

## **BUSINESS CONTINUITY SERVICES SUPPLEMENTAL TERMS AND CONDITIONS**

### **1. Scope**

- 1.1 These Business Continuity Services Supplemental Terms supplement and (unless expressly stated otherwise) incorporate the terms and conditions set out in the General Terms and Conditions and the relevant Proposal in respect of the Business Continuity Services to be provided by ITPS to the Customer under a Contract. These Business Continuity Services Supplemental Terms apply only to the supply by ITPS of the Business Continuity Services specifically identified in the Proposal and the Customer's use of those Services. Any other Products supplied by ITPS to the Customer remain subject to the Contract Terms applicable to those Products.
- 1.2 The additional definitions set out in clause 8 shall apply in these Business Continuity Services Supplemental Terms. Any defined terms in the General Terms and Conditions or the Proposal will have the same meaning in these Business Continuity Services Supplemental Terms unless stated otherwise.

### **2. Business Continuity Services**

- 2.1 If and to the extent that the relevant services are expressly identified in the Proposal, ITPS shall, on the terms and conditions of these Business Continuity Services Supplemental Terms, provide any or all of following Business Continuity Services:
  - 2.1.1 the Replication and Backup Services; and/or
  - 2.1.2 the Disaster Recovery Services; and/or
  - 2.1.3 the Workspace Recovery Services.
- 2.2 If during the Term, the Customer wishes ITPS to supply additional Business Continuity Services or wishes it to supply any Additional Services, it shall notify ITPS and ITPS shall process the Customer's request in accordance with the Change Control Procedure. Any additional Business Continuity Services will be supplied on the basis of these Business Continuity Services Supplemental Terms and any Additional Services will be supplied on the basis of the General Terms and Conditions then in effect.

### **3. Replication and Backup Services**

- 3.1 When Replication and Backup Services are expressly identified in the Proposal, ITPS shall use its reasonable endeavours to provide the Replication and Backup Services from the Commencement Date for the duration of the Term in accordance with the description and specification set out in the Proposal and in accordance with these Business Continuity Services Supplemental Terms.
- 3.2 It is agreed and acknowledged by the Customer that, as part of providing the Replication and Backup Services, ITPS may make Business Continuity Software available to the Customer on terms further detailed in the Proposal. Unless the parties expressly agree otherwise, the Business Continuity Software shall be supplied in executable form only. Business Continuity Software will either be:
  - 3.2.1 licensed directly to the Customer by the Third Party Software Vendor on the terms of a Third Party Software Licence in accordance with Clause 3.3; or
  - 3.2.2 licensed to the Customer by way of a sub-licence of the Business Continuity Software licensed to ITPS ("**Sub-Licence**"). The Sub-Licence to the Customer shall be on and subject to the terms set out in a separate licence document in writing between ITPS and the Customer and all other applicable terms of these Business Continuity Services Supplemental Terms or, where ITPS is granting a Sub-Licence in the absence of a separate licence document, ITPS shall grant the Customer a limited, revocable, non-exclusive, non-sub licensable, non-transferable, licence to use the Business Continuity Software solely for use in connection with its internal disaster recovery and business continuity services.

In the absence of express agreement by the Customer to the terms of any licence granted pursuant to this clause 3.2, by using the relevant Business Continuity Software or instructing ITPS to supply any relevant Business Continuity Services related to it, the Customer indicates its acceptance of the relevant licence.

