

# Cloud & Hosting Services

Terms & Conditions

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# Cloud and Hosting Services Terms of Service

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## Introduction

This Schedule of Services provides definitions and terms of service to which the Client may be subscribed or have ordered. The precise services to which the Client has subscribed or ordered are as specified in the quotation(s) and/or sign off Authorised Order Form signed by the Client and returned to the Supplier. The Supplier would welcome the opportunity to provide those services not currently ordered or subscribed to by the Client but additional fees will become chargeable.

### A.1. Commencement Date

These services will commence on the start date stated on the Authorised Order Form.

### A.2. Duration of Service

This Service(s) specified in this schedule is for the minimum term stated on the Authorised Order Form and is automatically renewable for a further minimum stated term at the end of this initial period and will continue to renew on completion of each term indefinitely unless either party gives the other ninety (90) days" prior written notice of its intent not to renew the Service(s) at the anniversary of the initial or renewable term.

### A.3. Definition

The Hosting Services Schedule incorporates the following documents by reference: (i) the Authorised Order Form that describes the Services you are buying and related fees; (ii) these General Terms and Conditions containing the general terms and conditions applicable to all Services (iii) the Acceptable Use Policy; When we use the term "Hosting Services Agreement" or "Agreement" in any of these documents, we are referring collectively to all of them.

### A.4. DEFINED TERMS

Some words used in this Schedule have particular meanings:

"Hosted System" means a combination of hardware, software and networking elements that comprise an information technology system. Depending on the Services you are buying, the Hosted System may consist of a dedicated system for the Client's use only, or the right to use certain parts of a shared system that the Supplier maintains for many customers, or a combination of some dedicated elements and some shared elements.

"Hosting Services" means: (i) the Supplier's provision for the Client's use of the Hosted System described in the Services Description, and (ii) Support.

"Product Terms and Conditions" means the terms and conditions for the particular Hosting Services you are buying.

"Services Description" means a written description of the Hosted System and/or Supplementary Services you are buying from the Supplier, and related fees that is incorporated by reference in the Schedule, including any "plan" or other name given to a Services description that you submit to the Supplier as part of an online order process.

"Service Level Guarantee(s)" means a guarantee or guarantees identified as a "Service Level Guarantee" or "Service Level Guarantees" in the applicable Product Terms and Conditions.

### A.5. OUR OBLIGATIONS

The Supplier will provide the Hosting Services in accordance with the Services Description, the Service Level Guarantees, and other specifications in this Schedule. The Supplier will perform any Supplementary Services in a good and professional manner. The Supplier will maintain security as detailed in the following Datacentre Security statement

## Datacentre Security Statement

The Supplier's devices used to provide the Services will be located in a controlled access data centre. Access to the data halls will be restricted to Lanmark employees or its agents who need access for the purpose of providing the Services. The data centre will be staffed 24/7/365 and will be monitored by video surveillance. Entrance to the data centre will be authorised by proximity-based access cards and biometric hand scanners or other approved security authentication methods.

### Lanmark Personnel

- **Screening:** The Supplier will perform background screening of its employees who have access to customers' accounts.
- **Access:** The Supplier will restrict the use of administrative access codes for customer accounts to its employees and other agents who need the access codes for the purpose of providing the Services. Lanmark employees or its agents who use access codes shall be required to log on using an assigned user name and password.

### Reports of and Response to Security Breach

The Supplier will immediately report to you any unauthorised access or release of your information of which we become aware. Upon request, we will promptly provide to you all information and documentation that we have available to us in connection with any such event.

The Supplier will provide the specific security services described in the Client's Services Description. Specific Hosting Services products Service Level Guarantees can be found in Section B. The Supplier will perform all Services in accordance with applicable law.

## A.6. YOUR OBLIGATIONS

You must use reasonable security precautions in connection with the Client's use of the Services. You must comply with the laws applicable to the Client's use of the Services and with the Acceptable Use Policy. You must cooperate with the Supplier's reasonable investigation of Service outages, security problems, and any suspected breach of the Schedule. You are responsible for keeping the Client's account permissions, billing, and other account information up to date using the portal or via another Supplier defined process.

## A.7. PROMISES WE DO NOT MAKE

- a. We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of the Client's privacy, Confidential Information and property.
- b. We disclaim any and all warranties not expressly stated in the Schedule to the maximum extent permitted by law, including the implied warranties relating to satisfactory quality and fitness for a particular purpose. You are solely responsible for the suitability of the services chosen. Any services that we are not contractually obligated to provide but that we may perform for you at the Client's request and without any additional charge are provided on an 'AS IS' basis.
- c. We do not have knowledge of the data you store within the Client's Hosted System, including the quantity, value or use of the data. You are therefore responsible to take all reasonable steps to mitigate the risks inherent in the provision of the Services, including data loss. The Services that the Supplier has agreed to provide to assist you to mitigate such loss (if required) are set out in the Services Description, which may include backup services and geographically redundant servers. The Supplier does not promise to back up the Client's data unless you have purchased backup services. If you purchase backup services the Supplier does not promise to retain any data backup(s) for longer than the agreed data retention period as set out in the Services Description. In all events, you release the Supplier from liability for loss of data to the extent that the data has changed since the time that we were last required by the Schedule to perform a backup.

