

## Service Supply Agreement

This agreement is made this \_\_\_\_\_ (“Commencement Date”)

### Between

(1) COBWEB SOLUTIONS LIMITED a company incorporated in England and Wales (registered number 3283443) whose registered address is at Delme 3, Delme Place, Cams Hall Estate, Fareham, Hampshire, PO16 8UX (“Cobweb”); and

(2) \_\_\_\_\_ a company incorporated in England and Wales (registered number \_\_\_\_\_) whose registered address is at Company Address – \_\_\_\_\_ (“the Customer”)

## 1 DEFINITIONS

In these terms, unless the context otherwise requires, the following expressions have the following meanings:

“Acceptable Use Policy”	means the Cobweb policy for the Customer’s use of Services, as set out on the Cobweb website at <a href="http://www.cobweb.com/termsand">www.cobweb.com/termsand</a> and may be amended by Cobweb from time to time.
“Confidential Information”	all information obtained by one party from the other which is expressly marked as confidential or which is manifestly confidential or which is confirmed in writing to be confidential within 7 days of its disclosure;
“Customer”	the user of the Services supplied under these Terms;
“Customer’s Material”	the Customer’s data loaded, received, maintained or transmitted by Cobweb on the System for the Customer under these Terms;
“Initial Period”	shall be 12 months unless otherwise stated in Schedule 1 in which case the Initial Period in Schedule 1 shall prevail. The Initial period shall commence on the Commencement Date.
“License Terms”	the licensing conditions and restrictions of the Software manufacturer, supplier or licensor, including (but not limited to) <ol style="list-style-type: none"><li>In respect of the Microsoft Software the licensing conditions set out at <a href="http://www.cobweb.com/terms">www.cobweb.com/terms</a> or available upon request;</li><li>In respect of other Software the licensing conditions set out at <a href="http://www.cobweb.com/terms">www.cobweb.com/terms</a> or available upon request;</li></ol>

“Software”	all machine readable data and instructions, including middleware and firmware and related updates and upgrades, licenses materials, user documentation, user manuals and operating procedures used or in the provision of, or the for the Customer to access, the Services;
"the Servers"	Cobweb's server(s) used for the purpose of providing the Services;
“the Services”	the aggregate of component services;
“Service Description”	the description of component services as set out at <a href="http://www.cobweb.com/terms">www.cobweb.com/terms</a> ;
"the SLA"	the Service Level Agreement for the Services
“System”	the equipment [hardware, software etc.] belonging to or used by Cobweb and which provides a link to the World Wide Web via the Internet;
"Terms"	the terms of this Agreement and the annexed Schedules.
“Working Days”	Monday to Friday excluding English Public Holidays.

## 2 SUPPLY OF THE SERVICES

- 2.1 Cobweb shall supply the Services in accordance with the provisions of these Terms.
- 2.2 Cobweb shall supply the Services in accordance with applicable Service Description for each element of the Services and the SLA for the Services. The Service Description for each element of the Services and the SLA for the Services are set out at [www.cobweb.com/term](http://www.cobweb.com/term) and may be varied from time to time.
- 2.3 Cobweb reserves the right to control, direct and establish technical procedures for the use of the Server and provision of the Services and the Customer shall follow the reasonable instructions and procedures of Cobweb. Where necessary, Cobweb may make reasonable operational changes to the Services without prior notice to the Customer.
- 2.4 Cobweb has obtained and shall use its reasonable endeavours to ensure that it retains all necessary consents, licenses or certifications required for the provision of the Services.
- 2.5 Cobweb shall use reasonable care and skill when providing Services but does not guarantee that the Services shall be continually available to the Customer. There may be occasions when Services are disrupted through an error or act of the Customer or another third party or, circumstances outside the reasonable control of Cobweb (“Service Disruption”). In the event of unavailability of Services to the Customer, other than in the case of Service Disruption, Cobweb shall reimburse the Customer (“Service Credit”) as follows:

Service Credit (% of monthly charge)	Service Availability
25%	99.0% to 99.5% inclusive
50%	95.0% to 98.9% inclusive
100%	Less than 95.0%

- 2.1 The service availability calculation excludes standard Exchange Server cluster failovers
  - 2.1.1 Service level data is based on data collected over whole calendar months.

