

NODE4

Node 4 Limited

General Terms and Conditions

(Node4 Standard Offerings)

These are Node4's general terms and conditions of standard offerings and should be read in conjunction with the corresponding Order Form executed between Node4 and the Client and the applicable Schedule Document for the standard service(s) required by the Client.

1. Definition 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 as applicable from time to time and/or as made available on Node4's website ([NODE4 CUSTOMER ACCEPTABLE USE POLICY](#)).

“Acceptance” means, where applicable and set forth in the corresponding Schedule Document, the approval by Client of Deliverables subject to the Acceptance Tests;

“Acceptance Tests” means in relation to the Deliverables, the tests agreed by the Parties and conducted by the Client, at its own cost;

“Agreement” means the terms and conditions comprising of these Terms, the terms of the Order Form(s) and the applicable Schedule Document between Node4 and the Client governing the provision of Services and / or Products to the Client.

“Applicable Data Protection Laws” means to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; or to the extent the EU GDPR

applies, the law of the European Union or any member state of the European Union which relates to the protection of personal data.

“Applicable Laws” means all applicable laws, statutes, statutory provisions or subordinate legislation in force from time to time relating to the provision or use of the Services and / or Products or the performance of this Agreement, including but not limited to the Applicable Data Protection Legislation (Data Protection Act 2018), 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, 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 in United Kingdom.

“Business Hours” means 9am to 5.30pm on each Business Day including breaks.

“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 either Party's relationships with actual or potential customers, or suppliers and any other information which, if disclosed, could cause harm to that Party.

"Consulting Services" means project based professional services provided on a time and materials basis unless stated otherwise.

"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.

"Client" means the Party as identified on the applicable Order Form.

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

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

"Deliverables" means the components defined in the Order Form and or Schedule Document.

"Effective Date" with respect to an Order Form means the date of last signature of such Order Form.

"EU GDPR" means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

"Extended Term" means the period following the Initial Term.

"Fees" mean the charges due to Node4 as set out in the Order Form.

"Initial Term" means the initial term of the Order Form, which shall commence, for each Product or Service included in an Order Form, when the implementation of such Product or Service is completed by Node4 and such Product or Service is available for use by the Client and its billing commences.

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights including those of any Third Party Service Provider, in each case whether registered or unregistered and including all applications for (and rights to apply for and be granted) renewals or extensions of such rights, and all similar

or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world in the Products and/or Services.

“Node4” means Node 4 Limited registered in England and Wales, (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 Client in connection with the provision of the Services or otherwise used by Node4 to provide the Services to the Client.

“Order Form” means the order form or statement of work (SOW) signed and duly executed by the authorised signatory of the Client detailing the Services and/or Products to be provided and/or supplied by Node4.

“Party” or “Parties” means a party to the Agreement being either Node4 or the Client.

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

“Schedule Document” means any schedule document applicable to the particular Services and Products purchased by the Client, and as identified in the applicable Order Form(s).

“Services” means the services provided by Node4 to the Client as

identified in the Order Form(s), as may be amended from time to time pursuant to clause 3.5 of these Terms and/or the applicable Schedule Document for such services.

“Service Credits” means, where specifically stated in a Schedule Document and/or Order Form, the credits due to the Client, which shall apply upon non-achievement of Service Levels;

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

“Terms” mean these general terms and conditions of standard service offerings of Node4, as updated, or amended from time to time in accordance with clause 2.6 herein.

“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 to provide the Services to the Client.

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

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

- 1.2. The headings to these Terms, the Order Form and each Schedule Document are for convenience only and will not affect their construction or interpretation in any manner whatsoever.

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

1.4. Any reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate and/or related legislation made under that legislation or legislative provision.

2. Formation and order of precedence

2.1. For the purposes of Node4 standard offerings, these Terms, together with the other terms and conditions 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 Terms, 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 Terms, 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 Client to purchase Services or Products upon these Terms. The Agreement is formed when the order is accepted by Node4, by way of e-mail confirmation or any other written acknowledgement. No contract or Agreement 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 template.

