FRESH MANGO TECHNOLOGIES (BVI)
FULL TERMS AND CONDITIONS OF TRADE

The Fresh Mango Full Terms and Conditions have been compiled in the following format:

SECTION A: covers the General Terms and Conditions which are applicable to all transactions.
SECTIONS B to H: cover additional Terms and Conditions, for specific services, hardware, software and/or other deliverables:

SECTION B: Business Cover IT Support Package 1 and Package 2 O SECTION C: IT Managed Services Provision (MSP) O SECTION D: Online Data Backup Service O SECTION E: Occasional Ad Hoc support O SECTION F: Software licences O SECTION G: Website hosting O SECTION H: When you buy hardware from Fresh Mango

SECTION A: General Terms and Conditions Applicable to All Clients

Intro

1 Who we are

1.1 We are Fresh Mango Technologies based at R&R Malone Complex, Pockwood Pond, Tortola, British Virgin Islands VG1110. Hereafter referred to as Fresh Mango.

2 Applicability

2.1 When you place an enquiry, make a purchase or enter into a service provision, support contract or hosting service with Fresh Mango, you must accept these Terms and Conditions of Trade, hereafter referenced as Terms and Conditions and any others that you are given by the Company.

3 Conflicts

3.1 In the event of any mismatch between these Terms and Conditions and a written Quotation, the written Quotation shall always take precedence.

3.2 In the event anything in these Terms and Conditions is, or subsequently becomes, invalid or unenforceable, it will still be enforced to the fullest extent permitted by English law and you and/or your organisation will still be bound by everything else in these Terms and Conditions.

4 Definitions and Terminology

4.1 **'The Client'** means the Company or person named within the Quotation and/or contract.

4.2 **'Business Day'** means any working day, based on Monday to Friday (excluding public holidays).

4.3 '**Commencement Date'** means the start of the agreement.

4.4 **'Singular and Plural'** - words imparting the singular number shall include the plural and vice-versa.

4.5 **'Force Majeure'** - event or circumstances beyond the control of Fresh Mango including, without limitation, strike, lock-out or other industrial action (whether involving the workforce of Fresh Mango or another party), failure of a utility service or transport or telecommunications network, act of God, acts of war, riot, civil unrest, acts of terrorism, malicious damage, compliance with any law, rule or regulation, governmental action or direction, accident, breakdown of plant or machinery, hardware or software failure, power failure, fire, flood, storms, earthquake, theft, or default of suppliers (or subcontractors); or where Fresh Mango's performance of its obligations is affected by such event, circumstance, or cause, the failure of Client computer or other equipment or facilities for which the Client is responsible.

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4.6 A 'Guarantee' is defined as an assurance given in Fresh Mango's literature or Quotation to perform a specified task, often within a timeframe.

4.7 **'Intellectual Property'** means any and all registered or unregistered intellectual property rights which now or in the future may subsist including but not limited to patents, trademarks, service marks, designs, trade secrets, business and company names, copyrights, database rights, know-how, rights in designs and inventions, and the right to sue for past infringements of any of the foregoing rights to which Fresh Mango may be entitled.

4.8 **'Confidential Information'** - all Data and any other information received or obtained by a party that is proprietary or confidential of the other party and (i) is clearly labelled as such; (ii) is otherwise clearly identified as such; or (iii) from its nature and/or the circumstances of its disclosure it is reasonable to infer that it is such, but not including information that: a) is or becomes publicly known other than through any act or omission of the receiving or obtaining party; b) was in the other party's lawful possession before the disclosure; c) is lawfully disclosed to the receiving or obtaining party by a third party without restriction on disclosure; d) is independently developed by the receiving or obtaining party, which independent development can be shown by written evidence; or e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

4.9 '**Consumer Price Index**' means the Consumer Price Index published by the Office for National Statistics.

4.10 **'Data Protection'** means all data protection legislation including UK GDPR, the Privacy and Electronic Communication Regulations 2003 and the BVI Data Protection Act 2018.

4.11 **'Hardware'** means any computer hardware that is ordered and supplied in accordance with the Specification and Specified Services, including: computers, printers, switchboxes, modems, scanners, servers, monitors, keyboards, cabinets or any other pieces of equipment associated with a computer, network and/or server.

4.12 '**Manufacturer**' means the supplier of any Hardware and support for Hardware as detailed in the Specification and Specified Services.

4.13 '**Remote Support**' means assisting the Client in solving computer problems, either by showing what steps to take via screen sharing or, with permission, taking control of the computer/server desktop and performing a task remotely.