- d. We will provide Support only to the Client's administrative or technical contacts listed on the Client's account. We will not provide support directly to the Client's end users unless specifically agreed in writing.
- e. Certain the Supplier Services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to the Client's business and for selecting and using those Services in a manner that complies with the applicable requirements.

#### **A.8. UNAUTHORISED ACCESS TO YOUR DATA OR USE OF THE SERVICES**

The Supplier is not responsible to you or any third party for unauthorised access to the Client's data or the unauthorised use of the Services unless the unauthorised access or use results from the Supplier's failure to meet its security obligations stated in Section 3 (Our Obligations) of these General Terms and Conditions or the Services Description. You are responsible for the use of the Services by any employee of the Client's, any person you authorise to use the Services, any person to whom you have given access to the Services, and any person who gains access to the Client's data or the Services as a result of the Client's failure to use reasonable security precautions, even if such use was not authorised by you.

#### **A.9. EXPORT MATTERS**

You represent and warrant that you will not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, nor will you provide administrative access to the Services to any persons (including any natural person, government or private entity or other form of body corporate) that is located in or is a national of any country that is embargoed or highly restricted under United Kingdom export regulations.

#### **A.10. CHANGES TO THE ACCEPTABLE USE POLICY**

We may change the Acceptable Usage Policies' from time to time to reflect changes in law, regulation or accepted industry practice and will inform you on this website when we do so. To make the most of the guidance contained in the AUPs it is The Clients responsibility to keep up to date with changes and review them on a regular basis.

#### **A.11. SUSPENSION OF SERVICES**

- a. We may suspend Services without liability if:
  - i) The Supplier reasonably believe that the Services are being used in breach of the Schedule;
  - ii) The Client does not cooperate with our reasonable investigation of any suspected violation of the Schedule;
  - iii) There is an attack on the Client's Hosted System or the Client's Hosted System is accessed or manipulated by a third party without the Client's consent;
  - iv) We are required by law or a regulatory or government body to suspend the Client's Services; or
  - v) There is another event for which we reasonably believe that the suspension of Services is necessary to protect the Supplier network or our other customers.

b. We will give you advance notice of a suspension under this clause of at least twelve (12) Business Hours unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect the Supplier or its other customers from imminent and significant operational, legal, or security risk. If the Client's Hosted System is compromised, then you must address the vulnerability prior to the Supplier placing the Hosted System back in service or, at the Client's request, we may be able to perform this work for you at our standard hourly rates as a Supplementary Service.

## **A.12. SOFTWARE**

a. General. You may not copy any software we provide for the Client's use, unless expressly permitted by this Schedule. You may not remove, modify or obscure any copyright, trade mark, or other proprietary rights notices that appear on any software we provide for the Client's use. Unless permitted by the terms of an open source software licence, you may not reverse engineer, decompile or disassemble any software we provide for the Client's use except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to the Supplier. If you use any non-the Supplier supplied software on the Client's Hosted System, you represent and warrant to the Supplier that you have the legal right to use the software in that manner. On the Supplier's request you will certify in writing that you are in compliance with this clause and any other software licence restrictions that are part of the Schedule, and will provide reasonable evidence of the Client's compliance as we may reasonably request.

b. Client Provided Licences. If we have agreed to install, patch or otherwise manage software for you in reliance on the Client's licence with a software vendor (rather than the Supplier's licence with the software vendor), then you represent and warrant that you have a written licence agreement with the software vendor that permits the Supplier to perform these activities. You agree that you will provide the Supplier with evidence of licensing as the Supplier may reasonably require prior to the scheduled deployment date, and from time to time as necessary to update the status of the licence. If you fail to provide the required evidence of licensing, the Supplier may, at its option, either:

- i) delay the deployment date for the Hosted System that was to include such software until such time as the required evidence is provided;
- ii) deploy the Hosted System in reliance on the Supplier's licensing agreement with the software vendor, and charge you its standard fee for the use of the software until such time as the required evidence is provided; or
- iii) suspend or terminate the Schedule.

c. Your licensed software may not be compatible with our standard process for deploying and repairing Hosted Systems. In addition, in order to install the software, the Supplier may require you to send the physical or electronic media provided to you by the software vendor, both for deployment, and again in the event of a failure of the Client's Hosted System. You agree that the Supplier will not be in breach of any Service Level Guarantee or other obligation under this Schedule that would not have occurred but for the delay resulting from our agreement to use the Client's licensed software.

