

# Managed Services Agreement



## 1. Interpretation

1.1 The definitions and rules of interpretation in this clause 1 apply in this Agreement.

**Business Day** means a day, other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Business Hours** means 9.00am to 5.00pm on Business Days;

**Commencement Date** means the date of the Quotation;

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach**, processing, and **appropriate technical and organisational measures** shall have the meanings given to them in the Data Protection Legislation;

**Customer** means the party ordering the Services whose full details are set out in the Quotation;

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, as each of the foregoing may be updated, replaced or amended from time to time; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

**Equipment** means any hardware or software purchased by the Customer to be used in conjunction with the Services, as detailed on the Quotation;

**Fee(s)** has the meaning given to it in clause 3.2;

**Quotation** means the quotation provided by Excalibur which details the Equipment and/or Services which the Customer has requested;

**Services** means the services to be provided by Excalibur to the Customer under this Agreement as set out Appendix B and excludes those listed in clause 7.1;

**Sub-Processor** has the meaning given in clause 17.6;

**UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Clause, Appendix and paragraph headings and any table of contents are included for convenience only and are not intended to and shall not affect the interpretation of this Agreement.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended, consolidated, replaced, superseded, re-enacted or otherwise converted, modified or incorporated into law from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 A reference to writing or written excludes fax but not email.

- 1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.9 References to clauses and appendices are to the clauses and appendices of this Agreement. References to paragraphs are to paragraphs of the relevant Appendix.
- 1.10 The appendices form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the appendices. If there is an inconsistency between any of the provisions in the main body of this Agreement and the appendices, the provisions in the main body of this Agreement shall prevail.

## 2. Term of Agreement

- 2.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, for the period set out in the Quotation (**Initial Term**) and shall automatically renew and extend for periods of 12 months at the end of the Initial Term (each an **Extended Term**). Either party may give written notice to the other party not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 2.2 Without prejudice to any rights of either party that have accrued under this Agreement or any of its rights or remedies, this Agreement may be terminated by either party immediately upon written notice if:
- (a) the other party commits any material breach of this Agreement and fails to remedy such breach (if such breach is remediable) within thirty (30) days of receipt of written notice specifying the breach; or
  - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
  - (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
  - (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company); or
  - (f) the holder of a qualifying floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
  - (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
  - (h) the other party (being an individual) is the subject of a bankruptcy petition or order; or
  - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
  - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause (b) to clause (h) (inclusive); or
  - (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 2.3 This Agreement may be terminated by Excalibur upon ninety (90) days written notice to the Customer.
- 2.4 Except where Excalibur terminates this Agreement pursuant to clause 2.2, if either party terminate this Agreement, Excalibur will

reasonably assist the Customer in the transfer of the Services to another designated provider and the Customer agrees to pay Excalibur's costs in providing such assistance.

### **3. Fees and Payment**

3.1 The provision of the Services is conditional on the Customer meeting the Minimum Standards defined in clause 6.1.

3.2 In consideration for the provision of the Services, the Customer shall pay to Excalibur the monthly fee detailed in the Quotation (the **Fee(s)**). The Fee will be invoiced by Excalibur to Customer on a monthly basis, and will become due and payable on the first day of each month following commencement of the Services. Excalibur may at its discretion suspend or cancel the provision of the Services (in whole or in part) if payment of the Fee is not received within 5 days following the due date for payment under this clause 3.2.

3.3 Changes in resource time of 20% or more in a quarter will constitute a reason for Excalibur implementing an increase in the Fees (which will take effect from the following quarter).

3.4 Excalibur has the right to amend the Fees:

3.4.1 each year, by introducing an increase to all or any Fees by a percentage up to or equal to the Office for National Statistics' (or such other body to which the functions of that office may be transferred) UK Consumer Prices Index (CPI) rate for December of the previous year (published in January) plus 3.9%. If the CPI rate is negative, the Fees will be increased by 3.9%. If the CPI is not published for the given month, Excalibur may use a substituted index published by that office for that month;; and / or

(As an example, based on (a) an increase of 7.9% being the CPI rate for December 2023 of 4.0% plus 3.9%, and (b) Fees of £50 per month, the Fees would increase to (£50.00 x 1.079) £53.95. Following price increases would be calculated on the relevant CPI rate, but assuming the same rate, the Fees would increase to (£53.95 x 1.079) £58.21 the following year).