4.14 **'Specified Services'** means the services to be provided by Fresh Mango for the Client as detailed under Specification and Specified Services.

4.15 '**Service Provider Server**' - the computer software system/s and network/s owned by Fresh Mango or supplied to it by third parties and used by it to provide services like the Backup Service.

4.16 '**Service Provider**' means Fresh Mango or a third party engaged by Fresh Mango to provide a specific service.

4.17 **'Technical Support'** means the provision by Fresh Mango of technical support to The Client as detailed in the Quotation, Specification and/or Specified Services.

4.18 **'Term'** an initial period of twelve months and thereafter, unless and until terminated by either party in accordance with the provisions of the Agreement.

4.19 **'Website'** - Fresh Mango's website access which is made available to organisations and the general public via the internet from which the Client may download Software.

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Actual Terms and Conditions Applicable to All Clients

5 Quotation, Contract and Variation

5.1 Fresh Mango is not obliged to accept any order from a Client.

5.2 All Quotations are valid for a period of 30 days only from the date issued, unless the Quotation is expressly withdrawn by Fresh Mango prior to 30 days, or it is stated otherwise on the Quotation.

5.3 Fresh Mango or the Client may cancel the order for any reason prior to the Client's acceptance (or rejection) of the Quotation.

5.4 If the Client wishes to vary any details of the services or hardware it must notify Fresh Mango in writing as soon as possible. Fresh Mango shall endeavour to make any required changes and any additional costs shall be invoiced to the Client.

5.5 If, due to circumstances beyond its control, Fresh Mango has to make any change in the Specified Services or Hardware, or the arrangements relating to the provision thereof, it shall notify the Client at the earliest opportunity.

5.6 Fresh Mango shall endeavour to keep any such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

5.7 Fresh Mango shall only accept requests for specification changes in the first instance from the person named in the Quotation. This provision may be varied or waived in writing as part of the Quotation without affecting any other provision in these Terms and Conditions.

6 Payment and Terms

6.1 Following the Client's acceptance of this Quotation, Fresh Mango shall invoice the Client in accordance with the Quotation. All prices exclude any applicable VAT or local taxes.

6.2 Invoices shall be deemed accepted and payable within the terms agreed, if no query has been raised within 28 days, following the Client's receipt of the invoice.

6.3 For MSP, Business Cover IT Support Packages, the Online Data Backup Service, Software Licenses, Website Hosting and any other monthly, quarterly and/or annually retained packages, Fresh Mango requires the setting up of a Direct Debit or Standing Order to facilitate the payment of invoices on the 28th day of the month. Where quarterly in advance or any other payment schedule is required (as per the Quotation) a Direct Debit or Standing Order must be setup to reflect the payment terms agreed.

6.4 All payments must be made in GBP Sterling unless otherwise agreed in writing between Fresh Mango and the Client.

6.5 Receipts for payment will only be issued by Fresh Mango at the Client's request.

6.6 The Client must pay the monies due in accordance with the terms agreed. This could be on receipt, or within so many days from the date of the Fresh Mango invoice or otherwise in accordance with any credit terms agreed between Fresh Mango and the Client. Please see the Quotation applicable to the deliverables.

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6.7 Payment is treated ‘as time of the essence’ between the Client and Fresh Mango.

6.8 If the Client fails to pay within the payment terms agreed, Fresh Mango will charge the Client interest at the rate of 8% per annum above the Bank of England base rate on the amount outstanding, pending any legal judgement and/or until payment is received in full.

6.9 In addition to clause 6.7 Fresh Mango shall have the right to suspend any further provision of the Services and to cancel any future services which may have been ordered by, or otherwise arranged with, the Client, without notice.

6.10 Furthermore, if payment is not made by the due date, Fresh Mango shall be entitled, without limiting any other rights it may have, to disconnect the Specified Services, and/or retain Hardware that has not been paid for, until the outstanding amount is paid in full.

6.11 In certain circumstances such as where additional work is subsequently required to fulfil an order, in addition to the price stated within the Quotation, Fresh Mango shall also be entitled to recover from the Client reasonable incidental expenses for materials used and for third party Hardware, software and/or services supplied in connection with any contract, Hardware order and/or service/s.

6.12 The Client shall pay Fresh Mango for any additional services provided that they have not been included in the original quotation. Any additional payment will be in accordance with Fresh Mango’s current, applicable hourly rates in effect at the time of performance or such other rate as may be agreed between the Parties.

