of an outage to one of these service components which results in server downtime Customers may be entitled to claim a service credit of one day's service fee for every hour that the server is unavailable, depending upon the outage circumstances. The period of the outage will be measured from the time the Customer reports the problem to the Company's confirmation of restoration of service.*
  - v) SLA claims may be made up to a maximum of one month's service fee in any calendar month.*
  - vi) Outages caused by third party software installations or other modifications to the default server operating system as deployed do not fall within the terms of this Service Level Agreement.*
  - vii) The Customer is responsible for ensuring that they will not display via the webspace any materials which break, contravene, infringe or violate any UK or Foreign Laws or regulations.*
  - viii) Access to the server is limited to the Customer and its authorised agents. As a general rule, the Company has no access to the contents of the Customer's server. Nevertheless, the Company reserves the right to require, at its discretion, software and/or hardware upgrades for the purposes of maintaining security and stability of the services provided and may require the installation of such upgrades. Standard fees for such upgrades shall be set by the Company from time to time.*
  - ix) The Customer agrees not to maliciously or intentionally interfere with the proper operation of the server and network, including but not limited to defeating identification procedures, obtaining access beyond that which the Customer is authorised for, and impairing the availability, reliability, or quality of service for other customers. The Customer further agrees not to interfere with the proper operation of other systems reachable through the Internet, including any attempt at unauthorised access. The Customer agrees to follow the Acceptable Use Policy of any network or service to which the Customer connects.*
  - x) The Customer agrees that if the security of the Customer's server has been compromised in any way, the Customer will notify The Company immediately. The Customer shall be held fully responsible for any misuse or compromise of the Customer's server for which The Company is not properly notified. The Customer agrees that if any security contraventions are believed to have occurred in association with the Customer's server, The Company has the right to suspend access to the server pending an investigation and resolution. The Customer also agrees that the Company has the right to cooperate in any government or legal investigation regarding any aspect of its services, including any servers used by the Customer. Any use of the Company's system to engage in software piracy or other*

*contraventions of law will result in service suspension and be immediately reported to the appropriate authorities.*

- xi) Without special agreement the Company is not obliged to undertake backup of data.*

## **16. Acceptable Use Policy**

- i) All nonauthorised or illegal access to IT systems (e.g. "hacking" will lead to the immediate blocking of the server without prior warning.*
- ii) Each Customer who operates a server is solely responsible for all stored and transmitted data of the server and all actions which emanate from the server. The Customer must take adequate measures which comply with the current state of technology to ensure that any misuse of the server is effectively prevented. The Company reserves the right to block any server at any time which causes a loss of network integrity or affects the network operation of other servers without prior warning including those actions which are not specifically referred to below. The Company further reserves the right to remove a server from the network if it is deemed to be causing excessive load or traffic over an unacceptably long period.*
- iii) IP SPOOFING*
- iv) IP spoofing refers to the falsification of the IP sender address for outgoing IP packages. This technology is generally used to conceal the origin of IP packages. The Company has installed anti-spoofing filters in order to prevent IP spoofing. All attempts at IP spoofing are automatically logged. Any attempt at IP spoofing will lead to the immediate blocking of the server without prior warning.*
- v) MAC SPOOFING AND MAC FLOODING*
- vi) MAC spoofing refers to the falsification of a sender address of an Ethernet framework. This technology is often used to give a false identity in the local network or for a router. MAC flooding refers to the sending of Ethernet frameworks with a number of different sender addresses for the purpose of flooding MAC databanks of switches thus causing a malfunctioning of these switches. The Company has put in place measures which in the event of any attempt at MAC spoofing or MAC flooding trigger an immediate and automatic blocking of the server without prior warning. All attempts at MAC spoofing and MAC flooding are automatically logged.*
- vii) ARP SPOOFING AND ARP FLOODING*
- viii) ARP spoofing refers to the falsification of an ARP entry on a router by unsolicited ARP replies. This technology is often used to prepare a man-in-the-middle attack. ARP flooding refers to the mass transmission of ARP replies for the purpose of flooding the ARP databank of a router and thus causing a malfunctioning of this switch. All attempts at ARP spoofing and ARP flooding are logged and will lead to the immediate blocking of the server without prior warning.*
- ix) TRANSMISSION OF SWITCH PROTOCOL FRAMEWORKS*
- x) The transmission of switch protocol frameworks, in particular spanning tree protocol frameworks (BPDUs) will lead to the immediate and automatic blocking of the server without prior warning. All attempts to transmit switch protocol frameworks are logged.*
- xi) TRANSMISSION OF SPAM AND MALWARE*