3.3 Where Business Continuity Software is to be licensed directly to the Customer by a Third Party Software Vendor:

3.3.1 ITPS shall ensure that a copy of the Third Party Software Licence is supplied or otherwise made available to the Customer upon or before the parties agree to the supply of the corresponding Business Continuity Software, whether by means of the Third Party Software Vendor's website or otherwise;

3.3.2 the Customer shall be responsible for ensuring that the Customer's use of the Business Continuity Software is properly licensed;

3.3.3 the parties acknowledge that the Customer's rights to use the Business Continuity Software, and the restrictions on the Customer's use of the Business Continuity Software, shall be as set out in the Third Party Software Licence;

3.3.4 the Customer must abide by the terms of the Third Party Software Licence and ensure that all persons using the Business Continuity Software supplied by ITPS to the Customer abide by the terms of the Third Party Software Licence; and

3.3.5 the Customer acknowledges that the Third Party Software Licence creates rights and obligations between the Customer and the Third Party Software Vendor, and that ITPS is not a party to the Third Party Software Licence.

3.4 In relation to the Replication and Backup Services, ITPS:

3.4.1 shall provide the Replication and Backup Services with reasonable skill and care;

3.4.2 shall use its reasonable endeavours to maintain and make available the Replication and Backup Services;

3.4.3 without prejudice to Sub-Clauses 3.4.1 to 3.4.2, does not undertake or warrant that:

(a) the Customer'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 Customer, or that it will be inaccessible by third parties;

(b) the Business Continuity Software will meet Customer's requirements or that the operation of the Business Continuity Software will be uninterrupted or error-free; or

(c) that the Replication and Backup Services will be available on an uninterrupted basis or will operate entirely error-free; and

3.4.4 shall be entitled to make any changes to the Replication and Backup Services from time to time in accordance with the Contract Terms.

3.5 In relation to the use of and access to the Replication and Backup Services:

3.5.1 the Customer undertakes to ITPS to:

(a) not 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, tortious, defamatory, libellous, or breaches another's confidentiality or privacy rights, or is abusive, indecent, defamatory, criminally obscene or threatening, or is otherwise unlawful;

(b) not transmit to ITPS for storage by ITPS any personal or other data of another party without first obtaining any consent of that party required by law to be obtained for that purpose;

- (c) not store or transmit or backup any material that contains software viruses or any other harmful code, files or programs, such as trojan horses, worms or time bombs;
- (d) comply with all such laws and regulations as are applicable to the Customer's transmission, storage, and retrieval of Data using the Replication and Backup Services;
- (e) not use the Replication and Backup Services for any purposes or in any way which in any jurisdiction is illegal or fraudulent or has any unlawful effect;
- (f) comply with ITPS' guidelines, policies, procedures, arrangements and any instructions issued from time to time by ITPS notified by it to the Customer;
- (g) not to interfere with, disrupt, or attempt to gain unauthorized access to, computer systems, servers or networks connected to the Replication and Backup Services;
- (h) not attempt to gain unauthorized access to the Replication and Backup Services or the accounts of other customers of ITPS who use similar services provided by ITPS;
- (i) fulfil all other Customer obligations and responsibilities set out in this Contract between ITPS and the Customer in a timely and efficient manner;
- (j) all Data used by the Customer or disclosed or transmitted by it to ITPS will be properly in the possession of, and properly disclosed and transmitted by the Customer; and
- (k) at all appropriate or material times it will maintain and have maintained a registration under the Data Protection Law.

3.5.2 the Customer assumes the sole responsibility for:

- (a) selecting the Replication and Backup Services and deciding whether it meets its business needs;
- (b) where identified as a responsibility of the Customer in the Proposal:
  - (i) completing the process of downloading, installing and activating the Business Continuity Software and initial activation of the Replication and Backup Services using Business Continuity Software;
  - (ii) Backing-up its Data whenever it requires a Backup of it;
- (c) using computer hardware suitable for the purpose of using the Replication and Backup Services and 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 Replication and Backup Services;
- (d) implementing Customer's own internal policies and procedures for opening potentially dangerous attachments (and is encouraged to install antivirus software on all access points or computers);
- (e) the consequences to the Customer and to ITPS of storage and other devices and media of the Customer transmitting Data containing any virus or other malicious code;
- (f) loss or corruption of or damage to Data unless and to the extent that such breach arises as a direct result of any breach by ITPS of any of its express obligations under the Contract;
- (g) the supply, operation, control and support of all necessary resources not included within the Replication and Backup Services;
- (h) all security arrangements necessary and appropriate to Customer's use of the Replication and Backup Services including, without limitation, passwords, pass codes, audit controls, operating methods and procedures;
- (i) the integrity and the suitability of the Data that is to be replicated and backed up and is to be restored by the Customer; and

(j) its use of Business Continuity Software.

