



MANAGED IT & TELECOMS SERVICES
STANDARD TERMS AND CONDITIONS

DOCUMENT CONTROL

Last Update: 10/12/2021

Version: v4

1. Commencement and Duration

This agreement (IT Support and Services Agreement) is entered into as of the date of signature on page 1, between Creative Networks Limited Registered in England and Wales as Company Number 05565620 and having its registered office at Moss Bridge House, Moss Bridge Road, Rochdale, OL16 5EA (referred to as "**The Supplier**") and The Client (referred to as "**The Client**" and detailed in [Table 1 on page 1].) for the provision of installation for supplied hardware where The Supplier will provide support, maintenance and installation support based on the terms and conditions set out below. This agreement is for a minimum period set out in [Table 2, page 1] renewed on the date set out in [Table 2 page 1]. The services supplied shall continue to be supplied until the contract is terminated by either The Supplier where at its discretion may terminate without any written or prior notice or by The Client giving to the other not less than the notice set out in [Table 2 page 1] with exception or at the expiry of the term or alternatively the contract is terminated in accordance with clause 23. This agreement replaces any previous agreement between the parties.

2. Installation

- 2.1. Hardware and Software may be configured prior to installation offsite.
- 2.2. Hardware and Software may be configured prior to installation remotely.
- 2.3. Installation includes any hardware/software provided by The Supplier.
- 2.4. Installation of hardware/software provided by third party/parties will be installed if required and charged at the agreed rate.
- 2.5. Installation and commissioning will be done on a "best effort" basis and may include suggestions for short term "work around" solutions and/or the provision of modifications to the software/hardware or documentation as deemed appropriate by The Supplier.
- 2.6. Any alterations or temporary solutions will be rectified to a satisfactory standard.
- 2.7. Installation will be completed to standard to the pre-agreed installation period.

3. Support

3.1. Software Support

- 3.1.1. Any application not installed by The Supplier will be diagnosed and reported to The Client, who may then need to follow this up with the software vendor directly.
- 3.1.2. Support for software provided by third party/parties may be supported to an installation degree.
- 3.1.3. Support for hardware/software provided by third party/parties will be charged at the standard agreed rate unless otherwise agreed.
- 3.1.4. All ad-hoc requests will carry a lower priority than supported items.

3.2. Hardware Support

- 3.2.1. Support is provided to The Client on a "best effort" basis, and may include suggestions for short term "work around" solutions, and/or the provision of modifications to the software/hardware or documentation as deemed appropriate by The Supplier.
- 3.2.2. Support for hardware provided by third party/parties may be supported to the extent of installation.
- 3.2.3. Support for hardware provided by third party/parties will be charged at the standard agreed rate unless otherwise agreed.

3.3. User Support

- 3.3.1. User support includes 1 PC per User unless otherwise agreed.
- 3.3.2. User Support includes supporting the user to the extent of ensuring all agreed services are functioning and provisioned. This does not include any training.
- 3.3.3. Support for users does not extend to mobile devices unless agreed to.
- 3.3.4. User Support will be provided remotely unless agreed. Any call out required will be covered by the User Support.

3.4. Raising a Support Request

Support is available through the means outlined below:

- a. Telephone: 03303 337 337
- b. Email: support@creative-n.com
- c. Web: www.creative-n.com

4. Maintenance

4.1. Server Maintenance

- 4.1.1. Backups will be checked on a regular basis.
- 4.1.2. Updates and Service Packs will be installed on a monthly basis.
- 4.1.3. Any critical updates will be applied immediately.
- 4.1.4. The Supplier will qualify the updates prior to installation.

4.2. Client Maintenance

- 4.2.1. "Client" refers to any device including Laptops, Workstations, Thin Clients and any other device that can be categorised as a Client.
- 4.2.2. Updates will be applied to Clients as and when necessary, normally during routine support calls.
- 4.2.3. Any critical updates will be applied immediately.
- 4.2.4. Client hardware will be repaired if faulty under manufacturer warranty.
- 4.2.5. If there is no warranty, parts will be chargeable.
- 4.2.6. Parts will be sourced by The Supplier unless The Client requests otherwise.

4.3. General Maintenance

- 4.3.1. Firmware and Software updates will be undertaken to resolve issues.
- 4.3.2. Any critical updates will be applied immediately.
- 4.3.3. "Devices" including Routers, Switches, Access Points, Firewalls and Network Storage Devices, this is not exhaustive.
- 4.3.4. The Supplier will not be liable for any downtime caused as a result of updates to Servers, Clients or any other equipment or services.
- 4.3.5. Any hardware or software not listed in Schedule A may be subject to additional charges if any maintenance or support is carried out.

