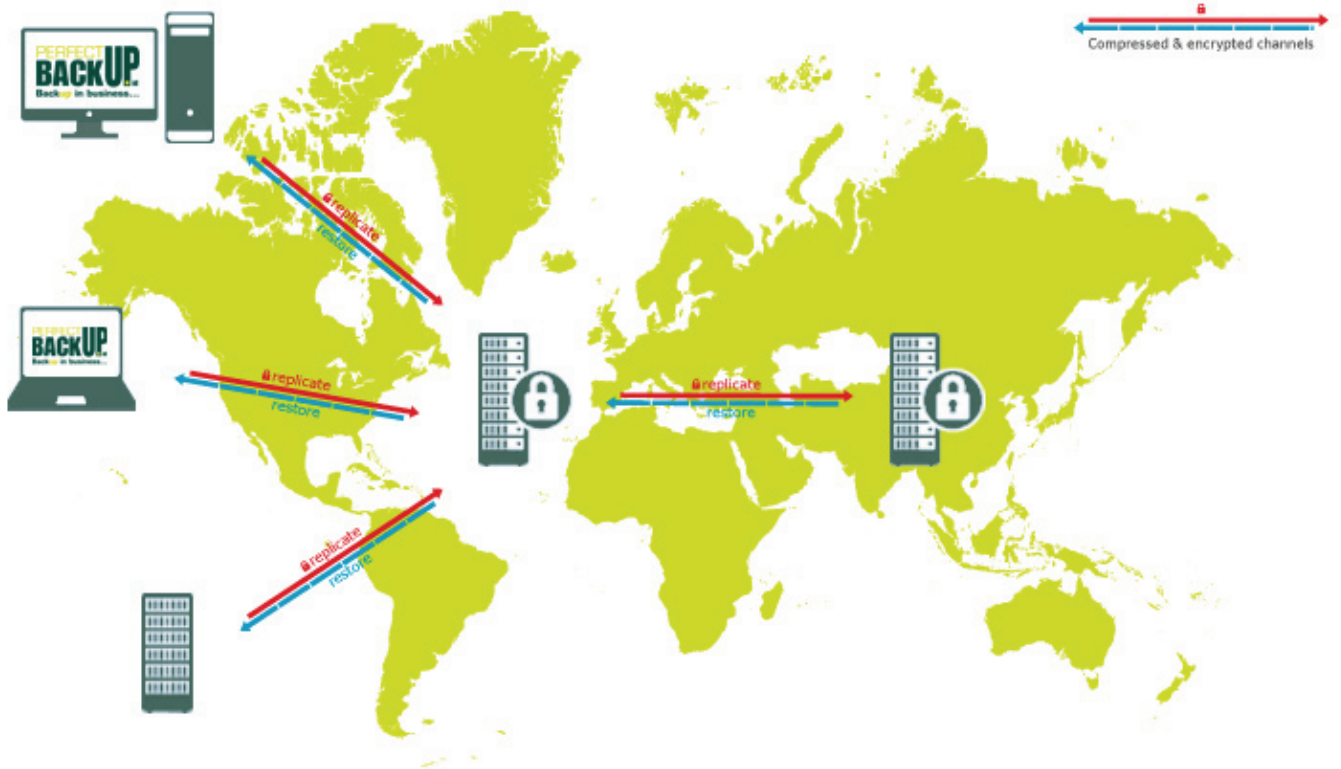




PerfectBackup

SERVICES SUPPLY AGREEMENT



SERVICES SUPPLY AGREEMENT

Date: ___ - _____ - 20__

Parties:

1 Mitol PerfectBackup Limited whose registered office is at Fawcett House, Shirbutt Lane, Hessay, York YO26 8JT (“the Company”)

2 _____ whose registered office / residence is at _____ (“the Customer”)

Recitals:

(A) The Supplier carries on business in the provision of services consisting of offsite back up.