3.6 ITPS shall as far as it is able pass on to the Customer the benefits of any Third Party Software Vendor Warranties in relation to the Business Continuity Software. ITPS gives no warranties or guarantees and makes no representations concerning the Business Continuity Software, and all such warranties, guarantees, representations, and all conditions and any other terms whatsoever implied by statute or otherwise, are hereby excluded from the Contract between ITPS and the Customer to the fullest extent permitted by applicable law.

3.7 Terms defined at clause 15 of the General Terms and Conditions shall have the same meaning in this clause 3.7 and accordingly:

3.7.1 the Customer (but not ITPS) shall, in using the Replication and Backup Services and in relation to any personal data processed by the Customer, operate as both controller and processor and, accordingly, the Customer shall ensure that its processing of personal data complies with the Data Protection Law and that it is entitled to transfer the relevant personal data to ITPS so that ITPS may lawfully store and deal with such personal data in accordance with the Contract; and

3.7.2 in so far as ITPS processes any Data which is personal data, it shall process such personal data only in accordance with the Data Protection Law, the terms of the Contract and any lawful, reasonable and documented instructions reasonably given by the Customer from time to time; each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage;

3.7.3 this clause 3.7 is without prejudice to any other rights or obligations of the parties pursuant to clause 15 of the General Terms and Conditions.

#### 4. **Disaster Recovery Services and Workspace Recovery Services**

4.1 When Disaster Recovery Services and/or Workspace Recovery Services are expressly identified in the Proposal, ITPS shall with effect from the Commencement Date and for the duration of the Term maintain the Standby Capability at the Standby Facility and make available to the Customer:

4.1.1 the Standby Capability in the event of a Disaster and following Invocation;

4.1.2 Testing; and

4.1.3 technical assistance as determined by ITPS to support the Customer on Testing or after Invocation.

in each case, in accordance the description and specification set out in the Proposal and in accordance with these Business Continuity Services Supplemental Terms and other Contract Terms.

4.2 ITPS will have no responsibility or liability for the Customer Facility or any equipment, software, services, other resources, data or storage media used at the Customer Facility or anywhere else in the operation of the Customer's business. It is the Customer's responsibility to maintain adequate copies of the software, services, other resources, data or storage media used at the Customer Facility.

4.3 While using or accessing the Standby Capability and the Standby Facility, the Customer will, and will ensure that all relevant personnel and contractors of the Customer will, comply with ITPS' guidelines, policies and procedures relating to the Standby Capability and the Standby Facility including any instructions and procedures set out in the ITPS Innovations Manual notified by ITPS to the Customer from time to time.

4.4 The Customer will:

4.4.1 ensure that ITPS is in possession of its latest information and configurations regarding its Standby Capability requirements;