2.1.2 The Service Credit shall be the sole remedy to the Customer in respect of the unavailability of Services.

- 2.2 Cobweb shall, either on its own reasonable judgment, or on request by the Customer, promptly suspend availability of the Services over the internet. Cobweb shall likewise, on its own reasonable judgment or on request by the Customer, promptly resume the provision of the Services following such suspension.
- 2.3 Cobweb shall maintain reasonable safeguards against the destruction, loss or unauthorised alteration of the Customer's Material, and shall maintain reasonable security procedures to restrict the destruction, corruption or unauthorised access to the Customer's Material, including back up material.
- 2.4 Cobweb will at all times implement and use appropriate virus-protection procedures and software on the Customer's Material.
- 2.5 Cobweb, upon reasonable notice to the Customer, may upgrade the Services to a new version of the Services at any time.

### 3 CONDITIONS OF USE OF THE SERVICES BY THE CUSTOMER

- 3.1 The Customer will be responsible for obtaining and maintaining the Customer's own compatible computer system being all such equipment, software and communications lines, including any public lines required by the Customer to access the Services ("Customer's Equipment"). Cobweb has no responsibility for or liability with respect to the Customer's Equipment.
- 3.2 All Software made available for use by the Customer under these Terms is provided subject to the License Terms.
- 3.3 The Services are supplied subject to the condition that there will be no abuse or fraudulent use thereof. Abuse and fraudulent use of the Services shall include (without limitation):
- 3.3.1 obtaining, or attempting to obtain, the Service by rearranging, tampering with, or making connection with any facilities of Cobweb, or by any trick, scheme, false representation or false credit device, or by or through any other fraudulent means or devices whatsoever, with intent to avoid payment, in whole or in part, of the regular charges for the Services;
  - 3.3.2 attempting to, or actually obtaining, accessing, altering, or destroying the data files, programs, procedures and/or information of Cobweb or of another customer of Cobweb;
  - 3.3.3 using the Services in such a manner as to interfere unreasonably with the use of the Services by any other user or authorised person;
  - 3.3.4 the resale of the Services without Cobweb's prior written approval.
- 3.4 Cobweb shall take reasonable steps to protect the Customer's information in accordance with the provisions of ISO 27001:2005, however the Customer acknowledges that the internet is not secure and accordingly that Cobweb cannot guarantee the privacy of the Customer's information.
- 3.5 The Customer shall use the Services in accordance with the Acceptable Use Policy of Cobweb and in particular (but without limitation) the Customer shall not:
- 3.5.1 send any message, email or other communication which, under the laws of England and Wales or, where appropriate, under international laws, conventions, codes or regulations applicable to the Internet:
    - 3.5.1.1 is in breach of those laws, codes or regulations including but not limited to infringement of copyright and other intellectual property rights ("IPRs"), defamation, theft, fraud, drug-trafficking, money-laundering and terrorism;
    - 3.5.1.2 may incite violence, sadism, cruelty or racial hatred;
    - 3.5.1.3 may facilitate prostitution or paedophilia;
    - 3.5.1.4 is pornographic, obscene, indecent, abusive, offensive or menacing.

- 3.6 The Customer shall use an up-to-date virus-scanning program on all the Customer's Material.
- 3.7 The Customer shall maintain confidentiality of its login names, passwords and other confidential information relating to the Customer's access to the Service.
- 3.8 The Customer acknowledges that Cobweb does not operate or exercise control over, and accepts no responsibility for the content of the Customer's Materials received on the System.

