

## SERVICE SCHEDULE

### 1. GLOSSARY

These terms are to be read in conjunction with a service specific Service Schedule to form an agreement between Trust Systems and the Customer.

#### 1.1 DEFINITIONS AND INTERPRETATION

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

**“Acceptable Use Policy”** – the acceptable and fair use policies of Trust Systems and any Third Party Services Providers from time to time applicable

**“Agreement”** – the agreement between Trust Systems and the Customer for the provision of Services and / or Products formed by this contract and the Schedules

**“Business Day”** – a day which is not a Saturday or Sunday or Public or Bank Holiday

**“Business Hours”** – 9am to 5pm GMT/BST on each Business Day

**“Case Reference Number”** means the unique number issued when logging a fault with Trust Systems.

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

**“Customer”** – as identified on the Proposal and Service Schedule

**“Customer Personnel”** - all employees and other personnel of the Customer and all agents, contractors and other users of the Services

**“Customer Responsible Faults”** means in the event that a Service Affecting or Non-Service Affecting Fault is identified as being attributable to Customer Provided Equipment, Premises, Customer power supplies, or the action of the Customer, employees or agents of the Customer, the fault shall be deemed the responsibility of the Customer. Any downtime shall not be included in service availability measurements and does not qualify for compensation.



**“Effective Date”** – the date set out in the Proposal or the Service Schedule. Where multiple dates are specified the earliest of these will be the Effective Date.

**“Fees”** – the charges due to Trust Systems as set out in the Proposal or Service Schedule, as may be amended from time to time pursuant to these conditions or the Service Schedule

**“Incident Management”** – The process for Incident Management as defined in [Appendix A](#)

**“Initial Term”** – the initial term of the Agreement, being 36 months, (unless otherwise laid out in the Service Schedule(s)) as set out in the Proposal

**“Installation Charge”** means charges payable by the Customer for the installation of the TrustCloud Services as provided in the Proposal;

**“Network Management System”** means Trust Systems’ network integrated fault management system;

**“Non-Service Affecting Fault”** means a fault or condition which is not a Service Affecting Fault.

**“Party”** – means a Party to the Agreement

**“Planned Outage”** means in maintaining the service provided, Trust Systems may with reasonable notice require a temporary outage in service. Wherever possible Trust Systems will agree the outage with you in advance of the required work. Any planned downtime shall not be included in fault or service reliability measurements.

**“Products”** – any hardware, software, cabling and/or other products or equipment sold or licensed by Trust Systems to the Customer as identified in the Proposal and/or the Specification Document, as may be amended from time to time pursuant to paragraph 1.3.5 of these conditions

**“Professional Service Charges”** means the professional service charges detailed on the Proposal or otherwise agreed in writing between the Parties in accordance with Section 2 of the Service Schedule;

**“Proposal”** – the proposal form signed by the Customer detailing the Services and/or Products to be supplied by Trust Systems.

**“Services”** – the service provided by Trust Systems as identified in the Proposal and/or the Specification Document, or any of the Schedules

**“Service Affecting Fault (SAF)”** means any failure of Trust Systems Network, equipment or service, which, in our reasonable opinion causes a loss of Customer’s service. In all such cases the service shall be deemed unavailable and the length of downtime recorded by Trust Systems from when the fault is registered by Trust Systems and a Case Reference Number allocated.



**“Service Availability”** means the time for which a Trust Systems service is usable, expressed as a percentage of the total time in a given Service Measurement Period. The Trust Systems service shall be deemed available for the purposes of calculating Service Availability if it is not usable due to an event outside Trust Systems’ reasonable control, a Customer Responsible Fault, a Third Party Attributable Fault or is due to a Planned Outage.

**“Service Commencement Date”** means the date when Trust Systems provides the Service tested and ready for use;

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

**“Service Measurement Period”** means the calendar monthly periods commencing on the 1st of each month during the Term, over which Service performance measurements are calculated, provided that the first Monthly Review Period will commence on the Service Commencement Date;

**“Service Schedule”** – the service schedule(s) as applicable to the particular Services and Products, and as identified in the Proposal

**“Summary of requirements”** – the document identified as such and which appears at Schedule 1 of the relevant Service Schedules.

**“Third Party Attributable Faults”** means in the event that a Service Affecting or Non-Service Affecting Fault is identified as being attributable to a third party this measurement period shall not be included in service availability measurements. Such faults do not qualify for rebates or compensation. Trust Systems will endeavour to resolve and rectify such Third Party Attributable Faults as soon as possible.

**“Third Party Services”** – any part of the Services which Trust Systems procures from a third Party, and any third Party hosting services, telecommunications services and/or equipment which Trust Systems uses in order to provide the Services

**“Third Party Services Provider”** – the provider of any Third Party Services

**“Time To Resolve Fault (TTRF)”** means the length of time from the issue of the Case Reference Number to repair and resolution of the service circuit and/or associated equipment.

**“Trust Systems”** – Trust Systems Ltd registered in England, No. 06013797, whose registered address is at Unit 20 & 21, Cirencester Office Park, Tetbury Road, Cirencester, Glos GL7 6JJ.

**“Trust Systems Equipment”** – any hardware, software, cabling and/or other products or equipment provided by Trust Systems to the Customer in connection with the provision of the Services or otherwise used by Trust Systems to provide the Services as specified in the Proposal Document.