(B) The Customer wishes to engage the Supplier to provide such services in relation to the business of the Customer, and the Supplier is willing to provide such services to the Supplier, on the terms of this agreement.

Operative Provisions:

1 Interpretation

1.1 In this agreement unless the content otherwise requires:

“Applicable Laws” means all laws, rules and regulations which impose legal, regulatory or other requirements in respect of any of the activities which the Supplier undertakes as part of the Services;

“Best Industry Practice” means the highest standards which could reasonably be expected to be exercised by a skilled and experienced person in the same type of business as that of the Supplier;

“Commencement Date” means; Thursday, 12th March

“Confidential Information” means, in relation to either party, any information (whether or not stated to be confidential or marked as such) which that party discloses to the other, or which the other party obtains from any information disclosed to it by that party, either orally or in writing or by any other means, under or in connection with this agreement;

“Customer’s Business” means the business of the Customer referred to in Recital (B), further details of which are set out in Schedule 2;

“Customer Resources” means any resources, facilities, accommodation, software, data, databases and/or materials specified in Schedule 1 which are to be provided by the Customer in order to enable the Supplier to provide the Services;

“Deliverables” means the deliverables (if any) required as an output of the Services, as specified in Schedule 1;

“Document” means anything in which information of any description is recorded, and a copy of a document means anything onto which information recorded in the document has been copied by any means, whether directly or indirectly;

“DPA” means the Data Protection Act 1998;

“Force Majeure” means, in relation to either party, any circumstances beyond the reasonable control of that party (including any strike, lock-out or other industrial action);

“Group” Means the Customer and any other company in the same group as set out in Section 421 Financial Services and Markets Act 2000;

“Intellectual Property Rights” means any patent, copyright, registered or unregistered design right, database right, registered or unregistered trade mark, rights in relation to confidential information or any other intellectual property rights in any part of the world;

“Liability” and “Loss” have the meanings given in clause 12.1;

“Licences” means any licence, consent, permission or approval necessary for the provision of the Services;

“Normal Working Hours” means the hours of 9.00 am to 5.00 pm (inclusive) on any Working Day, with one hour’s break for lunch;

“Personal Data” means any personal data as defined in the DPA which is disclosed by the Customer to the Supplier or otherwise obtained by the Supplier in connection with this agreement;

“Records” has the meaning given in clause 4.1;

“Regulatory Authority” means any UK or EU governmental or other regulatory body having jurisdiction over the subject matter of this agreement;

“Service Charges” means the charges specified in Schedule 4 for the provision of the Services;

“Service Levels” means the service levels, standards or performance targets applicable to the Services which are set out in Schedule 3;

“Services” means the services to be supplied by the Supplier to the Customer pursuant to this agreement, as specified in Schedule 1;

“Specification” means the specification for the Services set out in Schedule 1;

“Supplier’s Personnel” means all employees, contractors, sub-contractors or agents of the Supplier who are involved in the supply of the Services to the Customer;

“Supplier’s Premises” means the Supplier’s premises at Fawcett House, Shirbutt Lane, Hessay, York YO28 8JT (“PerfectBackup”)

[] or such other premises as may be notified in writing to the Customer from time to time;

“Term” means the period during which this agreement continues in force;

“Working Day” means a day other than Saturday or Sunday or a public holiday; and

1.2 In this agreement a reference to:

1.2.1 a Schedule is a reference to a schedule to this agreement and a clause or a paragraph is a reference to a clause of this agreement (other than the Schedules) or a paragraph of the relevant Schedule;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended, re-enacted or extended at the relevant time, and includes any corresponding statute or provision of a statute replacing that statute or provision.

1.3 In this agreement:

1.3.1 the singular includes the plural and vice versa;

1.3.2 words importing any gender include any other gender;

1.3.3 “writing”, and any similar expression, includes a reference to any communication effected by fax or similar means, but not electronic mail or text messages;

1.3.4 “this agreement” means this agreement and each of the Schedules, as amended or supplemented at the relevant time; and

1.3.5 where an expression is qualified by one or more examples preceded by the word “including”, it shall not limit the general scope of that expression.