6.13 Any deposit paid for products shall be non-refundable unless Fresh Mango fails to provide the Hardware and/or services and is at fault for such failure (where the failure is not the fault of Fresh Mango, no refund shall be made).

6.14 Fresh Mango reserves the right to cancel bookings and delivery dates where the client has failed to make any payments due under the contract.

7 Contractual Term

7.1 Unless you have an ad hoc non-contractual arrangement, the duration of all contracts (unless specified otherwise in a Quotation) is for a minimum of 12 months.

The contract automatically renews for a further twelve months on the expiry date unless the Client or Fresh Mango has signified otherwise, in writing, no later than three months before the expiry date.

7.2 Rolling contracts will automatically increase every 12 months by the rate of BVI wage inflation or the BVI Consumer Price Index, whichever is highest, unless otherwise agreed between the Client and Fresh Mango.

8 Working Day and Response Times

8.1 Fresh Mango’s working days are Monday to Friday, excluding public holidays, please see the website for opening hours https://freshmango.com

8.2 Response times vary depending on the Contract, please check the Quotation for more details. In the event of a conflict between these Terms and Conditions and the Quotation, the Quotation shall take precedence.

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9 Confidentiality

9.1 Fresh Mango and its agents will not use or disclose Client information, except as necessary for or consistent with providing the contracted services and will endeavour to protect against unauthorised use.

9.2 Notwithstanding the provisions of clause 9.1, Fresh Mango shall be entitled to disclose Confidential Information where required to do so by law or any order of any court or tribunal of competent jurisdiction provided that only such Confidential Information as is required to be disclosed, is revealed.

10 Access

10.1 Certain services provided by Fresh Mango require access to the Client's premises and/or computer systems both physically and remotely. The Client will promptly facilitate this and provide any passwords, access codes or other needed information to enable Fresh Mango to fulfil its contractual obligations.

10.2 The provision of Remote Technical Support from Fresh Mango is dependent upon the Client supplying it with Access to its central operating computer system by way of a modem link or such other communications link as the parties may agree for the sole purpose of providing Technical Support. Fresh Mango agrees to keep confidential any information it may access through any such link.

11 Due Diligence

11.1 Fresh Mango will carry out all work with due care and diligence, to the best of its ability and skills.

11.2 However, Fresh Mango is neither responsible nor liable for problems occurring within the network, computer systems or other devices supported caused by a third party or Client interference, whether physically, remotely, via software (such as malware and viruses) or by any other means.

12 Third Party Suppliers

12.1 Other parties cannot have Administrative Rights or access to any equipment or systems that Fresh Mango supports without its expressed agreement. Client and third parties should not make any changes to the Client IT environment without prior knowledge of Fresh Mango.

12.2 In the event time is required to remedy problems as a result of the Client or Third Parties making changes, this will be charged at the current hourly rate.

13 Statutory Cancellation Rights for Consumers Only

13.1 The provisions of this section only apply to Clients who are a Consumer for the purpose of any purchase of Hardware, software or services from Fresh Mango.

13.2 Subject to the remainder of this section, if the Client is based in the UK or EU and entered into the Contract using methods of distance communications only (i.e. online, phone or email) the Client will have the right to change their mind within 14 days after placing the order, and receive a refund.

13.3 If the Client wishes to change its mind in accordance with this clause the Client must contact Fresh Mango using the contact details set out at the end of these terms.

13.4 Where a client exercises its right to cancel and has made payments in advance for Hardware or services that have not yet been provided to it, then Fresh Mango will refund these amounts, less any return shipping costs to the Client within 14 days of receipt of the Hardware back from the Client; or if no Hardware or service has been provided by Fresh Mango, within 14 days after the day on which Fresh Mango is informed of the Consumer's decision to cancel the Contract.

13.5 Fresh Mango may reduce the refund of any Hardware or software (excluding delivery costs) to reflect any reduction in the value of the items, if this has been caused by the Client's handling of the goods which would not be permitted in a shop.

If Fresh Mango refunds the Client the price paid before Fresh Mango is able to inspect the goods and later discovers that the Client has handled the goods in an unacceptable way, and/or registered the product, the Client will be obligated to pay an appropriate amount specified by Fresh Mango, which in the case of software could be the full price.

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13.6 Where the Contract is with a Client for the supply of digital content, the Client will not have a right to cancel the Contract after the Client has started to download or stream the digital content.