3.4.2 at any time to reflect an increase in the cost to Excalibur of supplying such Services due to Excalibur's subcontractors or suppliers increasing charges,

in which event Excalibur will provide the Customer with 30 days' prior notice of such increase.

3.5 If any payment is not made within thirty (30) days of receipt of an invoice for such payment then Excalibur may, without prejudice to its other rights, charge daily interest at an annual rate of 4% above the base rate of the bank of England from time to time on sums owing from the date when payment was due (being thirty (30) days after the date of invoice on disputed amounts determined to be due) until the date that Excalibur receives payment of all sums outstanding including accrued interest. No interest shall be payable on any disputed amounts that are ultimately found (by a final court of competent jurisdiction) not to be payable.

3.6 It is understood that any and all services requested by Customer other than the Services will quoted and billed for separately .

### **4. Taxes**

All Excalibur charges herein will be exclusive of Value Added Tax ("VAT"). The Customer shall pay VAT on all sums due under this Agreement at the rate and in the manner prescribed by law from time to time.

### **5. Limitation of Liability**

5.1 Nothing in this Agreement shall exclude or limit Excalibur's liability for (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; (iii) any breach of any terms implied by Section 12 Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or (iv) any other liability to the extent that such liability cannot be excluded or limited by law.

5.2 Subject to the above clause 5.1, Excalibur shall have no Liability for any of the following:

5.2.1 loss of actual or anticipated profits;

5.2.2 loss of business opportunity;

5.2.3 loss of anticipated savings;

5.2.4 loss of use or corruption of software, data or information;

5.2.5 loss of goodwill;

5.2.6 injury to reputation; or

- 5.2.7 any indirect, special or consequential loss or damage howsoever caused even if Excalibur was advised of the possibility of such loss or damage in advance.
- 5.3 Any liability as described in clause 5.2 is excluded whether it is foreseeable, known, foreseen or otherwise.
- 5.4 Subject to clauses 5.1, 5.2, 5.5 and 5.6 , Excalibur's total aggregate liability in relation to any single event or series of related events shall be limited to 125% of the Fee paid to Excalibur for Services in the 12 months immediately prior to the date that such event or the first of such series of events occurred. If such date occurs during the first year of this Agreement, such total aggregate liability shall be calculated by using the actual Fee paid and/or payable up to such date, divided by the number of calendar days since the Commencement Date, multiplied by 365 (or 366 in the case of a leap year).
- 5.5 Subject to clauses 5.1, 5.2, 5.4 and 5.6 , Excalibur's total aggregate liability for all claims under this Agreement shall be limited to the aggregate Fees paid to Excalibur under this Agreement during the previous two years.
- 5.6 Without prejudice to clause 5.1, Excalibur shall have no liability to the Customer for any claim brought more than two years after the first accrual of the cause of action which the relevant circumstances or events have given rise to.
- 5.7 The terms of this Agreement are in lieu of all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying the Services and any goods which are provided or supplied in the course of performing the Services, which might but for this have effect between Excalibur and the Customer or would otherwise be implied into or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded (including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose).
- 5.8 Where the Services include Phishing simulation the Customer acknowledges that this does not provide a guarantee that a phishing attack will not be successful, and Excalibur will have no liability whatsoever to the Customer for any liability of the Customer arising from such an attack.
- 5.9 The Customer hereby indemnifies and holds harmless Excalibur from and against any suit or proceedings brought against Excalibur that arises from any illegal activity by the Customer or any associated persons, or breach of the Customer's obligations, representations or covenants contained within this Agreement.

