



Terms & conditions

Node4 Ltd

PUBLIC

03/10/2019

Terms and conditions

Node4 Limited

These are Node4's General Terms and Conditions of business and should be read in conjunction with the Order Form agreed between Node4 and the Customer and the applicable Schedule Document for the service required.

1. Definitions and interpretation

1.1 In the Agreement the following expressions will have the following meanings unless inconsistent with the context:

"Acceptable Use Policy" means the acceptable and fair use policies of Node4 and any Third Party Services Providers from time to time applicable

"Agreement" means the agreement between Node4 and the Customer for the provision of Services and / or Products formed by these conditions, the terms of the Order Form and the Schedule Document

"Applicable Laws" means all applicable laws, statutes, statutory provisions or subordinate legislation, including but not limited to the General Conditions of Entitlement issued pursuant to the Communications Act 2003, Bribery and Corruption (UK Bribery Act 2010), Equal Opportunities (Equal Opportunities Act 2010), Information Security (UK Data Protection Act 1998, EU's General Data Protection Regulation (GDPR) 2018), Privacy & Electronic Communications Regulations 2003, Modern Slavery and Human trafficking (Modern Slavery Act 2015.), Anti facilitation of tax evasion (Criminal Finances Act 2017), any license verification requirements, any directions or orders of Ofcom and any other enactments, orders, regulations, guidelines or industry codes and applicable judgments of a relevant court of law or decisions of a tribunal or competent authority which creates binding precedent, as may be amended, modified, extended, substituted, superseded, varied, replaced or consolidated from time to time

"Business Day" means a day which is not a Saturday or Sunday or Public or Bank Holiday

"Business Hours" means 9am to 5pm on each Business Day

"Confidential Information" means all information in respect of the business of a party including any ideas, business methods, finance, prices, marketing, manpower plans; customer lists or details, computer systems and software, products or services, including know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by a Party, and information concerning a Parties relationships with actual or potential clients, Customers or suppliers and any other information which, if disclosed, will be liable to cause harm to that Party

"Contract Year" means the period of 12 months from the Effective Date and each successive period of 12 months during the continuance in force of the Agreement or, in respect of the final Contract Year under the Agreement, the period from the end of the penultimate Contract Year to the date of termination of the Agreement, if shorter

"Customer" as identified on the Order Form

"Customer Equipment or Licences" means any equipment, products or services (including the Customer using its own applications and/or licenses) which the Customer has not purchased from Node4 but which it wishes to use and/or deploy on to the Node4 Services and/or Products;

"Customer Personnel" means all employees and other personnel of the Customer and all agents, contractors and other users of the Services

"Effective Date" means the date set out in the Order Form

"Extended Term" means the period following the Initial Term

"Fees" mean the charges due to Node4 as set out in the Order Form or Schedule Document, as may be amended from time to time pursuant to these conditions or the Schedule Document

“Initial Term” means the initial term of the Agreement as set out in the Order Form, which shall commence on the Ready For Service Notification

“Node4” means Node4 Limited registered in England, No. 04759927, whose registered address is at Millennium Way, Pride Park, Derby DE24 8HZ

“Node4 Equipment” means any hardware, software, cabling and/or other products or equipment provided by Node4 to the Customer in connection with the provision of the Services or otherwise used by Node4 to provide the Services

“Order Form” means the order form signed by the Customer detailing the Services and/or Products to be supplied by Node4

“Party” or “Parties” means a party to this Agreement being either Node4 or the Customer

“Products” means any hardware, software, cabling and/or other products or equipment sold or licensed by Node4 to the Customer as identified in the Order Form, as may be amended from time to time pursuant to clause 3.5 of these conditions

“Ready for Service Notification” means communication from Node4 to the Customer that the implementation of a Product or Service is completed and available for use by the Customer

“Schedule Document” means any schedule document applicable to the particular Services and Products, as identified in the Order Form

“Services” means the service provided by Node4 as identified in the Order Form, as may be amended from time to time pursuant to clause 3.5 of these conditions or the Schedule Document

“Service Levels” means any service levels applicable to the Services as set out in the Schedule Document

“Third Party Services” means any part of the Services which Node4 procures from a third party, and any third party hosting services,

telecommunications services and/or equipment which Node4 uses in order to provide the Services

“Third Party Services Provider” means the provider of any Third Party Services

1.2 The headings to these conditions and in the Order Form and Schedule Document are for convenience only and will not affect their construction or interpretation.