1.4 The headings in this agreement are for convenience only and shall not affect its interpretation.

2 Provision of the Services -

2.1 During the Term the Supplier shall provide the Customer with the Services in relation to the Business.

2.2 The Customer shall acquire the Services from the Supplier on a non-exclusive basis and accordingly nothing in this agreement shall prevent the Customer from arranging for any other person to provide for the Customer services which are the same as or similar to the Services, or from providing such services for itself.

2.3 The Supplier shall:

2.3.1 provide all such materials and facilities (other than the Customer Resources) as are necessary for the proper and efficient provision of the Services; and

2.3.2 co-operate with any other contractor or service provider of the Customer for any purposes connected with this agreement, as necessary from time to time or as expressly requested to do so in writing by the Customer

2.3.3 obtain and continue to hold all such Licences as are necessary in order to provide the Services;

2.3.4 prepare and file all applications, reports, statements, and other documents or information necessary for the Supplier to continue to qualify for or otherwise maintain such Licences;

2.3.5 ensure that there are no factors which may prejudice the obtaining, continuance or renewal of any of such Licences; and

2.3.6 promptly inform the Supplier if any of such Licences is not obtained or renewed or is withdrawn.

2.4 The Customer shall provide the Customer Resources.

3 Specification and Service Levels -

3.1 The Supplier shall provide the Services:

- 3.1.1 in accordance with the Specification, the Service Levels and any timescales for performance of the Services specified in Schedule 1 or, where applicable and where no specific timescales are specified, within a reasonable time after the Customer makes a request for the Services to be provided by the Customer; and
- 3.1.2 with reasonable skill, care and diligence, in accordance with Best Industry Practice and in compliance with all Applicable Laws.
- 3.2 The Supplier shall:
 - 3.2.1 at all times deal with the Customer dutifully and in good faith in relation to the provision of the Services; and
 - 3.2.2 not undertake any activities which may conflict with the Services or which may in any way harm the Customer's Business or its reputation.
- 3.3 The Supplier shall promptly notify the Customer of:
 - 3.3.1 any delays or problems from time to time in the provision of the Services of which the Supplier becomes aware;
 - 3.3.2 any circumstances from time to time which may prevent the Supplier from providing the Services in accordance with this agreement together with (where practicable) recommendations as to how such circumstances can be avoided; and
 - 3.3.3 any complaint (whether written or not) or other matter which comes to its attention and which it reasonably believes may give rise to any loss by or claim against the Customer or which may result in any adverse publicity for the Customer.
- 3.4 The Customer shall, without limiting any right or remedy of the Customer, promptly report to the Supplier any defects in the Supplier's performance of the Services as soon as reasonably practicable after any such defect comes to the attention of the Customer.
- 3.5 Where any defect in the provision of the Services is reported to the Supplier by the Customer or otherwise comes to the attention of the Supplier:
 - 3.5.1 the Supplier shall, without limiting any other right or remedy of the Customer, use its reasonable endeavours to provide such further services as are necessary in order to rectify the default as soon as is reasonably practicable; and
 - 3.5.2 the Supplier shall give the Customer a credit against the Service Charges calculated in accordance with Schedule 4, which shall take effect as an adjustment to the Service Charges and are acknowledged to be a reasonable pre-estimate of the loss suffered by the Customer.
 - 3.5.3 subject to Clause 12, if the actual Loss suffered by the Customer as a result of the failure of the Supplier to perform the Services in accordance with the Specification and Service Levels exceeds the credits set out in Schedule 4 and/or is outside of the scope of those credits then the Supplier shall without prejudice to the Customer's other rights and remedies pay the Customer's Loss.