“**Trust Systems Network**” means the network managed by Trust Systems;

“**Trust Systems Service Desk**” means Trust Systems’ fault management centre, which operates the Trust Systems Network Management System;

Other defined terms are as set out in the Proposal or Service Schedule

1.1.2 If there is a conflict between any of these conditions, the Proposal and the Service Schedule, the conflict will be resolved according to the following order of priority:

- 1.1.3 The Proposal,
- 1.1.4 These conditions, and
- 1.1.5 The Service Schedule.

1.1.63 The headings to these conditions and in the Proposal and Service Schedule are for convenience only and will not affect their construction or interpretation.

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

## **1.2 FORMATION**

1.2.1 These Terms and Conditions do not apply to any other relationship between Trust Systems and the Customer.

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

1.2.3 Unless otherwise stated, any quotation provided by Trust Systems is valid for a period of 3 days only from its date, provided Trust Systems has not previously withdrawn it.

1.2.4 No Products may be returned by the Customer following delivery unless they fail to comply with their specification due to defects in material or workmanship, and then only in accordance with the provisions of paragraph 1.7.1.



### 1.3 TRUST SYSTEMS RIGHTS AND OBLIGATIONS

1.3.1 The Services and the Products to be provided to the Customer are as described or referred to on the Proposal, the Specification Document and the Service Schedule or Order Form.

1.3.2 Subject as stated below, time for performance or delivery is not of the essence and any timescales for performance or delivery given by Trust Systems are estimates only. Trust Systems will use its best endeavours to provide the Services and deliver the Products in accordance with any timescale set out on the Proposal and/or the Specification Document, but will not be liable to the Customer where it fails to meet any timescale unless one Party has previously served a notice on the other Party making time of the essence. Such a notice may be served if a time estimate has been exceeded by more than 14 days due to no fault of the Party serving the notice.

1.3.3 Trust Systems will not be liable for any failure to provide the Services and / or deliver the Products resulting from any breach by the Customer of the Agreement.

1.3.4 Trust Systems will not be obliged to provide any Services or Products not referred to on the Proposal and/or the Specification Document.

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

1.3.6 Trust Systems shall provide the Services in accordance with the Service Levels. However, the customer acknowledges that, given the nature of the Services, Trust Systems cannot guarantee that the Services will be uninterrupted or error free.

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

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

1.3.9 Ownership of the Products other than those highlighted in Section 2.9 of the Service Schedule will not pass to the Customer.



## 1.4 CUSTOMER OBLIGATIONS

1.4.1 The Customer will provide Trust Systems with all information, instructions and assistance that Trust Systems may reasonably require in order to carry out its obligations under the Agreement. The Customer shall co-operate fully and in good faith with Trust Systems and any applicable Third Party Services Provider. The Customer shall provide all reasonably necessary physical access to Customer premises and other sites at all reasonable times as required

(including access for the purposes of installation, inspection, maintenance, replacement, upgrade, or removal of the Products, Trust Systems Equipment and any other equipment associated with the Services), facilities at such premises and sites, assistance with testing and other assistance to Trust Systems that Trust Systems shall reasonably require to perform its obligations under the Agreement, and the Customer shall comply with any reasonable operating instructions issued by Trust Systems from time to time.

1.4.2 If Trust Systems is provided with any incorrect information or instructions in connection with the Services, then the Customer shall pay any reasonable additional and wasted costs and expenses incurred or suffered by Trust Systems as a result in setting-up and/or providing any Services. Professional Services will be charged in line with the charges set out in paragraph Section 2 of the Service Schedule.

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

1.4.4 Subject to the terms of the Agreement, Trust Systems reserves the right to refuse access to its premises and servers to anyone.

1.4.5 All Services are subject to the [Acceptable Use Policy](#). The Customer shall, at all times in connection with its use of the Services, comply with the [Acceptable Use Policy](#). Trust Systems shall provide the [Acceptable Use Policy](#) on request and it shall be the responsibility of the Customer to ensure that it checks the same periodically and that it is aware of the current policies. The Customer shall ensure that the [Acceptable Use Policy](#) is communicated to Customer Personnel in a timely manner.

1.4.6 Without prejudice to paragraph 1.4.5, the Customer shall not use the Services, any Trust Systems Equipment or any Customer equipment which is located on Trust Systems premises:

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

1.4.6.2 To distribute illegal, copyright infringing, indecent or offensive material;



1.4.6.3 To send or procure the sending of any unsolicited e-mail; or

1.4.6.4 in an unlawful manner or for any illegal purpose.

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

## **1.5 SUSPENSION**

1.5.1 Without prejudice to any other right or remedy that it may have in such circumstances, Trust Systems reserves the right to suspend provision of any part of the Services on 14 days' notice where:

1.5.1.1 the Customer is in flagrant breach of the [Acceptable Use Policy](#), paragraph 1.4.6.1 or otherwise in material breach of the Agreement and fails to rectify such breach within 7 days of a written request from Trust Systems requiring the same to be rectified; or

1.5.1.2 Required for maintenance, repair or upgrade of any Trust Systems IT systems and/or the Services (Trust Systems shall use all reasonable endeavours to: (a) give as much advance notice to the Customer as is reasonably practicable in the circumstances, (b) avoid any suspension of provision of the Services, or any part of them, during Business Hours); or

1.5.1.3 Dealing with any actual or suspected security breach, virus, or attack or any misuse by any person of any Trust Systems IT systems and/or the Services; or

1.5.1.4 Necessary because of an emergency; or

1.5.1.5 Required by any regulatory, governmental or other competent authority; or

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

1.5.1.7 the Customer fails to pay any Fees in accordance with the provisions of the Agreement and fails to rectify such failure within 7 days of a written request from Trust Systems requiring the same to be rectified provided always that except in the circumstance described in clause 1.5.1.6 above, Trust Systems shall use all reasonable endeavours to reinstate the Services as soon as possible.