1.3 Any phrase in the Agreement introduced by the term “include”, “including” “in particular” or any similar expression will be construed as illustrating and will not limit the sense of the words proceeding.

2. Formation

2.1 These conditions, together with the other terms set out in the Agreement, will apply to all contracts and agreements between the Parties to the exclusion of all other terms and conditions and all previous oral or written representations.

2.2 If there is a conflict between any of these conditions, the Order Form and the Schedule Document, the conflict will be resolved according to the following order of priority:

2.2.1 The Order Form,

2.2.2 These conditions, and

2.2.3 The Schedule Document.

2.3 Each order or acceptance of a quotation for Services or Products will be deemed to be an offer by the Customer to purchase Services or Products upon these conditions. The Agreement is formed when the order is accepted by Node4, by way of e-mail confirmation or any other written acknowledgement. No contract will come into existence until such written acknowledgement of the order is issued by Node4. All orders must be on Node4’s standard Order Form.

2.4 Any quotation provided by Node4 is valid for a period of 7 days only from its date, provided Node4 has not previously withdrawn it.

2.5 All orders are non-cancellable. Without prejudice to this, no Products may be returned by the Customer following delivery unless they fail to comply with their specification due to defects in material or workmanship, and then only in accordance with the provisions of clause 8.1.

2.6 Node4 will be entitled to make changes to these conditions at any time for legal or regulatory reasons or for any changes made by a Third Party Services Provider by notifying the Customer in writing, following which the Customer will be subject to any such amended conditions from the date of the relevant notification. For all other changes to these conditions Node4 shall notify the Customer in writing of any such changes and unless the Customer can demonstrate in writing to Node4 within 30 days of any such notice that acceptance of such change would cause it a material detriment, the Customer shall be subject to the amended conditions from the date of the relevant notification. The most recent version of these conditions will be found at www.node4.co.uk.

3. Node4 rights and obligations

3.1 The Services and the Products to be provided to the Customer are as described or referred to on the Order Form and the Schedule Document.

3.2 Time for performance or delivery is not of the essence and any timescales for performance or delivery given by Node4 are estimates only. Node4 will use its reasonable endeavours to provide the Services and deliver the Products in accordance with any timescale set out on the Order Form, but will not be liable to the Customer where it fails to meet any timescale.

3.3 Node4 will not be liable for any failure to provide the Services and / or deliver the Products resulting from any breach by the Customer of the Agreement or if the Customer uses any Customer Equipment **or Licences** in connection with the Services and/or Products.

3.4 Node4 will not be obliged to provide any Services or Products not referred to on the Order Form.

3.5 Node4 may at any time and from time to time improve, correct or otherwise modify all or any of the Services and / or Products (including substituting software and/or Products with software or equipment of similar specification) provided that such modification does not materially adversely affect provision of the Services to the Customer or the functionality of the Products. Node4 will endeavour to give the Customer reasonable notice of any such modification, where this is reasonably practicable.

3.6 Node4 shall use its reasonable endeavours to provide the Services in accordance with the Service Levels. However, the Customer acknowledges that, given the nature of the Services, Node4 cannot

guarantee that the Services will be uninterrupted or error free.

3.7 Where service credits are provided for in the Schedule Document these shall be the sole and exclusive remedy of the Customer for the failure to meet the applicable Service Levels. Node4 shall have no additional liability to the Customer in respect thereof.