## **6. Suitability of Existing Environment**

### **6.1 Minimum Standards Required for Services**

- 6.1.1 In order for Customer's existing environment to qualify for the Services, the following requirements (**Minimum Standards**) must be met:
- 6.1.1.1 All Servers with Microsoft Windows Operating Systems must be running Windows 2012 Server, Microsoft Exchange 2013 or later, and have all of the latest Microsoft Service Packs and Critical Updates installed.
  - 6.1.1.2 All Apple equipment must be running MacOS 10.15 or later and have all updates installed.
  - 6.1.1.3 All Desktop PC's and Notebooks/Laptops with Microsoft Windows Operating Systems must be running Windows 10 Pro or later and have all of the latest Microsoft Service Packs and Critical Updates installed. If the Microsoft Office suite is installed, Microsoft Office 2013 or later must be installed.
  - 6.1.1.4 All server and desktop software must be genuine, licensed and vendor-supported.
  - 6.1.1.5 The environment must have a currently licensed, up-to-date and vendor-supported server-based Antivirus solution protecting all servers, desktops, notebooks/laptops, and email.
  - 6.1.1.6 The environment must have a currently licensed, vendor-supported server-based backup solution that can be monitored, and send notifications on job failures and successes.
  - 6.1.1.7 The environment must have a currently licensed, vendor-supported hardware firewall between the internal network and the internet.
  - 6.1.1.8 All wireless data traffic in the environment must be securely encrypted.
  - 6.1.1.9 There must be an outside static IP address assigned to a network device, allowing RDP or VPN access.

6.1.1.10 Excalibur will only assume support for Viruses within this agreement where 6.1.1.4 above is in place and there are no users with local administration rights. Should the users have local administration rights, virus removal will be excluded from this Agreement.

6.1.1.11 Virus removal under this agreement will be limited to 4 hours per user, per year, any time exceeding this amount will be charged for at the prevailing rate.

6.1.2 Costs required to bring Customer's environment up to these Minimum Standards are not included in this Agreement.

## **6.2 Network Administration**

6.2.1 Excalibur will only assume full responsibility for the operational status of the Customer's IT network if the network administrator username and password is only known by Excalibur's engineers. This information is kept safely and securely by Excalibur and will not be disclosed to any employee of the Customer. By the Customer accepting this, any network related issues will fall within the terms of this Agreement and as such will not incur additional costs.

6.2.2 Should the Customer wish to have the network administrator password, then Excalibur will still within reason accept responsibility for the administration of the network. In the event of any issues arising as a direct result of changes to the network by non- Excalibur employees or its sub-contractors then any remedial services performed by Excalibur will fall outside of this Agreement and will be subject to additional charges as detailed in Appendix B.

## **7. Excluded Services**

7.1 The Services to be rendered under this Agreement do not include:

7.1.1 Parts, equipment or software not covered by vendor/manufacturer warranty or support.

7.1.2 The cost of any parts, equipment, or shipping charges of any kind.

7.1.3 The cost of any software, licensing, or software renewal or upgrade fees of any kind.

7.1.4 The cost of any third party vendor or manufacturer support or Incident fees of any kind.

7.1.5 The cost to bring Customer's environment up to the Minimum Standards.

7.1.6 Service and repair made necessary by the alteration or modification of equipment other than that authorised by Excalibur, including alterations, software installations or modifications of equipment made by Customer's employees or anyone other than Excalibur.

7.1.7 Maintenance of applications software packages, whether acquired from Excalibur or any other source.

7.1.8 Programming (modification of software code) and program (software) maintenance.

7.1.9 Training services of any kind.

7.1.10 Any issues caused as a result of fire, theft or natural disaster.

7.1.11 Any issues caused by user damage or misuse of IT equipment

## **8. Confidentiality**

8.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients, clients or suppliers of the other party, except as permitted by clause 8.2.

8.2 Each party may disclose the other party's confidential information:

8.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8; and

8.2.2 as may be required by law, court order or any governmental or regulatory authority.