4 Records and inspections -

- 4.1 The Supplier shall keep complete, accurate and up-to-date records of all activities carried out by it in relation to and for the purposes of providing the Services and as required for compliance by

the Customer or the Supplier with all Applicable Laws or the requirements of any Regulatory Authority (“Records”).

4.2 The Supplier shall supply the Customer with copies of all Records in a form reasonably required by the Customer and at the intervals specified in Schedule 1, and otherwise within 7 Working Days of the Customer’s written request for a copy of such Records.

4.3 The Supplier shall at the request of the Customer and upon reasonable notice allow duly authorised representatives of the Customer, any Regulatory Authority, or the Customer’s external auditors to inspect, copy and/or audit the Records and/or the manner of provision of the Services and to enter upon the Supplier’s Premises for these purposes during Normal Working Hours under the supervision of the Supplier for the purpose of confirming compliance with this agreement. The Supplier shall provide the Customer, the Regulatory Authority in question or the Customer’s external auditors with such further assistance as they may reasonably require, provided that it does not materially affect the Supplier’s ability to provide the Services in the normal course.

4.4 If the inspection identifies areas where the Supplier is not complying with this agreement, the Supplier shall forthwith rectify the failure and take the necessary steps to ensure its future compliance with this agreement.

5 Ownership of Intellectual Property Rights -

5.1 All databases, designs, Documents, drawings, notebooks, photographs and Records which are made by the Supplier or any of the Supplier’s Personnel in the course of the provision of the Services, any media containing or recording any part of any of the foregoing items, and any Intellectual Property Rights in respect of any of those items, shall belong exclusively to the Customer, and accordingly the Supplier hereby assigns to the Customer (where appropriate, by way of present assignment of future copyright) or (in any other case) agrees to assign to the Customer absolutely on demand, with full title guarantee and for no further consideration, all Intellectual Property Rights in respect of those items.

5.2 The Supplier shall, both during the Term and after the termination of this agreement at the request of the Customer but for no further consideration, do all such things as may be necessary or desirable to vest in the Customer or its nominee the full benefit of the items and Intellectual Property Rights referred to in clause 5.1, and shall (except to the extent that the Supplier needs to retain the same for the purposes of providing the Services) forthwith deliver up to the Customer all such items as are referred to in clause 5.1 which come into its possession during the Term and which relate to the Services, both on request by the Customer at any time during the Term and after the termination of this agreement.

5.3 If and to the extent that it is not reasonably practicable for the Customer to exercise its rights under this agreement or to make full use of the Services without the use of any Intellectual Property Rights of the Supplier, other than those referred to in clause 5.1, the Supplier hereby grants to the Customer a non-exclusive, irrevocable, non-transferable and royalty-free licence during the Term to use such Intellectual Property of the Supplier as the Customer may require for that purpose.

5.4 Except as expressly provided in this agreement, each party shall retain exclusive rights in respect of all Intellectual Property Rights to which it is entitled, and nothing in this agreement shall be construed as granting any right, title, interest or licence to or in respect of the Intellectual Property Rights of either party.

6 Financial provisions -

6.1 As consideration for the provision of the Services, the Customer shall pay to the Supplier the Service Charges, in each case subject to receipt of a proper invoice and such supporting documentation as the Customer may reasonably require.

6.2 The Supplier shall invoice the Customer annually in respect of the Services and payment will be made monthly via direct debit. An invoice in respect of the Service Charges shall not be submitted before the due date for its submission.

6.3 Except as otherwise specified in Schedule 4 the Service Charges are fixed and shall not be varied without the prior written consent of the Customer;

6.4 The Service Charges and any other amounts payable by the Customer to the Supplier pursuant to this agreement are exclusive of any value added tax.

6.5 The Customer may set off from any amounts owed by it to the Supplier any undisputed amount which the Supplier may owe to the Customer pursuant to this agreement.