## **A.13. WHO MAY USE THE SERVICES**

You may permit the Client's subsidiaries and affiliated companies to use the Services if you wish, however you are responsible for the acts or omissions of the Client's permitted users. The Supplier will provide support only to you, not to the Client's customers, subsidiaries or affiliates. There are no third party beneficiaries to the Schedule, meaning that the Client's customers, subsidiaries, affiliates, and other third parties do not have any rights against either of us under the Schedule.

## **A.14. DATA PROTECTION**

Each of us agrees to comply with our respective obligations under the Data Protection Act 1998 (the "Act") as applicable to personal data that it controls or processes as part of, or in connection with, its use or provision of the Services. Specifically, but without limitation, you must comply with the Act as it relates to personal data that you store or transfer using the Client's Hosted System.

## **A.15. DATA CENTRES**

We are constantly upgrading our data centre facilities and in order for you to benefit from this, you agree that we may relocate the Client's servers within our data centres, make changes to the provision of the Services, URLs and the Client's

IP addresses and may establish new procedures for the use of the Services. We may also make changes to DNS records and zones on the Supplier operated or managed DNS servers as we deem necessary for the operation of the shared network infrastructure. In each case, we will give you reasonable advance notice and use all reasonable endeavours to minimise the effect that such change will have on the Client's use of the Services.

#### **A.16. NO HIGH RISK USE**

You may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, you may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical life support devices.

#### **A.17. TEST SERVICES**

If you use any Services that have been designated as a "Beta" service, pilot test, limited release, or with similar designation, then the Client's use of that Service is subject to the terms at [www.lanmark.co.uk/betaservices.html](http://www.lanmark.co.uk/betaservices.html)

#### **A.18. SERVICES MANAGEMENT AGENT**

You agree that you will not interfere with any services management software agent(s) that the Supplier installs on the Client's Hosted System. The Supplier agrees that its agents will use only a minimal amount of computing resources, and will not interfere with the Client's use of the Client's Hosted System. The Supplier will use the agents to track the hardware and software that the Supplier provides, so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. The Supplier may also use the software to identify security vulnerabilities. The Supplier will not use the agents to view or capture the Client's content or data. Your Services will become "unsupported" as described in the Product Terms if you disable or interfere with our service management software agents. You agree that the Supplier may access the Client's Hosted System to reinstall services management software agents if you disable or interfere with their performance.

#### **A.19. OWNERSHIP OF OTHER PROPERTY**

You do not acquire any ownership interest in or right to possess the Hosted System and you have no right of physical access to the Hosted System. We do not acquire any ownership interest in or right to the information you transmit to or from or store on the Client's the Supplier servers or other devices or media.

## B. SERVICE LEVEL AGREEMENTS

### Introduction

This Service Level Agreement/Guarantee ("SLA") applies to and governs The Supplier SharePoint, Web Hosting, Virtual Private Server, Exchange Hosting, CRM and other remotely provided services The Supplier may offer and further defined below (collectively, "Services" and each a "Service") and that the Client order and pay for in accordance with and subject to your compliance with The Supplier's General Product Terms & Conditions Agreement ("GTCA") & Hosting Services Product Terms & Conditions. (HS).

Except as noted below, this SLA applies to each of the SharePoint, Web Hosting, Virtual Private Server, Exchange Hosting and CRM Services. Capitalized terms in this SLA have the meaning set forth in the MSA unless they are otherwise defined herein or the context requires otherwise

### B.1. SERVICE DEFINITIONS

- **SharePoint Service:** The Supplier's application service for browser-based collaboration and documentmanagement, created using Windows® SharePoint® services.
  
- **Web Hosting Service:** The Supplier's application service making available shared resources on a server to make a site viewable on the Internet for other users.
  
- **Virtual Private Server Service:** The Supplier's application service making available a virtual server environment that runs its own operating system and sets of dedicated resources.
  
- **Exchange Hosting Service:** The Supplier's application service for email, calendaring, task management, and file sharing, created using Microsoft® Exchange server software.
  
- **CRM Service:** The Supplier's application service for managing relationships with customers, including the capture, storage, and analysis of information, created using Microsoft Dynamics® CRM.

Such Services are provided as network-based Services and each charged for on a monthly subscription basis. The Supplier provides all server and software maintenance, including 24/7 monitoring, testing and deployment of software patches, bug fixes, service packs, and same-version upgrades, and monitors and manages user accounts according to the provisions set forth in this SLA. Each Service also includes the provision of The Supplier's proprietary account provisioning and management interface for use by the Client's corporate administrator and users in managing the Client's organisation's accounts.