3.8 Risk of damage to or loss of the Products will pass to the Customer on delivery.

3.9 Ownership of the Products will not pass to the Customer until Node4 has received in full (in cash or cleared funds) all sums due to it in respect of:

3.9.1 The Products; and

3.9.2 All other sums which are or which become due to Node4 from the Customer on any account, except disputed invoices as provided in clause 7.4.

3.10 Until ownership of the Products has passed to the Customer, the Customer must hold the Products on a fiduciary basis as Node4's bailee and maintain the Products in satisfactory condition insured on Node4's behalf for their full price against all risks to the reasonable satisfaction of Node4.

3.11 The Customer's right to possession of the Products will terminate immediately if any of the circumstances set out in clause 12.4 occur.

3.12 Node4 will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from Node4.

3.13 On termination of the Agreement, howsoever caused, Node4's rights contained in clauses 3.9 to 3.12 will remain in effect.

3.14 Node4 reserves the right to refuse access to its premises and servers to anyone where there are reasonable grounds for doing so and in accordance with the Data Centre Access and Security Procedure.

3.15 Node4 shall ensure compliance with all Applicable Laws.

3.16 Node4 shall during normal business hours assist the Customer or Customer representatives with the right of access to relevant Node4 systems and personnel used in the provision of Services in order to audit Node4's compliance with its obligations under this Agreement. Such right shall be limited to one audit per calendar year and Customer shall be required to provide a minimum of 10

Business Days notice in advance of any audit. Each Party shall bear its own costs in relation to the audit.

4. Customer rights and obligations

4.1 The Customer will provide Node4 with all information, instructions and assistance that Node4 may reasonably require in order to carry out its obligations under the Agreement. The Customer shall co-operate fully and in good faith with Node4 and any applicable Third Party Services Provider. The Customer shall provide all reasonably necessary physical access to Customer premises and other sites at all reasonable times as required (including, but not limited to, access for the purposes of installation, inspection, maintenance, replacement, upgrade, or removal of the Products, Node4 Equipment and any other equipment associated with the Services and any audit which Node4 may be required to carry out by any Third Party Services Provider to demonstrate compliance with any licensing requirements in connection with any of the Services, the Products and/or any Customer Equipment **or Licences**), facilities at such premises and sites, assistance with testing and other assistance to Node4 that Node4 shall reasonably require to perform its obligations under the Agreement, and the Customer shall comply with any reasonable operating instructions issued by Node4 from time to time.

4.2 If Node4 is provided with any incorrect information, instructions or delayed in connection with the delivery or provision of Services, then the Customer shall pay any reasonable and demonstrable additional costs.

4.3 Where Node4 or any Third Party Services Provider are working on Customer premises, the Customer shall ensure a safe working environment in compliance with all applicable health and safety laws.

4.4 All Services are subject to the Acceptable Use Policy. The Customer shall, at all times in connection with its use of the Services, comply with the Acceptable Use Policy. Node4 shall publicise the Acceptable Use Policy on its website (the current url being www.node4.co.uk). Node4 shall notify the Customer in writing of any changes to the Acceptable Use Policy and it shall be the responsibility of the Customer to ensure that it is aware of the current policies. The Customer shall ensure that the Acceptable Use Policy is communicated to Customer Personnel in a timely manner.

4.5 Without prejudice to clause 4.4, the Customer shall not use the Services, any Node4 Equipment or any Customer equipment which is located on Node4 premises:

4.5.1 to provide, store, host, link to or connect to illegal content, content designed to offend or cause needless anxiety to others, any material which is abusive, indecent, defamatory, obscene, threatening, menacing or likely to cause harassment or which is in breach of any copyright, confidence, privacy or any other rights or scanning software;

4.5.2 to distribute illegal, copyright infringing, indecent or offensive material;

4.5.3 to send or procure the sending of any unsolicited e-mail; or

4.5.4 in an unlawful manner or for any illegal purpose.

4.6 The Customer will ensure that all Products and Services provided by Node4 are adequately protected from fraudulent use by any Third Parties. The Customer shall pay any costs and expenses incurred or suffered by Node4 resulting from fraud or other improper use of the service.

