

Terms and Conditions

1. Confidentiality During the term of this Agreement, and thereafter in perpetuity, neither party shall without the prior written consent of the other, disclose to anyone any Confidential Information of the other. "Confidential Information" for the purposes of this Agreement shall include each party's proprietary and confidential information such as, but not limited to, customer lists, business plans, marketing plans, financial information, designs, drawing, specifications, models, software, source codes, and object codes. Confidential Information shall not include any information that client makes publicly available or information which becomes publicly available through no act of Cyberphi Ltd or Client or is rightfully received by either party from a third party.
2. Client and Cyberphi Ltd both agree that they will not solicit for hire and it will not hire or otherwise engage any of each other's employees or contractors, either directly or indirectly during any period services are provided under this agreement or in the 12-month period immediately following termination of this agreement.
3. Force Majeure: Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, pandemics, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, terrorism, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and within the party's power to satisfy), acts of any governmental body, failure or delay of third parties or governmental bodies from whom approvals, authorizations, licenses, franchises or permits must be obtained, or inability to obtain labor, materials, equipment, or transportation or illness of Cyberphi Ltd's technical staff (collectively referred to herein as "Force Majeure"). Each party shall use reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event.
4. If the Client work is substantially changed due to a Force Majeure, Cyberphi Ltd will evaluate the need for change to IT services to Client and related change of managed service fees. Recognizing there are ongoing expenses to Cyberphi Ltd of maintaining backups, remote monitoring, other vendor support software/licensing and availability of technicians to service on going needs, Cyberphi Ltd will review with Client the need for change of fees if any. Late fees will not be charged under an agreed scenario below:
Change in number of users at an amount of £15 per user. If reduction is on a per user, as staff returns to work the per user fee will be added back to the monthly fee and prorated as of the date of return if mid-month.
A flat fee charge per month. If the change is a flat fee per month then billing will resume upon Client's resumption of services as mutually agreed between Cyberphi Ltd and Client. This may be an evaluation between the parties of a gradual resumption of workers and network activity or an immediate resumption of workers and network activity.
5. Cyberphi Ltd shall not be liable to Client or any of its affiliates for any damages, whether incidental, direct, indirect, special, consequential or punitive damages arising out of service or equipment provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, or loss to person or property, costs of substitute equipment or other costs even if Cyberphi Ltd has been advised of the possibility of such damages.

Regardless of the form of action, Cyberphi Ltd's cumulative liability shall be only for loss or damage directly attributable to negligence of a Cyberphi Ltd employee or contractor, for the cost of restoring the network to its condition prior to the negligence, but not to exceed ten thousand pounds. If a collection action is initiated by either party or if Cyberphi Ltd has to defend any action by Client, Cyberphi Ltd is entitled to its reasonable legal fees and expenses to be paid by Client.