### B.2. DISASTER RECOVERY

The Supplier schedules daily network backups to the shared backup devices. Backups are monitored and checked for errors, and regularly scheduled tests of the restoration procedures are performed. Backup copy retention time is three (3) (Web Hosting and Virtual Private Server Services), five (5) (SharePoint and CRM Services) or seven (7) (Exchange Hosting Service) days, as applicable. The Supplier does not guarantee, however, that a valid backup is available for every day of this 3/5/7 day period, as applicable. If a disruption of the Service occurs, The Supplier will assign its highest priority and will make its best commercial efforts to ensure the timely restoration of the Service. Depending on the type of disruption that has occurred, The Supplier may elect to first restore the Service without the data. Any data not immediately accessible after a disruption in the Service will be restored from the most recent backup and made accessible with The Supplier's highest priority. In order to ensure the readiness of The Supplier's operators to complete

the offline restoration process, The Supplier runs frequent drills to test restoration performance. Please note, however, that The Supplier is not responsible for data loss resulting from the failure or loss of backup media.

### **B.3. RESTORATION**

The Supplier recognizes that from time to time, the Clients users or administrators may mistakenly delete, in whole or in part, items in the Clients database, mailbox or public folders, as applicable. As this is not a system fault and restoration may require partial implementation of The Supplier's disaster recovery procedures, The Supplier reserves the right to charge the Client, and the Client agree to pay for, these restorations for a fee of £100 (GBP) per hour (with a minimum fee of £75 (GBP), plus taxes. Please note, however, that The Supplier does not guarantee the integrity of the Web content or mailbox content, as applicable, of each individual backup. (Only applicable to Exchange Hosting Service) Note that items within a mailbox that have been accidentally deleted can usually be restored directly from the Deleted Item Folder by the end user, even after the Deleted Item folder has been emptied. (Instructions for this procedure are contained within the Outlook® Help system.) Note, however, that The Supplier retains these deleted items online for no more than seven (7) days. If a public folder or mailbox cannot be recovered from the online Deleted Items storage, The Supplier must restore the items from the backup tapes employed in its disaster recovery systems. The Supplier will restore these items within 96 hours of an approved request from the Clients designated administrator acknowledging the fees.

### **B.4. Public Folder/Personal Mailbox Size Limits**

(Only applicable to Exchange Hosting Service) the Client will receive a specified amount of storage assigned to each mailbox, as per the terms of the Authorised Order Form. Warnings are automatically sent via email when a user reaches 90% - 95% of the limit granted by the system administrator for such user's personal mailbox. Another warning is sent via email when a user reaches the granted limit. Should a user exceed this limit, the user will be unable to send or receive email until the user either reduces the mailbox size below the imposed limit, or is granted an increase in personal mailbox capacity by the system administrator. The Supplier is not responsible for service unavailability or data loss caused by any mailbox or folder exceeding its storage capacity. The Client should not exceed the creation of more than 250 subfolders and/or 2 GB total inside its public folder. Should the Client exceed the amount of 250 subfolders and/or 2 GB total, The Supplier is not responsible for service unavailability and may require the Client to reduce the number of created subfolders. Furthermore, the number of items per public folder should not exceed 5,000 items. To manage the number of items per folder, the Client should configure expiration accordingly. If the 5,000 items per folder limit is reached regularly, even with an aggressive expiration schedule, consider segmenting the public folder into sub-topics and creating multiple public folders for each sub-topic.

### **B.5. Email Volume Limits**

(Not applicable to SharePoint Service) Inbound and outbound Internet emails may contain a maximum of 1,000 (Web Hosting and Virtual Private Server Services), 500 (Exchange Hosting and CRM Services – advanced plan) or 1,000 (CRM Services – enterprise plan) recipients, as applicable, including all addresses in the To, CC, and BCC fields. Additionally, The Supplier policy limits users to sending and receiving Internet emails to a maximum of 500 recipients per 24 hours. If a user regularly sends and/or receives more than this number of emails per 24 hours, The Supplier reserves the right to increase the monthly subscription rate as it applies to that user. These limitations apply only to Internet messages; internal messages are not limited.

### **B.6. Inactive/Disabled Account Policy**

Accounts that have been inactive or disabled either by the Client contacting The Supplier and requesting the account be terminated, by the Client using The Supplier's administration tools to terminate the account, or by The Supplier's account service team due to delinquent payment or otherwise, may be permanently deleted three (3) (Web Hosting Services) or seven (7) (SharePoint, Virtual Private Server, Exchange Hosting, and CRM Services) days, as applicable, after the date of account termination unless the Client agree to pay a The Supplier's applicable maintenance fee for the inactive accounts

## **SUPPORT & OTHER SERVICES**

### **B.7. Systems Support**

The Supplier provides systems support to the Clients designated administrators. Systems support is defined as support associated with issues/faults with The Supplier's servers. There are no additional charges for this support. (Note: please check the Server Status Page on our website before calling The Supplier's Client Support Services.) The Client may designate up to four (4), but no more than four (4), administrators who are authorized to call The Supplier's client support services.