1.5.2 Trust Systems may from time to time close down the whole or part of the network for routine repair or maintenance work. Trust Systems shall give as much notice as in the circumstances is reasonable and shall endeavour to carry out such works during the scheduled maintenance periods as published by Trust Systems as appropriate which shall be as short as possible and which shall not be during Business Hours or in November or December.

1.5.3 Trust Systems may from time to time without notice close down or restrict the whole or part of the Services where necessary for emergency repair, to prevent overload of the network, or to preserve the safety, security or integrity of the Services and traffic conveyed. Trust Systems shall at its sole discretion decide when such action is necessary provided that such action shall be performed out of Business Hours where possible and as quickly as possible and as much advance notice shall be given to the Customer as is practicable.

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

1.5.5 Where provision of any part of the Services is suspended by Trust Systems pursuant to paragraph 1.5.1.1, or 1.5.1.7.

## **1.6 PAYMENT**

1.6.1 All Fees are payable as indicated in the Service Schedule, Specification Document and Proposal and will not be refundable in whole or part if the Agreement or relevant part is terminated by the Customer during the period to which the payment relates.

1.6.2 Trust Systems reserves the right to require the payment of such Fees as it shall specify in the Proposal and/or the Specification Document upfront prior to the commencement of the provision of the Services or any Products or before any order is progressed.

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

1.6.4 Additional Fees will become payable if the Customer exceeds agreed or stipulated bandwidth or other use levels or restrictions set out in the Service Schedule, Specification Document or Proposal.

1.6.5 Any total sum for the Fees set out in a Proposal, Service Schedule and Specification Document is a fixed and firm amount unless stated otherwise,





1.6.6 Trust Systems shall be entitled to increase the Fees at any time, but no such increase may take effect earlier than the end of the Initial Term except where the costs incurred by Trust Systems in the provision of the relevant Services or Products increase through factors that are outside of Trust Systems' control, including electricity and bandwidth charges and charges levied by Third Party Services Providers. Trust Systems shall give the Customer 30 days' notice of such increases. If the increase in Fees pursuant to this clause 1.6.6 results in an overall increase in Fees payable of more than 10%, the Customer may terminate the Agreement on 30 days' written notice to Trust Systems.

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

1.6.8 The Customer agrees to pay Trust Systems invoices within 30 days of invoice date. If invoices are not settled in full by then, the Customer will without prejudice to its other rights and remedies be liable to pay interest on any sum outstanding from the due date for payment on a daily basis until payment is made (whether before or after any judgment) in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

1.6.9 Trust Systems may make a search in relation to the Customer with a credit reference agency (and make other credit enquiries from time to time), keep a record of that search and enquiries. Trust Systems may also make enquiries about the principal directors/proprietors of the Customer with a credit reference agency.

1.6.10 All Fees shall be paid by such method as is stated in the Proposal.

1.6.11 All payment is in UK sterling.

1.6.12 All payments to be made by the Customer will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

## **1.7 LIABILITY**

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



1.7.1.1 The Products have been improperly altered in any way whatsoever, or has been subject to misuse or unauthorised repair;

1.7.1.2 The Products have been improperly installed or connected (other than by Trust Systems);

1.7.1.3 Any maintenance requirements relating to the Products have not been complied with (other than where Trust Systems or a Third Party instructed by Trust Systems is responsible for such maintenance under the Agreement); and

1.7.1.4 The Customer has failed to notify Trust Systems of any defect or suspected defect within 14 days of the same coming to the knowledge of the Customer, and in any event no later than 21 days from the date of delivery, installation or commission (whichever is later).

1.7.2 Trust Systems warrants that the Services will be provided with reasonable care and skill and in accordance with the Specification Document.

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

1.7.3.1 for breach of Trust Systems' obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

1.7.3.2 for personal injury or death resulting from Trust Systems' negligence;

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

1.7.3.4 for any matter for which it would be illegal for Trust Systems to exclude or to attempt to exclude its liability; or

1.7.3.5 for fraud.

1.7.4 Except as provided in paragraph 1.7.3, Trust Systems will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any indirect or consequential loss or for any loss of profits, loss of business, loss of anticipated savings, depletion of goodwill and like loss howsoever caused arising out of or in connection with the Agreement.

1.7.5 Subject to paragraphs 1.7.3 and 1.7.4, Trust Systems' aggregate liability in any Contract Year under the Agreement whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or loss howsoever caused will be limited to three times the Fees payable in that Contract Year.

1.7.5 Except as set out in paragraph 1.7.3, Trust Systems hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Agreement) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.



1.7.6 The Customer acknowledges that the above provisions of this paragraph 1.7 are reasonable and reflected in the Fees which would be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.