#### **4 PROFESSIONAL SERVICES**

- 4.1 Cobweb shall provide professional services as agreed between Cobweb and the Customer ("Statement of Work") in addition to and to compliment the Services.
- 4.2 The Statement of Work shall set out:
  - 4.2.1 The scope of the professional services to be provided by Cobweb;
  - 4.2.2 The deliverables by Cobweb to the Customer;
  - 4.2.3 The period during which the professional services are to be delivered or the date by which deliverables will be delivered to the Customer;
  - 4.2.4 The specification of the professional services to be delivered;
  - 4.2.5 The conditions upon which professional services will be delivered to the Customer by Cobweb;
  - 4.2.6 The acceptance tests to be carried out (if applicable) in respect of the professional services;
  - 4.2.7 The charges to be paid by the Customer to Cobweb for the supply of professional services.
- 4.3 No Statement of Work shall be binding until signed by both Cobweb and the Customer;
- 4.4 Cobweb shall perform the professional services in a professional manner and with due care and skill;
- 4.5 Each party acknowledges that the scope and specification of the professional services may be subject to change subsequent to the commencement of the professional services. Variation to the Statement of Work shall be agreed between Cobweb and the Customer and confirmed in writing ("Change Order") by both parties
- 4.6 Where Cobweb perform professional services at a Customer site or another third party site the Customer will pay Cobweb all travel and all out of pocket expenses on demand. For the avoidance of doubt travel costs will be charged at 50 pence per mile, all other travel and subsistence expenses will be recharged at cost.
- 4.7 The Customer may cancel the Statement of Work by giving notice to Cobweb in writing. The following charges are payable in the upon cancellation:
  - 4.7.1 30 days' notice or more before commencement of the Statement of Work - no charge
  - 4.7.2 14 – 29 days' notice before commencement of the Statement of Work - 50% of charges as per the Statement of Work
  - 4.7.3 Less than 14 days' notice before commencement of the Statement of Work - 100% of charges as per the Statement of Work

#### **5 INDEMNITY**

- 5.1 Each party shall indemnify the other against any claims, proceedings, losses, liabilities, damages charges and expenses (including reasonable costs) of whatever nature arising out of or in connection with any claim or action relating to a breach of the obligations (including negative obligations) under this Agreement provided however that each party:
  - 5.1.1 shall not make any admissions without the other parties prior written consent;
  - 5.1.2 shall not take any step (or omit to take any step) which would prejudice the other parties defence of the claim or action; and

5.1.3 shall allow the other party to conduct and/or settle all negotiations and litigation resulting from such claim or action provided that where the Customer fails to commence and diligently undertake conduct of such matters within 7 days of the Customer having been notified of the dispute then Cobweb shall be at liberty to take over conduct of the matter at the cost of the Customer (with all costs, disbursements and expenses to be reimbursed on demand).

5.2 Cobweb shall, at the reasonable request of the Customer, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by Customer for any reasonable legal costs, disbursements and out of pocket expenses incurred in so doing.

## **6 PAYMENT**

6.1 The Customer shall pay to Cobweb the charges for the supply of the Services as set out in Schedule 1 ("the Service Charges").

6.2 The Service Charges payable under these Terms are exclusive of Value Added Tax which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law

6.3 Cobweb may vary all or any of the Service Charges by giving 60 days written notice to the Customer in advance of the expiry of the Initial Period or any anniversary thereof, save for the passing through of any increased costs by a third party service provider or licensor in which case the Service Charges may be varied by giving 30 days' notice at any time.

6.4 Where the Service Charges are not paid by the Customer when due, Cobweb upon 7 days' notice may suspend the Services to the Customer and the Statement of Work.

6.5 The customer shall pay charges for professional services under the Statement of Work within 30 days of the performance of such services, or upon the completion or acceptance of such professional services, whichever is the earlier. Cobweb shall notify the customer in writing when it considers the professional services to have been performed/completed/accepted as appropriate. Where payment terms are specified in the Statement of Work they shall override this clause 6.5.