5. Services

5.1. Backup

- 5.1.1. The minimum Backup 10GB.
- 5.1.2. Backups will be charged in 5GB increments.
- 5.1.3. The default unstated Backup Duration is 30 days.
- 5.1.4. Backups will be stored in a location agreed with The Client, this could be within the UK or offshore.
- 5.1.5. If a file is backed-up and it is a corrupted or damaged file, when that file is restored The Client will receive an identically corrupt or erroneous file.
- 5.1.6. It is The Clients responsibility to determine RTO and RPO.

5.2. Hosted Exchange and Office 365

- 5.2.1. The Supplier will provide a hosted exchange solution from a third party.
- 5.2.2. The Supplier will not be responsible for the storage, backup and security of hosted exchange service.
- 5.2.3. The Supplier will upon written request from The Client disclose the location and details of the third party.
- 5.2.4. Office 365 will be provided to The Client directly from Microsoft.
- 5.2.5. Microsoft 365 subscriptions will be renewed per the terms of Microsoft, some products require a 21 month subscription and though you may be charged and pay per month the commitment with the vendor will be passed on.

5.3. Telecoms, VOIP and Broadband

- 5.3.1. The Supplier will provide communications services from a third party.
- 5.3.2. The elected third party will be responsible for the provision of any services.
- 5.3.3. The Supplier will upon written request from The Client disclose the location and details of the third party used for all Telecoms services.
- 5.3.4. Number porting costs will be passed on to The Client.
- 5.3.5. Number Porting may carry risk of downtime and outages,

5.4. Hosting

- 5.4.1. Hosting includes any Website, Server or Application hosted on The Suppliers network, equipment or on any of The Suppliers third party networks

5.5. Mobile Device Management

- 5.5.1. Mobile Device Management services will be provided by means of a third party who will be responsible for the provision of the service.
- 5.5.2. The Supplier will not be responsible for the storage, backup and security of Mobile Device Management.
- 5.5.3. Mobile Device Management refers to a third party service and not the support of a Mobile Device.

5.6. Security

- 5.6.1. All security products including but not limited to Anti-Virus, Encryption, Mail Security, Web Security and Office 365 will be sourced and provided from a third party by means of software or third-party service referred to as a Manged Service.

5.7. General

- 5.7.1. The Supplier will not be responsible for the storage, backup and security of hosted exchange service.
- 5.7.2. The Supplier will take all necessary precautions and due diligence when selecting an appropriate third party for any services.
- 5.7.3. The Supplier will provide best endeavours to maintain an uptime of 98% for any services hosted by The Supplier
- 5.7.4. The Supplier will pass on the committed contract terms to The Client for any third party contracted services.

5.8. Declined Services

- 5.8.1. All services not contracted are deemed to be declined, for example, if you have not taken backup, this will be a declined service.
- 5.8.2. It is the Clients responsibly to ensure they have adequate security and protection for all services.

6. Shared Internet

6.1. Fair Usage Policy

- 6.1.1. Services are subject to a Fair Usage Policy.
- 6.1.2. The Supplier will manage and monitor the available bandwidth to The Client.
- 6.1.3. The available bandwidth on the network is contended across multiple customers.
- 6.1.4. To ensure quality of service, fair usage and availability for all our customers we will may deploy traffic management tools.
- 6.1.5. We classify all traffic into two categories:
 - a. Typical for business: Traffic that is typical for business is prioritised on our network. This includes but is not limited to making and receiving VOIP calls, sending and receiving emails.
 - b. Non-Typical for business: Traffic that is non-typical for business is de-prioritised on our networks. This includes but is not limited to streaming music and video, using peer to peer networks and general web browsing.

6.2. Throttling of excessive-Use Circuits

- 6.2.1. Circuits classified as having Average to High usage (<500GB of Data per month) are rarely throttled on our network unless the traffic demand is made over very short intervals of time.
- 6.2.2. Circuits classified as having excessive usage may be throttled or re-rated depending on the situation and the bandwidth overhead available at the time.
- 6.2.3. If The Supplier determines that excessive bandwidth, disk space utilisation or High CPU loads are adversely affecting the Suppliers ability to provide service to other users, The Supplier may take immediate action.
- 6.2.4. We reserve the right if required to terminate any broadband circuit on the network that is being used for nay purpose other than what would be expected from a typical business.

6.3. Customer Responsibilities

- 6.3.1. The Client is responsible for its actions on our network and system they access through their Service.
- 6.3.2. If the Client acts recklessly or irresponsibly in using their service or their actions endanger any person on the integrity or security of our network, systems or equipment, your access may be restricted, suspended, or terminated without prior notice.

6.4. Consequences of Unacceptable Use

- 6.4.1. If the Supplier believes that the policy has been breached or the integrity of the network and/or the performance of other users is at risk, then the Supplier reserves the right to immediately suspend or terminate the Clients access to the Services.