xii) *Spam refers to the mass transmission of unsolicited or unrequested email advertisements. Malware refers to any type of injurious software e.g. viruses, worms, trojans, backdoors, spyware or illegal dialers. The sending of spam can lead to a warning being sent to the server operator or to the immediate blocking of the server without prior warning depending upon the gravity of the infringement. The sending of Malware will lead to the immediate blocking of the server without prior warning.*

xiii) *PHISHING*

xiv) *Phishing refers to illegal attempts to release access data for security areas to a wide distribution of users. Well known websites are often imitated so as to appear deceptively genuine for this purpose. The websites are reached under domain names which are similar to the original domain names. Users are invited by misleading emails to enter their access data on such hoax websites. Phishing will lead to the immediate blocking of the server without prior notice.*

## **17. Denial of Service Attacks**

*Denial of Service attacks (DoS) refers to an attack on a server with the purpose of disabling one or more of its services. This generally occurs by overloading e.g. by attacks with a number of small UDP packages or TCP-SYN packages. Where the attack is coordinated by a larger number of other systems this is referred to as a Distributed Denial of Service (DDoS). The Company has put in place measures which permit the empirical recognition of Denial of Service attacks. All Denial of Service attacks are logged. A Denial of Service attack will lead to the immediate blocking of the system without prior warning.*

## **18. Scanning of External Computers**

*The Scanning of computers refers to the systematic searching for services on this computer with the purpose of detecting weaknesses in the services in order to utilise them for hacking at a later time. The scanning of external computers can lead to a warning being sent to the operator of the service or to the immediate blocking of the server without prior notice according to the seriousness of the infringement.*

## **19. Wide Area Network & IP Bandwidth Services**

- i) *The Company agrees to provide the Customer with the Service as set out in the service schedule on the terms of this Agreement;*
- ii) *Exercise the reasonable skill and care of a competent telecommunications service provider in providing the Service and if required, in determining how best to provide the Service to a Site;*
- iii) *Use its reasonable efforts to provide a Service within the timeframes specified in the Agreement and in accordance with the Service Levels set out in the Schedule. However, the Customer acknowledges that all timeframes are estimates only and the Service Levels are targets only.*

- iv) *Notify the Customer of the Service Handover Date.*
- v) *The Company may:*
- vi) *occasionally, for operational reasons, introduce or withdraw Service features, introduce process changes to improve the quality of the Service, change the technical specification of the Service including, without limitation, Service upgrades upon giving not less than 28 days notice, provided that any such changes do not have a materially adverse effect on the performance or provision of the Service; or*
- vii) *give the Customer instructions which it believes are necessary for reasons of health, safety or the quality of the Service and it is the Customer's responsibility to ensure these are adhered to; or*
- viii) *interrupt a Service for operational reasons (such as planned maintenance or Service upgrades) or because of an emergency. The Company agrees to restore the interrupted Service as quickly as possible and, where practicable, The Company will give the Customer as much notice as possible (such notice to be given in the manner to be reasonably determined) and agree with the Customer when the Service will be interrupted; but The Company will use reasonable efforts to provide an uninterrupted Service to the Customer.*
- ix) *If the Customer reports a fault in the Service, The Company agrees to respond in line with the Service Levels in the schedule*
- x) *The Customer agrees to:*
- xi) *prepare the Site and provide a suitable place, conditions, connection points and electricity for BT Equipment at the Site in accordance with BT's reasonable instructions, if any; and*
- xii) *obtain all necessary third party consents (excluding wayleaves or third party consents ordinarily obtained by BT); or*
- xiii) *provide reasonable assistance to BT where BT is the Party obliged to obtain necessary third party consents;*
- xiv) *Connection of equipment to the network*
- xv) *Any equipment connected to the Service must be: Technically compatible with the Service and not harm the Network, the Service or BT Equipment or another customer's network or equipment;*
- xvi) *Connected and used in line with any relevant instructions or laws; and*
- xvii) *connected and used in line with any relevant standards including any standards set out in the relevant SIN referred to in the Product Handbook and, in the order of precedence set out below:*
- xviii) *The Customer agrees to connect equipment to the Service only by using the NTE provided with the Service, unless otherwise agreed in writing by the parties.*
- xix) *The Company will not be liable for failure to meet any Service Level or other obligations under this Agreement to the extent that such failure was caused by equipment found to be connected otherwise than in accordance with this clause.*
- xx) *Access and site regulations*
- xxi) *The Company will conduct Site visits during Normal Working Hours. If The Company agrees to work outside of these hours, the Customer must pay the additional charges set out in the Standard Rates in Schedule 5.*

