

## Standard Terms and Conditions of Cube 6 IT Limited

These are the Standard Terms and Conditions on which we supply goods and services to you which, together with the content of the Order Form and those of the supplementary terms and conditions which apply to the goods and services set out in the Order Form, comprise the terms of the contract between us (Cube6 IT) and you (the Customer). Please read these terms carefully when you submit your Order Form to us as they will be binding on you.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CONDITION 9 (LIMITATION OF LIABILITY).

### 1. INTERPRETATION

The definitions and rules of interpretation in this condition apply in these terms and conditions.

#### 1.1 Definitions:

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 8.30 am to 5.00 pm on any Business Day.

**Charges:** means the charges payable by the Customers for the supply of the Services and/or Equipment by Cube6 IT, as set out in the Order Form and as varied from time to time by agreement and/or in accordance with these Conditions.

**Conditions:** means these standard terms and conditions, together with the supplementary terms and conditions set out in Schedule 1 to Schedule 4 (inclusive).

**Confidential Information:** has the meaning given in condition 8.1 (Confidentiality).

**Contract:** the Contract between the Customer and Cube 6 IT for the supply of Equipment and/or Services in accordance with the Order Form purchase order and Cube6 IT's acceptance of it under condition 3.

**Customer:** the person, firm or company who purchases Services from Cube6 IT.

**Customer Materials:** means all materials, equipment and tools, drawings, specifications and data supplied by the Customer to Cube6 IT.

**Cube6 IT:** a company incorporated and registered in England and Wales with company number 06312419 whose registered office is 122 Feering Hill, Feering, Colchester, England, CO5 9PY.

**Customer's Premises:** the premises identified in the Order Form on which the Equipment is to be delivered or installed and/or the Services are to be supplied.

**Deliverables:** all products and materials developed by Cube6 IT in relation to any Project in any media, including computer programs, data, diagrams, reports and specifications (including drafts).

**Equipment:** means all and any goods and equipment, including but not limited to all hardware, software, consumables, modems, modem configurations, routers, lines and cabling provided and/or installed by Cube6 IT in connection with supply of the Services as set out in the Order Form which for the avoidance of doubt at all times remain the property of Cube6 IT until paid for in full.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, rights in domain names, rights in 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, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Managed IT Environment:** means the Customer's IT environment or specified part of it that is managed by Cube6 IT but excluding: (a) equipment that is not covered by warranty; (b) all or any part of any home networks; (c) equipment which is primarily for personal use (not for business purposes); and (d) hardware and software installed without the knowledge of Cube6 IT.

**Order:** means the order for Equipment and/or Services comprised within the Order Form.

**Order Form:** means the Order Form submitted by the Customer and accepted by Cube 6 IT.

**Scope of Services:** the document detailing the scope of Services accompanying the Order Form and/or attached to these Conditions.

**Services:** the services, to be provided by Cube 6 IT pursuant to this Contract, as set out in the Order Form.

**Support Services:** IT support and consultancy services provided by Cube 6 IT including but not limited to the service modules set out in Schedule 1.

**VAT:** value added tax imposed by the Value Added Tax Act 1994 or any similar tax chargeable in the UK or elsewhere.

- 1.2 Condition, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** excludes faxes and emails.
- 1.9 References to conditions and Schedules are to the conditions and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. APPLICATION OF CONDITIONS**

2.1 The Conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Cube6 IT unless in writing and signed by a duly authorised representative of Cube6 IT.

## **3. EFFECT OF PURCHASE ORDER**

3.1 The Order Form constitutes an offer by the Customer to purchase the Services and/or Equipment specified in it in accordance with these Conditions. Accordingly, the execution and return of the acknowledgement copy of the purchase order form by Cube6 IT, or Cube6 IT's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

3.2 Each Order Form is subject to acceptance by Cube6 IT in its absolute discretion and without limitation shall be subject to Cube 6 IT's satisfaction of the following matters:

- (a) a site survey of the Customer's Premises being carried out and acceptable to Cube6 IT in its absolute discretion; and
- (b) the provision by Customer of financial and credit information satisfactory to Cube6 IT.

3.3 Should the site survey of the Customer's Premises prove, in Cube6 IT's absolute discretion, to be unacceptable, Cube6 IT reserves the right either to:

- (a) withdraw its acceptance of the Order Form: or
- (b) revise the Services and Charges set out on the Order Form to take account of any additional time and materials necessary for delivery of the Services and/ or Equipment.

3.4 In the event Cube6 IT provides the Customer with a written quote for Equipment and/or Services rather than an Order Form a contract shall be established once the Customer provides written or verbal acceptance of the quote and references to Order Form in these Conditions shall include a reference to a quote that has been accepted by the Customer. All Equipment and Services provided in accordance with an accepted quote shall be subject to these Conditions.

## **4. SUPPLY OF SERVICES**

Where the Order Form indicates that Support Services are to be supplied then, in addition to these Standard Terms and Conditions, the supplementary terms and conditions set out in Schedule 2 shall apply to the Contract in relation to that part of the Order.