6.5. Administration of Policy

- 6.5.1. The Client understands that the administration of this policy requires the exercise of discretion and judgment by the Supplier.
- 6.5.2. The Supplier agrees to exercise good faith in its administration of this policy and in making determinations under the policy.

6.6. Support

- 6.6.1. All issues must be reported to our service desk.
- 6.6.2. Our engineers will first carry remote network diagnostics to identify the problem.

- 6.6.3. The customer is responsible for Customer Premise Equipment (CPE) and we will not test this.
- 6.6.4. The Supplier is only responsible to ensure service is delivered to the data port.
- 6.6.5. If The Client requests a site visit, this will be chargeable at our standard Ad Hoc rates.

7. Hardware Rental

7.1. General

- 7.1.1. The Equipment shall at all times remain the property of The Supplier. The Client shall not part with possession of the Equipment nor dispose of, charge, pledge or underlet the same, nor attempt to do so.
- 7.1.2. The Client shall keep the Equipment at the address shown on the Agreement and can only remove it with the prior written consent of The Supplier.
- 7.1.3. The Client may use mobile equipment away from the address shown on the agreement. This is exclusively for equipment design to do so.
- 7.1.4. The Supplier reserves the right to vary the Rental Terms after the expiry of the agreement by giving one month's written notice.
- 7.1.5. Rental is not a right to Hire-Purchase and gives no right to buy the Equipment. By mutual consent, The Client has an option to purchase any Equipment under this Agreement, considering a proportion of the rental paid.
- 7.1.6. If The Client is using video, audio recording Equipment, downloading any files, software, computer hacking and / or performing any illegal actions using any Equipment owned by The Supplier. The Client should note that The Supplier will not be held responsible for any breach of copyright or performing rights and / or infringement of any laws, whether governed by the United Kingdom and / or Worldwide. Therefore The Client should make enquiries to ensure that their use of such Equipment is legally compliant within the United Kingdom and / or Worldwide.
- 7.1.7. Hardware Rentals do not include any software or licences unless specified on the agreement.
- 7.1.8. Rental Equipment which is directly connected to a telephone line or lines accept all responsibility for its connection and must make sure they have the permission of their telecommunications provider for its connection and pay any costs if necessary charged by them with regard to its connection.
- 7.1.9. The Supplier is not responsible for any software used on its computer Equipment, (unless agreed by both parties). All Support is chargeable if The Client reports faulty Equipment that is caused by software problems.
- 7.1.10. Rental of Hardware does not include software support and access to any other services from The Supplier.
- 7.1.11. This is not a Hire-Purchase Agreement.

7.2. Client Obligation

- 7.2.1. The Client shall not suffer the Equipment to be taken by way of distress or execution and shall indemnify The Supplier against any loss damage costs and expenses which The Supplier may incur for the purpose of preserving the Equipment from such distress or execution or of recovering it.
- 7.2.2. The Client and / or any associated 3rd party undertaking work for The Client is not to deface, remove or otherwise interfere with the markings on the Equipment showing The Supplier's ownership.
- 7.2.3. The Client and / or any associated 3rd party undertaking work for the customer shall use the Equipment in a proper manner and not to attempt to interfere or tamper with the Equipment except to make normal adjustments. The Supplier reserves the right to charge for callouts due to incorrect operation.
- 7.2.4. The Client is responsible for the cost of repairs needed due to misuse, whether caused by the customer and / or any 3rd party undertaking work for The Client. The costs of any repairs due to misuse shall be paid by The Client to The Supplier.
- 7.2.5. The Client shall allow The Supplier and his agents to enter the address at which the Equipment is installed to inspect and if necessary to repair or replace the Equipment.
- 7.2.6. The Client is to notify The Supplier immediately if the Equipment suffers any damage or fails to operate properly. The Supplier is not responsible for faulty tape products or other media that might be used.

7.3. Supplier Obligation

- 7.3.1. The Supplier agrees to repair the Equipment in the event of failure. If this is not possible it will be replaced by similar or better Equipment within seven days which will be subject to the terms of this Agreement.
- 7.3.2. The Supplier is not responsible for any loss of use of the Equipment due to failure.
- 7.3.3. The Supplier will be liable for negligently caused death or personal injury but will not be liable for any other injury or damage to persons or property or for any other losses whatsoever arising out of installation, possession or use of the Equipment or of its non-performance or otherwise in connection with this Agreement.
- 7.3.4. The Supplier will exercise due care in selecting its staff and agents but will not be responsible for any act or default of such staff or agents which could not have been foreseen and prevented by the exercise of reasonable care by The Supplier.