8.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

## **9. Force Majeure**

9.1 Neither party shall be in breach of any obligation of this Agreement if it is prevented, hindered or delayed from performing such obligation by any matter or circumstance beyond its reasonable control.

## **10. Hardware and Software**

10.1 Any IT equipment required to be used in conjunction with the Services must be purchased from, or approved in writing in advance by Excalibur.

10.2 Excalibur have no responsibility for damage caused to the Equipment by unauthorised modification, misuse, or mishandling of Equipment or operation outside the environmental specifications of the Equipment including third party products not installed or configured by Excalibur.

## **11. Subcontracting and Assignment**

11.1 Excalibur may assign any or all of its rights under this Agreement provided that it gives prior written notice to the Customer.

11.2 Excalibur is entitled to subcontract any part of its obligation to provide the Services. Excalibur shall remain liable to the Customer for the performance of any subcontracted obligation.

11.3 Save as set out in clauses 11.1 and 11.2, neither party shall assign or transfer any of its rights or obligations under this Agreement without the written consent of the other party.

## **12. Variations**

Subject to clauses 3.3 and 3.4, Excalibur may amend this Agreement at any time by publishing the updated version online at <https://www.excaliburcomms.co.uk/excalibur-terms-conditions/> (or any other online address that Excalibur advises the Customer of) or by giving written notice to the Customer.

## **13. Intellectual Property Rights and Indemnities**

13.1 In this clause 13, **Intellectual Property Rights** shall mean patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

13.2 Title in all Intellectual Property Rights existing prior to the Commencement Date shall be the absolute property of and shall remain vested in the party that owned such rights immediately prior to that date. Each party acknowledges that it shall not acquire title or any rights or interest (except as expressly set out in this Agreement) in the other party's Intellectual Property Rights by virtue of the operation of this Agreement.

13.3 All Intellectual Property Rights created or developed in connection with the provision of the Services shall, unless otherwise agreed in writing by the parties, be owned by Excalibur.

13.4 The Customer shall indemnify Excalibur from and against all costs, damages, losses, or expenses (including legal expenses) incurred by Excalibur in respect of any demands or claims received by Excalibur that the Customer's use of the Services or the Equipment infringes the Intellectual Property Rights of any third party.

## **14. Governing Law**

14.1 This Agreement shall be governed by the laws of England. The Parties irrevocably submit for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.

## **15. Entire Agreement**

15.1 This Agreement constitutes the entire agreement between the Customer and Excalibur for the provision of the Services.

15.2 The terms and conditions of this Agreement shall prevail should there be any variance with the terms and conditions of any order submitted by the Customer.

**16. Non-Solicitation**

Neither party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of six months thereafter, other than in the normal course of business between Excalibur and the Customer, directly solicit the services of any staff of the other party who have been engaged in the provision of the Services or the management of this Agreement. In the event that this happens a fee of 35% of the annual salary of such staff will become immediately payable by the party in breach of this clause 16 to the other party.

**17. Data Protection**

17.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

17.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Excalibur is the Processor when providing the Customer with Equipment and/or Services pursuant to the Agreement.

17.3 The following table sets out the scope, nature and purpose of processing by Excalibur, the types of Personal Data and categories of Data Subject being processed for the purposes of the Agreement:

<b>Subject matter</b>	The processing of the Data Subjects' Personal Data in order to provide the Customer with Equipment and/or Services pursuant to the Agreement.
<b>Duration</b>	The duration required for the performance of the Agreement.
<b>Categories of data</b>	Any Personal Data transferred by the Customer to Excalibur under this Agreement, including, but not limited to: <ul style="list-style-type: none"><li>• title;</li><li>• full name;</li><li>• job title;</li><li>• telephone numbers and other contact details;</li><li>• bank, payment and invoicing details; and</li><li>• details related to use of the Services (which may include: description, duration, number of calls, destination of call, where the call is made from (e.g. mobile or fixed line), date and time of call, caller's location, call recipient's location, recipient's telecoms provider).</li></ul>
<b>Categories of Data Subjects</b>	Employees and staff of the Customer (or such other persons authorised by the Customer to make use of the Services) ( <b>Customer Staff</b> ). Recipients of calls made by Customer Staff and those who contact Customer Staff using the Services.
<b>Nature of processing</b>	Storing and using the information to fulfil the Agreement.
<b>Purposes of processing</b>	To provide the Customer with Equipment and/or Services pursuant to the Agreement.