- 4.4.2 all changes to the Customer Facility which affect the provision of the Disaster Recovery/Workspace Recovery Services are promptly notified to ITPS as soon as reasonably practicable following such changes being made;
  - 4.4.3 use and operate the Standby Capability only for its own business continuity purposes and in a proper manner and in the ordinary course of its business;
  - 4.4.4 use the Services at all times in a proper, professional and responsible manner and by properly trained and skilled personnel;
  - 4.4.5 take good care of the Standby Facility and Standby Capability at all times while using the Disaster Recovery Services or Workspace Recovery Services and not modify any element of the same without the prior written consent of ITPS. At the end of use return them to ITPS in the same condition they were in before the Customer's use of the Services commenced. Without prejudice to any other rights or remedies of ITPS, the Customer will within thirty (30) days of the date of any invoice from ITPS pay all sums due under such invoice in respect of restoration of the Standby Facility and the Standby Capability to such condition; and
  - 4.4.6 in relation to the Workspace Recovery Services, observe the following obligations and covenants in clause 6.
- 4.5 The Customer alone is responsible in relation to its use of the Disaster Recovery Services and/or Workspace Recovery Services for:
- 4.5.1 satisfying itself that the Standby Facility and Standby Capability provide sufficient capacity to support the Customer Facility and the Customer will use Testing to ensure that the Disaster Recovery Services and/or Workspace Recovery Services are adequate for its requirements;
  - 4.5.2 supplying all storage media (including backup tapes) and ensuring that it is suitable in all respects for use on the Standby Capability;
  - 4.5.3 the adequacy, accuracy and security of all storage media and data it brings, processes, generates and/or uses;
  - 4.5.4 all software and other proprietary materials that do not form part of the Standby Capability (including ensuring that they are appropriately licensed);
  - 4.5.5 the supply, operation, control and support of all other resources not included within the Disaster Recovery Services and/or Workspace Recovery Services;
  - 4.5.6 risk of loss of or damage to any such data, storage media, software, proprietary materials or other resources (whether and howsoever in transit to or from or at the Standby Facility or on the Standby Capability);
  - 4.5.7 all necessary security arrangements appropriate to its use of the Services including without limitation passwords, pass codes, audit controls, the creation of backup files and operating methods and procedures; and
  - 4.5.8 all results it obtains from the Disaster Recovery Services and/or Workspace Recovery Services.
- 4.6 ITPS shall be entitled to reject any unsuitable storage media supplied by the Customer for use on the Standby Capability and shall have no responsibility or legal liability whatsoever for any of the things in clause 4.5 for which the Customer has agreed that it alone has responsibility.
5. **Invocation and use of the Standby Capability**
- 5.1 In the event of a Disaster, the Customer shall be entitled to send ITPS an invocation notice that it wishes to use the Standby Capability for business continuity purposes. Any oral notification of a requirement to use the Standby Capability shall be confirmed by an invocation notice in accordance with clause 5.2 (bearing the additional words "confirmation of invocation notice")

- 5.2 The invocation notice shall be:
- 5.2.1 in the form and sent to the email address stipulated by ITPS;
  - 5.2.2 true, complete and accurate in all material respects;
  - 5.2.3 signed by a duly authorised representative of the Customer whose details have been notified to ITPS in advance; and
  - 5.2.4 otherwise in accordance with ITPS' invocation procedures from time to time.
- 5.3 The Customer undertakes that it will ensure that the Standby Capability is not improperly invoked and that it will not invoke the use of the Standby Capability where the Disaster can be reasonably and properly remedied by the Customer purchasing replacement equipment, calling its maintenance service provider or utilising in house resources and personnel.
- 5.4 Subject to clause 5.5, ITPS shall following Invocation and within the Invocation Response Time make available the Standby Capability to the Customer and the Customer may use the Standby Capability during the Service Period for business continuity purposes while the Disaster lasts. The Customer will observe the provisions of clause 6 if its use of the Standby Capability comprises or includes the use of Workspace Recovery Facilities.
- 5.5 In relation to Workspace Recovery Services only, the Customer acknowledges and agrees that ITPS operates a commercial business continuity service and has a number of Subscribers and accordingly in the event of Multiple Invocation:
- 5.5.1 one or more other Subscribers may either have invoked use of or be using the Standby Capability at the time of Invocation;
  - 5.5.2 ITPS shall operate in accordance with the Priority Levels;
  - 5.5.3 ITPS shall have no obligation or liability to the Customer for failure to provide any access to or use of all or any part of the Standby Capability or the Standby Facility;
  - 5.5.4 if ITPS is unable to provide access to or use of the Standby Capability or the Standby Facility to the Customer, it shall nevertheless use its reasonable endeavours to make alternative business continuity facilities, equipment and/or resources available (as applicable); and
  - 5.5.5 the Customer shall cooperate with ITPS in its efforts to provide business continuity services to other Subscribers.
- 5.6 The Customer shall use its reasonable endeavours as soon as reasonably practicable either to restore use of the Customer Facility as it was used before the Disaster or to bring into operation a suitable alternative facility.
- 5.7 The Customer shall cease use of the Standby Capability and vacate the Standby Facility within three hours of the earliest to occur of the ending of the Service Period or (in accordance with clause 5.6) the restoration of the Customer Facility or the bringing into operation of a suitable alternative facility. The Customer hereby irrevocably authorises ITPS without liability or obligation to the Customer and without prejudice to ITPS' other rights or remedies to effect such cessation and/or vacation if for whatever reason the Customer has not done so within such time. Nothing in these Business Continuity Services Supplemental Terms:
- 5.7.1 is intended to confer exclusive possession of the Standby Facility upon the Customer nor to create the relationship of landlord and tenant between the parties hereto and the Customer shall not be entitled to any statutory security of tenure now or upon the termination of the Contract;
  - 5.7.2 shall impede ITPS or its officers, servants or agents, in the exercise of its rights of possession and control of the Standby Facility and every part thereof.