7.4. Insurance

- 7.4.1. The Client is liable for any loss or damage of or to the equipment and is therefore strongly advised to ensure the equipment is insured against any such loss or damage for the value specified within the signed Agreement.
- 7.4.2. The Client agrees to notify The Supplier immediately of any loss by theft, damage or otherwise of the Equipment.
- 7.4.3. The Client agrees to notify the Insurance Company on any claim of the interest held on any Equipment by The Supplier allowing, if possible, direct settlement of the value of the Equipment between the Insurance Company and The Supplier. Until The Supplier has received a proper reimbursement, The Client shall continue to pay the Rental payments due. Any Equipment replaced prior to this will be subject to a new Agreement.

7.5. Return of Equipment

- 7.5.1. When this Agreement comes or is brought to an end The Client shall at once return the Equipment to The Supplier at The Suppliers Address and shall without prejudice to his duty to return the Equipment allow and assist The Supplier's staff or agents to enter upon any property in the Customers possession or control and shall give The Supplier all information in his possession to enable The Supplier to retake the Equipment.
- 7.5.2. It is declared and agreed that if The Client fails to return or allow The Supplier to retake the Equipment then the Rental payments due for this time from the end of the Agreement and any costs incurred in the Equipment's recovery shall be paid by The Client.
- 7.5.3. The Client shall cover all costs the return the equipment except where it is agreed in writing for The Supplier to collect.

8. Site Visits

- 8.1. Site Visits begin from the time of leaving The Supplier's office until the time of returning to The Supplier's office.
- 8.2. All site visits required for support and maintenance for items not listed on Schedule A; are additionally chargeable unless agreed.
- 8.3. Any additional work carried out whilst onsite will be chargeable this is regardless of the engineer visiting for a supported item.
- 8.4. Sign-off is the approval of installation or services or hardware to a satisfactory standard by The Supplier accepted by The Client.

9. Supply and Delivery

- 9.1. In accordance with this agreement The Supplier will provide, and The Client will accept the Products and/or Services listed in the Schedule A.
- 9.2. Any delivery date given by The Supplier is an estimate only and in no circumstances shall time be, or be capable of being, made of the essence of this Agreement. Delivery may be made by instalments if The Supplier so requires.
- 9.3. Delivery will be made during normal working hours and if The Client requires delivery to be made outside such hours an additional charge will be payable, unless otherwise agreed.
- 9.4. The Client is obliged to purchase hardware and software from The Supplier for the minimum duration of the contract.
- 9.5. Any hardware and software not purchased from The Supplier may not be supported.
- 9.6. Shipping charges will be applied to all items dispatched by The Supplier.

10. Manufacturer Warranties

The Supplier will carry out any warranty requests and claims for hardware that is covered under as a Managed Service or is covered within our IT Support Packages and supported under Schedule A.

11. Support SLAs

- 11.1. Support priority will be assigned by The Supplier. Each priority carries a different response time. The priority levels are as detailed on our SLA listed on our website.
- 11.2. Our Support Methodology and SLA can be accessed here: www.creative-n.com/sla.
- 11.3. Support will be prioritised using the ITIL framework. We will determine the Urgency and Impact of any issues to determine the priority.
- 11.4. SLAs set out on our website are a company policy and are open to review and ratification as per the needs of the company. They do not form part of the contract.
- 11.5. The Supplier is not bound to meet the SLAs by means of contract and are their to ensure a quality of service and delivered on best endeavour.

12. Approvals and Authorities

- 12.1. Support may be requested by end users if this is the agreed service.
- 12.2. We will use the Schedule B – Approvers Form to determine the necessary points of contact.
- 12.3. Changes will only be accepted and approved from the nominated support contact listed in Schedule B.
- 12.4. Any suspicious requested from the nominated support contact may be referred to the company owner for approval prior to submission.
- 12.5. Support calls from anyone not listed in Schedule B may be refused and redirected to a listed support contact.
- 12.6. Company directors listed on companies house will be automatically approved as Final Authorities.
- 12.7. Where a contact cannot be determined, we will refer to the company directors listed on companies house.
- 12.8. Where there is no listing on companies house we will refer to the signee of the contract.

13. Hours of Operations

13.1. Core Business Hours

Advice, assistance and support are available during normal working hours (08:30 to 18:00) Monday to Friday excluding public and bank holidays.

13.2. Out of Hours

- 13.2.1. Out of Hours are 18:01 to 08:29 AM Monday to Friday and all of Saturday and Sunday.
- 13.2.2. Public holidays are deemed as Out of Hours.
- 13.2.3. Out of Hours will be chargeable by default at our standard out of hours rates.