4.7 Whether or not express reference is made to Customer Personnel in the relevant provision, the Customer will procure that all Customer Personnel comply with all the duties, obligations and restrictions imposed on the Customer by the Agreement, to the extent such duties, obligations and restrictions are applicable to the Customer Personnel. Any act or omission of any Customer Personnel which, if it had been committed or omitted by the Customer, would have been a breach of the Agreement by the Customer will be deemed to be a breach of the Agreement by the Customer who will be liable to Node4 accordingly.

4.8 Where the Products or Services

4.8.1 provided by Node4 include any software, the same is provided to the Customer on a licensed basis in accordance with the licence terms and conditions applicable thereto, which the Customer agrees that it will comply with;

4.8.2 include the Customer using Customer Equipment **or Licences**, the Customer warrants to Node4 that where it uses Customer Equipment **or Licences**, any licenses required as part of any such use are sufficient to cover the Customer's deployment of the software on to Node4's IT infrastructure and have been verified by the relevant

licensor (e.g. Microsoft) through completion of an appropriate license verification process.

4.9 The Customer shall, at all times in connection with its use of the Services comply with all Applicable Laws and shall not knowingly take any action which would cause Node4 to be in breach of the Applicable Laws.

4.10 The Customer shall comply and support Node4 in relation to any audits from Third Party Providers or relevant authorities in relation to the services provided.

5. Suspension

5.1 Without prejudice to any other right or remedy that it may have in such circumstances, Node4 reserves the right to suspend provision of any part of the Services where:

5.1.1 the Customer's use of any of the Services is found to be monopolizing the resources available (this policy is only implemented in extreme circumstances and is intended to prevent misuse of the Services); or

5.1.2 the Customer is in breach of the Acceptable Use Policy, clause 4.5 or otherwise in material breach of the Agreement and fails to rectify such breach within 7 days of a written request from Node4 requiring the same to be rectified; or

5.1.3 Required for maintenance, repair or upgrade of any Node4 systems and/or the Services (Node4 shall use reasonable endeavours to give as much advance notice to the Customer as is reasonably practicable in the circumstances); or

5.1.4 dealing with any actual or suspected security breach, virus, or attack or any misuse by any person of any Node4 systems and/or the Services; or

5.1.5 necessary because of an emergency; or

5.1.6 required by any regulatory, governmental or other competent authority; or

5.1.7 the Services depend on any Third Party Services and that Third Party Service is suspended by the relevant Third Party Services Provider; or

5.1.8 the Customer fails to pay any undisputed Fees in accordance with the provisions of the Agreement and fails to rectify such failure within 7 days of a written request from Node4 requiring the same to be rectified.

5.2 Node4 may from time to time close down the whole or part of the network for routine repair or

maintenance work. Node4 shall give as much notice as in the circumstances is reasonable and shall endeavour to carry out such works during the scheduled maintenance periods as published by Node4 as appropriate.

5.3 Node4 may from time to time by raising a Priority 1 ticket close down or restrict the whole or part of the Services where necessary for emergency repair, to prevent overload of the network, or to preserve the safety, security or integrity of the Services and traffic conveyed. Node4 shall at its sole discretion decide when such action is necessary.

5.4 The Customer's internal network configuration and any equipment that it uses with the Services that is not a Product or Node4 Equipment remains the responsibility of the Customer. Any interruptions to the Services that occur as a result of an internal configuration or equipment issue may not be deemed as an interruption or suspension of the formal provision of the Services and Node4 shall have no liability in this respect.

5.5 Where provision of any part of the Services is suspended by Node4 pursuant to clause 5.1.1, 5.1.2 or 5.1.8, Node4 shall be entitled to charge the Customer its standard reconnection fee from time to time applicable which the Customer shall pay to Node4 prior to Node4 recommencing provision of such part of the Services.