7 Confidentiality -

7.1 Subject to sub-clause 7.2 below, the parties shall not, other than with the prior written consent of the others, disclose directly or indirectly to any person, firm, company or third party and shall only use for the purposes of this Agreement, any information relating to the Programme, the Website, or the parties' employees, each others' business, trade secrets, customers, subsidiaries, suppliers, affairs or any other information in whatever form received or obtained by any party, from another party, as a result of entering into or performing this Agreement, or arising on its termination or expiry.

7.2 Any party may disclose information which would otherwise be confidential if and to the extent that:

7.2.1 The disclosure is required by law or applicable regulatory requirements;

7.2.2 The information has come into the public domain through no default of any party;

7.2.3 It is disclosed to any party's professional advisers, auditors, bankers, sub-contractors or employees who are directly concerned with this Agreement and whose knowledge of such information is essential, subject to such persons being bound by a duty of confidence

7.3 The restrictions contained in sub-clause 7.1 shall continue to apply after termination of this Agreement.

7.4 The parties agree that damages might not be a sufficient remedy to any breach of the terms of this clause 7 and that as a result injunctive or other equitable relief may be obtained in respect of any breach or anticipated breach.

8 Data protection -

8.1 Each party warrants and represents that it has made, and undertakes that at all times during the Term it will maintain, any notification and registration required under the DPA which relates to the performance of its obligations under this agreement.

8.2 Each party undertakes that in the performance of this agreement it will comply with the DPA, and in particular the Data Protection Principles set out in the DPA, and with any guidance issued from time to time by the Information Commissioner.

8.3 The Supplier undertakes that it has and/or will:

8.3.1 at all times during the period of this agreement put in place appropriate technical and organisational measures against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to the Personal Data as well as adequate security programmes.

8.3.2 not transfer the Personal Data to any country outside the European Economic Area;

8.3.3 submit its data processing facilities, data files and documentation needed for processing to audit and/or certification by the Customer, if so requested;

8.3.4 admit to the Supplier's Premises upon reasonable notice any person authorised by the Customer or the Information Commissioner for the purposes of satisfying the Customer and/or the Information Commissioner as to its compliance with the DPA and in particular the 7th Data Protection Principle of the DPA;

8.3.5 return to the Customer all Personal Data and any copies of Personal Data in its possession or control or in the possession or control of any of its sub-contractors upon termination of this agreement; and

8.3.6 comply with any changes in Applicable Laws or any change in instructions from the Customer relating to Personal Data.

8.4 The Supplier shall indemnify the Customer against all liability, loss, costs and expenses incurred by reason of any claim by any person in respect of any loss, damage or distress caused to that person as a result of the Supplier's unauthorised or unlawful processing of or the destruction of or damage to any Personal Data, or any breach by the Supplier of its obligations under this clause 8.

9 Duration of agreement -

9.1 This agreement shall commence on the Commencement Date and, subject to the following provisions, shall continue unless and until either party shall serve not less than one month's notice of termination on the other.

9.2 The Customer may forthwith terminate this agreement by giving written notice to the Supplier if the Supplier:

9.2.1 commits a material breach of this agreement and, if the breach is capable of being remedied, fails to remedy it within 14 days after receipt of a written notice specifying the breach and requiring it to be remedied; or

9.2.2 goes into liquidation or administration, has a receiver appointed over any of its assets or makes a voluntary arrangement or composition with its creditors (in each case, within the meaning of the Insolvency Act 1986).

9.3 The Supplier may forthwith terminate this agreement by giving written notice to the Customer if the Customer:

9.3.1 fails to pay any sum payable by it under this agreement within 14 days of the due date for payment;

9.3.2 commits a material breach of this agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after receipt of a written notice specifying the breach and requiring it to be remedied; or

9.3.3 goes into liquidation or administration, has a receiver appointed over any of its assets or makes a voluntary arrangement or composition with its creditors (in each case, within the meaning of the Insolvency Act 1986).

9.4 For the purposes of clauses 9.2.1 and 9.3.2, a breach of any provision of this agreement 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 the time of performance is not of the essence).