## **5. SUPPLY OF EQUIPMENT**

5.1 In addition to these Conditions, the supplementary terms and conditions set out in Schedule 3 shall also apply to the supply of any Equipment by Cube6 IT to the Customer.

5.2 If Cube6 IT supplies any Equipment under hire or lease terms that is not supplied directly, in addition to these Conditions, supplementary terms and conditions provided to the Customer shall also apply in the Contract between Cube6 IT and the Customer in relation to the supply of such Equipment.

## **6. CHARGES AND PAYMENT**

6.1 Condition 6.2 shall apply if the Services are to be provided on a time-and-materials basis. condition 6.3 and condition 6.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 6 shall apply in either case.

6.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with Cube6 IT's standard daily fee rates as amended from time to time;
- (b) Cube6 IT's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
- (c) Cube6 IT shall be entitled to charge at an overtime rate (at Cube6 IT's discretion) up to a maximum of 100% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 6.2(b) on a pro-rata basis;
- (d) Cube6 IT shall ensure that all members of the project team complete time sheets recording time spent on the relevant Project, and Cube6 IT shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 6.2(e); and
- (e) Cube6 IT shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (subject to condition 6.5) for the month concerned, calculated as provided in this condition 6. Each invoice shall set out the time spent by each member of the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

6.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Order Form. The total price shall be paid to Cube6 IT in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. On achieving a Project Milestone, Cube6 IT shall (subject to condition 6.5) invoice the Customer for the charges that are then payable, together with expenses and the costs of materials, calculated as provided in condition 6.4.

6.4 Any fixed price contained in the Order Form excludes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Cube6 IT for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Cube6 IT.

6.5 All payments made by the Customer under this agreement are exclusive of VAT. Cube6 IT shall provide the Customer with a valid VAT invoice.

6.6 Without prejudice to any other right or remedy that Cube6 IT may have, if the Customer fails to pay Cube6 IT on the due date Cube6 IT may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank, accruing on a daily

basis and being compounded quarterly until payment is made, whether before or after any judgment; and

(b) suspend all Services until payment has been made in full.

6.7 Time for payment shall be of the essence of the Contract.

6.8 The Customer shall pay each invoice submitted to it by Cube6 IT in full, and in cleared funds, within 30 days of receipt

6.9 All payments payable to Cube6 IT under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

6.10 All amounts due under this agreement shall be paid by the Customer to Cube6 IT in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Cube6 IT may, without prejudice to any other rights it may have, set off any liability of the Customer to Cube6 IT against any liability of Cube6 IT to the Customer.

6.11 Additional provisions relating to charges for Services are set out in Schedule 2 and additional provisions relating to charges for Equipment are set out in Schedule 3.

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Cube6 IT. Cube6 IT licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Cube6 IT terminates the Contract under condition 10.1, this licence will automatically terminate.

7.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Cube6 IT obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Cube6 IT to license such rights to the Customer.

## **8. CONFIDENTIALITY AND SUPPLIER'S PROPERTY**

8.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this agreement in connection with the supply of Services, including but not limited to:

(a) the existence and terms of this agreement or any agreement entered into in connection with this agreement;

(b) any information that would be regarded as confidential by a reasonable business person relating to:

(i) the business, assets, affairs, customers, clients, suppliers, or plans of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

(ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

(c) any information developed by the parties in the course of carrying out this agreement.

**Representatives** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

8.2 The provisions of this Condition shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Condition);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) the parties agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

8.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this condition 8.

8.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Condition.

8.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Condition 8.5, it takes into account the reasonable requests of the other party in relation to the Condition of such disclosure.

8.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.

8.7 On termination or expiry of this Contract, each party shall:

- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
- (c) certify in writing to the other party that it has complied with the requirements of this Condition, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Condition shall continue to apply to any such documents and materials retained by a recipient party, subject to Condition 10.

8.8 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

8.9 The provisions of this Condition 8 shall continue to apply after termination or expiry of this agreement.

## **9. LIMITATION OF LIABILITY**

**WARNING: you are strongly advised to read the drafting note on this condition.**

9.1 The following provisions set out the entire financial liability of Cube6 IT (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a) any breach of the Contract however arising;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Contract.

9.3 Nothing in these conditions excludes the liability of Cube6 IT:

- (a) for death or personal injury caused by Cube6 IT's negligence; or
- (b) for fraud or fraudulent misrepresentation.