6. Implied Warranties are expressly disclaimed by Cyberphi Ltd. An Cyberphi Ltd contractor is a technician or contractor who operates on behalf of Cyberphi Ltd, is paid by Cyberphi Ltd and has access to Cyberphi Ltd's service ticket management system for making time entries and charges for their work. Cyberphi Ltd is not responsible for the acts of other technicians, contractors or consultants providing service to Client not under its control and direction. If Client purchases equipment from Cyberphi Ltd it understands and agrees that it will look to the manufacturer for all remedies and warranties and agrees that Cyberphi Ltd is not responsible for functioning of the equipment and has not made any express or implied warranties. Cyberphi Ltd shall not be liable for any claim or demand against the Client by any third party on account of errors or omissions performed hereunder.
7. Remote access to personal computers and/or networks. If or when Client transitions to home or alternative networks, Cyberphi Ltd will make best effort to make connections and serviceability. However, home or alternative networks may not have adequate internet connectivity and equipment to effectively work. Cyberphi Ltd is not responsible for inadequacies in those home or alternative networks or to secure those connections. Home equipment will not be as secure and may not have Cyberphi Ltd's software and security features. Cyberphi Ltd is not responsible for the security of the home or alternative networks. Work on a home or alternative network unless otherwise included is outside the scope of this Agreement and Cyberphi Ltd may charge it's then hourly rate for work on home or alternative networks. Cyberphi Ltd will charge for additional software installed at home or alternative networks as needed.
8. In the event of a Force Majeure Cyberphi Ltd is not required to have technicians work during periods or at places where their safety or health could be in jeopardy and in any event will not require technicians to go on site.
9. Client agrees to carry liability insurance and property insurance covering any damage to its network as well as to any clients of the Client adversely affected by Client's network functioning or transmissions from its network.
10. Cyberphi Ltd may apply changes or additional terms, conditions and provisions to this Agreement upon 30 days advance written notice to client containing the proposed addition or change. If the additions or changes are not objected to then they shall take effect at the end of the 30 days. Within the 30 days Client may submit changes or objections to the proposed changes or additional terms. If the parties do not agree on the change or addition then it shall not become part of the Agreement. All the terms, conditions and provisions of this Agreement will continue to apply during any renewal term. Both parties agree to negotiate in good faith rates to be mutually agreed under any renewed contractual service term to be effective at the end of the initial term.
11. Failure to pay: If payment is not received by the first of the month for that month of service Cyberphi Ltd reserves the right to put a hold on rendering on-site and remote services until monthly fee has been paid, provided Cyberphi Ltd gives a five (5) business day notice of late payment.

12. It is understood that any taxes applicable shall be added to each invoice for services or materials provided by Cyberphi Ltd. Client shall pay any such taxes unless a valid exemption certificate is furnished to Cyberphi Ltd, except in cases when Cyberphi Ltd procures or sources the incorrect equipment and / or software and / or support services any incorrect items or software shall be returned to Cyberphi Ltd.
13. If Client fails to make payment for any services or items purchased, and such failure continues for fifteen days, interest shall accrue on any amount due at the rate of 12% per annum until paid. In the event collection processes are instituted to collect any amounts due from Client, Client shall pay the costs of collection plus reasonable legal fees.
14. This Agreement is fully assignable by Cyberphi Ltd. Immediately upon assignment the assignee's name, address and contact information shall be provided to the other party. This Agreement shall be fully binding and enforceable as against all permitted assignees and successors in interest.
15. Termination: Termination by Client: Client may terminate this Agreement with or without cause after the first 12 months of the Agreement have passed payment of a Termination Fee equal to the combined amount of the remaining monthly Managed Services fee agreed to in this Agreement (e.g. 24 months = £121.40 x 24) and ii.) payment of all past and currently due amounts together with late fees and costs unless client has valid reason to withhold payment on incomplete tasks, work orders or faulty equipment and provided Cyberphi Ltd was notified in a service ticket within 10 days of the original occurrence of any incomplete tasks, work orders and/or faulty equipment which it itemised with sufficient detail to identify the problem. That amount may be withheld until the incomplete tasks, work orders or equipment issues are resolved. Cyberphi Ltd shall be given a reasonable opportunity to correct any problems. Any such election shall be made in writing by Notice of Termination and is to be accompanied by the Termination Fee and all other amounts due.

Termination by Cyberphi Ltd:

- a. Upon giving notice to Client of default and the default is not cured within ten (10) business days of receipt of written notice from Cyberphi Ltd or for failure of Client to pay for service or products at the time of ordering or within 30 days of billing. Failure of Cyberphi Ltd to require payment at the time provided shall not be construed as a waiver of the right to do so.
- b. Failure of Client to comply with its obligations in this Agreement after written notice by Cyberphi Ltd of the non-compliance and failure to correct the problem or acknowledge the problem and commitment to take corrective action in the future.
- c. Backups in the event of default or early termination or in the event the parties do not renew at the end of the term of this Agreement: Client shall be responsible for transferring backups to a system administered by Client or others on its behalf and for paying any costs of transferring and/or setting up backups off of the system maintained by Cyberphi Ltd. If Client does not provide for any transfer of backups, they shall be terminated within 30 days of the Notice of Termination or Notice of Default. Client assumes all responsibility for its backups and Cyberphi Ltd has no responsibility to retain backups. In the event prior to the end of the 30 days, client places its own backups on site or obtains its own cloud backups then it shall notify Cyberphi Ltd so it's backups can be terminated.