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. A quotation shall in no manner constitute an offer.

2.5. All Order Forms once confirmed and signed by Node4, are non-cancellable, unless otherwise stated within the Order Form(s). Without prejudice to this, no Products may be returned by the Client 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 10.1 herein.

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

3. Node4’s rights and obligations

3.1. The Services and the Products to be provided to the Client are as described or referred to in the Order Form and the relevant 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, however, will not be liable to the Client where it fails to meet any timescale.

- 3.3. Node4 will not be liable for any breach of contract or failure to provide the Services and / or deliver the Products resulting from (a) any breach by the Client of the Agreement, (b) any use of the Services and/or Products in connection with Client Equipment or Licences, or (c) any failure by the Client to follow Node4's instruction regarding the installation, use or maintenance of 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 Client or the functionality of the Products. Node4 will endeavour to give the Client 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, if and where applicable as set out in the Schedule Document. However, the Client 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 specifically in the Schedule Document and/or Order Form, these shall be the sole and exclusive remedy of the Client for any failure to meet the applicable Service Levels. Node4 shall have no additional liability to the Client in respect thereof.
- 3.8. Where Service Credits are not provided for in the Schedule Document and/or Order Form, Node4 shall have no liability to the Client in respect thereof failure to achieve Service Levels.
- 3.9. Node4 shall, in accordance with the Applicable Laws perform its obligations under or in connection with the Agreement.
- 3.10. Node4 shall, during normal Business Hours, assist the Client or Client representatives with the right of reasonable access to relevant Node4 systems and personnel used in the provision of Services in order to audit Node4's compliance with its obligations under the Agreement. Such right shall be limited to one audit of up to 4 hours (additional hours will be charged to the Client) per calendar year and Client shall be required to provide a minimum of 10 Business Days' written notice in advance of any audit. Each Party shall bear its own costs in relation to the audit, subject to audit being up to 4 hours.

4. Node4 products

- 4.1. Risk of damage to or loss of the Products will pass to the Client immediately upon delivery.

- 4.2. Ownership of the Products will not pass to the Client until Node4 has received in full (in cash or cleared funds) all sums due to it in respect of:
- 4.2.1. The Products; and
 - 4.2.2. All other sums which are, or which become due to Node4 from the Client on any account, except disputed invoices as provided in clause 9.4.
- 4.3. Until ownership of the Products has passed to the Client, the Client must hold the Products on a fiduciary basis as Node4's bailee, store the Products separately and readily identifiable as Node4's property 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.
- 4.4. Unless and until ownership of the Products has passed to the Client, the Client's right to possession of the Products will terminate immediately if any of the circumstances set out in clause 14.4 occur.
- 4.5. Node4 will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from Node4.
- 4.6. Clauses 4.2 to 4.5 shall survive termination of the Agreement, howsoever caused.
- 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.
- 5. Node4 services**
- 5.1. Node4 will ensure that the Services:
- 5.1.1. conform in all material aspects to the Deliverables; and
 - 5.1.2. are free from material defects in design and specifications as outlined in the corresponding Schedule Document and/or Order Form.
- 5.2. where Deliverables are subject to acceptance the following shall apply:
- 5.2.1. Node4 shall notify the Client when the Deliverables are available for the Acceptance Tests, and the Client shall conduct its Acceptance Tests, at its own cost, within timescales agreed in writing between the Parties
 - 5.2.2. Client shall confirm to Node4, its Acceptance of the Deliverables within the agreed timeframe, failing which, such Deliverable(s) shall be deemed to have been Accepted.
 - 5.2.3. The Client may not withhold Acceptance based on any minor deviation that does not materially affect the performance of the Deliverables.
 - 5.2.4. Where the Client demonstrates to Node4's reasonable satisfaction, that a Deliverable has failed the Acceptance Test, and such failure is solely attributable to Node4, then the Client may:
 - 5.2.4.1. require Node4 to rectify such failure and resubmit such Deliverables for follow up Acceptance Testing; or
 - 5.2.4.2. Accept such Deliverables; or
 - 5.2.4.3. Accept such Deliverables on a conditional basis, as

agreed between the Parties.