9.4 Subject to condition 9.2 and condition 9.3:

- (a) Cube6 IT shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
  - (i) loss of profits;
  - (ii) loss of business;

- (iii) depletion of goodwill or similar losses;
  - (iv) loss of anticipated savings;
  - (v) loss of goods;
  - (vi) loss of contract;
  - (vii) loss of use;
  - (viii) wasted expenditure;
  - (ix) loss or corruption of data or information; or
  - (x) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Cube6 IT's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

9.5 Cube6 IT shall not be liable for:

- (a) temporary loss or disruption to other telecommunications services;
- (b) any defect or default in the Services, or any part of them, that is attributable to elements that are not provided by it but by other third parties and/or manufacturers (such as but not limited to access circuits, modems, routers, installation);
- (c) issues resulting from the Customer's use of infrastructure (including Infrastructure as a Service (IaaS) / Platform as a Service (PaaS) / Software as a Service (SaaS)), networks, devices, internet connections, software or services where the relevant infrastructure, network, device, software or service is not included in the Managed IT Environment;
- (d) the failure or poor performance of the Customer's power source and/or power supply;
- (e) any changes or modifications made to the Customer's operating system, environment or equipment except where made or approved by Cube6 IT;
- (f) device failures, where any rectification work or rebuild shall be subject to the prior agreement of Cube6 IT (at its sole discretion) and in such circumstances shall agree to use its reasonable endeavours (but no guarantee) to resolve such device failure. Any such work shall be quoted and invoiced to the Customer separately;
- (g) the Customer not acting on a recommendation from Cube6 IT (given in writing) that additions, changes or updates to the Managed IT Environment are required;
- (h) any virus or malware attacks, cyber security or security breaches, data protection compliance issues, nor privacy products or services;
- (i) unexpected or inappropriate (in Cube6 IT's professional and reasonable opinion, taking into account industry best practice) or unauthorised (by Customer's IT policy) software or application downloaded, saved or located on a user's device;



- (j) any new software or application downloaded, saved or located on a user's device or Customer's system not advised to Cube6 IT in advance and on reasonable notice, unless otherwise agreed in writing by Cube6 IT;
- (k) any third party act, omission or circumstance which results in unavailability of all or any section of the Managed IT Environment, whether malicious or not (other than where the third party is a subcontractor engaged by Cube6 IT) or any unauthorised access to the Managed IT Environment; or
- (l) a Force Majeure Event.

## **10. TERMINATION**

10.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (h) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (i) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 10.1(d) to condition 10.1(k) (inclusive);
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- (n) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

10.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

10.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

## **11. FORCE MAJEURE**

Neither party shall be in breach of this agreement or otherwise liable for any failure or delay in the performance of its obligations if such nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

## **12. NON-SOLICITATION**

12.1 The Customer shall not directly or indirectly solicit or entice away, or attempt to solicit or entice away from Cube6 IT any person employed or engaged by Cube6 IT in connection with the provision of Services at any time during the provision of such services, and for a further period of 12 months after both the supply of the Services, and termination of this agreement in each case.

12.2 If the Customer commits any breach of clause 12.1, the Customer shall, on demand, pay to Cube6 IT a sum equal to one years' basic salary or the annual fee that was payable by Cube6 IT to that employee, worker or independent contractor plus the recruitment costs incurred by Cube6 IT in replacing such person.

## **13. WAIVER**

13.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

13.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **14. RIGHTS AND REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**15. SEVERANCE**

- 15.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 15.2 If any provision or part-provision of this agreement is deemed deleted under condition 15.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, the amended provision achieves the intended commercial result of the original provision.

**16. ENTIRE AGREEMENT**

- 16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 16.2 Each party acknowledges that, in entering into this agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**17. ASSIGNMENT**

- 17.1 Cube6 IT may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Customer.
- 17.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

**18. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**19. THIRD PARTY RIGHTS**

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**20. NOTICES**

- 20.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
  - (i) Cube6 IT: [accounts@cube6it.com](mailto:accounts@cube6it.com).
  - (ii) Customer: the contact email set out in the Order Form.

20.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

20.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **21. GOVERNING LAW**

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and interpreted in accordance with the law of England and Wales.

## **22. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## **SCHEDULE 1 - Service Module Definition**

### **1. UNLIMITED REMOTE SUPPORT**

- 1.1 The Customer may report break-fix faults against the Equipment located at the Service Address specified in the Scope of Service, by logging a Call. This can be achieved by telephone to our call centre number, by email or via the internet as directed by CUBE6 IT. The Customer will be given a unique call reference which indicates the Call has been logged.
- 1.2 A Call can be placed using the above methods during Normal Working Hours.
- 1.3 CUBE6 IT will attempt to respond to the Call within the Service Level Response Time period specified in the Scope of Service, either by telephone or by email.
- 1.4 CUBE6 IT will work to diagnose and correct the fault to the Equipment as is, by remote services.
- 1.5 The Services will only be provided on Windows desktop supported operating systems and later Windows operating systems when released and approved by CUBE6 IT. Earlier versions are not supported without prior written consent from CUBE6 IT.
- 1.6 The Services will only be provided on Windows server operating systems and later Windows operating systems when released and approved by CUBE6 IT. Windows Server 2003 and 2003 R2, will be supported on a reasonable endeavours basis only (due to limitations with the manufacturer). Earlier versions are not supported without prior written consent from CUBE6 IT.
- 1.7 At the request of the Customer and wherever possible, CUBE6 IT will liaise directly with third parties such as software providers, internet and phone companies, web developers and those involved in delivering technical services to the Customer. On occasion CUBE6 IT may hand over direct support of the third party to the Customer, typically where it makes technical sense to do so.
- 1.8 Call volume and fair usage of the Service will be reviewed at the discretion of CUBE6 IT periodically.
- 1.9 Fair usage of the Service is calculated at CUBE6 IT's discretion. This generally forms a calculation that ascertains whether
- 1.10 the Customer is operating within profitable boundaries of the Scope of Service and Service Charges of this Contract. It should be noted this is simply a trigger for CUBE6 IT to review profitability of this Contract internally and forms the basis of a potential conversation between CUBE6 IT and the Customer at a later stage.
- 1.11 The Customer will allow CUBE6 IT a permanent connection between the CUBE6 IT and Customer offices to allow support to be delivered by remote services.
- 1.12 CUBE6 IT will at times continue to work to resolve the fault outside Normal Working Hours subject to arrangement with the Customer on a reasonable endeavours basis.