14. Data Protection

- 14.1. The Supplier will take all reasonable care to protect The Client's data.
- 14.2. Data will not be disclosed without the prior consent of The Client.
- 14.3. Data will be stored on a secured data onsite.
- 14.4. Data will be backed up onsite and offsite, offsite backups will be held in accordance to GDPR.
- 14.5. A copy of the data can be requested by an authorised representative of The Client subject to a minimum of 72 hours' notice.
- 14.6. The Client has the rights to request data as per the GDPR.
- 14.7. The Client has the rights to be forgotten as per the GDPR.
- 14.8. The Supplier will store passwords and client access information by default unless The Client opts out.

15. The Suppliers Obligations

- 15.1. The Supplier undertakes that the services will be performed with all reasonable skill and care.
- 15.2. The Supplier will provide The Client with the necessary means to enable it to utilise the services.
- 15.3. The Client agrees and accepts that The Supplier requires access to and use of the internet and that the internet is an unregulated public network over which The Supplier exerts no control.
- 15.4. The Supplier will prioritise all tickets raised for supported items over non-supported items.
- 15.5. The Supplier will prioritise all tickets raised for clients on contracts over clients who use The Suppliers services on an ad-hoc basis.

16. The Clients Obligations

- 16.1. The Client shall provide The Supplier with:
 - a. All necessary co-operation in relation to the contract and these terms; and
 - b. All necessary access to such information as may be required by The Supplier in order to render the service.
- 16.2. The Client shall comply with all applicable laws and regulations with respect to its activities under the contract.
- 16.3. The Client shall be responsible for providing and paying for its internet access.
- 16.4. The Client acknowledges and accepts that if a file is backed-up and it is a corrupted or damaged file, when that file is restored The Client will receive an identically corrupt or erroneous file.
- 16.5. The Client is solely responsible for implementing adequate firewall, password and other security measures to protect its systems, data and application from unwanted intrusion whether over the internet or otherwise.
- 16.6. The Client and its users of our services will act and behave professionally at all times. Abuse of our colleagues or services will not be tolerated under any circumstance and The Supplier hold the right to cease to service any abusive users.
- 16.7. The Suppliers colleagues will terminate any abusive calls, emails and communication and report this to The Client.

17. Professional Conduct

- 17.1. Aggressive or Abusive Behaviour
 - 17.1.1. Violence is not restricted to acts of aggression that may result in physical harm. It also includes behaviour or language (whether oral or written) that may cause staff to feel afraid, threatened or abused.
 - 17.1.2. Examples of behaviours grouped under this heading include threats, physical violence, personal verbal abuse, derogatory remarks and rudeness. It is also considered that inflammatory statements and unsubstantiated allegations can also be abusive behaviour.
 - 17.1.3. The Supplier expects its staff to be treated courteously and with respect. Violence or abuse towards staff is unacceptable. Staff understand the difference between aggression and anger. The anger felt by many service users involves the subject matter of their request or complaint. However, it is not acceptable when anger escalates into aggression or abuse (whether oral or written) directed towards the Suppliers' Staff.

18. Non-Solicitation

- 18.1. The Client understands and agrees that any attempt on the part of The Client to induce other employees or contractors of The Supplier to leave The Supplier's employ, or any effort by The Client to interfere with The Supplier's relationship with its employees and contractors would be harmful and damaging to The Supplier.
- 18.2. The Client agrees that during The Client's term of engagement with The Supplier and for a period of five (5) years after the end of that term, The Client will not in any way, directly or indirectly:
 - a. Induce or attempt to induce any employee or contractor of The Supplier to quit employment or retainer with The Supplier;
 - b. Otherwise interfere with or disrupt The Supplier's relationship with its employees and contractors;
 - c. Discuss employment opportunities or provide information about competitive employment to any of The Supplier's employees or contractors; or
 - d. Solicit, entice, or hire away any employee or contractor of The Supplier for the purpose of an employment opportunity that is in competition or causes commercial, financial or any other harm or distress to The Supplier.
- 18.3. This non-solicitation obligation as described in this section will be limited to employees or contractors who were employees or contractors of The Supplier during the period that The Client was engaged by The Supplier.
- 18.4. During the term of The Client's active engagement with The Supplier, and for five (5) years thereafter, The Client will not divert or attempt to divert from The Supplier any business The Supplier had enjoyed, solicited, or attempted to solicit, from its customers, prior to termination or expiration, as the case may be, of The Client's engagement with The Supplier.
- 18.5. These clauses apply to all and any staff, employee, contractor in any engagement direct or indirect, remote or onsite and via services provided by The Supplier or Sub Contracted by The Supplier.