- 5.8 If the Customer wishes to use the Standby Capability after the Service Period, it shall notify ITPS in writing as far in advance as practicable. ITPS makes no commitment that it shall grant use of or access to the Standby Capability or the Standby Facility after the end of the Service Period for any reason but shall use its reasonable endeavours to do so. The Customer shall pay ITPS for any such extended use or access at the same rate as during the Service Period. ITPS shall be entitled to end any such extended use or access on not less than three (3) hours' notice at any time.
- 5.9 ITPS shall be entitled on not less than thirty (30) days' notice to the Customer to change the location of the Standby Facility and/or the equipment and/or other resources comprising the Standby Capability. ITPS shall not be required to notify the Customer of changes to the equipment or resources that are routine, arise through remedial maintenance, involve standard upgrades to equipment, software or services or are otherwise (viewed objectively) not material. In the event of a notification of a Standby Facility location change or of a change of Standby Capability equipment or resources that would materially and adversely affect the Customer's use of the Standby Capability for business continuity purposes, the Customer shall be entitled at any time within fourteen (14) days after the date of ITPS' notice to elect to terminate the Contract with immediate effect, any such termination being without liability to ITPS but not otherwise affecting the parties' then accrued rights and obligations.
6. **Use of the Workspace Recovery Facilities**
- 6.1 ITPS hereby grants to the Customer the right to use on two (2) occasions on each calendar year of the Term of the Contract, during the Designated Hours and for the Service Period:
- 6.1.1 the Workspace Recovery Facilities for business continuity purposes;
- 6.1.2 in common with ITPS and all other Subscribers, the roads, paths, entrance halls, corridors, lifts and staircases of the Standby Facility ("**Access Ways**"), the use of which is necessary to obtain access to and egress from the Standby Facility for the purposes of access to and egress from the Workspace Recovery Facilities; and
- 6.1.3 in common with ITPS and all other Subscribers, the toilet, bathroom, meeting room and kitchen facilities located within the Standby Facility or some part thereof.
- 6.2 In relation to its use of the Workspace Recovery Services, the Customer undertakes to:
- 6.2.1 use the Workspace Recovery Facilities for business continuity purposes only;
- 6.2.2 not bring any furniture, equipment, goods or chattels onto the Standby Facility without the consent of ITPS, except as is necessary for the exercise of the rights given in these Business Continuity Services Supplemental Terms;
- 6.2.3 keep the Workspace Recovery Facilities clean and tidy and clear of rubbish and leave them in a clean and tidy condition and free of the Customer's furniture, equipment, goods and chattels at the end of the Service Period;
- 6.2.4 not obstruct the Access Ways or make them dirty or untidy, or leave any rubbish on them.
- 6.2.5 not display any signs or notices at the Standby Facility without the prior written consent of ITPS;
- 6.2.6 not to make any alterations or addition to the Workspace Recovery Facilities without the prior written consent of ITPS;
- 6.2.7 not to use the Standby Facility or any part thereof in such a way as to cause any nuisance, damage, disturbance, annoyance, inconvenience or interference to other occupiers or adjoining or neighbouring property or to the owners, occupiers or users of any adjoining or neighbouring property;
- 6.2.8 not do anything that will or might constitute a breach of any statutory requirement affecting the Standby Facility or that will or might wholly or partly vitiate any insurance affected in respect of the Standby Facility from time to time; and