### **2. UNLIMITED REMOTE AND ON-SITE SUPPORT**

- 2.1 The Customer may report break-fix faults against the Equipment located at the Service Address specified in the Scope of Service, by logging a Call. This can be achieved by telephone to our call centre number, by email or via the internet as directed by CUBE6 IT.

The Customer will be given a unique call reference which indicates the Call has been logged.

- 2.2 A Call can be placed using the above methods during Normal Working Hours.
- 2.3 CUBE6 IT will attempt to respond to the Call within the Service Level Response Time period specified in the Scope of Service, either by telephone or by email.
- 2.4 CUBE6 IT will work to diagnose and correct the fault to the Equipment as is, by remote services.
- 2.5 If CUBE6 IT cannot correct the fault to the Equipment, by either telephone or remote services, CUBE6 IT may schedule the Call to become an on-site visit to one of the Customer locations specified in the Scope of Service within the Services level response time period specified in the Scope of Service.
- 2.6 The Services will only be provided on Windows desktop supported operating systems and later Windows operating systems when released and approved by CUBE6 IT. Earlier versions are not supported without prior written consent from CUBE6 IT.
- 2.7 The Services will only be provided on Windows server operating systems and later Windows operating systems when released and approved by CUBE6 IT. Windows Server 2003 and 2003 R2, will be supported on a reasonable endeavours basis only (due to limitations with the manufacturer). Earlier versions are not supported without prior written consent from CUBE6 IT.
- 2.8 At the request of the Customer and wherever possible, CUBE6 IT will liaise directly with third parties such as software providers, internet and phone companies, web developers and those involved in delivering technical services to the Customer. On occasion CUBE6 IT may hand over direct support of the third party to the Customer, typically where it makes technical sense to do so.
- 2.9 Call volume and fair usage of the Service will be reviewed at the discretion of CUBE6 IT periodically.
- 2.10 Fair usage of the Service is calculated at CUBE6 IT's discretion. This generally forms a calculation that ascertains whether
- 2.11 the Customer is operating within profitable boundaries of the Scope of Service and Service Charges of this Contract. It should be noted this is simply a trigger for CUBE6 IT to review profitability of this Contract internally and forms the basis of a potential conversation between CUBE6 IT and the Customer at a later stage.
- 2.12 The Customer will allow CUBE6 IT a permanent connection between the CUBE6 IT and Customer offices to allow support to be delivered by remote services.
- 2.13 CUBE6 IT will at times continue to work to resolve the fault outside Normal Working Hours subject to arrangement with the Customer on a reasonable endeavours basis.

### **3. CUBE6 INFRASTRUCTURE MONITORING**

- 3.1 CUBE6 IT will install relevant software agents and / or probes on agreed servers and devices to enable pro-active monitoring of Customer infrastructure and networks.
- 3.2 When operational the software agents and / or probes will alert CUBE6 IT of faults detected on each monitored device.

- 3.3 The Customer acknowledges that there are potential limitations with the Equipment. Pro-active alerts generated by the software agents and / or probes cannot be specifically listed due to the limitations. A typical expectation of these alerts can be found using up to date CUBE6 IT marketing material.
- 3.4 An alert will be generated, and a Call will be logged automatically or manually (whichever is deemed relevant by CUBE6 IT) into CUBE6 IT's appropriate call management software.
- 3.5 CUBE6 IT will attempt to respond to the Call and diagnose an alert within a response time appropriate to its nature. Critical alerts will be responded to within the Service Level Response Time period specified in the Scope of Service. Other alerts will be responded to dependant on the severity of the fault or alert, either by telephone or by remote services or where relevant by visit to the Service Address.
- 3.6 CUBE6 IT will work to diagnose and correct the alert as is, by remote services.
- 3.7 CUBE6 IT will at times continue to work to resolve the fault outside Normal Working Hours subject to arrangement with the Customer on a reasonable endeavours basis.
- 3.8 CUBE6 IT will continue to receive alerts outside of Normal Working Hours (24/7/365) however Calls will only be logged and responded to during Normal Working Hours.