5.3. Upon Acceptance of a Deliverable, such Deliverable shall form a completed part of the Service, and Node4 shall have no further liability in respect of such Deliverable.

5.4. Where a Deliverable fails to complete the Acceptance Tests, and such failure is not the fault of Node4, then any remediation work is not the responsibility of Node4, unless otherwise agreed in writing by Node4 (which, for the avoidance of doubt, may be subject to additional Fees).

5.5. Node4 shall not be responsible for any other exclusions stated within the Order Form and/or the Schedule Document.

6. Client's rights and obligations

6.1. The Client 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 Client shall co-operate fully and in good faith with Node4 and any applicable Third Party Services Provider. The Client shall provide Node4, its employees and agents with access to Client premises and other sites at all reasonable times as reasonably 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 Client 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 Client shall comply with any reasonable operating instructions issued by Node4 from time to time.

6.2. If Node4 is provided with any incorrect information, instructions or delayed in connection with the delivery or provision of Services, then the Client shall pay or reimburse any reasonable and demonstrable costs, including costs incurred by Node4.

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

6.4. All Services are subject to the Acceptable Use Policy. The Client shall, at all times, in connection with its use of the Services, comply with the Acceptable Use Policy. Node4 shall notify the Client in writing of any changes to the Acceptable Use Policy, and it shall be the responsibility of the Client to ensure that it is aware of the current policies. The Client shall ensure that the Acceptable Use Policy is communicated to Client Personnel in a timely manner and always adhered to by Client Personnel.

6.5. Without prejudice to clause 6.4, the Client shall not use the Services, any Node4 Equipment or any Client Equipment which is located on Node4 premises:

6.5.1. 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;
- 6.5.2. to distribute illegal, copyright infringing, indecent or offensive material;
- 6.5.3. to send or procure the sending of any unsolicited e-mail; or
- 6.5.4. in an unlawful manner or for any illegal purpose.
- 6.6. The Client will ensure that all Products and Services provided by Node4 are adequately protected from fraudulent or improper use by any third parties. The Client shall pay any costs and expenses incurred or suffered by Node4 resulting from fraud or other improper use of the service.
- 6.7. Whether or not express reference is made to Client Personnel in the relevant provision, the Client will procure that all Client Personnel comply with all the duties, obligations and restrictions imposed on the Client by the Agreement, to the extent such duties, obligations and restrictions are applicable to the Client Personnel. Any act or omission of any Client Personnel which, if it had been committed or omitted by the Client, would have been a breach of the Agreement by the Client will be deemed to be a breach of the Agreement by the Client who will be liable to Node4 accordingly.
- 6.8. Where the Products or Services:
- 6.8.1. include any software, the same is provided to the Client on a licensed basis in accordance with the licence terms and conditions applicable thereto, which the Client agrees that it will comply with;
- 6.8.2. will be used by the Client including Client Equipment **or Licences**, the Client warrants to Node4 that, all licenses and permissions required for such use are obtained and sufficiently cover the Client's use and 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. The Client shall be liable for any damages or losses incurred by Node4 relating to the use of any Client Equipment or Licences.
- 6.9. The Client shall, at all times:
- 6.9.1. comply with all Applicable Laws;
- 6.9.2. not knowingly take any action or omit to do anything which would cause Node4 to be in breach of the Applicable Laws or any arrangement with any Third Party Service Provider and shall immediately notify Node4 if any instruction given to Node4 would or would be likely to cause Node4 to cause any such breach; and
- 6.9.3. obtain and maintain all necessary licences, permissions or consents which may be required for the Products and/or Services.
- 6.10. The Client shall with regard compliance with Applicable Laws:
- 6.10.1. inform Node4 as soon as it becomes aware of any changes in the Applicable Laws that may