### **B.8. End-user Support**

The Supplier also provides, at no additional charges, limited end-user support for each of the Web Hosting, SharePoint, Exchange Hosting and CRM Services. For the Virtual Private Server Service, end-user support may be purchased separately. Please contact The Supplier to purchase any such additional end-user support services.

### **B.9. Account Administration**

The Supplier provides the Clients designated administrators with access to an account management and administration tool. The Control Panel enables the Clients designated administrators to change passwords, enable new accounts and disable old accounts, etc. the Client are entirely responsible for maintaining the confidentiality of your passwords and account. Furthermore, the Client are entirely responsible for any and all activities that occur under your account. The Client agree to notify The Supplier immediately of any unauthorized use of your account or any other breach of security. The Supplier will not be liable for any loss that you may incur as a result of someone else using the Clients password or account, either with or without your knowledge. However, the Client could be held liable for losses incurred by The Supplier or another party due to someone else using the Clients account or password. The Client may not use anyone else's account at any time, without the permission of the account holder.

### **B.10. Wireless Service Support**

(Only applicable to the SharePoint, Exchange Hosting and CRM Services) For users who subscribe to The Supplier's BlackBerry-Exchange Service or other wireless services, The Supplier follows the same policies as above. The Supplier provides wireless access to the Exchange/SharePoint (as applicable) server through the use of third-party provided software. Success in configuration and set up of wireless server access is highly dependent upon device and wireless access provider chosen by the Client; therefore, The Supplier can only covenant that it shall use commercially reasonable efforts to assist the Client in configuring and supporting your wireless server access for the areas of the access not under The Supplier's direct control.

### **B.11. Customer Service, Billing and Sales Enquiries**

Non-technical and billing enquiries regarding the Clients account should be sent to [accounts@lanmark.com](mailto:accounts@lanmark.com) All enquiries regarding the purchase of new accounts or additional services should be addressed to [sales@lanmark.com](mailto:sales@lanmark.com)

### **B.12. Optional Support Services**

In addition to the support described above, The Supplier also offers custom contracts for different types of support programs; please contact The Suppliers sales representative for details. Additionally, several support offerings are available on an as-needed basis, with discrete pricing for each service. For advanced customisation features (such as application development, form design, etc.) or for data migration services from existing in-house applications running at the Clients site, The Supplier will work on a project basis. The Supplier will provide a statement of work, including a price quotation, prior to undertaking such a project.

## SERVICE LEVELS/PENALTIES

The Supplier is committed to providing the Client with quality Services. To support this commitment, The Supplier observes the following schedule of penalties for certain failures to comply with this SLA.

### B.13. Application Service Availability

The Supplier covenants to a 99.9% average scheduled availability of a Service. This guarantee is calculated on a monthly basis and applies 24 hours per day, 365 days a year, except as noted below. Availability is defined as the ability of a user within an organization to connect to a Service and access the CRM, SharePoint or other site, mailboxes, public folders or the Virtual Private Server connector, in each case as applicable. Rarely a Service may be functioning in some areas and not functioning in others; e.g., the documents may be available but the search engine may be unavailable (SharePoint Service), or the email function (receiving/sending emails) may be available but data in Public Folders and calendar may be unavailable (Exchange Hosting Service). This time of any such diminished functioning is not considered downtime and is excluded from the calculations of availability. In addition, the following conditions are specifically excluded from the calculation of availability:

- A problem with the Clients network, Internet connection, or a private network connection to the Service, which prevents the Client from reaching a site, connector, mailbox or public folder.
- A problem connecting to the Service due to any action on the Clients part that triggers a security response; e.g., scanning the ports on a The Supplier router triggers a shut-down of the ports used by the Client.
- Scheduled maintenance (normally scheduled between 11:00 PM and 3:00 AM GMT). The Supplier will provide two (2) days of notice prior to maintenance periods.
- Installation of urgent “hot-fixes”. These will be scheduled as quickly as possible after testing, with notification sent to the Client; the two-day notification above is waived for urgent hotfixes. The Supplier also reserves additional two (2) two-hour maintenance windows on Wednesdays and Saturdays from 11:00 PM to 1:00 AM (GMT), during which the servers may be offline for urgent fixes.
- Software “bugs” or problems within used products that create service interruptions. Bugs must be acknowledged by the vendor to be excluded from calculations.
- Problems connecting to the Service due to the addition of 3rd party (i.e. non-Microsoft) software installed on the Clients PC or network, e.g. Outlook plug-ins and add-ons.
- Movement of mailboxes within the *Exchange Hosting Service* among the different The Supplier servers – as The Supplier may do in its discretion. The Supplier makes no promise of notification to the Client for these moves, which, normally, should not affect users whose software is installed and configured correctly. Incorrect configuration of the user’s software that results in the inability to connect to the Service is not considered downtime and is excluded from the calculation of system availability.
- The period of time during which The Supplier disaster recovery is in effect.
- Any circumstance beyond The Supplier’s reasonable control.