- xxii) *The Customer agrees to take reasonable steps to provide access to the Customer's Site and to ensure that the End User provides The Company with access to the End User's Site including for the purpose of installation and use of Equipment at the Customer's Site and at the End User's Site. The Company shall not tamper or interfere with any End User or Customer equipment save to the extent it is necessary to provide, repair or maintain the Service.*
- xxiii) *The Company agrees to observe the Customer's and the End User's reasonable Site safety and security requirements.*
- xxiv) *The Customer agrees to provide a suitable and safe working environment at the Customer's Site. The Customer indemnifies The Company for death or personal injury claims or actions threatened or brought against The Company resulting from the Customer's breach of this sub-clause*
- xxv) *It is the responsibility of the Customer to carry out any making good or decorator's work required but The Company accepts responsibility for any property damage caused by negligence subject to the limitation of liability provisions of this Agreement.*

## **20. Use of Service**

- i) *The Customer agrees not to use the Service and agrees to take all reasonable steps to ensure that the Customer Service is not used;*
- ii) *unlawfully or fraudulently or in breach of any legislation; or The Company's fair usage policy*
- iii) *To send, knowingly receive, upload, download, use or re-use material which is offensive, indecent, defamatory, obscene or menacing; or*
- iv) *If The Company notifies the Customer or if the Customer is aware that the Service is in breach of clause 10.7.2 then the Customer will take all reasonable steps to co-operate with The Company and will acknowledge the Service will be disconnected if they continue to use the Service in breach of clause 10.7.2.*
- v) *If a Customer uses the Service in breach of sub-clause 10.7 The Company may on notice where reasonably practicable suspend the Service, in so far as it is reasonable in the circumstances, without prejudice to The Company's rights of termination under this Agreement. Provided that where reasonably practicable, The Company shall first warn the Customer that it is in breach of sub-clause 10.7 and that it may suspend the Service.*

## 21. Support of the Hosting Service

i) *The Services shall be provided during the following hours:*

Services	Normal hours of operation	Out of hours operation
Remote Service desk Service	09:00-17:30 Mon-Fri inclusive (excluding UK national or bank holidays)	Priority A faults only
Monitoring Service	24 hours a day 7 days a week	N/A
On-site Support Engineering	09:00-17:30 Mon-Fri inclusive (excluding UK national or bank holidays)	Priority A faults only
Sales and Account management	09:00-17:30 Mon-Fri inclusive (excluding UK national or bank holidays)-sol	

ii) *A helpdesk service provided for Hosted Servers*

- a. Phone and remote support 9am to 5:30pm, Monday to Friday
  - i. Weekend & out of hours support is available for priority A issues
  - b. Calls can be logged via phone, email or web portal
2. Wanstor will provide Helpdesk cover for 52-weeks of the year.
3. Monthly support service activity reports will be submitted, detailing call volumes and an analysis of service performance.
4. Support is provided for
  - a. Hosted Servers, at levels below the operating system to ensure the service is accessible to the WAN and LAN. For example
    - i. Physical hardware, backups, physical switches, SAN Storage.

## 22. Non-Solicitation

*The Customer shall not without prior written consent of the Company, for the duration of this Agreement and for a period of two years after its termination however caused, directly or indirectly employ on any basis, including via another agent or agency, or as a contractor, any employee or ex-employee of the Company. If an engineer introduced by the Company or any of the Company's staff or sub-contract personnel shall be offered and accept a position with the Customer or with any individual, firm or company associated with the Customer, the Customer will forthwith pay a fee calculated as 100% of the gross annual salary of the employee in question.*

23.

## 24. Force Majeure

- i) *Any failure or delay by either Party in the performance of its obligations under this Agreement due to any event of Force Majeure shall not be deemed to be a breach of the provisions of this Agreement by such Party, to the extent that and for so long as such delay or non-performance is due to such event of Force Majeure.*
- ii) *The Party seeking to rely on this clause 21 shall notify the other of the fact and circumstances and shall use all reasonable endeavours to minimise the impact of such circumstances and to perform its obligations as soon as possible. If such delay or failure persists for more than 10 Working Days, the Party not affected may, as its option, terminate this Agreement with immediate effect by giving prior written notice of such termination to the other Party.*