6.2.9 observe any reasonable rules and regulations ITPS makes and notifies to the Customer from time to time, governing the use of the Standby Facility.

## 7. Testing

7.1 The Customer shall, on prior agreement with ITPS (and in accordance with ITPS' policies and procedures for Testing from time to time) be entitled to use the Standby Capability for Testing during the Testing Days. The Customer will request from ITPS a proposed date which shall be at least one (1) month in advance from the date of its request and ITPS shall advise the Customer of its acceptance or rejection of this date within twenty one (21) days of receipt of such request.

7.2 The Customer acknowledges and agrees that:

7.2.1 ITPS might not be able to make available Testing Days on days of the Customer's choice;

7.2.2 Testing Days may not be consecutive; and

7.2.3 ITPS shall be entitled to change the date of previously agreed Testing Days.

7.3 The Customer shall be responsible for all data and storage media used during Testing and ITPS shall have no liability or responsibility for loss of or damage to any such data or storage media, or to any other equipment, software, services or other resources of the Customer used during Testing.

7.4 If the Customer wishes to carry out Testing at any time after the Service Period, it shall notify ITPS in writing in the same way as at clause 5.8 and the provisions of clause 5.8 shall apply to such request in the same way as they apply to the use of the Standby Capability.

## 8. Definitions and interpretation

8.1 In these Business Continuity Services Supplemental Terms, the following additional definitions apply:

**Additional Services:** any such services (other than the Business Continuity Services) that ITPS makes commercially available from time to time, including, for example, support, hosting, network monitoring or remote access testing.

**Business Continuity Software:** the Software supplied by ITPS for use by the Customer in accordance with the Licence to enable it to access related internet services for the purpose of it using services related to the Replication and Backup Services.

**Business Continuity Services:** means the services identified in clause 2.1 which may comprise of (as applicable) Replication and Backup Services and/or Disaster Recovery Services and/or Workspace Recovery Services if such services are expressly identified in the Proposal.

**Customer Facility:** the equipment, software, services and other resources which together form the Customer's computer facility described in the Proposal and/or Project Plan.

**Data:** any data (including personal data as defined in the Data Protection Law) programs or other information of the Customer replicated or to be replicated from the Customer Facility during a Backup.

**Designated Hours:** 8.30 am to 6.00 pm GMT on a Monday to Friday (Business Days) or such other hours of the day as ITPS, in its sole discretion, shall make the Workspace Recovery Facilities accessible to the Customer.

**Disaster:** an unplanned event or circumstance other than an Excluded Event resulting in an interruption of or inaccessibility to the Customer Facility justifying Invocation.



**Disaster Recovery Services:** the disaster recovery services to be provided for the Customer's business continuity purposes by ITPS in accordance with clause 4.1 and as further described in the Proposal.