17.4 Without prejudice to the generality of clause 17.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer and processing of any Personal Data to and by Excalibur for the duration and purposes of the Agreement, and will transfer to Excalibur only the Personal Data that Excalibur requires in order to perform its obligations under the Agreement.

17.5 Without prejudice to the generality of clause 17.1, Excalibur shall, in relation to any Personal Data processed by Excalibur as Processor in connection with the Agreement:

17.5.1 process the Personal Data only in accordance with the Agreement or on the documented instructions of the Customer unless Excalibur is required by applicable law to otherwise process that Personal Data. Where Excalibur is relying on applicable law as the basis for processing Personal Data, Excalibur shall notify the Customer of this before performing the processing required by the applicable law unless that applicable law prohibits Excalibur from so notifying the Customer. Excalibur shall inform the Customer if, in the opinion of Excalibur, any of its instructions infringes or may infringe Data Protection Legislation;

17.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss,

destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 17.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 17.5.4 assist the Customer, insofar as this is possible (taking into account the nature of processing and the information available to Excalibur), at the Customer's cost and written request, in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 17.5.5 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 17.5.6 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the Personal Data. For the purposes of this clause 17.5.6, Personal Data shall be considered deleted where it is put beyond further use by Excalibur; and
- 17.5.7 maintain records to demonstrate its compliance with this clause 17 and allow for the Customer or the Customer's designated auditors to review, audit and inspect such records for the purposes of verifying such compliance.

17.6 The Customer hereby provides its prior, general authorisation for Excalibur to:

- 17.6.1 appoint third-party processors of Personal Data ("**Sub-Processors**"). Excalibur shall inform the Customer of any intended changes concerning the addition or replacement of the Sub-Processors. If the Customer objects it shall give written notice to Excalibur within 10 days of notice of any such additional or replacement Sub-Processor, which includes a description of the objection including if the objection is due to an actual or likely breach of Data Protection Legislation. On Excalibur's receipt of the objection, the parties shall attempt in good faith to resolve the objection. If the parties are unable to resolve the objection within 30 days from the Customer's objection then Excalibur may either: (i) continue the Agreement without appointing the new or replacement Sub-Processor; or (ii) terminate the Agreement, without liability to the Customer. Excalibur confirms that it has entered or (as the case may be) will enter with each Sub-Processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 17. As between the Customer and Excalibur, Excalibur shall remain fully liable for all acts or omissions of any Sub-Processor appointed by it pursuant to this clause 17.6; and
- 17.6.2 transfer Personal Data outside of the UK or EEA as required for the purposes as described in clause 17.3, provided that Excalibur ensures that all such transfers are effected in accordance with Data Protection Legislation.

## **18. Waiver**

- 18.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **19. No partnership or agency**

- 19.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## **20. Severance**

- 20.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 20.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



**21. Notices**

- 21.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.
- 21.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by email ,at the time of transmission or, if this time falls outside Business Hours, when Business Hours resume, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**22. Counterparts**

- 22.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**23. Third party rights**

- 23.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## Appendix A

### Response and Resolution Times

The following table shows the targets of response and resolution times for each priority level, subject to no dependence on external third parties:

Priority	Response Time (in Business Hours)	Target to fix * (working hours)	Examples
P1	Within 1 hour	4	No staff can logon Business applications down for all staff – resolution will be coordinated with business application provider
P2	Within 2 hours	8	Single user unable to logon No Email
P3	Within 4 hours	16	Single user unable to complete some work (i.e. access to certain drives)
P4	within 10 hours	25	Network admin New user setups How do I tasks PC rebuilds Move / add / change a user account / email address Set email redirection / access levels to email accounts

A response time is considered as the acknowledgement of the request for assistance and also depends on the contact being within Business Hours.