- impact the Products and/or Services;
- 6.10.2. provide Node4 with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes;
- 6.10.3. consult with Node4, and if possible, agree with the Node4, on the manner, form, and timing of changes it proposes to make to meet those changes in the Applicable Laws;
- 6.10.4. use all reasonable endeavours to minimise any disruption caused by any changes in Applicable Laws introduced pursuant to this Clause 6.10.
- 6.11. The Client shall implement and maintain appropriate security measures in connection with the Products and/or Services. The Client shall inform Node4 as soon as it becomes aware of actual or potential security breach which could impact the Services.
- 6.12. The Client shall comply and support Node4 in relation to any audits from Third Party Providers or relevant authorities in relation to the services provided. If an audit reveals any over usage of services, then the Client shall, within 15 days of notice, order sufficient services to cover its overuse and reimburse Node4 any resulting Fees which are incurred by Node4 as a consequence. Where the Client is unable or unwilling to comply with such audit request then the Client shall fully indemnify Node4 for all costs and charges from Third Party, which it incurs as a result.
- 6.13. The Client shall be responsible for the Client's internal network configuration and any equipment that it uses with the

Services that is not a Product or Node4 Equipment.

7. Suspension

- 7.1. Without prejudice to any other right or remedy that it may have in such circumstances, Node4 reserves the right to suspend provision of whole or any part of the Services where:
- 7.1.1. the Client'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
- 7.1.2. the Client is in breach of the Acceptable Use Policy, clause 6.5, 6.9 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
- 7.1.3. such suspension is required to maintain, repair, or upgrade any Node4 systems and/or the Services (Node4 shall use reasonable endeavours to give as much advance notice to the Client as is reasonably practicable in the circumstances); or
- 7.1.4. required to deal 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
- 7.1.5. necessary because of an emergency; or
- 7.1.6. required by any regulatory, governmental, or other competent authority; or
- 7.1.7. the Services depend on any Third Party Services and any Third Party Service is

- suspended by the relevant Third Party Services Provider or otherwise;
- 7.1.8. the Client fails to pay any undisputed Fees in accordance with the provisions of the Agreement.
- 7.2. Any interruptions to the Services that occur as a result of an internal configuration or equipment issue, which is not a Product or Node4 Equipment, shall not be considered an interruption or suspension of the formal provision of the Services and Node4 shall have no liability in this respect.
- 7.3. Where provision of any part of the Services is suspended by Node4 pursuant to clause 7.1.1, 7.1.2 or 5.1.8, Node4 shall be entitled to charge the Client its standard reconnection fee as applicable from time to time, which the Client shall pay to Node4 prior to Node4 recommencing provision of such part of the Services.
- 8. Fees**
- 8.1. Charging mechanism and Fees shall be set out in the applicable Schedule Document and Order Form(s) respectively.
- 8.2. 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:
- 8.2.1. 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 or increases due to legal or regulatory requirements. Node4 shall give the Client 30 days' notice of such increases.
- 8.2.2. An annual increase of the higher of CPI (<https://www.ons.gov.uk/economy/inflationandpriceindices>) and 2% shall apply to the Fees and shall be effective no earlier than the first anniversary of the Effective Date of the Agreement.
- 8.3. All Fees shall be payable in advance on a monthly or yearly basis (as indicated in the Schedule Document and/or Order Form). Fees shall be non-refundable in whole or part if the Agreement or any relevant part is terminated by the Client during the period to which the payment relates.
- 8.4. Node4 reserves the right to require the payment of such Fees as specified in the Order Form in advance prior to the commencement of the provision of the Services or any Products or before any order is progressed.
- 8.5. All other Fees (unless indicated otherwise in the Schedule Document or Order Form) shall be payable by the Client 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.
- 8.6. Additional Fees will become payable if the Client exceeds agreed or stipulated bandwidth, licenses or other use levels or restrictions set out in the Schedule Document or Order Form.
- 8.7. 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.

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

8.9. Node4 shall be entitled to make a search in relation to the Client with a credit reference agency (and make other credit enquiries from time to time), to keep a record of that search and of any enquiries.