#### **4. REMOTE ADMINISTRATION**

- 4.1 The Customer may log service requests, additions against the Equipment located at the Service Address specified in the Scope of Service, by logging a Call. This will be classed as Administration and covered under this module. This can be achieved by telephone to our call centre number, by email or via the internet as directed by CUBE6 IT. The Customer will be given a unique call reference which indicates the Call has been logged.
- 4.2 Typically, Administration includes the following types of Call; new users, user security changes / group changes, pin and password resets, minor re-configurations, mailbox setup or changes, small / individual / mailbox restorations.
- 4.3 For the avoidance of doubt Administration does not include; installations or upgrades, Scoped Projects, major reconfigurations or virus removal.
- 4.4 Call volume and fair usage of the Service will be reviewed at the discretion of CUBE6 IT periodically.

#### **5. 24/7/365 INCIDENT PACK**

- 5.1 The Customer may log a Call outside of Normal Working Hours. This can be achieved by telephoning our dedicated 24/7/365 out of hours support number.
- 5.2 CUBE6 IT will attempt to respond to the Call within a 1 hour period either by telephone or by email.
- 5.3 CUBE6 IT will continue to diagnose and work to resolve the fault outside of Normal Working Hours subject to arrangement with the Customer, inclusive of weekends and public holidays.
- 5.4 The Customer may log up to four remote Calls or one onsite Call within one 24/7/365 incident pack.
- 5.5 Replenishment of any allocated pack will be automatic on an annual basis. A pack can also be replenished or purchased on an ad-hoc basis at an additional charge (please see prevailing rates), outside of this Contract.

**6. SURGERY DAYS**

- 6.1 CUBE6 IT will provide a technical engineer on-site for the frequency specified in the Scope of Service excluding weekends and public holidays.
- 6.2 CUBE6 IT technical engineers can be present from 0900hrs to 1700hrs for a full day, including a 1 hour lunch break, or for half day 0900hrs to 1300hrs or 1300hrs to 1700hrs, or otherwise as specified in the Scope of Service.
- 6.3 The Customer agrees to make available a desk, phone and data point to enable the CUBE6 IT technical engineer to carry out the Services function. These costs are to be covered by the Customer.
- 6.4 The technical engineer will be rotated with other technical engineer(s) to assist in knowledge of the Customer network being shared and enhancing consistency of support. This is at the discretion of CUBE6 IT.

**7. SERVER PATCH MANAGEMENT**

CUBE6 IT will keep your server and network secure by updating to the latest patches and security releases on a Monthly basis with full audit history.

**Server Patching Schedule**

Rating (Severity)	Infrastructure Server Services	Devices; Applications; Digital	Web Check Reporting
Critical (4)	3-7 days after vulnerability alert released.		<b>Urgent:</b> Serious configuration problems that you should fix without delay and no later than 28 days after the vulnerability alert is released.
High Risk (3)	3-7 days after vulnerability alert released.		<b>Advisory:</b> Configuration problems that leave the site vulnerable. Patches should be implemented no later than 28 days after the vulnerability alert is released.
Medium (2)	28 days after vulnerability alert released.		<b>Informational:</b> Configurations that you could optimise, or information that you may find useful.



Low (1)	Next scheduled system upgrade (not to exceed 90 days).	<b>N/A</b>
Positive (0)	N/A	<b>Positive:</b> Site configurations that conform to best practices.

## 8. WORKSTATION PATCH MANAGEMENT

CUBE6 IT will keep your Workstations and network secure by updating to the latest patches and security releases on a weekly basis with full audit history

### Workstation Patching Schedule

Rating (Severity)	End User Client Devices	Client	Web Check Reporting
Critical (4)	14 days vulnerability released.	after alert	<b>Urgent:</b> Serious configuration problems that you should fix without delay and no later than 28 days after the vulnerability alert is released.
High Risk (3)	14 days vulnerability released.	after alert	<b>Advisory:</b> Configuration problems that leave the site vulnerable. Patches should be implemented no later than 28 days after the vulnerability alert is released.
Medium (2)	28 days vulnerability released.	after alert	<b>Informational:</b> Configurations that you could optimise, or information that you may find useful.
Low (1)	Next scheduled system upgrade (not to exceed 90 days).		<b>N/A</b>
Positive (0)	N/A		<b>Positive:</b> Site configurations that conform to best practices.