## 25. Customer Obligations

- i) *The Customer shall, during the term of this Agreement:*
- ii) *utilise the Equipment correctly in accordance with the manufacturers' or suppliers' operating manuals and instructions and with such supplies and consumables as are in accordance with the manufacturers or suppliers' requirements, and shall (save to the extent to be carried out by the Company under this Agreement) promptly and regularly carry out all operations or maintenance routines (if any) as are set out or referred to therein;*
- iii) *only use the Equipment for the purpose for which it was designed;*
- iv) *not deliberately subject any Equipment to unusual physical or electrical stress or otherwise neglect, misuse or other wilfully damage the Equipment;*
- v) *provide the personnel of the Company or its sub-contractors access during normal working hours (or as otherwise agreed) to the Customer's premises and Equipment as such personnel may reasonably require in order to provide the Services, and provide such personnel with reasonably adequate working space and such light, telephone and power supplies as such personnel may reasonably require in order to provide the Services, provided always that the Customer shall reserve the right to refuse entry and/or eject any person or persons from its premises as it thinks fit in its sole discretion, and provided that the Company shall procure that all such personnel shall at all times whilst on the Customer's premises comply with all health and safety, working practices and environmental policies and procedures of the Customer which are notified to the Company in advance;*
- vi) *Keep The Company informed of changes or planned changes which might affect the performance of the equipment;*
- vii) *Exercise reasonable care and skill in the use of the equipment;*
- viii) *Ensure software is legally and correctly licensed; and*
- ix) *Notify The Company of any additional items of equipment or software which have been added to, or removed from the network.*



- x) *The Company and the Customer agree that in some circumstances support requirements arise that will fall outside of the scope of this agreement, but which must be expedited without recourse to prior discussion and quotations. The Customer agree to reasonable charges being made by The Company in line with the schedule of rates for the support of new items of equipment, software, staff or sites which fall outside of the scope of this agreement.*

## **26. Fair Usage Policy**

- i) *The fair usage policy is designed so that The Company is able provide the most effective service to all of its customers and provide service agreements which represent best value.*
- ii) *The fair usage policy will identify excessive levels of usage and provide steps to reduce this. The Company will communicate this to The Customer and try to establish what is driving specific high usage and which patterns and habits can be modified to the benefit of all. In extreme cases, The Customer may be required to apply management techniques to reduce the impact the heavy use has on the service delivery, or pay for additional service.*
- iii) *This may come into effect based on*
- iv) *Growth within The Customer's business*
- v) *An expansion of scope to cover new areas of work*
- vi) *Project requests which were not anticipated at the outset of the agreement (new site or equipment set-up, etc.).*
- vii) *The provision of new technologies*
- viii) *The need to liaise with other 3rd parties*
- ix) *If The Customer is affected, The Company will contact the Customer's senior management representative by telephone or by email to inform them. The contact details used will be those that The Customer currently has registered. The Company will make charges for the additional support that is provided at the standard rates specified in the contract schedule.*

## **27. Warranties**

- i) *Each Party warrants and represents that, as at the date of this Agreement:*
- ii) *it has full capacity and authority to enter into and to perform this Agreement;*
- iii) *this Agreement is executed by a duly authorised representative of that Party; and*
- iv) *once duly executed this Agreement will constitute its legal, valid and binding obligations.*
- v) *The Company undertakes, warrants and represents on an ongoing basis that:*
- vi) *the Services will be performed in accordance with the Service Levels;*
- vii) *its obligations under this Agreement will be performed by appropriate experienced, qualified, skilled, competent, trained and efficient personnel to at least the same standard expected of experienced, qualified, skilled, competent, trained and efficient providers of services similar to the Services using all due skill and care and in accordance with Good Industry Practice;*
- viii) *all subcontractors and the Company's employees will be adequately supervised;*
- ix) *all personnel used to provide the Services will be vetted in accordance with Good Industry Practice;*

- x) *it will perform its obligations under this Agreement in compliance with all applicable laws, enactments, orders, regulations, guidance and in accordance with Good Industry Practice;*
- xi) *there is no litigation (whether past or ongoing), actions, suits or proceedings or regulatory investigations pending or, to the Company's knowledge, threatened against or affecting the Company before any court or administrative body or arbitration tribunal, nor any contract with a third party, which would prevent the performance of its obligations under this Agreement; and*
- xii) *it has and will continue to have all necessary rights in and to all software and other materials made available by the Company and/or any of its sub-contractors to the Customer pursuant to this Agreement or which are used or required for use by the Company in order to perform its obligations under this Agreement.*
- xiii) *Save as expressly provided in the Agreement no statutory or other warranty, condition or representation of any kind whatsoever on the part of the Company is given or to be implied by this Agreement.*