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

9. Payment

9.1. The Client agrees to pay Node4 invoices within thirty (30) days of the date of the invoice, unless a shorter payment term is set out in the Order Form(s). If invoices are not settled in full by then, the Client will, without prejudice to its other rights and remedies that Node4 may have against the Client, 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. Time for payment shall be of the essence of the Agreement.

9.2. All payment is in UK Pound Sterling.

9.3. All payments to be made by the Client 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 Client is required by law to make any such deduction or withholding.

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

9.4.1. Client shall notify Node4 in writing within 7 days of receiving the invoice;

9.4.2. the Client shall pay the balance of the invoice which is not in dispute by the due date;

9.4.3. the Parties shall endeavour to resolve any disputes promptly.

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

9.6. If a disputed invoice is not resolved within 30 days, then the dispute resolution process in clause 18 shall apply.

9.7. Node4 shall have a lien over and be entitled to retain any equipment and property of the Client in Node4's possession pending satisfaction in full of the Client'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.

10. Warranty

10.1. Products – Node4 warrants that on delivery, and for a period of 12 months from the date of delivery (“**Warranty Period**”), the Products shall conform in all material respects to their description and will be free from material defects in material or workmanship. During the

Warranty Period, if the Client proves to the reasonable satisfaction of Node4 that the Products do not reasonably comply with this warranty, Node4 shall repair, or at its option replace, the Products free of charge. Except as provided in this clause 10.1, Node4 shall have no liability to the Client in respect of the Product's failure to comply with the warranty and the remedies stated in this clause shall be the Client's sole right of remedy. This warranty will not apply where:

- 10.1.1. the Products have been improperly altered by the Client or any third party in any way whatsoever, or have been subject to misuse or unauthorised repair;
- 10.1.2. the Products have been improperly installed or connected (other than by Node4);
- 10.1.3. the defect arises as a result of the Client's failure to follow Node4's instructions;
- 10.1.4. any maintenance requirements relating to the Products have not been complied with (other than where Node4 is responsible for such maintenance under the Agreement);
- 10.1.5. the Client has failed to notify Node4 of any defect or suspected defect within 14 days of the same coming to the knowledge of the Client, and in any event no later than 12 months from the date of delivery; and
- 10.1.6. the Client makes any further use of the Products after giving notice of any defect or suspected defect.

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

10.3. Consulting Services – Node4 will provide remediation warranty for the Consulting Services provided for a period of fourteen (14) days post:

- 10.3.1. Client Acceptance of the Deliverables set out in the corresponding Order Form; or
- 10.3.2. Provision of Consulting Services, which do not have any Deliverables.

11. Liability

11.1. The Parties do not (and nothing in the Agreement shall be construed to) exclude liability (if any) to the other Party:

- 11.1.1. for breach of obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
- 11.1.2. for personal injury or death resulting from negligence;
- 11.1.3. under section 2(3) Consumer Protection Act 1987;
- 11.1.4. for any matter for which it would be illegal to exclude or to attempt to exclude its liability; or
- 11.1.5. for fraud.

11.2. Except as provided in clause 11.1, neither Party will be under any liability to the other Party whatsoever (whether in contract, tort (including negligence), breach of statutory duty or any Applicable Laws, restitution or otherwise) for:

- 11.2.1. any indirect, consequential, or special loss or damage;
- 11.2.2. any loss of profits (direct or indirect);
- 11.2.3. loss of sales, contracts, or business (direct or indirect);

- 11.2.4. loss of anticipated savings (direct or indirect);
 - 11.2.5. loss of or depletion of goodwill (direct or indirect);
 - 11.2.6. loss of data (direct or indirect);
 - 11.2.7. loss of revenue (direct or indirect);
 - 11.2.8. loss of opportunity (direct or indirect); or
 - 11.2.9. loss arising in connection with the Client having insufficient or incorrect licenses with respect to the Client Equipment or Licences (direct or indirect).
- 11.3. Subject to clauses 11.1 and 11.2, either Party's aggregate liability in any Contract Year under the Agreement howsoever caused (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) and in respect of all liabilities, damages, charges and/or losses shall be limited to the Fees payable in that Contract Year, including any Service Credits.
- 11.4. Service Credits shall be the sole financial remedy for Client for breaches by Node4 of any Service Levels.
- 11.5. Except as set out in clause 11.1, 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 Client.
- 11.6. Client 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 Client being precluded from bringing any such alleged claim.