If a Client cancels the Contract under this clause, it will return any products which Fresh Mango has provided to it at its own cost, unless otherwise expressly agreed by Fresh Mango in writing.

14 Liability and Indemnity

14.1 Fresh Mango will exercise the utmost caution whilst servicing and repairing equipment to minimise the risk to the Client's personnel, property and/or equipment.

14.2 Fresh Mango will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under these Terms and Conditions, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by Fresh Mango's employees, agents or otherwise) in connection with its provision of the Services or the performance of any of its other obligations under these Terms and Conditions or this Quotation or with the use by the Client of the Services supplied.

14.3 Fresh Mango shall not be liable to the Client or deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of the supplier's obligations if such delay or failure is due to any cause beyond Fresh Mango's reasonable control.

14.4 The Client shall indemnify Fresh Mango against all damages, costs, claims and expenses suffered by the supplier arising from any loss or damage to any equipment (including that belonging to third parties) caused by the Client [or its agents or employees].

14.5 Nothing in these Terms and Conditions shall limit or exclude Fresh Mango's liability for death or personal injury caused by its negligence or for any other matters for which it would be unlawful to exclude or limit liability.

14.6 Fresh Mango shall not be liable to the Client or deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Specified Services if the delay or failure was due to any cause beyond Fresh Mango's reasonable control.

14.7 Fresh Mango shall not be liable for any loss or damage to the Client's computer equipment and systems which is caused by any existing weakness (or defect) in the Client's equipment and systems that is discovered or initiated by the supply of any services from Fresh Mango.

14.8 Fresh Mango shall also have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

14.9 Excluding Clause 14.4, any liability of Fresh Mango for breach of this Agreement or tort (including negligence or breach of statutory duty), or for negligent or innocent misrepresentation, or otherwise in connection with this Agreement, shall be limited in the aggregate to the total amount paid by the Client for the Service/s during the 12-month period up to the date the liability arose.

14.10 In the event that Fresh Mango fails to meet a specific Guarantee, its liability shall be capped at $100.

14.11 The limitations and exclusions in clause 14 are cumulative.

14.12 Except as expressly set out in this Agreement Fresh Mango gives no warranties or guarantees and makes no representations concerning products and services offered, and all such warranties, guarantees, representations, and all conditions and any other terms whatsoever implied by statute or otherwise, are hereby excluded from this Agreement to the fullest extent permitted by applicable law.

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15 Documentation

15.1 Any documentation created as part of the initial onboarding process for when a new Client joins Fresh Mango, is for the purpose of optimising the service provision. Ownership of the documentation is retained exclusively by Fresh Mango.

15.2 At its own expense the Client shall supply Fresh Mango with any necessary documentation within sufficient time to enable Fresh Mango to provide Technical Support. The Client shall ensure the accuracy of all documentation.

15.3 The Client shall, if requested, supply in writing to Fresh Mango a detailed description of any fault requiring Technical Support and the circumstances in which it arose.

16 Force Majeure

16.1 Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause, that is beyond the reasonable control of that party. Please see Clause 4.5.

17 Insurance

17.1 Fresh Mango will maintain adequate insurance cover at its own cost with a reputable insurance provider to cover the liability accepted by it under the terms of this Agreement and shall, at the Client's request, produce a copy of the relevant renewal receipts for inspection by the Client. Fresh Mango shall do nothing to invalidate or prejudice the Client's entitlement under any such insurance policy.

18 Network and Cyber Security

18.1 Fresh Mango will put in place security measures to protect its network and information systems.

18.2 Furthermore, Fresh Mango will notify the Client immediately in the event that it becomes aware of any security incident affecting its network and information systems that has the potential to affect the Client.

18.3 Fresh Mango will respond without undue delay to any and all queries or requests from the Client with respect to any such incident, irrespective of whether that incident has been discovered by the Client or Fresh Mango, and at all times keeping in mind the extent of any reporting obligations applicable to the Client under the Network and Information Systems Regulations 2018 (the "NIS Regulations") and any other statutory or regulatory time limits with which the Client is required to comply.

18.4 Whilst Fresh Mango will endeavour to maintain robust security mechanisms, Fresh Mango cannot guarantee the security of any Client's IT systems and communications systems.

Accordingly, Fresh Mango accepts no liability for breaches of security, however caused, of systems or equipment that Fresh Mango manages or maintains on behalf of the Client.

19 Recruitment of Personnel

19.1 It is agreed that the Client will not directly or indirectly hire, employ, retain or use as an independent contractor, or agent, any of Fresh Mango's employees, former employees, or independent contractors without the written approval of Fresh Mango.