## **1.8 FORCE MAJEURE**

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

## **1.9 TERM AND TERMINATION**

1.9.1 The Agreement shall commence on the Effective Date and shall continue in force for the Initial Term and thereafter shall continue in force unless or until terminated by one Party in accordance with clause 1.9.

1.9.2 Unless stated otherwise in the relevant Service Schedule, at the end of the Initial Term the agreement will renew automatically for an additional Contract Year unless either Party gives to the other not less than 90 days' notice in writing before the contract renewal date.

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

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

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



1.9.3.3 Has any distraint, execution or other process levied or enforced on any of its property; or

1.9.3.4 Ceases to trade.

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

1.9.5. Subject to the provisions of paragraph 1.9, on termination of this Agreement howsoever arising each Party will return to the other any property of the other in its possession or control.

1.9.4.6 Without prejudice to any other of its rights and remedies:

1.9.6.1 Trust Systems will be entitled to remove the Customer's data from its systems and any Trust Systems Equipment and/or put the Trust Systems Equipment to any use other than the Customer's following termination of the Agreement. Trust Systems is not required to back up such data or return the same to the Customer prior to any such removal; and

1.9.6.2 In the event of any termination by Trust Systems pursuant to paragraph 1.9.3 the Customer shall be liable to pay or reimburse Trust Systems for any cancellation charges that may be due to any Third Party Services Provider or otherwise due as a consequence of such termination.

## **1.10 DATA AND CONFIDENTIAL INFORMATION**

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

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

1.10.3 Where Trust Systems is processing any personal data relating to the Customer in connection with the provision of the Services, it is doing so on behalf of the Customer as a "data processor" under the Data Protection Act 1998, and the Customer is the "data controller". Trust Systems will comply with its obligations under the Data Protection Act 1998 as data processor.

1.10.4 In particular Trust Systems will maintain and comply with reasonably appropriate technical and organisational measures against unauthorised or unlawful processing of that personal data and against accidental loss or destruction of, or damage to that personal data.



1.10.5 Each Party will keep confidential:

1.10.5.1 the terms of the Agreement; and

1.10.5.2 any and all Confidential Information that it may acquire in relation to the other Party.

1.10.6 Neither Party will use the other Party's Confidential Information for any purpose other than to perform its obligations under the Agreement. Each Party will ensure that its officers and employees comply with the provisions of paragraphs 1.10.5 and 1.10.6.

1.10.7 The obligations on a Party set out in paragraphs 1.10.5 and 1.10.6 will not apply to any Confidential Information which:

1.10.7.1 either of the parties can demonstrate is in the public domain (other than as a result of a breach of paragraph 1.10.5 or 1.10.6); or

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

1.10.8 The provisions of paragraphs 1.10.5 and 1.10.6 will survive any termination of the Agreement for a period of 5 Years from termination.

## **1.11 MISCELLANEOUS**

1.11.1 Each right or remedy of a Party under any Agreement is without prejudice to any other right or remedy of a Party under the Agreement.

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

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

1.11.4 Either Party may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Agreement with the other's prior written consent, such consent not to be withheld or delayed.

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



1.11.6 The parties intend that the TUPE Regulations do not apply to any employees of either party.

1.11.7 The Agreement contains all the terms which Trust Systems and the Customer have agreed in relation to the Services and Products and save as noted herein supersedes any prior written or oral agreements, representations or understandings between the parties relating thereto. Each Party acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the other which is not set out in the Agreement. Nothing in this paragraph 1.11.7 will exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

## **1.12 APPLICABLE LAW AND JURISDICTION**

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



## 2. PROVISION OF TRUSTCLOUD SERVICES

### 2.1. FAULTS

Trust Systems will provide assistance in the event of a service failure. Faults will be dealt with as described in [APPENDIX 1 - Incident Management](#)

### 2.2. SOFTWARE UPDATES & PATCHES

As part of the Service, software updates and patches will be applied to the Trust Systems managed elements of the Service when they are required due to software defect (bug) or security vulnerability.

### 2.3. HARDWARE MAINTENANCE

Any fault relating to hardware failure on the TrustCloud platform is covered by hardware maintenance which is provided as part of the service.

TrustCloud can be used in conjunction with Colocation. In this event the Customer is responsible for maintaining their own hardware in accordance with the Schedule Document for Colocation Services.

### 2.4. MOVES, ADDS & CHANGES

Trust Systems provides Moves, Adds and Changes (MACs) at additional cost to the Customer. All MACs must be requested on the correct CRF documentation ("[DOCALCRF2015](#)") and approved by Trust Systems at which stage costs will be confirmed in line with the charges specified in Section 2 of the Service Schedule.

### 2.5. MONITORING

Trust Systems monitor the service elements managed by Trust Systems as standard via the Trust Systems monitoring system, which provides pro-active fault management by Trust Systems during the contracted support hours. As standard we monitor device response time/device availability, interface statistics (utilisation & errors), CPU and Memory usage where applicable to the service. In the event the device stops responding, or a monitored threshold is exceeded, Trust Systems Technical Support will pro-actively investigate the issue during the contracted support hours. TrustCloud is a managed service, as such Trust Systems capacity manage the service to ensure it meets all SLA targets – visibility of this monitoring is not necessary for a customer using the service and therefore will not be provided as standard.