12. Intellectual property rights

- 12.1. Each Party will retain all rights to any Intellectual Property Rights or information that it owned, sub-licensed 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 ("**Background IPR**").
- 12.2. To the extent required for the purpose of using and receiving the Services and subject to the terms of the Agreement, Node4 hereby grants to the Client a royalty-free, world-wide, non-exclusive, and non-transferable licence to use any of Node4's Background IPRs. In respect of any such Background IPRs that are not so required for the purpose of using or receiving the Services, such licence shall end on the expiry or termination of the Agreement.
- 12.3. In the event that the Services provided by Node4 are adjudicated to infringe, Node4 shall have the option, at its expense:
- 12.3.1. to modify the Services to be non-infringing;
 - 12.3.2. to obtain for the Client a licence to continue using the Services;
 - 12.3.3. replace the Service with a service that is substantially similar in functionality and performance.
- 12.4. The terms and obligations imposed by this Clause 12 shall survive the expiry or termination of the Agreement for any reason.

13. Force majeure

- 13.1. Neither Party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations (other than the obligation to

pay any Fees under this Agreement) where such delay or failure results from events, circumstances or causes beyond its reasonable control, 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 Client, explosion, flood, pandemic, epidemic, lock outs (whether or not by that Party), strikes and other industrial disputes (excluding those relating to either Party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, ("**Force Majeure Event**").

14. Term and termination

- 14.1. The Agreement shall commence on the Effective Date and shall continue in force for the Initial Term and thereafter unless or until terminated in accordance with this clause 14.
- 14.2. 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 non-renewal, such notice not to expire before the end of either the Initial Term or the Extended Term (as appropriate).
- 14.3. Where the Client is not renewing a Node4 Service pursuant to clause 14.2 above or is terminating specific Products or Services (in whole or in part) included in an Order Form through a notification under this Clause 14, Node4 will raise and issue to the Client for signature a cancellation form within 5 Business Days of such notification. The notice period for non-renewal or termination, as the case may be, will commence 5 Business Days after submission of the signed cancellation form by the Client to Node4.
- 14.4. Either Party may by written notice served on the other terminate the Agreement immediately if:
- 14.4.1. 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 the party seeking to terminate specifying the breach and requiring it to be remedied;
- 14.4.2. 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;

- 14.4.3. if the other Party has any distressed, execution or other process levied or enforced on any of its property;
- 14.4.4. if the other Party ceases to trade; or
- 14.4.5. if the Force Majeure Event continues for more than 90 consecutive days.

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

14.6. Subject to the provisions of clause 9.7, on termination of this Agreement howsoever arising, each Party will return to the other any property of the other in its possession or control.

14.7. Without prejudice to any other of its rights and remedies on Termination, Node4 will:

- 14.7.1. Keep a final backup of the Client data for a period of 30 days.
- 14.7.2. Provide the Client 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 Client.
- 14.7.3. For personal data following written confirmation from the data controller, transfer data by agreed method.
- 14.7.4. After 30 days, Node4 will be entitled to remove the Client's data and Personal Data from its systems and any Node4

Equipment and provide written confirmation that the Client's Data and Personal Data has been removed.

- 14.7.5. If requested by the Client and with fees and scope agreed in advance, Node4 will provide a specific exit plan and support during its execution.

15. Early termination fees

15.1. In the event of any termination by Node4 pursuant to clause 14.4, the Client 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 value of the Order Form(s).

15.2. In the event of termination by the Client unless subject to clause 14.4.1, the Client shall pay Node4 the remaining Fees as indicated in the Order Form for the remaining months of the Initial or Extended Term (as the case may be).