6.6 Any Services provisioned to the Customer subsequent to the Commencement Date in addition to the Services in Schedule 1 shall be deemed to be additions to Schedule 1("Additional Services") and provided in accordance with the Terms of this Agreement. Additional Services shall co-terminate at the end of the Initial Period or if the Initial Period is past, the next anniversary of the Commencement Date.

6.7 Any applicable Cancellation Fee shall be paid within 7 days of the termination date of this Agreement.

## **7 COBWEB'S SOFTWARE**

7.1 Cobweb hereby grants to the Customer and the Customer hereby accepts a non-exclusive and non-transferable license to use any Software provided by Cobweb to access the Internet, for the sole purpose of enabling the Customer to use the Services. The Customer hereby acknowledges that the title of and intellectual property rights to all such software is and shall remain in the ownership of Cobweb. The Customer hereby undertakes to use its best endeavours to protect and keep confidential all Cobweb software used by it, and shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such software.

## **8 LIMITATION OF LIABILITY**

8.1 Except as specified in clause 2.5 Cobweb shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the supply of Services, the System, the connectivity to the Internet, any Software or its

use, application, support or otherwise, except to the extent to which it is unlawful under the applicable laws and regulations to exclude such liability.

- 8.2 Cobweb shall not be liable to the Customer for loss of profits or contracts, loss of goodwill or other special, indirect or consequential loss whether arising from negligence, breach of contract or howsoever
- 8.3 In the event that any exclusion contained in these Terms shall be held to be invalid for any reason and Cobweb becomes liable for loss or damage that it may otherwise have been lawful to limit, such liability shall be limited to the fees paid by the Customer in the 12 month period preceding the occurrence of the liability.
- 8.4 Cobweb does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of Cobweb its employees, agents or authorised representatives and further to the extent Cobweb is not able to exclude such liability by law.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 Cobweb acknowledges and agrees that the copyright, trademarks, trade names, patents and all other intellectual property rights vesting in the Customer shall remain vested in the Customer and nothing in these Terms shall operate as an assignment to Cobweb of such intellectual property rights.
- 9.2 The Customer acknowledges and agrees that the copyright, trademarks, trade names, patents and all other intellectual property rights vesting in Cobweb shall remain vested in the Cobweb and nothing in these Terms shall operate as an assignment to the Customer of such intellectual property rights.
- 9.3 Cobweb acknowledges that the Customer's Material will at all times remain under the sole ownership of the Customer with the Customer retaining all rights to the same.

## **10 CONFIDENTIALITY**

- 10.1 Cobweb and the Customer shall treat as confidential all Confidential Information and shall not divulge such Confidential Information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this clause.

## **11 DATA PROTECTION**

- 11.1 The Customer hereby notifies Cobweb that the Customer's Material contains personal data as defined in Section 1(1) of the Data Protection Act 1998 (the Customers Personal Data) and warrants to Cobweb that the Customer has notified under the said Act in respect of the Customers Personal Data.
- 11.2 The Customer warrants and undertakes to Cobweb that:
  - 11.2.1 the Customers Personal Data has been obtained and processed (in so far as the Customers Personal Data has been processed) lawfully;
  - 11.2.2 the Services will be entirely consistent with and appropriate to the specified and lawful purposes for which the Customer has notified under the said Act in respect of the Customers Personal Data (the "Notified Purposes");
  - 11.2.3 the Customer has not hitherto and will not during the continuance of these Terms use or disclose the Customers Personal Data or any part thereof in a manner incompatible with the Notified Purposes;

11.2.4 the Customers Personal Data is adequate, relevant and not excessive in relation to the Notified Purposes; and

11.2.5 the Customers Personal Data is accurate and the Customer shall keep the Customers Personal Data fully up to date at all times during the continuance of these Terms.