19.2 This clause will remain binding for a period of not less than twelve months after the Client has ceased trading with Fresh Mango. This clause will cease to apply after any such person has been out of Fresh Mango's employment or service contract, for a period of not less than twelve months.

19.3 In the event of a breach of Clause 19.1 and/or 19.2 the Client shall be liable to pay a recruitment penalty comprising not less than the employee's or former employee's last 12 salary payments, made during the immediately prior 12 months. Where the recruitment involves an independent contractor, the fee applicable will be 30% of their first year's salary, as determined by an independent auditor, who the Client will permit to audit the arrangements.

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20 Retention of Title

20.1 Notwithstanding delivery and the passing of risk in any Hardware, or any other provision of these Terms and Conditions, legal and beneficial title of the Hardware shall not pass to the Client until Fresh Mango has received the payment of cleared funds for the full price of any goods supplied.

20.2 Until payment has been made to Fresh Mango in accordance with these Conditions and title in the Hardware has passed to the Client, the Client shall be in possession of the Hardware as bailee for Fresh Mango and the Client shall store the Hardware separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by Fresh Mango and shall insure the Hardware against all reasonable risks.

20.3 In the event that the Client sells or transfers the Hardware to a third party before legal and beneficial title has passed to them under these Terms and Conditions, the proceeds of the sub-sale or transfer (or such proportion as is due to Fresh Mango) shall be held by the Client on behalf of Fresh Mango.

The Client shall ensure that such monies are held separately from, and are in no way mixed with, any other money or funds, and that all moneys held on Fresh Mango's behalf are identified as such.

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20.4 Fresh Mango reserves the right to repossess any Hardware in which it retains title without notice.

The Client irrevocably authorises Fresh Mango to enter the Client's premises during normal business hours for the purpose of repossessing the Hardware in which Fresh Mango retains title or inspecting the Hardware to ensure compliance with the storage and identification requirements of sub-Clause 20.2.

21 Data Protection

21.1 The Client warrants that any personal data it provides Fresh Mango for the delivery of any services is GDPR compliant.

21.2 The Client further agrees to indemnify Fresh Mango in full from any claims arising from said data. This includes but is not limited to meeting in full all legal costs, ICO fines, criminal, class actions and civil damages in so far as legally possible, that may arise from a legal challenge caused by data breaches, unauthorised use and/or other legal related issues, where Fresh Mango has followed the Client's instructions.

22 Communications

22.1 All notices under these Terms and Conditions shall be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).

22.2 Notices shall be deemed to have been duly given:

(a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
(b) when sent, if transmitted by email and a successful transmission report or return receipt is generated;
(c) on the fifth business day following mailing, if mailed by national ordinary mail

22.3 All notices under these Terms and Conditions shall be addressed to the most recent address or email address, notified to the other party.

22.4 Any service level agreement is subject to a support request being raised by one of our recognised support methods, specifically:

a) Telephoning one of Fresh Mango's BVI office numbers (a voicemail can be left if no answer)
b) An email to support@freshmango.com
c) A direct Ticket Request on Fresh Mango's support portal https://support.freshmango.com/ticket
d) Via the Fresh Mango App.

23 No Waiver

23.1 No waiver by Fresh Mango of any breach of these Terms and Conditions by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

23.2 No failure or delay on the part of either Fresh Mango or the Client to exercise any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.

24 Severance

24.1 In the event that one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which shall remain valid and enforceable).

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25 Third Party Rights

25.1 A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.26.

26 Assignment and Sub-Contracting

26.1 Fresh Mango shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors.

Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of Fresh Mango.

27 Relationship of the Parties

27.1 Nothing in these Terms and Conditions shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in any Agreement.

28 Termination

28.1 Fresh Mango or the Client may terminate the provision of the Services immediately if:

(a) either Party commits a material breach of its obligations under these Terms and Conditions; or

(b) either Party is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors; or

(c) either Party enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors; or

(d) either Party convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of either Party, notice of intention to appoint an administrator is given by either Party or any of its directors or by a qualifying floating charge holder (as defined in para.14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of either Party or for the granting of an administration order in respect of either Party, or any proceedings are commenced relating to the insolvency or possible insolvency of either Party.

28.2 Whilst Fresh Mango recognises that IT problems can often be frustrating, Fresh Mango has a zero-
tolerance policy towards those who abuse its staff. Fresh Mango reserves the right to immediately terminate any Agreement and all other Client services, in the event of its employees being abused by the Client.