16. Data and confidential information

16.1. Node4 reserves the right to hold the names and other information provided by and relating to Clients 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.

16.2. Clients who request an IP address assignment will have their contact details added to the RIPE database.

16.3. Each Party will keep confidential:

- 16.3.1. the terms of the Agreement; and
- 16.3.2. any and all Confidential Information that it may acquire in relation to the other party.
- 16.4. Neither Party will use the other Party's 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 16.2 and 16.3.
- 16.5. The obligations on a Party set out in clauses 16.2 and 16.3 will not apply to any Confidential Information which:
- 16.5.1. either of the Parties can demonstrate is in the public domain (other than as a result of a breach of clause 16.2 or 16.3); or
- 16.5.2. a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 16.6. If so, requested by the Party disclosing Confidential Information at any time by notice in writing to the Party receiving Confidential Information, the receiving Party shall:
- 16.6.1. destroy (or return to the disclosing Party) all documents and materials containing, reflecting, incorporating, or based on the disclosing Party's Confidential Information;
- 16.6.2. to the extent technically and legally practical (without incurring undue expense) erase all the disclosing Party's Confidential Information from the computer and communications systems and devices used by it, or which is stored in electronic form including information that is stored on systems and data storage services provided by third parties; and
- 16.6.3. certify in writing to the disclosing Party that it has complied with the requirements of this clause 16.6.
- 16.7. Nothing in clause 16.6 shall require the receiving Party to return or destroy any documents and materials containing or based on the disclosing Party's Confidential Information that the recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority.
- 16.8. The provisions of this clause 16 will survive any termination of the Agreement for a period of 5 years from termination.
- 17. Personal data**
- 17.1. In this clause 17, the terms "**controller**", "**processor**" and "**Personal Data**" shall have the meanings given to such terms in the Data Protection Legislation.
- 17.2. Both Parties will comply with all applicable requirements of the Applicable Data Protection Laws. This Clause 17.2 is in addition to, and does not relieve, remove, or replace, a Party's obligations or rights under Applicable Data Protection Laws.
- 17.3. Without prejudice to Clause 17.1, for the purposes of the Applicable Data Protection Laws (i) Node4 is the processor and the Client is the controller of the Personal Data provided to Node4 by the Client; (ii) the Client will ensure it has all necessary and appropriate consents and notices in place to enable the lawful transfer and processing of Personal Data by Node4

for the purposes of this Agreement, (iii) each of the Parties shall in relation to Client's Personal Data comply with documented data processing activities in relation to the Products and Services; and (iv) the Client represents and warrants that it will be solely responsible for determining the lawful basis to process the Personal Data supplied to Node4 and Node4 shall have no liability for the failure of the Client to have accurately determined the lawful basis prior to processing of the Personal Data by Node4.

17.4. When required, the roles and responsibilities of each Party regarding the processing of Client's Personal Data will be defined in a separate Data Processing Agreement ("**DPA**") which shall be incorporated by reference into the Agreement. If required the Parties also agree to execute a Data Transfer Agreement ("**DTA**") to govern the transfer of Client's Personal Data between the Client and Node4, ensuring compliance with Applicable Data Protection Laws. The DTA shall outline the terms and conditions for the transfer, including the legal basis for transfer, security measures, and data subject rights.

17.5. Node4 shall, in respect of Client's Personal Data:

- 17.5.1. in its role as data processor, process the Client's Personal Data only on the written instructions of the Client to perform its obligations under the Agreement;
- 17.5.2. provide such appropriate technical and organisational measures as are specified by the Client against unauthorised or unlawful processing, accidental loss, or destruction

of or damage to Client's Personal Data;