Additional monitoring services (including monitoring of virtual machines) can be provided to give the Customer increased visibility on service performance. This may incur an additional charge and will be identified on the Proposal or Service Schedule if taken.

## 2.6. BANDWIDTH

On certain services bandwidth to the internet is available on either guaranteed bandwidth (per Mbps), or data transferred (per GB). Some services have optional burst capacity and services with this capability are charged using the 95th percentile method using the following calculation: Trust Systems record the inbound and outbound data transfer for the Customer's connection at 5 minute intervals over a 1 month period. We do this by measuring the data transferred divided by the sampling length in seconds to obtain a MBit/Sec value for each 5 minute interval. At the end of the month we order the data collected from highest to lowest and discard the top 5 percent of the readings. Therefore in a 30 day billing cycle, the top 5% (36 hours) of peak traffic are not taken into account. This equates to 65 minutes per day. Trust Systems then take the remaining data set and use highest measurement as the billable utilisation for that month. We calculate the 95th percentile for inbound and outbound traffic separately, and take the higher of these two values as the billable utilisation. This value is then rounded to the nearest Mbit/Sec for billing purposes.

All internet usage is subject to the [Acceptable Use Policy](#)

## 2.7. POWER

Power to the TrustCloud service is provided using dual feeds. UPS and Generator back-up is also provided with a minimum N+1 configuration.

## 2.8. INTERNET SECURITY

Some services provide TrustCloud customers with public internet access. Internet Security and Virus Protection is the responsibility of the Customer and is not included as standard however this is included as part of the virtualisation layer if virtualisation is part of the service. All internet usage is subject to the [Acceptable Use Policy](#). If not specified in the Service Schedule, firewall and virus protection options are available as part of the service on request at an additional charge.

Where applicable the TrustCloud service is managed from an internet accessible Portal. Trust Systems have secured this by placing it behind a firewall and using SSL encryption from the portal to the Customer. In order to obtain access Customers are allocated per person usernames and passwords. Furthermore the portal provides role based authorization, so control of what a particular user can do is also available.



## **2.9. IP ADDRESSES**

The number of public internet routable IP addresses assigned will be identified on the Proposal. IP address usage is monitored and reported to RIPE database. The use of IP addresses must be justified. It is the Customer's responsibility to use their assigned IP addresses. Use of non-assigned IP addresses will result in immediate disconnection from the Trust Systems Network.

## **2.10. SERVICE INSTALLATION AND PROVISIONING**

Standard set-up is provided. For more complex configurations a technical scope document will be agreed and any relevant charges are identified on the Proposal.

## **2.11. SITE SECURITY**

The following security measures are in place at Trust Systems partner data centres:

- Perimeter fencing with electric gates
- Access via photo swipe card system
- CCTV with 24 hour recording both external and internal to the data centre
- Access Control Procedure
- Data Centres are manned 24 hours a day.

## **2.12. DATA CENTRE ACCESS**

Customer access to the data centre is by appointment only and by adhering to the procedure outlined in the Data Centre Access Process document which is available on request. Access to the data centre is not necessary for TrustCloud services as they are managed by Trust Systems. Access can be requested but a charge for providing such access may be levied by the data centre partner, Trust Systems reserves the right to refuse access to the data centre or areas of the data centre.

## **2.13. CUSTOMER SUPPORT**

Bronze level support is provided as standard on TrustCloud. Options are available for Silver, Silver Plus and Gold support levels.

Trust Systems can provide a tailored 24/7/365 managed service to the Customer encompassing reactive and proactive elements.

Trust Systems provides the service direct to the Customer. The Customer commits to fully manage all their customers and suppliers directly. Trust Systems will not interface directly with any third parties working with the Customer. If the Customer requires Trust Systems to provide their customers with a customer care or Network Operations Centre (NOC) service this is available on request and subject to Professional Service Charges.



Trust Systems shall not be liable in respect of any contract, agreement or relationship that Customer may have with any third party. If a dispute arises between Customer and a third party involving Trust Systems' TrustCloud Service, Trust Systems shall provide the Customer with reasonable information and assistance (to the extent that such is not adverse to Trust Systems' interests to Customer (at Customer's expense) in the resolution of such dispute.

#### **2.14. FAULT HANDLING**

Faults are handled in line with best practice and ITIL guidelines

#### **2.15. MAINTENANCE WINDOW**

Where Trust Systems plans to perform essential works and the changes are service affecting, Trust Systems will use reasonable endeavours to perform such works outside of Normal Business Hours and will use reasonable endeavours to give the Customer at least five (5) days prior notice for network related work and at least ten (10) days prior notice for Infrastructure related work. In the event of an emergency or Service Affecting Fault such notice may be less than 24 hours. This is without prejudice to or limitation of the definition of Planned Outage.

#### **2.16. TIME TO REPAIR**

Trust Systems aims to resolve requests in relation to the Trust Systems supported infrastructure causing a loss of service within four (4) hours of the fault occurring. We will use best endeavours to adhere to the TTRF guidelines. Where fault resolution involves third parties, or hardware replacement, then this is subject to the support contracts in place with those parties.

#### **2.17. FAULT DURATION**

All faults recorded by the Network Management System will be reconciled against the corresponding fault ticket raised by the Trust Systems Service Desk. The exact fault duration will be calculated as the elapsed time between the fault being reported to the Trust Systems Service Desk and the time when Service is restored.