## **9. PRIVATE CLOUD / VIRTUALISED SERVER**

- 9.1 Private Cloud is an Infrastructure-as-a-Service (IaaS) service that is provided by CUBE6 IT and its supplier, which is accessed by Customer using independently supplied network services, which for the avoidance of doubt, are not covered by the terms of this Agreement. References to CUBE6 IT in relation to Private Cloud and Virtualised Server Service means CUBE6 IT and / or its supplier of Private Cloud.
- 9.2 CUBE6 IT shall use reasonable endeavours to provide each of the Private Cloud or Virtualised Server Services to the Customer subject to acceptance of Customer's order by CUBE6 IT, from the Commencement Date. The details of the Services are set out in the Order Form and/or the scope of service attached hereto and such shall be provided subject to the terms of this Agreement. CUBE6 IT shall use reasonable endeavours to provide the Services twenty-four hours per day, subject to the limitations expressed in this Agreement.
- 9.3 During the term of this Agreement, Cube6 IT shall be entitled to:
- (a) Change the technical specification of the Data Centre for operational reasons, statutory or regulatory requirements PROVIDED THAT such changes do not materially adversely affect the quality or performance of the Services;
  - (b) Make alterations to the Services. Such alterations may result in temporary disruption to the Services and CUBE6 IT will use reasonable endeavours to minimise such disruption and will provide as much notice as possible.
  - (c) CUBE6 IT cannot guarantee and does not warrant that the Services will be free from interruptions, including interruption of the Services for operational reasons and temporary degradation of the quality of the Services.

## SCHEDULE 2 – Support Services Additional Terms

### 1. DEFINITIONS:

**Customer's Project Manager:** the Customer's manager for the Project appointed in accordance with paragraph 3.1 (a) of this Schedule 2.

**Deliverables:** all products and materials developed by Cube6 IT in relation to the Project in any media, including computer programs, data, diagrams, reports and specifications (including drafts).

**Pre-existing Materials:** materials which existed before the commencement of the Project.

**Project:** the project as described in the Project Plan.

**Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

**Project Plan:** the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Services by Cube6 IT in accordance with the Contract.

**Supplier's Project Manager:** Cube6 IT's manager for the Project, appointed in accordance with paragraph 2.3 of this Schedule 2.

### 2. SUPPLIER'S OBLIGATIONS

- 2.1 Cube6 IT shall supply the Services to the Customer from the Contract Date in accordance with this Contract.
- 2.2 Cube6 IT shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 2.3 Cube6 IT shall appoint Cube6 IT's Project Manager who shall have authority to contractually bind Cube6 IT on all matters relating to the Project. Cube6 IT shall use reasonable endeavours to ensure that the same person acts as Cube6 IT's Project Manager throughout the Project, but may replace that person from time to time where reasonably necessary in the interests of Cube6 IT's business.
- 2.4 Cube 6 IT shall take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, provided always that Cube6 IT may destroy the Customer Materials if to collect the Customer Materials within a reasonable period after termination of this Contract.
- 2.5 Cube6 IT shall use reasonable endeavours to ensure the Services comply in all material respects with the applicable service levels and module definitions set out in Schedule 1.

### 3. CUSTOMER'S OBLIGATIONS

- 3.1 The Customer shall:
  - (a) co-operate with Cube6 IT in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;
  - (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by Cube6 IT;

- (c) provide in a timely manner such information as Cube6 IT may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

#### **4. CHANGE CONTROL**

- 4.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 4.2 If either party requests a change to the scope or execution of the Services, Cube6 IT shall, within a reasonable time, provide a written estimate to the Customer of:
  - (a) the likely time required to implement the change;
  - (b) any variations to Cube6 IT's charges arising from the change;
  - (c) the likely effect of the change on the Project Plan; and
  - (d) any other impact of the change on the terms of the Contract.
- 4.3 If Cube6 IT requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 4.4 If the Customer wishes Cube6 IT to proceed with the change, Cube6 IT has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

#### **5. DURATION OF SERVICES**

- 5.1 Unless specified otherwise in the Order Form, the Services and the Contract shall continue for a period of 24 months from the Commencement Date (**Initial Term**) unless terminated earlier in accordance with condition 10 (Termination) and shall automatically extend for a further 12 months (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. Each Party may give written notice to the other party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

#### **6. ADDITIONAL PROVISIONS RELATING TO CHARGES FOR ONGOING SERVICES**

- 6.1 Cube6 IT may increase the Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 6.2 Cube6 IT shall invoice the Customer for the Charges at the intervals specified in the Order Form or if no intervals are so specified Cube6 IT shall invoice the Customer at the end of each month for Services performed during that month.

#### **7. SUPPLY OF PRIVATE CLOUD OR VIRTUALISED SERVER SERVICES AND/OR LICENSES BY MICROSOFT OR OTHER THIRD PARTY SUPPLIERS**

- 7.1 If the Services include the supply of Private Cloud or Virtualised Server Services and/or other products or licenses by Microsoft or other third party suppliers then the additional terms set out in Schedule 4 shall apply to this Contract.

## **SCHEDULE 3 – Supply of Equipment**

This Schedule 3 sets out additional terms applicable to the supply of Equipment (including software) by Cube6 IT to the Customer.

### **1. QUANTITY AND DESCRIPTION**

- 1.1 The quantity and description of the Equipment shall be as set out in Order Form.
- 1.2 All samples, drawings, descriptive matter, specifications and advertising issued by Cube6 IT and any descriptions or illustrations contained in Cube6 IT's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.
- 1.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Cube6 IT shall be subject to correction without any liability on the part of Cube6 IT.
- 1.4 Cube6 IT reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where Cube6 IT is not the manufacturer of the Equipment, Cube6 IT shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Cube6 IT.
- 1.5 Cube6 IT's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment.