11.3 In addition to any indemnity given by the Customer elsewhere in this Agreement, the Customer shall indemnify Cobweb against any loss or damage which Cobweb may sustain or incur as a result of any breach by the Customer of the provisions of this Clause. In performing its Services Cobweb may process (albeit for diagnostic or investigative purposes only) personal data belonging to the Customer. Cobweb hereby warrants to the Customer that in such circumstances it will in respect of such personal data observe all the obligations pertaining to a data processor under the Data Protection Act 1998 and will indemnify the Customer against all breaches of the said Act by Cobweb in respect of the Customers data.

## 12 FORCE MAJEURE

Notwithstanding clause 2.5, Cobweb will not be responsible for any delay in, or failure of, the Services or the internet due to any occurrence, event or cause beyond Cobweb's reasonable control, which may prevent or hinder the performance of Cobweb of any of its obligations under this Agreement.

## 13 DURATION AND TERMINATION

13.1 These Terms shall commence on the Commencement Date and shall continue until terminated in accordance with this Clause 13.

13.2 These Terms may be terminated by the Customer, without penalty, by giving at least one month's notice in writing in advance of the expiry of the Initial Period or any subsequent anniversary of the Commencement Date thereafter. In the event such notice is given, termination of these Terms shall take effect on the expiry of the Initial Period or subsequent anniversary of the Commencement Date, as appropriate.

13.3 Subject to clause 13.2 and 13.4, if the Customer wishes to terminate this Agreement other than on the expiry of the Initial Period or any anniversary date thereafter, the Customer shall pay the Service Charges due between the date of termination and the expiry of Initial Period or if the Initial Period is past, the next anniversary of the expiry of the Initial Period ("the Cancellation Fee").

13.4 These Terms may be terminated forthwith by either party on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or a bankruptcy petition presented to the court or shall cease or threaten to cease to carry on business.

13.5 Cobweb may cease to supply the Services forthwith without giving notice to the Customer if the Customer is in material breach of these Terms and has failed to rectify such breach (in the case of a breach capable of being remedied) within 14 days of receiving a written notice requiring it to do so.

13.6 Any termination under this clause 13 shall discharge Cobweb from any liability for further performance of the Services but its rights to make any claim for any antecedent breaches shall remain in force.

#### 14 **AMENDMENT**

14.1 No variation to the provisions of these Terms or Schedules shall be of any effect unless made in writing and agreed and signed by or on behalf of Cobweb and the Customer.

#### 15 **ASSIGNMENT**

15.1 Cobweb may perform any of the obligations undertaken by it and to exercise any of the rights granted to it under these Terms through any other company which at the relevant time is its holding company or subsidiary (as defined by section 1159 of the Companies Act 2006) or the subsidiary of any such holding company, and any act or omission of any such company shall for the purposes of these Terms be deemed to be the act or omission of Cobweb.

#### 16 **NOTICES**

16.1 Any notice required or permitted under these Terms or required by statute, law or regulation shall (unless otherwise provided) be in writing and shall be delivered in person, sent by registered mail as appropriate, properly posted and fully pre-paid in an envelope properly addressed or sent by facsimile or email to the respective addressee at its usual place of business or to such other address, facsimile number or email address as may from time to time be designated by notice hereunder.

16.2 Any such notice shall be considered to have been received on the next working day following delivery, facsimile or emailing or in any other event within seven (7) Working Days after it was mailed in the manner provided under this clause.

#### 17 **LAW**

17.1 These Terms shall be governed by and construed in accordance with the laws of England and Wales.

17.2 Any dispute which may arise between the parties concerning these Terms shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.

#### 18 **INTERPRETATION**

In these Terms:

18.1 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

18.2 words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated; and (in each case) vice versa;

18.3 any reference to Cobweb or the Customer in these Terms includes a reference to their successors in title and permitted assigns;

18.4 the headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of these Terms.

18.5 any reference to a clause means a clause in this Agreement unless the contrary is stated.