The Supplier calculates uptime as a percentage of the time during a month (30 days X 24 hours X 60 minutes) that the system is available, excluding the conditions above.

#### **B.14. Penalty for Non-compliance/Application Service Availability**

On a per-Service basis, for each month in which the availability is below an average of 99.9% as calculated above, The Supplier will reduce the amounts due and payable to it relating to such Service for such month by 5%. In addition, for every 1% loss of availability below the 99.9% targeted average availability during the same calendar month, The Supplier will further reduce the amounts due and payable to it relating to such Service for such month by another 5%; provided that the maximum credit for non-compliance is 25% per month.

Note: Because of the architecture that The Supplier has created to provide the Service, users within an organization may be spread across separate and distinct servers. In the case where one server suffers downtime exceeding the service level guarantees, the Clients organization will be compensated only for those users with accounts on the non-complying server, on a pro-rated basis.

#### **B.15. Network Availability**

The Supplier covenants to 99.9% Network Availability. Network Availability is defined as the ability to pass incoming and outgoing TCP/IP traffic through The Supplier's network from/to the Clients IP transit provider (Internet Backbone).

Servers unavailability resulting from loss of Network availability is excluded from servers availability calculations if the Network Availability loss is caused by any circumstance beyond The Supplier's reasonable control, including such factors as IP transit provider (backbone) or end users' portion of the network (commonly known as "last mile") failure, denial of service or similar attacks directed at the The Supplier's servers or the The Supplier's network.

#### **B.16. Penalty for Non-compliance/Network Availability**

On a per-Service basis, for each month in which the availability is below an average of 99.9% as calculated above, The Supplier will reduce the amounts due and payable to it relating to such Service for such month by 5%. In addition, for every 1% loss of availability below the 99.9% targeted average availability during the same calendar month, The Supplier will further reduce the amounts due and payable to it relating to such Service by another 5%, provided that the maximum credit for non-compliance is 25% per month.

#### **B.17. Network Availability Monitoring**

To verify the Network server availability, The Supplier will probe router port to which the server is connected every two minutes, with a 10-second failure threshold. If the probe is not successful, the port is considered non-operational and NOC personnel on duty are automatically notified.

If two or more consecutive port probes fail, network downtime will be registered as the number of minutes between the first and the last failed tests. Downtime of less than five minutes in duration is not recorded. The Supplier will calculate server uptime and refund eligibility amounts based on this type of server monitoring.

#### **B.18. Web Hosting Servers Availability**

(Only applicable to Web Hosting Service)

The Supplier's primary commitment is to provide outstanding Web Hosting service to all customers. To support this commitment, The Supplier observes the following:

## WEB SERVER AVAILABILITY

The Supplier covenants to 99.9% Web server availability, defined as the ability to retrieve the HTTP headers from the hosting server, calculated on a monthly basis. The Supplier will not monitor availability of individual web sites but only monitors the server availability as a whole for the Web Hosting Service. Denial of service attacks or other types of attacks directed toward The Supplier's network of servers resulting in or contributing to downtime will not be included in Web Server Availability calculations.

**Web Applications Availability Note:** Web Server Availability guarantee does not cover availability of specific applications or servers products (such as ColdFusion or ASP.NET applications) deployed on Web Server. Performance of such applications largely depends on the quality of code comprising such application, which is beyond of The Supplier's control.

## SQL (DATABASE) SERVER AVAILABILITY

The Supplier covenants to 99.9% SQL (database) server availability. SQL server availability is defined as the ability to receive a response from SQL server on port 1433, calculated on a monthly basis. The Supplier will not monitor availability of individual SQL databases but only monitors the server availability as a whole.

Denial of service attacks or other types of attacks directed toward The Supplier's network of servers resulting in or contributing to downtime will not be included in SQL Server Availability calculations.

## MAIL SERVER AVAILABILITY

The Supplier covenants to 99.5% Mail server availability. Mail server availability is defined as the ability to retrieve the SMTP and POP headers from the mail server, calculated on a monthly basis. The Supplier will not monitor availability of individual mail accounts or mailboxes but only monitors the server availability as a whole.

Denial of service attacks, mail bombing, and other flooding techniques directed toward The Supplier's mail servers resulting in or contributing to downtime will not be included in Mail Server Availability calculations.

The outgoing email protocol used on the mail server (SMTP) is a "store-and-forward" type of protocol that does not guarantee immediate delivery of email messages. If the mail server's first email delivery attempt fails, it will re-attempt delivery according to a predefined schedule. If the message fails to be sent for 24 to 72 hours, the messages will be returned to the sender.