9.5 No time or indulgence granted by either party shall be considered a waiver of any provision by that party, and no waiver by either party of a breach of this agreement shall be considered a waiver of any subsequent breach of the same or any other provision.

9.6 The termination of this agreement for any reason shall not affect any accrued right or liability of either party arising under this agreement and shall not affect any other right or remedy of either party.

10 Consequences of termination -

10.1 On the termination of this agreement for any reason the Supplier shall:

10.1.1 return to the Customer all Confidential Information and Personal Data obtained or produced in the course of providing the services and any Customer Resources used for the provision of the and Services, and supply the Customer with copies of all Records relating to the provision of the Services (to the extent that they have not already been supplied to the Customer);

10.1.2 assist and co-operate with the Customer to ensure an orderly transition of the Services to any replacement supplier of similar services approved by the Customer and/or the completion of any work in progress; and

10.1.3 promptly provide all information concerning the Services which may reasonable be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or any new supplier of similar services to conduct due diligence.

10.2 The expiry of this agreement shall not affect:

10.2.1 any payment which is owing by either party to the other;

10.2.2 any other accrued rights of either party; or

10.2.3 any provision of this agreement which is expressed to come into force or continue in force on or after termination.

11 Warranties and indemnities -

11.1 Each party warrants to the other that:

11.1.1 it has the necessary authority to enter into this agreement;

- 11.1.2 the signatory to this agreement for and on behalf of that party is authorised and fully empowered to execute this agreement on that party's behalf;
- 11.1.3 the entry into and performance of this agreement by that party will not breach any contractual or other obligation owed by that party to any other person, any rights of any other person or any other legal provision; and
- 11.1.4 the entry into and performance of this agreement by that party require no governmental or other approvals or, if any such approval is required, it has been obtained.
- 11.2 The Supplier shall, subject to the Customer complying with clause 11.3, indemnify the Customer against:
- 11.2.1 any claim by any other person that the provision of the Services to the Customer in accordance with this agreement infringes any Intellectual Property Rights of that other person; and
- 11.2.2 any claim by any person in respect of death or personal injury or the loss or destruction of or damage to any property resulting from the negligence or wilful default of any employee or agent of the Supplier or the breach by the Supplier of any of its obligations under this agreement.
- 11.3 Where the Supplier is required to indemnify the Customer under any provision of this agreement:
- 11.3.1 the Supplier shall be given full control of any proceedings or negotiations in connection with any such claim and shall be exclusively entitled to appoint and instruct legal advisers and counsel in connection with any such proceedings or negotiations and to determine the forum for any such proceedings, provided that the Supplier takes over conduct of the proceedings or negotiations within a reasonable time after being notified of the claim in question;
- 11.3.2 the Customer shall give the Supplier all reasonable assistance for the purpose of any such proceedings or negotiations;
- 11.3.3 except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings or negotiations, without the consent of the Supplier (which shall not be unreasonably withheld);
- 11.3.4 the Customer shall do nothing to invalidate or prejudice any policy of insurance or insurance cover which the Customer may have in relation to any such claim, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- 11.3.5 the Supplier shall be entitled to, and the Customer shall accordingly account to the Supplier for, all damages and costs which are awarded against or which with the consent of the Customer (which shall not be unreasonably withheld) are agreed to be paid by any other party in respect of any such claim; and
- 11.3.6 the Supplier shall be entitled to require the Customer to take such steps as the Supplier may reasonably require to mitigate or reduce any loss of the Customer.

12 Liability -

- 12.1 In this clause 12:

12.1.1 “Liability” means any liability by reason of any representation (unless fraudulent) or the breach of any implied condition, warranty or other term or any duty at common law or under any statute, or under any express term of this agreement or otherwise; and

12.1.2 “Loss” means, in relation to either party, any loss of profit, contracts, goodwill, anticipated savings, wasted expenditure or other loss of any kind which is incurred by that party, or any damages, costs or other claims for compensation and any expenses (including legal expenses) which are awarded against or incurred by or paid or agreed to be paid by that party, however the same may arise and whether occasioned by the negligence of the other party, its employees or agents or otherwise.