**Excluded Event:** any Disaster where the Customer is unable to use the Customer Facility due to its full or partial unavailability or non-function which is, or is caused by:

- (a) Force Majeure affecting ITPS;
- (b) any act or omission of the Customer; or
- (c) any failure, incorrect functioning or non-functioning of or fault in any computer, telecommunications, equipment, software, facilities or services of the Customer or for which the Customer is solely responsible under the Contract.

**General Terms and Conditions** means the General Terms and Conditions of ITPS from time to time, as available at [General-Terms-Conditions.pdf \(itps.co.uk\)](#)

**Invocation:** receipt by ITPS of the Customer's invocation notice in accordance with Clause 5.1 and Clause 5.2 requesting use of the Standby Capability for business continuity purposes.

**Invocation Response Time:** means:

- (a) in respect of the critical systems of the Customer's Facility, the period of twenty four hours after Invocation; and
- (b) in respect of the non-critical systems of the Customer's Facility, the period of forty eight hours after Invocation,

within which ITPS shall make the Standby Capability available to the Customer in accordance with Clause 5.3.

**Multiple Invocation:** Invocation and invocation by any other Subscriber(s) resulting in competing requests for use of the Standby Facility and/or the Standby Capability.

**Priority Levels:** the priority determined by ITPS on a "first come, first served" basis in which ITPS shall provide use of the Standby Capability in the event of Multiple Invocation.

**Proposal:** the document(s) provided in writing by ITPS to the Customer which sets out the description or specification of the applicable Business Continuity Services that will be provided by ITPS to the Customer and may include a Project Plan and/or a disaster recovery plan.

**Replication and Backup Services:** the online data replication and/or backup services to be provided for the Customer's business continuity purposes by ITPS using the Business Continuity Software in accordance with clause 3 and as further described in the Proposal.

**Service Period:** the period of twelve weeks commencing on Invocation during which the Customer is eligible to use the Standby Capability for business continuity purposes.

**Standby Capability:** the equipment, software, services and other resources which together form the standby capability to be provided for the Customer's business continuity purposes by ITPS which:

- (c) where ITPS is providing Disaster Recovery Services, means the equipment, software, services and other resources referred to in the Proposal; and/or
- (d) where ITPS is providing Workspace Recovery Services, means providing access to and use of the Workspace Recovery Facilities.

**Standby Facility:** a site at which the Standby Capability is to be made available, which:

- (a) where ITPS is providing Disaster Recovery Services means, subject to clause 5.9, the site referred to in the Proposal; and/or
- (b) where ITPS is providing Workspace Recovery Services means, subject to clause 5.9, Angel House, Drum Industrial Estate, Chester-Le-Street, DH2 1AQ (or such other facility that shall be set out in the Proposal).

**Sub-Licence:** the sub-licence granted by ITPS to the Customer of the Business Continuity Software referred to in clause 3.2.2.

**Subscriber:** a third party entitled to use the Standby Capability and the Standby Facility for Workspace Recovery Purposes.

**Testing:** use by the Customer of the Standby Capability for testing purposes in accordance with Clause 7.

**Testing Days:** where Disaster Recovery Services are to be supplied to the Customer, the number of days of use by the Customer of the Standby Capability for Testing that are identified in the Proposal or in the absence of any number of days stated there, one (1) day of use.

**Third Party Software Licence:** means the Third Party Software Vendor's standard licensing terms for the Business Continuity Software from time to time.

**Third Party Software Vendor:** means a third party that has granted to ITPS the right to distribute the Business Continuity Software and resell licences for the Business Continuity Software.

**Third Party Software Vendor Warranties:** the warranties given by any Third Party Software Vendor in relation to Business Continuity Software supplied by ITPS.

**Workspace Recovery Facilities:** the equipment, software, services and other resources further described in the Proposal which may include desk space, IT workstations, VoIP telephony (including answerphone), copier, fax internet services and office supplies.

**Workspace Recovery Services:** the workspace recovery services to be provided for the Customer's business continuity purposes by ITPS in accordance with clause 4.1 and as further described in the Proposal.