### Support Tiers

The following details and describes our Support Tier levels:

Support Tier	Description
Tier 1 Support	All support incidents begin in Tier 1, where the initial trouble ticket is created, the issue is identified and clearly documented, and basic hardware/software troubleshooting is initiated.
Tier 2 Support	All support incidents that cannot be resolved with Tier 1 Support are escalated to Tier 2, where more complex support on hardware/software issues can be provided by more experienced Engineers.
Tier 3 Support	Support Incidents that cannot be resolved by Tier 2 Support are escalated to Tier 3, where support is provided by the most qualified and experienced Engineers who have the ability to collaborate with 3rd Party (Vendor) Support Engineers to resolve the most complex issues.

**Managed Services Agreement**

**Appendix B**

**Service Rates**

Labour	Rate
Remote PC Management/Help Desk 8am-6pm M-F	INCLUDED
Remote Printer Management 8am-6pm M-F	INCLUDED
Remote Network Management 8am-6pm M-F	INCLUDED
Remote Server Management 8am-6pm M-F	INCLUDED
24x7x365 Network Monitoring	INCLUDED
Lab Labour 8am-6pm M-F	INCLUDED
Onsite Labour 9.00am-5.30pm M-F	EXCLUDED

## **Appendix B (cont)**

### **Coverage**

Remote Helpdesk and Vendor Management of Customer's IT networks will be provided to the Customer by Excalibur through remote means between the hours of 8.00 am – 6.00 pm on Business Days. Network Monitoring Services will be provided 24/7/365.

Hardware costs of any kind are not covered under the terms of this Agreement.

### ***Support and Escalation***

Excalibur will respond to Customer's Support Tickets under the provisions of Appendix A. Support after hours or on holidays may be provided at Excalibur's discretion where there is resource available, but Excalibur shall not be obliged to provide such support. Support Tickets must be opened by email to Excalibur's Help Desk, or by phone if email is unavailable. Each call will be assigned a Support Ticket number for tracking.

Excalibur gives no guarantee that it will resolve any incident within any particular timescale. Excalibur's failure to resolve an incident in accordance with any service level or other target set out in Appendix A shall not constitute a breach of contract, nor give rise to any liability of Excalibur to the Customer.

### ***On Site visits***

All work where possible will be completed remotely and if required with the assistance of an employee of the Customer.

### ***Service outside Normal Working Hours***

Emergency services performed outside of the hours of 8:00 am – 6:00 pm on Business Days, shall be subject to provisions of this Appendix B.

### ***Service Calls Where No Trouble is found***

If Customer requests onsite service and no problem is found or reproduced, Customer shall be billed at the current applicable rates as indicated in this Appendix B.

### **Additional Maintenance Services**

#### **Hardware/System Support**

Excalibur shall provide support of all hardware and systems, provided that all hardware is covered under a currently active manufacturer warranty; and all software is genuine, currently licensed and vendor-supported. Should any hardware or systems fail to meet these provisions, they will be excluded from this Agreement. Should third party vendor support charges be required in order to resolve any issues, these will be payable by the Customer (though Excalibur shall first obtain the Customer's authorisation to incur them).

#### **Virus Recovery for Current, Licensed Antivirus protected systems**

Attempted recovery from damages caused by virus infection not detected and quarantined by the latest Antivirus definitions is covered under the terms of this Agreement. This service is limited to those systems protected with a currently licensed, vendor-supported Antivirus solution.

#### **Monitoring Services**

Excalibur will provide ongoing monitoring and security services of all devices. Should a problem be discovered during monitoring, Excalibur shall attempt to rectify the condition in a timely manner through remote means.

#### **Data Back-Up**

Excalibur has no responsibility or liability to the Customer for failure of any backup process. The responsibility for backups that require physical management for example swapping of tapes or other media lies with the Customer.