### **2. APPLICABLE TERMS**

- 2.1 Equipment shall be supplied by Cube6 IT in accordance with the Conditions (including this Schedule 3), any applicable terms on the Order Form and the terms and conditions of use for such Equipment as defined by Cube6 IT at the time of delivery.
- 2.2 Cube6 IT gives no warranty to the Customer in respect of Equipment that is purchased by Cube6 IT from a supplier of equipment to Cube6 IT (**Cube 6 IT Supplier**) for resale to the Customer but shall take reasonable steps to assist Customer in pursuing warranty claims against the relevant Cube6 IT Supplier.
- 2.3 Unless otherwise specified in the Contract, Cube6 IT shall only deliver non-modifiable and executable run-time versions of Software.
- 2.4 The Customer shall at all times comply with the terms of Cube6 IT's software licenses.

### **3. PRICES**

- 3.1 All prices shall be as stated in Cube6 IT's acknowledgement of order. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties. Cube6 IT shall provide the Customer with a VAT invoice.
- 3.2 The price of the Equipment shall be Cube6 IT's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Cube6 IT's price list current at the date of acceptance of the order.
- 3.3 Cube6 IT reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to Cube6 IT which is due to market conditions or any factor beyond the control of Cube6 IT (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour,

materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Cube6 IT adequate information or instructions.

#### **4. PAYMENT**

4.1 Subject to any special terms agreed in writing between the Customer and Cube6 IT, Cube6 IT may invoice the Customer for the price of the Equipment on or at any time after delivery of the Equipment, unless:

- (a) the Equipment is to be collected by the Customer; or
- (b) the Customer wrongfully fails to take delivery of the Equipment,

and in either case Cube6 IT shall be entitled to invoice the Customer for the price at any time after Cube6 IT has notified the Customer that the Equipment is ready for collection.

4.2 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Equipment then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Cube6 IT, Cube6 IT shall be entitled to:

- (a) terminate the Contract or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;
- (b) appropriate any payment made by the Customer to such of the Equipment (or the Equipment supplied under any other contract between the Customer and Cube6 IT) as it thinks fit (despite any purported appropriation by the Customer);
- (c) suspend all further manufacture, delivery, installation or warranty service until payment has been made in full;
- (d) make a storage charge for any undelivered Equipment at its current rates from time to time; and
- (e) a general lien on all Equipment and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to Cube6 IT. Cube6 IT shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

#### **5. DELIVERY OF EQUIPMENT AND ACCEPTANCE**

5.1 Cube6 IT shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in Cube6 IT's acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and Cube6 IT is not in any circumstances liable for any delay in delivery, however caused.

5.2 The Equipment may be delivered by Cube6 IT in advance of the quoted delivery date on giving reasonable notice to the Customer.

5.3 Delivery shall be made during normal business hours (excluding bank or public holidays). Cube6 IT may levy additional charges for any deliveries made outside such hours at the Customer's request.

- 5.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If Cube6 IT is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, Cube6 IT may levy additional charges to recover its loss arising from this event.

## **6. RISK AND PROPERTY**

- 6.1 The Equipment shall be at the risk of Cube6 IT until delivery to the Customer at the place of delivery specified in Cube6 IT's acknowledgement of order. Cube6 IT shall off-load the Equipment at the Customer's risk.

- 6.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including off-loading), or when Cube6 IT has received in full in cleared funds all sums due to it in respect of:

- (a) the Equipment; and
- (b) all other sums which are or which become due to Cube6 IT from the Customer on any account.

- 6.3 Until ownership of the Equipment has passed to the Customer under paragraph 6.2, the Customer shall:

- (a) hold the Equipment on a fiduciary basis as Cube6 IT's bailee;
- (b) store the Equipment (at no cost to Cube6 IT) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Cube6 IT's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- (d) keep the Equipment insured on Cube6 IT's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of Cube6 IT, ensure that Cube6 IT's interest in the Equipment is noted on the policy, and hold the proceeds of such insurance on trust for Cube6 IT and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

- 6.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in Condition 10 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Cube6 IT on the due date.

- 6.5 Until ownership of the Equipment is transferred to the Customer in accordance with paragraph 6.2, the Customer grants Cube6 IT, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Cube6 IT in repossessing the Equipment shall be borne by the Customer.

## **7. INSPECTION AND TESTING OF EQUIPMENT**

- 7.1 Cube6 IT shall:

- (a) test and inspect the Equipment on delivery to ensure that it complies with the requirements of the Contract; and

- (b) if so requested by the Customer, give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).

## **8. SOFTWARE LICENCE**

- 8.1 If Cube6 IT refers to a software licence in the acknowledgment of order, the price of the Equipment includes the licence fee for the Customer's right to use the Software.
- 8.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to Cube6 IT within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 8.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
  - (a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
  - (b) the Customer shall not use the Software on any equipment other than the Equipment, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
  - (c) such licence shall be terminable by either party on 28 days' written notice, provided that Cube6 IT terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or Cube6 IT is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
  - (d) on or before the expiry of this licence, the Customer shall return to Cube6 IT all copies of the Software in its possession.