6. Fees

6.1 All Fees will commence when Ready For Service Notification is provided.

6.2 Node4 shall be entitled to increase the Fees at any time, but no such increase may take effect earlier than the end of the Initial Term, except:

6.2.1 Where the costs incurred by Node4 in the provision of the relevant Services or Products increase through factors that are outside of Node4's control, including electricity, licensing and charges levied by Third Party Services Providers, legal or regulatory requirement. Node4 shall give the Customer 30 days' notice of such increases.

6.2.2 An annual 2.0% increase, to be effective as of the anniversary of the Effective Date of the Agreement.

6.3 All Fees payable monthly or yearly as indicated in the Schedule Document and Order Form will be paid by the Customer in advance and will not be refundable in whole or part if the Agreement or

relevant part is terminated by the Customer during the period to which the payment relates.

6.4 Node4 reserves the right to require the payment of such Fees as it shall specify in the Order Form upfront prior to the commencement of the provision of the Services or any Products or before any order is progressed.

6.5 All other Fees (unless indicated otherwise in the Schedule Document or Order Form) shall be payable by the Customer following provision of the relevant Services or delivery of the Products, or, where provision of the relevant Services continues for more than one month, monthly in arrears.

6.6 Additional Fees will become payable if the Customer exceeds agreed or stipulated bandwidth, licenses or other use levels or restrictions set out in the Schedule Document or Order Form.

6.7 Any total sum for the Fees set out in an Order Form is (unless stated in the Order Form to be a fixed and firm amount) an estimate of the Fees only and not a fixed price quotation.

6.8 Any sums payable by the Customer to Node4 under the Agreement are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Customer at the appropriate rate.

6.9 Node4 may make a search in relation to the Customer with a credit reference agency (and make other credit enquiries from time to time), keep a record of that search and enquiries.

6.10 All Fees shall be paid by direct debit, to such account as specified by Node4.

7. Payment

7.1 The Customer agrees to pay Node4 invoices within 14 days of invoice due date. If invoices are not settled in full by then, the Customer will without prejudice to its other rights and remedies be liable to pay interest on any sum outstanding from the due date for payment on a daily basis until payment is made (whether before or after any judgment) in accordance with the provisions of the Late Payment of Commercial Debt (Regulations) 2013.

7.2 All payment is in UK sterling.

7.3 All payments to be made by the Customer will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees,

deductions or withholdings of any nature, unless in relation to a documented disputed invoice or the Customer is required by law to make any such deduction or withholding.

7.4 If Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due (a disputed invoice):

7.4.1 Customer shall notify Node4 in writing within 7 business days of receiving the invoice;

7.4.2 the Customer shall pay the balance of the invoice which is not in dispute by the Due Date

7.4.3 the Parties shall endeavour to resolve any disputes promptly

7.5 Once a dispute has been resolved, where Customer is required to make a balancing payment, it shall do so within 7 days.

7.6 if a disputed invoice is not resolved within 30 days then the dispute resolution process in clause 16 shall apply.

7.7 Node4 shall have a lien over and be entitled to retain any equipment and property of the Customer in Node4's possession pending satisfaction in full of the Customer's payment obligations under the Agreement, including following any termination of the Agreement. This shall include the right to sell the same and set off the proceeds of sale against any sums owing.

8. Warranty

8.1 Node4 will, free of charge, within a period of 12 months from the date of delivery of the Products which are proved to the reasonable satisfaction of Node4 to not comply with specification due to defects in material or workmanship, repair, or at its option replace, such Products. Provided that Node4 complies with this obligation it shall have no further liability to the Customer in connection with such non-compliance. This obligation will not apply where:

8.1.1 the Products has been improperly altered in any way whatsoever, or has been subject to misuse or unauthorised repair;

8.1.2 the Products has been improperly installed or connected (other than by Node4);

8.1.3 any maintenance requirements relating to the Products has not been complied with (other than where Node4 is responsible for such maintenance under the Agreement); and

8.1.4 the Customer has failed to notify Node4 of any defect or suspected defect within 14 days of the same coming to the knowledge of the Customer, and in any event no later than 12 months from the date of delivery.