18.6 references to "written" (e.g. written consent or written notice) shall include by email.

#### 19 **SEVERABILITY**

19.1 Notwithstanding that the whole or any part of any provision of these Terms may prove to be illegal or unenforceable the other provisions of these Terms and the remainder of the provision in question shall remain in full force and effect.



**20 THIRD PARTIES**

20.1 Cobweb and the Customer confirm their intent not to confer any rights on any third parties by virtue of these Terms and accordingly the Contracts (Rights of Third parties) Act 1999 shall not apply.

**21 WAIVER**

21.1 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

**22 ENTIRE AGREEMENT**

22.1 Each party on behalf of itself and as agent for each of its related persons acknowledges and agrees with the other party (each such party acting on behalf of itself and as agent for each of its related persons) that:-

- 22.1.1 this Agreement constitutes the entire and only Agreement between the parties and their respective related persons relating to the subject matter of this Agreement;
- 22.1.2 neither it nor any of its related persons has been induced to enter into this Agreement in reliance upon, nor has any such party been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in this Agreement and, to the extent that any of them have been, it (acting on behalf of itself and as agent on behalf of each of its related persons) unconditionally and irrevocably waives any claims, rights or remedies which any of them might otherwise have had in relation thereto;

PROVIDED THAT the provisions of this clause 22.1 shall not exclude any liability with any of the parties or, where appropriate, their related persons would otherwise have to any other party or, where appropriate, to any other party's related persons or any right which any of them may have in respect of any statements made fraudulently by any of them prior to the execution of this Agreement or any rights which any of them may have in respect of fraudulent concealment by any of them.

EXECUTED in two originals as per the Commencement Date above:

Signed for and on behalf of COBWEB

Signature:

Name:

Title:

Date:

Signed for and on behalf of CUSTOMER

Signature:

Name:

Title:

Date:

**SCHEDULE 1**

A) INITIAL PERIOD Months

B) SERVICE CHARGES

The Service Charges provided below are in relation to the Services.

The charges below are per mailbox per month.

**HOSTED MICROSOFT EXCHANGE**

		Price	Quantity
	Exchange Advanced		
	Exchange 2013 Professional		
	Exchange 2013 Webmail		
	Microsoft Outlook Client License		

**HOSTED LYNC**

		Price	Quantity
	Lync IM & P		
	Lync Professional Conferencing		
	Lync Professional Voice		
	Lync Advanced		

**HOSTED BLACKBERRY ENTERPRISE SERVER**

	Service	Price	Quantity
	Setup Fee (One-Off)		
	BlackBerry Enterprise		

**CUSTOMER DIRECTORY INTEGRATION (CDI)**

	Service	Price	Quantity
	CDI		
	CDI Domain Controller – Set Up (Minimum of 2)		

---

## MESSAGE ARCHIVING

	Service	Retention Period	Price	Quantity
	Global Relay - Message Archiver	Unlimited		
	Global Relay - Message Archiver with Compliance Review	Unlimited		
	Global Relay Setup (10 – 100 Users)			
	Global Relay Setup (100+ Users)			

## IMAGE &amp; CONTENT CONTROL

	Service	Price	Quantity
	Email Image & Content Control		

## HOSTED SHAREPOINT 2010 FOUNDATION

	Option	Price	Quantity
	SharePoint - up to 10 Users + 10GB Storage		
	SharePoint - 1 Additional User		
	SharePoint - 1GB Additional Storage		
	Volume Discount 50 - 99 Users		
	Volume Discount 100+ Users		

## PROFESSIONAL SERVICES

	Service	Price	Quantity
	Day Rate Professional Services	Subject to Scope of work and duration of project.	

- PAYMENT
- All monthly charges are payable monthly in advance by Direct Debit
  - All set up charges are billed in first month

- 
- All professional services charges are payable within 30 days of completion
  - All charges are monthly unless otherwise stated
  - Prices are subject to VAT at the prevailing rate