## **9. WARRANTY**

- 9.1 Cube6 IT warrants to the Customer that the Equipment is free from defects of workmanship and materials. Cube6 IT undertakes (subject to the remainder of this paragraph 9), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within three months of delivery and installation.
- 9.2 Cube6 IT shall not in any circumstances be liable for a breach of the warranty contained in paragraph unless:
  - (a) the Customer gives written notice of the defect to Cube6 IT within seven days of the time when the Customer discovers or ought to have discovered the defect; and
  - (b) after receiving the notice, Cube6 IT is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by Cube6 IT) returns such Equipment to Cube6 IT's place of business for the examination to take place there.
- 9.3 Cube6 IT shall not in any circumstances be liable for a breach of the warranty in paragraph 9.1 if:
  - (a) the Customer makes any use of Equipment in respect of which it has given written notice under paragraph 9.1(a); or



- (b) the defect arises because the Customer failed to follow Cube6 IT's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or
- (c) the Customer alters or repairs the relevant Equipment without the written consent of Cube6 IT.

9.4 Cube6 IT shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.

9.5 With the exception of the warranty given under paragraph 9.1 of this Schedule 3, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

## **10. REMEDIES**

10.1 Cube6 IT shall not in any circumstances be liable for any non-delivery of Equipment (even if caused by Cube6 IT's negligence) unless the Customer notifies Cube6 IT in writing of the failure to deliver within seven days after the scheduled delivery date.

10.2 Any liability of Cube6 IT for non-delivery of the Equipment shall in all circumstances be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.

10.3 In the event of any claim by the Customer under the warranty given in paragraph 9.1, the Customer shall notify Cube6 IT in writing of the alleged defect. Cube6 IT shall have the option of testing or inspecting the Equipment at its current location or moving it to Cube6 IT's premises (or those of its agent or subcontractor) at the cost of Cube6 IT. If the Customer's claim is subsequently found by Cube6 IT to be outside the scope or duration of the warranty in paragraph 9, the costs of transportation of the Equipment, investigation and repair shall be borne by the Customer.

## **SCHEDULE 4 Provision of Microsoft or other Third Party Provider Licences and Services**

### **1. AUTHORISED RESELLER**

- 1.1 Cube6IT is an authorised reseller of certain Microsoft software and cloud products and provides managed services to support its Customers' use of such services.
- 1.2 Microsoft products including cloud products and software are supplied to the Customer subject to the applicable Microsoft Client Agreement, which is a direct agreement between Microsoft and the Customer.
- 1.3 In the event Cube6 IT resells products for a third party other than Microsoft such resale shall be subject to the relevant third party suppliers' agreement or terms and conditions, which applies between the third party and the Customer. The relevant third party agreements or terms and conditions shall be made available to the Customer and by purchasing other third party cloud products the Customer confirms its acceptance of the relevant third party cloud agreements or terms and conditions, which the Customer confirms it has read and acknowledges its terms. If required by Cube6IT, the Customer will confirm its acceptance of the relevant third party cloud agreements or terms and conditions in writing.

### **2. MICROSOFT CLIENT AGREEMENT**

- 2.1 All Microsoft products are supplied subject to this contract and the applicable Microsoft Client Agreement. The Microsoft Client Agreement is an agreement between Microsoft and the Customer.

The Microsoft Client Agreement is available at:

<https://www.microsoft.com/licensing/docs/customeragreement>

- 2.2 The Customer acknowledges receipt of the current Microsoft Client Agreement from Cube6IT and by purchasing Microsoft products from Cube6IT the Customer confirms its acceptance of the Microsoft Client Agreement, which the Customer confirms it has read and acknowledges its terms. If required by Cube6IT, the Customer will confirm its acceptance of the Microsoft Client Agreement in writing. If Cube6IT agree to or accept the Microsoft Client Agreement on behalf of the Customer and in accordance with a request by the Customer, Cube6IT shall be acting as agent and shall have no responsibility, obligation nor liability to the Customer or Microsoft, nor be a party to the Microsoft Client Agreement.
- 2.3 The Customer acknowledges that Cube6IT is not permitted to revise the Microsoft Client Agreement in any way.
- 2.4 If Microsoft updates the Microsoft Client Agreement the Customer must accept the new Microsoft Client Agreement at or before renewal of their subscription. The updated Microsoft Client Agreement (if any) will be made available to the Customer prior to the subscription renewal and by permitting the subscription to renew, the Customer is deemed to have accepted the updated Microsoft Client Agreement.

### **3. PRICING**

- 3.1 Pricing may be increased by Cube6IT for the next renewal term, on 30 days written notice in writing to the Customer, or on written notification at any time if pricing of Microsoft products or other third party products are increased by Microsoft or the relevant third party supplier.

- 3.2 Pricing will increase in line with increases in the number of subscriptions and licenses included in the Managed IT Environment and any other changes to the Managed IT Environment.