### B.19. Exchange Hosting Specific Terms

(Only applicable to Exchange Hosting Service)

**Email Delivery Restrictions:** Individual email messages (including attachments) inbound from the internet or outbound to the Internet are limited to 50 Mb. Internet email messages including attachments greater than 50 Mb will not be moved through The Supplier gateways and, instead, will generate an error message to the sender. If users require the ability to send Internet email messages over 50 Mb, The Supplier can, upon request, make special arrangements for such users. Additionally, The Supplier will assist clients in understanding how to reduce the size of, or separate, large documents so that they can be transmitted via the Exchange Hosting Service.

**Mail Delivery Times:** Email messages including attachments of less than 20 Mb that are received inbound from the Internet gateways, or those sent from one mailbox on the Exchange Hosting Service to a second mailbox on the Service, generally will be delivered in 60 seconds or less. Email messages including attachments of less than 20 Mb outbound to Internet gateways generally will be sent from the Exchange Hosting Service within 60 seconds; delays at the gateways due to Internet issues are not covered by this SLA.

**Exceptions:** The Supplier makes no covenant regarding the timing of delivery or receipt of mail being processed on the Internet. Delivery times covered by this SLA are only for mail sent between servers, mailboxes, and/or gateways on the Exchange Hosting Service. Additionally, The Supplier's spam control functionality performs additional analysis and processing of inbound emails, so the delivery times specified above do not apply for delays due to same.

**Penalties for Non-Compliance:** If The Supplier causes mail delivery delays in excess of the parameters defined above for 2 hours or more in any given month, The Supplier will reduce the amounts due and payable to it relating to the Exchange Hosting Service for such month by 5% for each mailbox affected. For every additional 2 hours of delay of email service during the same calendar month, The Supplier will further reduce the amounts due and payable to it relating to the Exchange Hosting Service by another 5% of the original price charged for such month. The maximum credit per month for message delays will be 15%.

**Protection Against Viruses:** The Supplier provides inbound anti-virus scanning as part of the Exchange Hosting Service, and will make its best commercial efforts to protect against SMTP borne viruses and other computer software threats. The Supplier's anti-virus protection has proven highly effective since its deployment; however, due to the rapidly evolving nature of viruses, Trojan Horses, and other email-borne security issues, The Supplier can make no guarantees against these types of threats.

**Protection Against Spam:** The Supplier provides anti-spam filtering as part of the Exchange Hosting Service, and will make its best commercial efforts to protect against unwanted emails. The Advanced Spam Firewall is an integrated hardware and software solution for complete protection of your mailbox. Although this system has proven highly effective, The Supplier cannot make any guarantees in the system's filtering efficiency.

## **B.20. Web Hosting Specific Terms**

**Web Space Usage:** Included disk space may only be used for content linked or directly related to the hosted web site. Disk space may not be used at any time as a location to archive and/or backup files not directly related to the hosted web site.

## **B.21. Server Software**

(Not applicable to Exchange Hosting Service)

The Supplier will exercise industry standard practices to ensure that pre-installed software is correctly configured in all material respects. In case there is more than one way to configure software, The Supplier will choose the configuration it determines, in its sole discretion, to be the most appropriate.

The Supplier will install security patches, updates, and service packs as soon as practical. Software updates may change system behaviour and functionality and as such may negatively affect your applications. The Supplier cannot foresee nor can it be responsible for service disruption or changes in functionality or performance due to implementation of software patches and upgrades. If such disruption or changes occur, The Supplier will provide its best efforts to remedy the situation as soon as possible after being notified of the problem by you.

The Supplier is not responsible for problems that may arise from incompatibilities between new versions of the software and the Clients content, regardless of whether it was a requested, required or discretionary upgrade. Nevertheless, The Supplier will provide its reasonable efforts to help the Client to find a workaround.

Any log processing (web reporting) software made available is provided on an "as is" basis. The Supplier is not responsible for bugs in the software or for interpreting the reports generated by the software. The Supplier, in its sole discretion, can upgrade the software to newer versions or replace it with different software upon providing a reasonable notice to you. The Supplier cannot foresee nor will it be responsible for any incompatibility of newer versions and other software you may choose in conjunction with the log processing software.

## **B.22. Storage Capacity; Data Transfer; Server Resources**

(Not applicable to Exchange Hosting Service)

Each account is allocated storage capacity and data transfer amounts on The Supplier's servers according to the plan and options selected by the Client. This allocated storage size and data transfer can be increased through the Account Manager for an additional charge up to the maximum amount allowed for each plan or service. The servers may stop accepting, processing, or delivering data when the purchased limit is reached thus causing server unavailability or data loss.