- 17.5.3. not subcontract any processing of Client's Personal Data to a third party without the prior written consent of the Client;
- 17.5.4. take all reasonable steps to ensure the reliability of its staff who have access to Client's Personal Data and ensure that access to Client's Personal Data is limited to such authorised staff only who require access to it for the purpose of complying with Node4's obligations under the Agreement;
- 17.5.5. not process or transfer Client's Personal Data outside of the UK, the European Union, or the European Economic Area without the prior written consent of the Client. In the event that Personal Data is transferred internationally and outside UK, if required the Parties agree to execute an International Data Transfer Addendum ("**IDTA**") to the Data Transfer Agreement. The IDTA shall include additional safeguards and mechanisms for ensuring the lawful transfer of personal data outside the UK, in compliance with the requirements of the UK GDPR;
- 17.5.6. promptly inform the Client of any request for disclosure of Client's Personal 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 Client's Personal Data without first consulting with and obtaining the consent of the

Client, except where required by applicable law or any court of competent jurisdiction; and

- 17.5.7. provide reasonable assistance to the Client in complying with any data subject request (including a subject access request) and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of Client's Personal Data as soon as is possible but in any event within ten (10) Business Days of receipt of the request or any other period as agreed in writing with the Client. Node4 will be entitled to recover its reasonable costs of providing such assistance.
- 17.6. Upon becoming aware of any loss, alteration, unauthorised disclosure of, or access to Client's Personal Data or any Personal Data breach, Node4 shall inform the Client without undue delay and shall provide all such timely information and cooperation as the Client may require in order for the Client to fulfil its data breach reporting obligations under Applicable Data Protection Laws.
- 17.7. If Node4 becomes aware that it, or any third-party processing Client's Personal Data pursuant to the Agreement, is processing, or has processed, Client's Personal Data in contravention of the Agreement, Node4 shall promptly and in writing, notify the Client with full details of the contravention.
- 17.8. Node4 will on Client's written direction, delete (or put beyond use) or return Client's Personal Data to Client once provision of the Services has ceased,

unless required by a legal obligation to store such Client's Personal Data.

18. Dispute resolution

- 18.1. The Parties shall attempt in good faith to resolve any dispute in relation to this Agreement by the approach described below:
 - 18.1.1. either Party must notify the other Party in writing the nature of the dispute. Management representatives will then meet with the aim of resolution within 10 days of receipt of notification; and
 - 18.1.2. if the dispute continues, senior management from the Parties will meet within a further 10 days with the aim of resolution.
- 18.2. 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 using an independent mediator to be agreed between the Parties. In the absence of any agreement between the Parties, a mediator will be nominated by the Centre for Effective Dispute Resolution (CEDR) in accordance with the Model Mediation Procedure. 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.
- 18.3. Following mediation if the dispute continues, either party shall be entitled to refer the dispute to the courts in accordance with Clause 22.

19. Non-solicitation

- 19.1. During the Initial Term and any Extended Term and for a period of one year thereafter, the Parties agrees that they will not solicit to employ any employee

the other Party, unless the Party has first obtained the other Parties' prior written consent. The foregoing will not prohibit a Party from employing an individual who applies for a position in response to an employment advertisement, or other general solicitation of employment, or from hiring individuals that are no longer employed by the other Party.

20. Notices

20.1. Any notices sent must be in writing. For the purpose of this clause, post, facsimile transmission, and electronic mail is accepted as being 'in writing'.

20.2. Notices shall be deemed to have been made to the other Party on the day on which such communication ought to have been received, post two Working Days after posting, facsimile transmission the next Working Day after successful transmission, electronic mail the Working Day on which the communication is sent from the Party's electronic mailbox.

20.3. Any legal action should be sent to the other Party's registered office by post with a copy to email at legal@node4.co.uk.

21. Miscellaneous

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

21.2. 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.

21.3. A waiver of any right or remedy shall only be effective if given in writing. 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.

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

21.5. The Agreement is personal to the Client 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.

21.6. The Parties to the Agreement 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.

21.7. The Agreement contains all the terms which Node4 and the Client 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 Client 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 21.7 will exclude any liability which one Party would otherwise have to the other

Party in respect of any statements made fraudulently.

21.8. The Client 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 Client Equipment or Licences.

22. Governing law and jurisdiction

22.1. The construction, performance, governance, 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.