19. Confidential Information

- 19.1. The Client will, or may, be making use of, acquiring or adding to information which is confidential to The Supplier (the "Confidential Information") and the Confidential Information is the exclusive property of The Supplier.
- 19.2. The Confidential Information will include all data and information relating to the business and management of The Supplier, including but not limited to, proprietary and trade secret technology and accounting records to which access is obtained by The Client, including Work Product, Computer Software, Other Proprietary Data, Business Operations, Marketing and Development Operations, and Customer Information, Resources, contracts and proposals.
- 19.3. The Confidential Information will also include any information that has been disclosed by a third party to The Supplier and is governed by the Data Protection Act or by a non-disclosure agreement entered into between that third party and The Supplier.
- 19.4. The Confidential Information will not include information that:
 - a. Is generally known in the industry of The Supplier;
 - b. Is now or subsequently becomes generally available to the public through no wrongful act of The Client;
 - c. Was rightfully in the possession of The Client prior to the disclosure to The Client by The Supplier;
 - d. Is independently created by The Client without direct or indirect use of the Confidential Information; or
 - e. The Client rightfully obtains from a third party who has the right to transfer or disclose it.
- 19.5. The private affairs, business secrets and any other confidential information relating to The Supplier or The Suppliers clients, which The Client may acquire in the course of The Client's engagement will be maintained in the strictest confidence, and the same will not be disclosed to any third party without appropriate written authority from The Supplier.
- 19.6. The Client shall not use any materials, database, contacts, documentation, information obtained from The Supplier for any purpose after the departure from The Supplier.

20. Charges and Payments

- 20.1. Monthly Support and Maintenance must be paid by Direct Debit. Any payments not made by Direct Debit may carry a fixed administration fee of £10.
- 20.2. All invoices are to be settled by their due date, failing to do so will automatically suspend any further services and access to support.
- 20.3. All Hardware and Software is to be paid for on delivery by cleared funds. If payments are not paid then title of the goods remain with the Supplier until clear funds/payment is received.
- 20.4. The Supplier shall invoice The Client monthly as of the last day of each month for all services, hardware and software provided by The Supplier during that month. The Client shall pay each invoice submitted to it in full and clear funds by the due date on the invoice.
- 20.5. Without prejudice to any other right or remedy that it may have, if The Client fails to pay The Supplier on the due date The Supplier is entitled to suspend any service without any reference to the Client until payment has been made in full.
- 20.6. At our discretion, if we cannot recover debt in a timely manner, we will proceed to cease services to mitigate further costs incurred by us. This may require us to cease services that hold data. The Client accepts in full all liability for any data loss and damages incurred.
- 20.7. Time for payment shall be of the essence of the contract.
- 20.8. All sums payable to The Supplier under the contract shall become due immediately on its termination, despite any other provision. This is without prejudice to any Right to claim for interest under the law, or any such right under the contract.
- 20.9. The Supplier may, without prejudice to any other rights it may have, set off any liability of The Client to The Supplier against any liability of The Supplier to The Client.
- 20.10. The Supplier may, without prejudice to any other rights it may have, the Supplier is entitled to refer any outstanding payments to their appointed legal representative for enforcement and if matters progress to this stage, the Supplier is entitled to claim compensation under the Late Payment of Commercial Debt Act at a rate of 8% together with recouping all its fees and disbursement.
- 20.11. If a payment is refused or reversed, The Supplier reserves the right to charge The Client a £25 administration fee each time payment is refused.
- 20.12. All amounts and fees stated or referred to in the contract are exclusive of value added tax, which shall be added to The Supplier's invoice(s) at the appropriate rate.
- 20.13. Support and Maintenance is to be paid 1 calendar month in advance.
- 20.14. Fees are subject to price increase at the annual rate of 3%.
- 20.15. The Supplier has the right to increase prices without a notice period by up to 10%.
- 20.16. Price increases for managed services will be passed on accordingly to The Client.
- 20.17. A restocking fee of 10% will be applied to all returns or cancellations.

21. Disputed invoices

- 21.1. The Client shall notify The Supplier within 7 days of the receipt of the invoice specifying reasons for disputing the invoice. The Supplier will provide such evidence as may be reasonably necessary to verify disputed invoice. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly

22. Renewals

- 22.1. All subscription based services will auto renew for the term without notification.
- 22.2. Server Warranty will be auto renewed at expiry
- 22.3. Services contracted by The Supplier on the request or at renewal for any period over 30 days will automatically commit The Client to this same period.
- 22.4. Should The Client cease committed services, the full committed cost will be incurred by The Client.
- 22.5. Notice must be provided 30 days prior to renewal to prevent automatic renewal.

23. Indemnity

- 23.1. The Client shall defend, indemnify and hold harmless The Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with The Client's use of The Supplier services, provided that:
 - a. The Client is given prompt notice of any such claim;
 - b. The Supplier provides reasonable co-operation to The Client in the defence and settlement of such claim, at The Client's expense; and
 - c. The Client is given sole authority to defend or settle the claim.