8.2 Node4 warrants that the Services will be provided with reasonable care and skill.

9. Liability

9.1 Node4 does not (and nothing in the Agreement shall be construed so as to) exclude its liability (if any) to the Customer:

9.1.1 for breach of Node4's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

9.1.2 for personal injury or death resulting from Node4's negligence;

9.1.3 under section 2(3) Consumer Protection Act 1987;

9.1.4 for any matter for which it would be illegal for Node4 to exclude or to attempt to exclude its liability; or

9.1.5 for fraud.

9.2 Except as provided in clause 9.1, Node4 will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty or any Applicable Laws, restitution or otherwise) for any direct, indirect or consequential loss for:

9.2.1 any loss of profits;

9.2.2 loss of business;

9.2.3 loss of anticipated savings;

9.2.4 loss of or depletion of goodwill;

9.2.5 loss of data;

9.2.6 loss of revenue;

9.2.7 loss of opportunity

9.2.8 loss arising in connection with the Customer having insufficient or incorrect licenses with respect to the Customer Equipment or Licences ; or

9.2.9 any like loss howsoever caused arising out of or in connection with the Agreement.

9.3 Subject to clauses 9.1 and 9.2, Node4's aggregate liability in any Contract Year under the Agreement whatsoever (whether in contract, tort

(including negligence), breach of statutory duty, restitution or otherwise) for any damage or loss howsoever caused will be limited to the Fees payable in that Contract Year, including any Service Credits.

9.4 Service Credits shall be the sole financial remedy for Customer for breaches by Node4 of any Service Levels.

9.5 Except as set out in clause 9.1, Node4 hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Agreement) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

9.6 Customer must submit any claim to Node4 within 12 months from the date of any alleged breach of the Agreement by Node4. Failure to submit any alleged claim within this period shall result in the Customer being precluded from bringing any such alleged claim.

10. Intellectual property rights

10.1 Each Party will retain all rights to any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the Effective Date, or acquired or developed after the Effective Date, without reference to or use of the intellectual property of the other Party.

10.2 In the event that the Services provided by Node4 are adjudicated to infringe, Node4 shall have the option, at its expense:

10.2.1 to modify the material to be non-infringing;

10.2.2 to obtain for Customer a license to continue using the Material.

10.3 Node4 agrees to indemnify Customer against a claim that any information, Products and Services used by Node4 in connection with the provision of services provided by Node4 infringes a copyright, patent or trademark right of any third party provided that:

10.3.1 as soon as reasonably practicable and in any event within 15 days of the date upon which Customer becomes aware of any such claim, give written notice of the claim to Node4, specifying in reasonable detail the nature of the claim;

10.3.2 Node4 shall have sole conduct of the claim and shall take such action to avoid, dispute, resist, mitigate, compromise or defend the claim and to appeal against any judgment given in respect of it as is reasonably necessary; and

10.3.3 Customer provides Node4 with all such assistance, information, and authority reasonably required by Node4 to give effect to the provisions of clause 10.3.2.

11. Force majeure

11.1 Neither Party is under any liability to the other Party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either Party, circumstances beyond the reasonable control of that Party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, systems fault, unauthorised use or access to the IT systems of Node4 or the Customer, explosion, flood, epidemic, lock outs (whether or not by that Party), strikes and other industrial disputes (excluding those relating to Node4 's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control (Force Majeure Event).

12. Term and termination

12.1 The Agreement shall commence on the Effective Date and shall continue in force for the Initial Term and thereafter shall continue in force unless or until terminated by one Party in accordance with clause 12.

12.2 At the end of the Initial Term or Extended Term, the Agreement will renew automatically for a further Contract Year unless a Party has given to the other party 90 days' prior written notice of termination, such notice not to expire before the end of either the Initial Term or the Extended Term (as appropriate).

12.3 Where a Customer is terminating a Node4 service a cancellation form will be raised which will need to be signed by both parties. The notice period will commence on the earlier of either the signature of both parties or 15 business days after submission of the request by the Customer.