12.2 Neither party seeks to limit any Liability which it may have arising out of or in connection with this agreement in respect of death or personal injury caused through negligence or fraudulent misrepresentation.

12.3 Except pursuant to clause 8.5 or 11.2, and subject to clause 12.2:

12.3.1 neither party shall have any Liability to the other party arising out of or in connection with this agreement for any indirect, special or consequential Loss of the other party; and

12.3.2 the total Liability of either party for any other Loss of the other party in respect of any one event or series of connected events shall not exceed £1,000,000 (one million pounds).

13 Force Majeure -

13.1 If any Force Majeure occurs in relation to either party which affects or may affect the performance of any of its obligations under this agreement (other than, in the case of the Customer, its obligation to pay the Service Charges), it shall forthwith notify the other party as to the nature and extent of the circumstances in question.

13.2 A party affected by Force Majeure of which it has notified the other party pursuant to clause 13.1 shall not be deemed to be in breach of this agreement, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this agreement, to the extent that the delay or non-performance is due to Force Majeure, and the time for performance of that obligation shall be extended accordingly.

14 Insurance -

14.1 The Supplier shall effect and maintain adequate insurance cover at its own cost with a reputable insurance to cover the liability accepted by it under the terms of this Agreement and shall, at Customer’s request, produce a copy of the relevant renewal receipts for inspection by the Customer.

14.2 The Supplier shall do nothing to invalidate or prejudice the Customer’s entitlement under any such insurance policy.

15 Dispute Resolution -

15.1 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same. If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim by mediation in accordance with the CEDR Model mediation procedure. Unless otherwise agreed the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (‘ADR notice’) to the other parties to the dispute requesting the mediation. A copy of the request

should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

16 Nature of agreement -

16.1 Neither party shall be entitled to assign this Agreement nor all or any of its rights or obligations hereunder, without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

16.2 Nothing in this agreement shall constitute or create or be deemed to constitute or create a partnership or the relationship of principal and agent or employer and employee between the Customer and the Supplier or any of the Supplier's Personnel.

16.3 Save for fraudulent misrepresentation, this Agreement constitutes the whole and only Agreement between the parties and, supersedes and extinguishes any prior drafts and agreements of any nature whatsoever, whether or not in writing, relating to its subject matter. No party has relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to herein.

16.4 Save with respect to a company within the same group as the Customer nothing in this agreement shall operate to confer any right or benefit on any who is not a party in accordance with the Contracts (Rights of Third Parties) Act 1999, although this agreement may be varied without the consent of any such company.

16.5 If any provision of this agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

16.6 Any variation to the terms of this agreement shall be made in writing by the duly authorised representatives of the parties.

17 Applicable law and jurisdiction

17.1 This agreement shall be governed by and construed in accordance with English Law and the parties hereto submit to the exclusive jurisdiction of the English Courts.

18 Notices

18.1 Any notice request instruction or other document to be given hereunder or issued by any party shall be delivered by hand or sent by first class post or by facsimile at the address or facsimile number of the other party as set out in Schedule 1.

18.2 Any such notice or other document shall be deemed to have been served (if delivered by hand) at the time of delivery (if sent by post) upon the expiry of 48 hours after posting and if sent by facsimile upon the expiry of 12 hours after transmission.

Schedule 1

Notices

Supplier

Contact Name: Mitol PerfectBackup Limited

Address: Fawcett House

Shirbutt Lane

Hessay

York

YO26 8JT

Tel 01904 737528

Fax 01904 737529

Customer

Contact Name: -----

Address: -----

The Services

Specification:

_____ GB Automated Online Data Backup Solution including _____ Exchange brick level backup licenses.

Customer Resources:

Unlimited backup and restores with unlimited bandwidth.