24. Limitation of Liability

- 24.1. In no event will The Supplier or its staff be liable for any damages, including loss of profit, or any other direct, indirect, incidental or consequential damages, arising from the use of, or the inability to use, the hardware and software provided by The Supplier.
- 24.2. This clause sets out the entire financial liability of The Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to The Client in respect of:
 - a. any breach of these terms or the contract;
 - b. any use made by The Client of the service, the software or hardware; and
 - c. any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms or the contract.
- 24.3. except as expressly and specifically provided in the contract or these terms:
 - a. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to The Supplier by The Client in connection with the service; and
 - b. all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 24.4. nothing in the contract excludes the liability of The Supplier:
 - a. for death or personal injury caused by The Supplier's negligence; or
 - b. for fraud or fraudulent misrepresentation.
- 24.5. subject to clause 16.4:
 - a. The Supplier shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and
 - b. The Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the price paid by The Client for the service during the 12 charging periods preceding the date on which the claim arose.

25. Insurance

- 25.1. The Supplier is responsible for carrying its own insurances set out below:
 - a. Public Liability
 - b. Professional Indemnity
 - c. Employers Liability

26. Notices

- 26.1. Any notice required to be given under these terms or the contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class or second-class post or recorded delivery post to the other party at its address set out in the contract, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's primary contact email address as set out in the contract.
- 26.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class or second-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.

27. Suspension

Without prejudice to any other rights or remedies, The Supplier may suspend all services not excluding, hosting, support, maintenance, telecommunications, broadband and backups at any time if:

- a. The Client's account is at any time more than 30 days overdue;
- b. The Supplier suspects that The Client is miss-using the service in any way;
- c. If the Client has instigated any legal proceedings against the Supplier.

28. Rental & All Inclusive Packages

- 28.1. Any hardware, software, services supplied remain the property of the supplier until the final payment of the agreed term is made.
- 28.2. Transfer of ownership will only be complete once the balance of the agreed term has been settled in full either prior to or by the end of the term.
- 28.3. The client agrees to establish a direct debit for payments at the agreed rate to be collected at the agreed dates.

29. Termination

- 29.1. The Supplier reserves the right to terminate this agreement without prior notice.
- 29.2. Termination of any existing contracts is the responsibility of the Client.
- 29.3. The Client must provide a notice period set out in Table 2 of the Schedule to terminating this agreement.
- 29.4. The Client must settle any outstanding Invoices prior to termination.
- 29.5. The contract shall continue for the term, unless otherwise terminated or suspended as provided for in this clause.
- 29.6. Without prejudice to any other rights or remedies to which The Supplier may be entitled, The Supplier may terminate the contract without liability to The Client if:
 - a. an order is made or a resolution is passed for the winding up of The Client, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to The Client; or
 - b. an order is made for the appointment of an administrator to manage the affairs, business and property of The Client, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of The Client, or notice of intention to appoint an administrator is given by The Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of schedule b1 to the insolvency act 1986); or
 - c. A receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of The Client, or if any other person takes possession of or sells The Client's assets; or
 - d. The Client makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
 - e. The Client takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
 - f. The Client instigates legal proceedings, either by court or through pre-action stage.
- 29.7. On termination of the contract for any reason:
 - a. The Client shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to The Supplier;
 - b. The Supplier may destroy or otherwise dispose of any of The Clients data in its possession unless The Supplier receives, no later than ten days after the effective date of the termination or expiry of the contract, a written request for the delivery to The Client of the then most recent back-up of the data. The Supplier shall use reasonable commercial efforts to deliver the back-up to The Client within 30 days of its receipt of such a written request, provided that The Client has, at that time, paid all fees and other charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by The Supplier in returning or disposing of data; and
 - c. the accrued rights of The Client as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.
 - d. All Rentals payments accrued due shall remain payable by The Client together with Rental payments for the remainder of the Term of the Agreement.

30. Waiver

- 30.1. A waiver of any right under the contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 30.2. Unless specifically provided otherwise, rights arising under the contract are cumulative and do not exclude rights provided by law.

31. Severance

- 31.1. If any provision (or part of a provision) of the contract or these terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 31.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

32. Force Majeure

The Supplier shall have no liability to The Client under the contract if it is prevented from or delayed in performing its obligations under the contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving The Clients or sub-contractors of The Supplier or any other party), failure of a utility service or transport network, act of god, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of The Supplier or sub-contractors, provided that The Client is notified of such an event and its expected duration.

33. Assignment

- 33.1. The Client shall not, without the prior written consent of The Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract or these terms.
- 33.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract or these terms.