12.4 Either Party may by written notice served on the other terminate the Agreement immediately if:

12.4.1 the other Party is either is in material breach of any of the terms of the Agreement and such breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy such breach within 14 days after service of a written notice from Node4 specifying the breach and requiring it to be remedied;

12.4.2 the other Party is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, makes a proposal for a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal, becomes subject to any voluntary arrangement, has a receiver, manager, or administrative receiver appointed over any of its assets, undertaking or income, passes a resolution for its winding-up, is subject to a petition presented to any court for its winding-up, has a provisional liquidator appointed, has a proposal made for a compromise or arrangement under Part 26 Companies Act 2006, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator filed at any court by any person or is the subject of a notice to strike off the register at Companies House;

12.4.3 if the other Party has any distressed, execution or other process levied or enforced on any of its property; or

12.4.4 if the other Party ceases to trade.

12.4.5 If the Force Majeure Event continues for more than 90 days.

12.5 The termination of the Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses in the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

12.6 Subject to the provisions of clause 7.7, on termination of this Agreement howsoever arising each party will return to the other any property of the other in its possession or control.

12.7 Without prejudice to any other of its rights and remedies on Termination Node4 will:

12.7.1 Keep a final backup of the Customer data for the 30 day period.

12.7.2 Provide the Customer the ability to retrieve data held on the Node4 systems via electronic

transfer, or provide hard copy of data on to a device provided by the Customer.

12.7.3 For personal data following written confirmation from the data controller, transfer data by agreed method.

12.7.4 After 30 days Node4 will be entitled to remove the Customer's data and Personal Data from its systems and any Node4 Equipment and provide written confirmation that the Customer's Data and Personal Data has been removed.

12.7.5 If requested by the Customer and with fees and scope agreed in advance Node4 will provide a specific exit plan and support during its execution.

13. Early termination fees

13.1 In the event of any termination by Node4 pursuant to clause 12.4, the Customer shall be liable to pay or reimburse Node4 for any cancellation charges that may be due to any Third Party Services Provider or otherwise due as a consequence of such termination, in such case charges limited to the remaining contract value.

13.2 In the event of termination by the Customer unless subject to clause 12.4.1, the Customer shall pay Node4 the remaining Fees as indicated in the Order Form for the remaining months of the Initial or Extended Term.

14. Data and confidential information

14.1 Node4 reserves the right to hold the names and other information provided by and relating to Customers in a computerised database. This data will be used to enable the provision and maintenance of Services, and may in certain circumstances be supplied Node4 to Third Party Service Providers and any other suppliers to Node4 to enable the provision or maintenance of the Services.

14.2 Customers who request an IP address assignment will have their contact details added to the RIPE database

14.3 Each Party will keep confidential:

14.3.1 the terms of the Agreement; and

14.3.2 any and all Confidential Information that it may acquire in relation to the other party.

14.4 Neither Party will use the other Parties Confidential Information for any purpose other than to perform its obligations under the Agreement. Each

Party will ensure that its officers and employees comply with the provisions of clauses 14.3 and 14.4.

14.5 The obligations on a Party set out in clauses 14.3 and 14.4 will not apply to any Confidential Information which:

14.5.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of clause 14.3 or 14.4); or

14.5.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.

14.6 The provisions of clauses 14.3 and 14.4 will survive any termination of the Agreement for a period of 5 years from termination.

15. Personal data

15.1 This clause only applies to the extent that Node4 is Processing Personal Data on behalf of Customer.

15.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation.

15.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, Customer is the Controller and Node4 is the Processor.

15.4 Without prejudice to the generality of Clause 15.2 Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Node4 for the purposes of the Contract

15.5 Node4 shall, in respect of any Data:

15.5.1 in its role as data processor, process the Data only on the written instructions of the Customer to perform its obligations under this Agreement;

15.5.2 provide such appropriate technical and organisational measures as are specified by the Customer against unauthorised or unlawful processing, accidental loss or destruction of or damage to the Data;

15.5.3 not subcontract any processing of the Data to a third party without the prior written consent of the Customer;

15.5.4 take all reasonable steps to ensure the reliability of its staff who have access to the Data and ensure that access to the Data is limited to such authorised staff only who require access to it for the purpose of complying with Node4's obligations under this Agreement.