## APPENDIX A: MICROSOFT SOFTWARE USE – TERMS AND CONDITIONS

This document (hereinafter, "Appendix A") concerns the Clients use of Microsoft software, which includes computer software provided to the Client by LANMARK as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually or collectively "Licensed Products"). LANMARK does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which LANMARK needs to inform the Client. The Clients right to use the Licensed Products is subject to the Clients agreement with LANMARK, and to the Clients understanding of, compliance with and consent to the following terms and conditions, which LANMARK does not have authority to vary, alter or amend.

### 1. DEFINITIONS.

For purposes of this Appendix, the following definitions will apply:

"Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone", or other electronic device.

"Server Software" means software that provides services or functionality on a computer acting as a server. "Redistribution Software" means software described in Paragraph 6 ("Use of Redistribution Software") below.

2. OWNERSHIP OF LICENSED PRODUCTS. The Licensed Products are licensed to LANMARK from an affiliate of the Microsoft Corporation ("Microsoft"). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Clients possession, access, or use of the Licensed Products does not transfer any ownership of Licensed Products or any intellectual property rights to the Client.

3. COPYRIGHT, TRADEMARK AND PATENT NOTICES. The Client must not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Licensed Products. The Client must include Microsoft's copyright notice on any labels or documentation (including online documentation) for The Supplier's products that include the Licensed Products. The Client have no right under this Agreement to use any Microsoft logos in any manner whatsoever. Whenever a Licensed Product is first referenced in any written or visual communication, the Client must use the appropriate trademark, Licensed Product descriptor and trademark symbol (either ™ or ®), and clearly indicate Microsoft's (or Microsoft's suppliers') ownership of such marks. For information on Microsoft trademarks, including a listing of current trademarks, see <http://www.microsoft.com/trademarks>. The Client must not undertake any action that will interfere with or diminish Microsoft's (or Microsoft's suppliers') right, title and/or interest in the trademark(s) or trade name(s). At Microsoft's or The Supplier's request, the Client must provide Microsoft with samples of all of the Clients written or visual materials that use a Licensed Product name.

4. ANTI-PIRACY. The Client must not engage in the manufacture, use, distribution or transfer of counterfeit, pirated or illegal software. The Client may not distribute or transfer Licensed Products to any party that the Client know is engaged in these activities. the Client must report to Microsoft any suspected counterfeiting, piracy or other intellectual property infringement in computer programs, manuals, marketing materials or other materials owned by Microsoft, its Affiliates and/or its licensors as soon as the Client become aware of it. The Client will cooperate with Microsoft in the investigation of any party suspected of these activities.

5. USE OF CLIENT SOFTWARE. The Client may use the Client Software installed on the Clients Devices by LANMARK only in accordance with the instructions, and only in connection with the services, provided to the Client by LANMARK. The terms of this Appendix A permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during the the Clients use of the Client Software.

6. USE OF REDISTRIBUTION SOFTWARE. In connection with the services provided to the Client by LANMARK, the Client may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO LANMARK, WHICH TERMS MUST BE PROVIDED TO YOU BY LANMARK.

Microsoft does not permit the Client to use any Redistribution Software unless the Client expressly agree to and comply with such additional terms, as provided to the Client by LANMARK.

7. COPIES. the Client may not make any copies of the Licensed Products; provided, however, that the Client may (a) make one (1) copy of Client Software on the the Clients Device as expressly authorized by LANMARK; and (b) the Client may make copies of certain Redistribution Software in accordance with Paragraph 6 (Use of Redistribution Software). The Client must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of the Clients agreement with LANMARK, upon notice from LANMARK or upon transfer of the Clients Device to another person or entity, whichever first occurs. The Client may not copy any printed materials accompanying the Licensed Products.

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9. NO RENTAL. The Client may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute Licensed Products to any third party, and the Client may not permit any third party to have access to and/or use the functionality of the Licensed Products.

10. TERMINATION. Without prejudice to any other rights, LANMARK may terminate the Clients rights to use the Licensed Products if the Client fail to comply with these terms and conditions. In the event of termination or cancellation, the Client must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of their component parts.

11. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY LANMARK AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

12. PRODUCT SUPPORT. Any product support for the Licensed Products is provided to the Client by LANMARK and is not provided by Microsoft or its affiliates or subsidiaries.

13. NOT FAULT TOLERANT. THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE Licensed Products COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

14. EXPORT RESTRICTIONS. The Licensed Products are of U.S. origin for purposes of U.S. export control laws. the Client agree to comply with all applicable international and national laws that apply to the Licensed Products, including U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issue by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

DISCLOSURE OF INFORMATION. The Client hereby consent to LANMARK providing information regarding the Clients Account to Microsoft to the extent it is required to do so under the terms of its license agreement with Microsoft.

15. LIABILITY FOR BREACH. In addition to any liability the Client may have to LANMARK, the Client agree that the Client will also be legally responsible directly to Microsoft for any breach of these terms and conditions.