- d. In the event of default or termination under any circumstances Client agrees it will provide access to Cyberphi Ltd technicians to remove antivirus licenses and monitoring tools. The consequence of and failure to provide this access shall be that Client shall continue to be responsible for 50% of the amount of the monthly Managed Services payment until access is allowed and the licenses and tools removed. Spam filtering will be terminated upon default or termination. Client understands that it is entirely responsible to redirect all of Client's MX records away from the spam filter system and redirect email to its server or it must provide Cyberphi Ltd access to its network information and equipment to take those steps. Upon termination of spam filtering services email will bounce if Client has not taken these steps or requested and allowed Cyberphi Ltd to take those measures. Client understands the above and accepts this responsibility and the consequences if it fails to cooperate or act; Client acknowledges that upon termination of the spam filtering if these steps are not allowed or taken email will not be available and there is no recourse whatsoever to Cyberphi Ltd.
 - e. In the event of termination by either party, Client is responsible for the full amount of all payments for services provided and products ordered.
 - f. If either party terminates the relationship of managed service provider and client or if Client defaults then the parties agree to work cooperatively to transfer the client's data and network information as directed by the client to another service provider or to the client. The client will pay the cost of transfer which will include hourly charges of technicians to accomplish the transfer and any services maintained by Cyberphi Ltd containing Client data. Client must designate a vendor to handle its email, backups and any other services provided by Cyberphi Ltd. Client must establish an account for transfer of the backups and any other services within 30 days of notice of termination or default, or within 30 days of termination of this SLA. Cyberphi Ltd has no responsibility for backups, email or other services beyond 30 days following termination or default under this Agreement.
 - g. In the event of termination of services for any reason by either party, upon written request by Client Cyberphi Ltd will provide up to 60 days support to allow Client to make a transition provided Client pays all amounts then due and pays the fee for the additional 60 days in advance.
16. **Dispute Resolution:** All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration unless they are of an amount which can be handled within small claims court. The parties agree they waive the right to bring a lawsuit based on such claims or disputes other than in small claims court. Before commencing any arbitration proceedings, the aggrieved party must first present the claim or dispute in writing to the other party. The parties shall have 30 days to resolve the claim or dispute. If not resolved then the aggrieved party may commence arbitration proceedings. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all decisions. Arbitration shall be conducted by an arbitrator experienced in Information Technology services and experience required for arbitrator and shall include a written record of the arbitration hearing. The location of arbitration shall be in Essex. The fees and expenses of the arbitrator and proceedings shall be paid by the losing party.
17. This Agreement and any amendments and its validity, construction and performance shall be governed by the laws of the United Kingdom. Exclusive jurisdiction and venue for all matters relating to this Agreement shall be in Essex.
18. This Agreement does not create any rights in any third parties.

19. Client shall not modify, create any derivative work of, or incorporate any other software into the computer software programs or any portion thereof with the exception of allowing automatic updates to commence or confirming the installation of an automatically scheduled update or fully supported software for which client has purchased technical support and has scheduled such installation with Cyberphi Ltd. Programs must be installed by an Cyberphi Ltd technician or software technical support with an Cyberphi Ltd technician assisting. Cyberphi Ltd shall not be responsible for maintenance of or for repair of errors or malfunctions occasioned by any installation, modification or enhancement to the Programs made by Client or by anyone other than Cyberphi Ltd unless Cyberphi Ltd has agreed. Corrections of unauthorised modifications shall be at the rate of £150 per hour and may be grounds for immediate termination by Cyberphi Ltd of this Managed Services Agreement. Client agrees to prohibit others, including its principals, officers and employees from installing hardware, working on the technical aspects of the operating systems on the Servers and PC's or to give anyone Domain Administrator access. Only Cyberphi Ltd will make administrative or technical changes to the servers.