15.5.5 not process or transfer Data outside of the European Economic Area without the prior written consent of the Customer;

15.5.6 provide such information as is reasonably necessary to enable the Customer to satisfy itself of Node4's compliance with this clause 15 and allow the Customer and its authorised representatives, upon reasonable prior written notice to Node4, reasonable access to any relevant premises, during normal business hours, to inspect the procedures and measures referred to in this clause 15, provided that the Customer agrees to carry out such inspection with minimum disruption to Node4's day to day business and to sign Node4's confidentiality agreement;

15.5.7 promptly inform the Customer of any request for disclosure of the Data from a Data Subject or any other third party which Node4 receives directly and provide a copy of such request and Node4 shall not disclose or release any Data without first consulting with and obtaining the consent of the Customer, except where required by applicable law or any court of competent jurisdiction;

15.5.8 provide reasonable assistance to the Customer in complying with any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Data as soon as is possible but in any event within 10 business days of receipt of the request or any other period as agreed in writing with the Customer. Node4 will be entitled to recover its reasonable costs of providing such assistance; and

15.6 Node4 upon becoming aware of any loss, alteration, unauthorised disclosure of, or access to the Data, shall inform the Customer without undue delay and shall provide all such timely information and cooperation as the Customer may require in order for the Customer to fulfil its data breach reporting obligations under Privacy Law.

15.7 In the event that the Node4 becomes aware that it, or any third party processing Data pursuant to this Agreement, is processing, or has processed, the Data in contravention of this Agreement, Node4 shall promptly and in writing, notify the Customer with full details of the contravention.

15.8 Node4 will on Customer's written direction, delete (or put Beyond Use) or return Personal Data to Customer once provision of the Products or

Services has ceased, unless required by a legal obligation to store the Personal Data.

16. Dispute resolution

16.1 The Parties shall attempt in good faith to resolve any dispute in relation to this Agreement by the approach described below:

16.1.1 either Party must notify the other Party in writing the nature of the dispute. Management representatives will then meet for resolution within 10 days of receipt of notification; and

16.1.2 if that fails senior management from the Parties will meet within a further 10 days for resolution.

16.2 If the senior management of the Parties cannot resolve the dispute within 7 days of meeting, the Parties shall endeavour to resolve the dispute using mediation. Each Party shall bear its own costs and expenses incurred in connection with the mediation and sharing equally the costs and expenses of the mediator.

17. Miscellaneous

17.1 Each right or remedy of Node4 under any Agreement is without prejudice to any other right or remedy of Node4 under the Agreement.

17.2 If any condition or part of the Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Agreement and will be ineffective without, as far as is possible, modifying any other provision or part of the Agreement and this will not affect any other provisions of the Agreement which will remain in full force and effect.

17.3 No failure or delay by Node4 to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

17.4 Node4 may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Agreement.

17.5 The Contract is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Agreement without Node4's prior written consent.

17.6 The Parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

17.7 The Agreement contains all the terms which Node4 and the Customer have agreed in relation to the Services and Products and supersedes any prior written or oral agreements, representations or understandings between the Parties relating thereto. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Node4 which is not set out in the Agreement. Nothing in this clause 17.7 will exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

17.8 The Customer shall perform such acts and do such things as Node4 may reasonably require from time to time for the purpose of giving full effect to this Agreement including, but not limited to, providing any verifications regarding licensing requirements for the use of any of the Services, the Products and/or the Customer Equipment **or Licences**.

18. Applicable law and jurisdiction

18.1 The construction, performance and validity of the Agreement will be governed by English law and the English courts have exclusive jurisdiction to settle any disputes which may arise out of or in connection with it.