34. No Partnership of Agency

Nothing in the contract of these terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

35. Third Party Rights

The contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

36. Entire Agreement

- 36.1. These terms, the contract and any documents referred to in them, constitute the entire agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 36.2. each of the parties acknowledges and agrees that in entering into the contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of the contract, other than as expressly set out in these terms of the contract.

37. Updating Policies, Terms & Conditions

- 37.1. The Supplier may and will change the terms and conditions as and when required.
- 37.2. Terms and conditions are accessible here: www.creative-n.com/terms for reference at any-time.
- 37.3. SLAs and policies may change and will be updated on the website.
- 37.4. We will provide a 30 day notice of changes to our terms. The notice will be added to the invoice. By continuing to pay for services you agree to be bound by the new and updated terms.

38. Date of Agreement

This Agreement shall, after signing by The Client, come into force on the date it is signed by The Supplier which date shall be regarded as the date of this Agreement and (unless otherwise specified in the Schedule) as the commencement date of the Agreement. This Agreement shall remain in force until terminated in accordance with its terms.

39. Governing Law and Jurisdiction

- 39.1. The contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales.
- 39.2. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the contract.

40. Wording and Interpretation

The definitions and rules of interpretation in this clause apply to these terms and also the contract.

- 40.1. **First Response:** refers to the time from the issue being reported by The Client and a Ticket Number being issued by The Supplier, until the call has been allocated to the appropriate Systems Engineer, who will then contact The Client.
- 40.2. **Target Resolution:** means the target timeframe within which The Supplier will endeavour to resolve the incident.
- 40.3. **Resolution:** means expected level of service is now operational for The Client.
- 40.4. **Workaround:** means that adequate functionality has been restored temporarily whilst a permanent resolution is being investigated.
- 40.5. **Priority:** is defined at the 1st response of a call, where The Supplier and The Client will agree on the urgency of the call.
- 40.6. **Nominated Support Contact:** is through whom all other end users log calls to The Supplier.
- 40.7. **Application:** is a utility to assist end users, these are installed by The Supplier. Any third-party Applications are not supported.
- 40.8. **Corruption:** means that an application/program/utility/operating system is not functioning as per its intended design.
- 40.9. **Client:** means any device including Laptops, Workstations, Thin Clients and any other device that can be categorised as a Client.
- 40.10. **Authorised Users:** those employees and independent contractors of The Client who are entitled to use The Suppliers services.
- 40.11. **Business day:** any day which is not a Saturday, Sunday or public holiday in the UK
- 40.12. **One Day:** is equivalent to 8 hours.
- 40.13. **Charging period:** a period of a full calendar month or year or any part thereof.
- 40.14. **Contract:** the contract between The Supplier and The Client based on the standard The Supplier application form (incorporating these terms) and also a Direct Debit Mandate completed and established by The Client.
- 40.15. **The Client:** a person (including a company, firm or other body) who has contracted with The Supplier for the provision of its services.
- 40.16. **The Supplier:** whose registered office is at: Regal House, Miall Street, Rochdale, OL11 1HY, United Kingdom.
- 40.17. **Third Party:** is the provider of a service to The Supplier who then provides to The Client.
- 40.18. **Customer data:** the data stored as a backup or client details stored on The Supplier network by The Supplier on The Client's behalf.
- 40.19. **Effective date:** the date of the contract between The Supplier and The Client.
- 40.20. **Fees:** the fees payable to The Supplier at the rate applicable from time to time and detailed in Schedule A.
- 40.21. **Core Business Hours:** 8:30 am to 6.00 pm local UK time, Monday to Friday, excluding public holidays.
- 40.22. **Out of Hours:** 6:01 pm to 8:29 am UK Time, Monday to Friday, all of Saturday, Sunday and all public holidays.
- 40.23. **Service:** Remote Data Storage, Backups, Support, Maintenance, Installation, Hosting, Telecommunications, VoIP, Mobile Device Management, Hosted Exchange, Office 365, Hosted Telephony and any other such service.
- 40.24. **Term:** the period of contract either a calendar month renewable automatically or 12 calendar months from the date of the contract.
- 40.25. **Terms:** these standard terms of contract.
- 40.26. **Standard Agreed Rate:** rates set out in Schedule A
- 40.27. **Supported Items:** items listed in Schedule A
- 40.28. **Schedule B:** Schedule B refers to the Approvers form. This will be sent or can be requested separately.
- 40.29. **SLA:** Service Level Agreement, this is the method in which we will provide support, you can see this here: www.creative-n.com/sla and is a policy not a contractual agreement.
- 40.30. A reference to a Business or Company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 40.31. Words in the singular shall include the plural and vice versa.
- 40.32. A reference to writing or written includes faxes, e-mail and postal letters.
- 40.33. References to clauses and schedules are to the clauses and schedules of these terms.
- 40.34. References to paragraphs are to paragraph of the relevant schedule.