Unlimited 24 x 7 access to technical support via email or telephone.

Unlimited 24 x 7 access to client data via Online Backup Manager or via web site.

Retention period of deleted or changed data set by customer.

Full automated email reporting detailing new, changed, deleted and file permission changes for every server. Reports detailed to individual file level.

Unlimited use and distribution of Online Backup Manager Software.

Schedule 3

Service Levels:

Mitol PerfectBackup Limited Service Level Agreement (Business users)

This Service Level Agreement ("SLA") covers performance guarantees for our Business online backup service only, and is made between Mitol PerfectBackup Limited ("Mitol PerfectBackup Limited", "Provider", "we", "us", "our") and you ("Client", Customer, "you").

The following SLA Terms and Conditions apply only to Customers agreeing to a Minimum Service Period of one month or more for PerfectBackup Limited Business Services and only in respect of the provision of such services during such period and where Customer's accounts with PerfectBackup Limited are in good standing.

Data Centre Configuration

Our Data Centre infrastructure is architected to deliver the maximum system uptime, security and reliability.

System Availability Guarantee

We offer a 99.999% uptime guarantee. This means that for any given year, while unlikely, it is possible that we may experience an average downtime of up to 3.2 minutes including scheduled maintenance.

File Restore Guarantee

All files backed up on our system will be available for a period of your set retention period from the date of backup. In the event of you wishing to restore a file or a group of files previously backed up we guarantee that the file or files will be recoverable within one hour from the initial request.

Application/Database recovery Guarantee

Application and Database files backed up on the Mitol PerfectBackup Limited System will be recoverable within 1 hour from the initial request.

Disaster Recovery Guarantee

In the event of a major data loss by the client involving the loss of entire servers and their contents, where such servers and files are legitimately backed up on our infrastructure, we will make all reasonable efforts to provide expert guidance to the client in order to restore the system to its original operational state. We will provide such support as is necessary to work with the clients or its suppliers in order to ensure that system files and data files are restored to any replacement hardware subject to the condition that such replacement material is correctly configured, specified and available.

Notification of non-performance

To be eligible for compensation under the any of the above Guarantees, the Client must notify us of a possible incident. Upon opening a support ticket, we will ascertain whether the problem exists within our realm of reasonable control. We will make reference to system log files to confirm the appropriate breach of the performance Guarantee. In the event of a disaster, notification by telephone to the Support Team is acceptable, where the Support Team will validate the nature of the disaster.

Compensation Payments

In case of non-performance under this Agreement, the client will be compensated as follows:

System Availability Guarantee - if a continuous outage exceeds 3.2 minutes, we will refund 5% (five percent) of the Client's base monthly recurring fee per 3.2 minutes of downtime, up to 100% (one hundred percent) of the base monthly recurring fee.

File Restore Guarantee - if a file or set of files is not recoverable within 1 hour of the initial request, we will refund the client 5% (five percent) of the Client's base monthly recurring fee for each MB (Megabyte) of non-restorable data, up to 100% (one hundred percent) of the base monthly recurring fee.

Application/Database Recovery Guarantee - if system and or database files or set of files are not recoverable within 1 hour of the initial request, we will refund the client 5% (five percent) of the Client's base monthly recurring fee for each MB (Megabyte) of non-restorable data, up to 100% (one hundred percent) of the base monthly recurring fee.

In all cases of non-performance of service where downtime deems lack of access to our infrastructures these Compensation Payments are non-cumulative and the highest amount for each category will be paid and the maximum payment in anyone month will not exceed 100% of the Client's base monthly recurring fee.

If client has been backed up successfully within the set retention period of the software and is totally unrecoverable due the malpractice of Mitol PerfectBackup Limited then up to a maximum of £1,000,000 compensation will be payable.

Signed on Behalf of _____ (“Client Name / the Customer”)

.....

Signed on Behalf of Mitol Ltd PerfectBackup (“the Company”)

.....