28.3 Client agrees to pay Fresh Mango any costs of transition to a new IT provider, minimum fee of $500.

29 Law and Jurisdiction

29.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of The British Virgin Islands.

29.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall exclusively within the jurisdiction of the courts of the British Virgin Islands.

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SECTION B: Business Cover IT Support Package 1 and 2 and Ad hoc Hardware Support

30 Additional Conditions

30.1 Business Cover Support Contracts are payable monthly or quarterly in advance. The contract will run from the period highlighted within the Quotation.

SECTION C: IT Managed Services Provision (MSP)

31 Service Support

31.1 Managed Service Provision (MSP) Support provides Clients with access to Fresh Mango's 24/7/365 Ticket Portal and a guaranteed response time of 4 hours. The response time is based on a normal working Business Day please see Clause 8.

Coverage excludes public holidays, evenings and weekends unless special provision has been made at additional cost.

31.2 The Client will be obliged to make payment for any requested items on such terms as the Equipment manufacturer or Fresh Mango may require.

31.3 MSP Contracts are payable monthly in advance, See Clause 6.2 for more details. The contract will run from the period highlighted within the Quotation.

SECTION D: Online Data Backup Service

32 Additional Terminology Relevant to the Backup Service

32.1 The 'Encryption Key' is the special unique code which is given to the Client by Fresh Mango to access and retrieve its Data stored on the Server provided via Fresh Mango.

32.2 'Licence' - this is granted by Fresh Mango to the Client to use the Software

32.3 'Outage' refers to any period(s) during which the Backup Service is unavailable for use by the Client during any time that the Client is permitted by this Agreement to use it.

32.4 'Retrieval' restoration and retrieval by Client of Data using the Backup Service, as detailed in Schedule 1.

32.5 'Service Provider Software' The online backup service called 'neoVault' or other cloud backup software selected by Fresh Mango.

33 Service

33.1 Fresh Mango cannot guarantee that the operation of any Software it provides will be uninterrupted or error-free. Furthermore, Fresh Mango will not have any obligation or duty, and shall not bear any liability or responsibility, in relation to any of those matters which the Client expressly undertakes, warrants, or is responsible for in regards to the Backup Service Agreement.

33.2 Without prejudice to Sub-Clause 11.1 Fresh Mango does not undertake or warrant that the Client's Data shall be transferred to it, or stored by it, entirely free from corruption, loss or damage, or that it will in its entirety be accessible or capable of retrieval by, or transferrable to, the Client, or that it will be inaccessible by third parties.

34. Client's Obligations and Responsibilities

34.1 In relation to this Agreement and use of and access to the Backup Service, the Client undertakes not to transmit, store, receive, upload, download, use, or re-use any Data or other material that, in any jurisdiction, does or may infringe the Intellectual Property or other rights of third parties, or is illegal,

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tortious, defamatory, libellous, or breaches another's confidentiality or privacy rights, or is abusive, indecent, defamatory, criminally obscene or threatening, or is otherwise unlawful.

34.2 The Client further agrees not to transmit to Fresh Mango for storage any personal or other data of another party without first obtaining any consent of that party required to be obtained for that purpose by the Data Protection Legislation or other legal measures or obligations.

34.3 Furthermore the Client will not knowingly backup, or store or transmit, any material that contains software viruses or any other harmful code, files or programs, such as trojan horses, worms or time bombs; not use the Backup Service for any purposes or in any way which in any jurisdiction is illegal or fraudulent or has any unlawful effect.

34.4 The Client will comply with Fresh Mango's guidelines, policies, procedures, arrangements and any instructions issued from time to time to notified the Client.

34.5 In addition, the Client will not interfere with, disrupt, or attempt to gain unauthorised access to, computer systems, servers or networks connected to the Backup Service.