### 3. APPENDIX 1 - INCIDENT MANAGEMENT

An incident is an unplanned interruption to an IT Service or a reduction in the Quality of an IT Service. Failure of a Configuration Item that has not yet impacted Service is also an Incident. For example Failure of one disk from a mirror set. Each incident is prioritised by its severity or impact of the issue on the service:

- Incident management for Medium (P2) and Low (P3) priority problems are performed during normal business hours on normal business days excluding bank holidays.
- Incident management for High Priority problems are performed during the supported hours of the service as specified in Section 1.7 of the Service Schedule.

When an incident is logged, Trust Systems' main tasks are:

1. To register and analyse the incident.
2. Carry out the troubleshooting process.
3. To restore the service as quickly as possible, with appropriate resolution to restore the System to normal operation.
4. After the incident is considered resolved by Trust Systems, verbal or email confirmation of resolution will be made.

#### 3.1. NOTIFYING TRUST SYSTEMS OF A SUPPORT INCIDENT

In the event that you become aware of any fault in the operation of the Services provided to you by Trust Systems you should notify us as soon as possible. Escalation can be done by an authorised contact(s). If escalation is required, the client shall ask for the next escalation level according to the Escalation Process.

#### BEFORE CONTACTING TRUST SYSTEMS

If you are not the designated IT contact for your company, please check beforehand that nobody within your organisation has already raised a support ticket for the same fault.

To help us diagnose and resolve any suspected faults rapidly and effectively, you should endeavor to ensure that you are in possession of the following information when contacting Trust Systems service desk:

- Customer organisation name
- Details of the services provided by us to you
- Customer fault site address & relevant contact details
- Where there is a circuit fault
- circuit details (DSL username, Telephone numbers, Circuit ID)
- Detailed description of the fault and steps to reproduce if appropriate
- Details of any tests you may have carried out
- Availability of access to the site for Trust Systems engineering staff, or their contractors
- Whether affected services can be taken out of service, if necessary, for testing



## CONTACT METHODS

All incidents raised with Trust Systems will be tracked using our web-based helpdesk system.

Our preferred method of contact is for you to raise your own support ticket on this system via our support website. <http://www.myitservicedesk.com>

If this is not possible, you can contact us via email ([help@myitservicedesk.com](mailto:help@myitservicedesk.com)) or telephone (0843 3300300 during contracted support hours only) when our technical staff will raise a support ticket on your behalf. If you wish to raise an emergency support ticket for a P1 fault outside normal business hours, please email [help@myitservicedesk.com](mailto:help@myitservicedesk.com) and this will alert our on call engineer.

Each support incident will be assigned a unique ticket ID. Please quote this ticket ID when:

- Requesting a progress report
- Calling back to say that the fault has been cleared
- Providing an update to a Technical Support Engineer

### 3.2. HIGH PRIORITY INCIDENTS

If you raise a P1 fault (see definitions below) within your Contracted Support Hours and we have not responded or acknowledged the fault within 30 minutes, please contact us by phone on 0843 3300300.

### 3.3. KEEPING YOU INFORMED

You will be kept informed of progress on your incident via our helpdesk system. You can log into the system at any time at <http://www.myitservicedesk.com> with your username and password to view the progress of your incidents. For access to the helpdesk system, please contact the Trust Systems Service Desk. Email updates will be sent upon ticket creation and every subsequent time the support ticket is updated (e.g. notes added, status changed etc.). Updates will continue to be sent until the incident has been closed, cancelled or the process is put on hold because, for example:

- You fail to provide any necessary information requested by us
- You fail to provide access to site when requested
- You request the fault to be put on hold until downtime is arranged



### 3.4. INCIDENT SEVERITY

SEVERITY	DESCRIPTION	TARGET RESPONSE SLA	TARGET FIX SLA
<b>P1 – High</b>	Major Fault (Severe service degradation or loss of service to users)	30 Mins (Response)	4 Hours
<b>P2* – Medium</b>	Minor Fault (Limited or degraded service or single EU fault)	3 Hours (Response)	24 Hours
<b>P3* – Low</b>	General Non-service affecting support)	24 Hours (Response)	72 Hours
<b>P4* – Change request</b>	Used for CR to be approved	24 Hours (Response)	N/A

For P1 faults (see above) we will endeavour to contact you within 30 minutes of the fault being rectified to confirm restoration of service. Depending on the type of service, some P1 faults may be escalated within Trust Systems as part of our escalation procedure. Service requiring visits by PSTN Providers will be managed although fall outside of direct control.

All Priority 1 & 2 faults should be raised via the tickets system then followed by a phone call or other contact methods.

Acknowledgement refers to an automated service which generates a response and alerts engineers of a service failure; or where there is dialogue between the client and the engineer.

Standard Change requests will be completed during the contracted support hours within 3 days where requests are conducted within the support contract. This does not include change requests outside of the support contract, or change request implemented outside the contracted support hours these will be dealt with as chargeable projects.