## **28. Insurance**

*The Company shall at all times during this Agreement and for a period of three years thereafter, at its own cost, maintain a comprehensive policy or policies of insurance which shall provide cost in an amount or amounts at least equal to its aggregate liabilities under this Agreement.*

## **29. Indemnity**

- i) *The Company shall indemnify and keep indemnified the Customer and all Affiliates of the Customer for all Losses arising due to personal injury or death caused by the negligence of the Company or its employees, agents or sub-contractors.*
- ii) *The Company shall indemnify and keep indemnified the Customer and all Affiliates of the Customer for all Losses to tangible property of the Customer caused by the negligence or wilful default of the Company or its employees, agents or sub-contractors in the provision of the Services or by the breach by the Company of its contractual obligations arising under this Agreement.*
- iii) *The Company shall indemnify and keep indemnified the Customer and all Affiliates of the Customer in respect of all Losses suffered or incurred by the Customer or any Affiliate in connection with any claim or action by any third party that the use or benefit of the Services or any software provided by the Company infringes the Intellectual Property of that third party.*
- iv) *A Party giving an indemnity under this Agreement shall be liable to make payment under the indemnity on demand from the time when the liability being indemnified is incurred by the other Party, whether or not the other Party has satisfied or discharged the liability.*

## 30. Liability

- i) *Neither Party limits its liability:*
  - 1. *for fraud by it or its employees, including any fraudulent misrepresentation;*
  - 2. *for any matter which liability cannot be lawfully restricted;*
  - 3. *in respect of the indemnity contained in clause ii); or*
  - 4. *for death or personal injury caused by its negligence or that of its employees, agents or sub-contractors (as applicable).*
- ii) *The total liability of either party in any Contract Year shall not exceed 50% of the total amount of Charges payable or due (whether or not paid) under this Agreement in that Contract Year.*
- iii) *The Company shall not be liable for any loss of anticipated profits, loss of reputation or goodwill, loss of expected future business or any indirect or consequential loss, in each case whether arising from negligence, breach of contract or otherwise.*

## 31. Dispute Resolution

- i) *Any question, dispute or difference which may at any time arise between the Parties concerning the provisions of this Agreement or the effect thereof or the rights and duties of the Parties or any other matter or thing arising under or in connection with this Agreement (a "Dispute") shall in the first instance, prior to the issue of any proceedings by either Party, be referred in writing by either Party to the other Party for resolution by their respective day-to-day contract representatives. If the Dispute has not been resolved by such representatives within 15 Working Days after it has been so referred, the Dispute shall be escalated by direct reference to the Managing Director of the Company and the Operations Director of the Customer who shall use all reasonable endeavours to resolve the Dispute as soon as possible within a further 15 Working Days.*
- ii) *This clause shall not preclude or restrict either Party from seeking any interim or injunctive relief in relation to any Dispute.*
- iii) *Notwithstanding any Dispute, the Company shall continue to provide the Services in accordance with this Agreement until resolution of such Dispute.*

## 32. Law and Jurisdiction

*The validity, construction and performance of this agreement shall be governed by the law of England, and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.*

### 33. Severability

*If any clause(s) or sub-clause(s) of this Agreement shall be deemed or held to be unreasonable within the meaning of the Unfair Contract Terms Act 1977 or otherwise deemed or held to be illegal, invalid or unenforceable, then such clause(s) or sub-clause(s) as the case may be shall be deemed to be a severable part of this Agreement and the remaining provisions of this Agreement shall so far as possible remain fully effective; and the Parties shall promptly negotiate in good faith to modify any such provisions so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provisions.*

### 34. Confidentiality

- i) All Confidential Information shall be kept strictly confidential by the receiving Party, and such disclosure shall not imply transfer of any property or rights protecting the same to the receiving Party.*
- ii) Each Party shall:*
- iii) use the Confidential Information of the other Party disclosed to it (by whoever disclosed) only for the proper performance of its duties under this Agreement;*
- iv) not without the disclosing Party's written consent disclose or permit the disclosure of the Confidential Information disclosed to it;*
- v) only make such Records as are strictly necessary for the proper performance of its duties under this Agreement and clearly mark all Records as confidential;*
- vi) The provisions of clause shall not apply to Confidential Information that:*
- vii) ompany has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and the Company shall thereafter implement a remedial plan; and*

### 35. Waivers and Remedies

- i) Except as otherwise stated in this Agreement, the rights and remedies of each Party under this Agreement:*
- ii) are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law; and*
- iii) may be waived only in writing and specifically.*
- iv) Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right, partial exercise of any right under this Agreement and shall not preclude any further or other exercise of that right or any other right under this Agreement and waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.*