34.6 At all times the Client has the sole responsibility for selecting the Backup Service and deciding whether it meets its business needs and also for:

(a) establishing and maintaining all telecommunications, internet and computer equipment, software, data, storage media, arrangements, services, facilities and resources (including, but not limited to, telecoms links, power, modem, router, cabling, switches, firewall) necessary for the purpose of using the Backup Service;

(b) implementing Client's own internal policies and procedures for opening potentially dangerous attachments (and is encouraged to install antivirus software on all access points or computers);

(c) the consequences to the Client and to Fresh Mango's Server storage devices and media of the Client transmitting Data containing any virus or malicious code;

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(d) loss or corruption of or damage to Data unless due to any breach of any of Fresh Mango's obligations under this Agreement; the supply, operation, control and support of all necessary resources not included within the Backup Service;

(e) the safeguarding of the Encryption Key where it has been provided by Fresh Mango;

(f) all security arrangements necessary and appropriate to Client's use of the Backup Service including, without limitation, passwords, pass codes, audit controls, operating methods and procedures;

(g) all results it obtains from the Backup Service;

(h) the integrity and the suitability of the Data that is to be backed up and is to be restored by Client unless the defect in the integrity or the suitability of the Data is due to any breach of any of the Service by Fresh Mango's obligations under this Agreement; and its use of Fresh Mango's software

unless any failure of the Software or adverse consequence of such use is due to any breach of any of Fresh Mango's obligations under this Agreement;

(i) its use of Fresh Mango's Software unless any failure of the Software or adverse consequence of such use is due to a breach of any of Fresh Mango's obligations under this Agreement.

35 Fresh Mango's Warranty and Indemnity

35.1 Subject to Clause 34, Fresh Mango warrants that its software will during the Term perform substantially in accordance with its specification provided that it is properly used on the Client computer and with the operating system for which it was designed.

35.2 Fresh Mango confirms that it has good title to or a right to licence the Service Provider's Software and further undertakes to indemnify Client against any claims by third parties of infringement of Intellectual

Property arising out Client's use of, or Service Provider's provision of, the Backup Service to the Client.

35.3 Fresh Mango shall have no liability to indemnify Client if the alleged infringement is attributable either to modification by anyone other than Fresh Mango of any Software or the Client's use of its Software contrary to any instructions given by Fresh Mango.

SECTION E: Occasional Ad Hoc support

36 **Technical Support**

36.1 Fresh Mango will provide ad hoc (as and when required) Technical Support for computer equipment. Any work completed will be charged at Fresh Mango's standard hourly rate unless out of hours support is needed, which will incur a premium.

SECTION F: Software licences

37 Additional Terminology Relevant to Software

37.1 '**Software Publisher**' the organisation that creates the software and provides the branding.

'**Vendor**' this is Fresh Mango.

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'**Consumer Client**' is a non-business Client.

'**Software Product Activation Key**' is a series of letters and numbers required to register the software and make it work.

37.2 All Software licence/s are granted to a Client pursuant to the Software Publisher's own terms and conditions for using the said Software. As part of the Software licence, the Client agrees to accept all terms and conditions issued by the Software Publisher.

37.3 For the purposes of any Software transactions, Fresh Mango is acting as a vendor for the Software Publisher.

37.4 The Client will indemnify and hold Fresh Mango harmless against any loss or damage which it may suffer or incur as a result of the Client breaching any Software Publisher's terms and conditions

37.5 The Client accepts responsibility for the selection of the Software to achieve its objectives and acknowledges that the Software has not been developed specifically to meet the personal requirements of the Client.

37.6 If you are a Consumer Client (applicable to Consumers only, not business Clients), and you ordered remotely, as opposed to onsite at one of our premises and would like to return your software order within 14 days from placing the order, Fresh Mango will refund or exchange your purchase providing:

(a) (if applicable applies to all) it is unopened and in its original packaging and it has not been registered;

(b) any DVDs, CDs must still be sealed;

(c) if you would like to send back a Software Product Activation Key card which is not faulty, the software must not have been activated and if applicable any silver strip at the rear of the card must be unbroken and as new;

(d) if you cancel and then start a digital download during the 14-day cancellation period, your right to cancel will be lost, and you will not receive a refund.

37.7 Applicable to all Clients, all faulty software will be replaced in accordance with the Software Publisher's own Terms and Conditions. Fresh Mango can only provide a replacement where the software has arrived damaged, such as punctured packaging, damaged DVD or has an unresponsive download service.

37.8 It is the Client's responsibility to advise Fresh Mango on the number of software licences required, and it is also the Client's responsibility to advise whenever this number of software licences should be reduced or increased. Fresh Mango are not responsible for any costs arising from excessive licences where the Client has not advised Fresh Mango in due time accordingly.