### 3.5. INCIDENT STATUS

Description	Status
Not Started	All new incidents raised by the Customer
Re-Opened	A previously closed incident which has been re-opened.
PRTG Alert	A new fault identified by our Network Management System
In Progress	Our technicians are working on solving the issue.
Waiting on Customer	We are waiting for information or input from the customer
Waiting on 3rd Party	We are waiting for information or input from a 3rd Party (such as BT or a hardware vendor)
Scheduled	Activity related to the incident has been scheduled (e.g. A device reboot or upgrade Scheduled to be completed outside of Normal Business Hours)
Close-Pending	A solution has been provided, the incident is considered closed but final confirmation from the Customer is desired.
Closed	Customer has confirmed that solution is satisfactory Incident has been completed and closed by Trust Systems (If the fault re-occurs within 14 days a ticket can be re-opened).

### HOURS OF SUPPORT

The following table details the standard contracted support hours depending on the service purchased.

Service Level	Support Hours
Bronze	Standard business hours support 9am to 5.30pm week days, excluding bank and national holidays
Silver †	Support hours between 7am and 7pm weekdays, excluding bank and national holidays
Silver Plus †	Support hours between 6am and 10pm 7-days a week, excluding bank and national holidays, excluding Christmas day, Boxing day and New Year's day
Gold †	Support hours 24/7 7-days a week

†Support out of Normal Business Hours is for P1 incidents only.



### **3.6. TIME TO RESOLVE FAULT (TTRF)**

Time to resolve fault is defined as the time between the fault being reported with Trust Systems (i.e. a support ticket is issued) and resolution of the problem (not including time waiting for customer input).

### **3.7. SERVICE LEVEL BREACHES**

Some services have a Service Level Agreement (SLA) attached to them that specify a monthly availability level or target TTRF that, if not achieved, will result in Service Credits being payable. Service Credits are provided in accordance with Section 2.11 of the Service Schedule.

#### **3.7.1 CALCULATION OF SERVICE CREDITS**

- Where a Service Review Period incorporates part of a month, any Service credit will apply to a pro-rated Monthly Charge.
- Service credits will be calculated monthly, aggregated and credited to the Customer on a quarterly basis. - Time based calculations and SLAs are limited to the supported hours for that service element
- If a Service is cancelled during a Service Review Period, no Service credit will be payable in respect of that Circuit for that Service Review Period.
- The Customer must claim any Service credit due to a failure to meet the Service levels, in writing, within twenty one (21) business days of the date at which the Customer could reasonably be expected to become aware of such failure. The Customer shall not be entitled to any Service credits in respect of a claim unless and until Trust Systems has received notice of the claim in writing in accordance with the above. Should Trust Systems require additional information from the Customer, the Customer shall assist, and shall not be entitled to any Service credits until Trust Systems has received all the information it has reasonably requested.

#### **3.7.2. EXCLUSIONS TO THE PAYMENT OF SERVICE CREDITS**

Service credits are not applicable for more than one breach of any targets outlined in this document arising from the same occurrence.

In respect of any Service Review Period, the total amount of any service credit payable in relation to any service level breach shall not exceed 50% of the Monthly Charge for the affected Service. The provision of Service credits shall be the sole and exclusive remedy for the failure to meet targets for the specified service. Trust Systems shall have no additional liability to the Customer.



Service credits will not be payable by Trust Systems to the Customer in relation to the Service Availability for faults or disruptions to the Service caused by any of the following:

- The fault, action or negligence of the Customer, its employees, agents or contractors;
- The Customer failing to comply with Trust Systems Standard Terms and Conditions;
- A fault in, or any other problem associated with, equipment connected on the Customer's side of the Trust Systems Network Termination Point, except where such fault or problem is directly caused by the fault action or negligence of Trust Systems, its employees, agents or contractors;
- Any event described in Clause 1.8 (Force Majeure)
- A failure by the Customer to give Trust Systems access to any equipment after being requested to do so by Trust Systems; or
- Maintenance during any Planned Outage
- Where Trust Systems is unable to access or is denied access to the customer site
- Where Trust Systems are ejected from the customer site whilst attempting to remedy the specified fault
- Faults relating to PSTN or Analogue Phones lines where the customer has not purchased critical care for the relevant service

### **3.8. FAULTS LOGGED BY TRUST SYSTEMS**

We may raise faults against alarms on the Trust Systems Network or customers monitored equipment. If a fault affects your services, then we will use reasonable endeavours within the defined SLAs to promptly inform the named contact(s) via the informed route.

### **3.9. ESCALATION PROCESS**

Trust Systems have a support team structure and a formal set of internal processes designed to deal efficiently with technical support incidents. The Service Delivery Manager will coordinate the communication process with the customer when a fault is hierarchically escalated and will ensure that the appropriate resources (technical and financial) are available as required. This may include liaising with the Technical Manager or Managing Director and the appropriate 3rd parties. A communication schedule will be agreed with the Customer and updates will be provided in line with this. If a technical solution cannot be implemented in a reasonable timescale, a Corrective Action Plan will be discussed with the Customer. If a CAP is raised, this may trigger other processes in line with ITIL.



Under normal circumstances most faults are dealt with quickly by our support team. We may escalate the problem internally to more senior technical support staff during the incident management process and we will always endeavour to keep you informed of progress via the helpdesk ticket. If we feel it is necessary, we may also escalate the incident within Trust Systems' management hierarchy so that we ensure that the appropriate resources are made available. These 2 types of escalation are outlined below.