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SECTION G: Website Hosting

38 Additional Terminology Relevant to Website Hosting

38.1 '**Defect'** means any failure in the Website that causes it to fail any part of the Acceptance Tests;

38.2 '**Defect Report**' means a report of Defects compiled by Fresh Mango;

38.3 '**Hosting Fees**' means the sums to be paid by the Client to Fresh Mango for the Hosting Services, as agreed by the Parties, as set out in the Quotation;

38.4 '**Hosting Services**' means the services to be provided by Fresh Mango pursuant to the Quotation, as set out in the Hosting Specification;

38.5 '**Hosting Service Levels'** means the service levels in accordance with which Fresh Mango shall provide the Hosting Services, as set out in the Quotation;

38.6 '**Hosting Specification**' means a document setting out the particulars of the hosting services to be provided by Fresh Mango;

38.7 '**Non-Host Defect**' means any failure in the Website that causes it to fail any part of the Acceptance Tests that has been caused by an act or omission of the Client, or by any other party associated with the Client for whom Fresh Mango has no responsibility;

38.8 '**Project Manager**' means a Project Manager appointed by either Party;

38.9 '**Retest Period**' means the period within which the Acceptance Retests shall be carried out, as specified in the Agreement;

38.10 '**Site Software**' means the software for the Website commissioned by the Client as set out in the Agreement;

38.11 '**Testing Period**' means the period within which the Acceptance Tests shall be carried out, as specified in the Agreement;

38.12 '**User Content**' means any and all content uploaded or otherwise submitted to the Website by its users;

39.13 '**Website**' means the Client's website to be hosted by Fresh Mango pursuant to the Quotation; and '**Website Specification**' means a document setting out the particulars of the Website and its specification, as part of the Quotation.

40 The Hosting Service

40.1 Fresh Mango hosts the Website in accordance with the Hosting Specification and the Hosting Service Levels.

40.2 At all times Fresh Mango shall use reasonable endeavours to ensure website hosting continuity for the Client.

40.3 The Client shall supply Fresh Mango with a complete copy of all Client Site Materials and Site Software.

40.4 If Fresh Mango reasonably believes that any content on the Website (including, but not limited to, User Content and Client Site Materials) is unlawful or otherwise offensive (including, but not limited to,

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material that is obscene, pornographic, offensive, defamatory, threatening, incites violence, or that breaches the Intellectual Property Rights of any third party), it shall inform the Client immediately of such content and shall deactivate the Website immediately, pending resolution.

SECTION H: When you buy hardware from Fresh Mango – this is also applicable to all other SECTIONS when hardware is being purchased and/or installed

41 Additional Terminology Relevant to Hardware

41.1 '**Manufacturer Warranty**' is the guarantee provided by the manufacturer of Hardware and is subject to the manufacturer's own terms and conditions.

41.2 '**Hardware**' concerns the equipment listed within the Quotation and any other ancillary items.

41.3 '**Installation**' means the connection by Fresh Mango of any Hardware.

41.4 When you place an order to purchase or lease Hardware and/or ancillary equipment, you are purchasing them in accordance with Fresh Mango's full Terms and Conditions. It is your responsibility to ensure that the Quotation from Fresh Mango meets your requirements.

41.5 Fresh Mango reserves the right prior to any delivery to substitute, if necessary, an alternative item of Hardware if such change does not materially change the performance of the solution or result in any increased charges for the Client.

41.6 Prior to the delivery of Hardware, where Fresh Mango is also providing installation support, Fresh Mango reserves the right to visit the site prior to delivery of Hardware to determine where the Hardware may be installed and whether any existing Hardware needs relocating or removing prior to the new delivery.

If necessary, Fresh Mango will provide written guidance to the Client for the preparation of the site ahead of the delivery. The Client shall be responsible for implementing the changes at its own expense or through Fresh Mango at the relevant charge rate.

The Hardware will be ordered in the name of the Client and as such all the risk and the rights in the contract for the Hardware passes directly to the Client. Fresh Mango accepts no responsibility for the risk associated with the storage, carriage and delivery of Hardware to the Client's site.

41.7 Any dispute or problem with the Hardware or Hardware support should be referred to the Manufacturer directly. Fresh Mango does not give any warranty, guarantee or other term as to their quality, fitness for purpose or to the suitability of the Manufacturer or otherwise, and shall, where any relevant rights have been acquired by Fresh Mango, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying it the products.

41.8 Fresh Mango will, if requested, arrange for additional Hardware support from the Manufacturer in the name of the Client at the time of ordering the Hardware at the Client's cost.

41.9 If any problem should arise that in the reasonable opinion of Fresh Mango is caused by the Hardware, then Fresh Mango may, after notifying the Client of the problem, at its discretion make additional charges in respect of any costs incurred in resolving the problem.

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