### **3.9.1 FUNCTIONAL ESCALATION**

Functional escalation is the normal transfer of an incident to individuals or teams with a higher level of technical knowledge to reach a resolution. Many incidents will be escalated internally in this manner. Standard process is to escalate through 1st, 2nd and 3rd line teams until the fault is rectified, but the nature of the problem may allow for the bypass some of these stages. As the incident moves through this process, the support ticket will be updated at appropriate stages.

### **3.9.2 HIERARCHICAL ESCALATION**

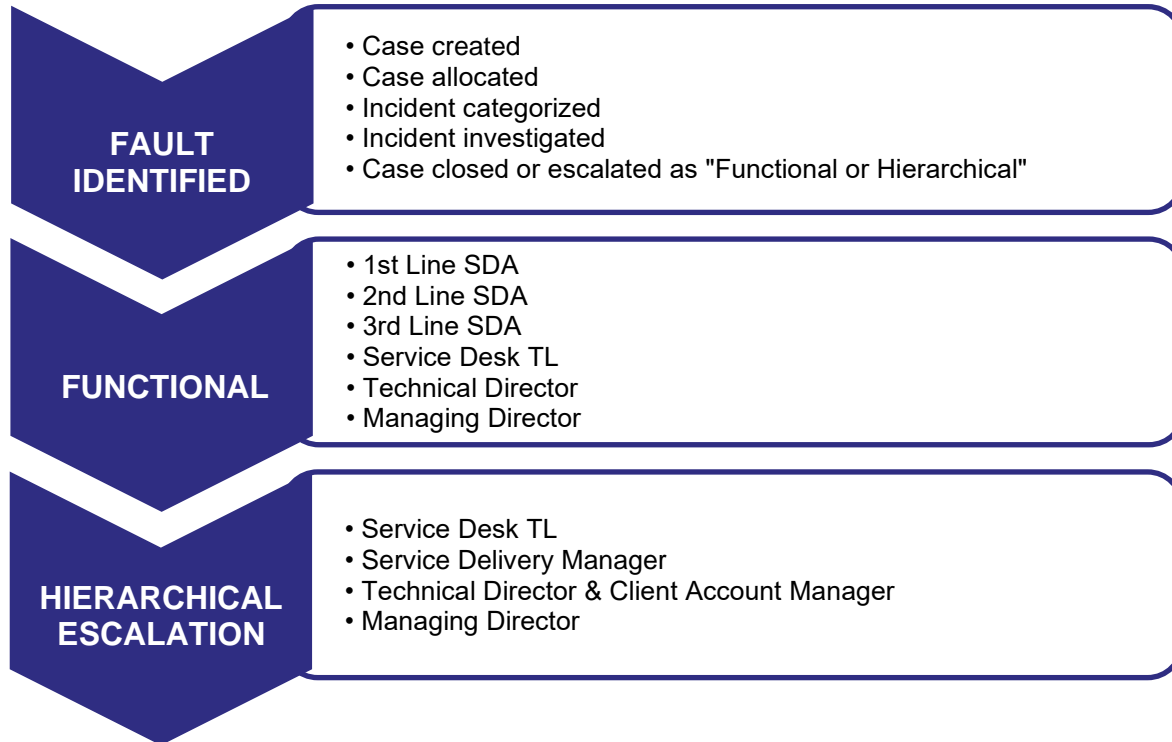
In some cases, an incident will be escalated within the management hierarchy of Trust Systems alongside a functional escalation. There are several triggers for this and the level of escalation will depend on the details of the case. An incident that has been escalated in this manner will usually be overseen by a dedicated Incident Manager (usually the Service Delivery Manager). Your Trust Systems account manager will also be included in communications.

#### **3.9.2.1. POSSIBLE HIERARCHICAL ESCALATION TRIGGERS**

- A Service Level Agreement (SLA) breach is likely
- The incident has been classified as major (e.g. a DR scenario, total loss of certain types of service etc.)
- The functional escalation process has failed to deliver a solution and external resource may be required
- A formal customer complaint has been made regarding the handling of the incident system primarily, or by telephone in circumstances where the fault means that they would not receive email. The start time of a fault is the time it is detected by us and a Case Reference Number is allocated.



## Escalation process flow



### 3.10. INCIDENT REPORTS

We will always endeavour to give reasons for outage (RFOs) where possible. In most cases, this will be done on the ticket system. For major incidents, or incidents affecting multiple customers, we may issue a formal Incident Report. This will be released when we have completed an investigation into the cause of the fault and, as such, may be issued a few days after the incident. Interim or follow-up reports may also be issued where appropriate. You can request an Incident Report through the ticket system or via your account manager.

### 3.11. THIRD PARTY SERVICES

Support for third party equipment and services are subject to the specific support agreements in place with those parties; where applicable Trust Systems will manage the fault with those third parties. Copies of these agreements can be provided upon request from your Trust Systems Account Manager. Third party services include (but are not limited to): vendor hardware & software support, Wide Area Network (WAN) services, cabling, power and environment.

### 3.12. OTHER FAULTS NOT COVERED

If the fault cannot be traced to Trust Systems services, network or equipment, or it appears to be a problem with resources or equipment for which we are not responsible, we will provide you with a report of tests that have been carried out and an explanation of how the fault was traced. If Trust Systems prove beyond reasonable doubt that the fault is not related to a Trust Systems service, network or equipment, and you continues to request support then we reserve the right to charge for you for this support. Should you require support services outside of Trust Systems' obligations, this will be charged for.



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